THE BUFFALO CITY METROPOLITAN MUNICIPAL SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

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CHAPTER 1

DEFINITIONS, APPLICABLITY AND CONFLICT OF LAWS

1. Definitions

In these By-Laws, unless the context indicates otherwise, a word or expression defined in the Act or provincial legislation has the same meaning as in these By-laws and -

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

"Acted Upon" in relation to a land development approval, means when all relevant conditions of approval have been complied with and:

(a) where the approval includes a subdivision, a clearance to pass transfer has been issued by the municipality and the transfer / registration is effected in the Deeds Office;

(b) an occupation certificate has been issued by the municipality in terms of the National Building Regulations; and

(c) the approved land development activity has commenced*,*

Note: Item (b) above, does not apply to approvals relating to Urban or Rural Public Funded Settlement Development Incremental Settlement developments.

"Appeal Authority" means the executive authority of the municipality or any other body or institution outside of the municipality authorised by that municipality to assume the obligations of an appeal authority for purposes of appeals lodged in terms of the Act;

"Authorised Official" means an official who may consider and determine applications as contemplated in section 35(2) of the Act;

"Authorised Representative" means a person or entity formally mandated by another in terms of a formal appointment or power of attorney, to act in the name and on behalf of such mandating person or entity in duties described in the appointment or power of attorney.

"Authority" in terms of this By-law includes the Authorised official, Municipal Planning Tribunal and Appeals Authority.

"By-Laws" mean this By-Law and includes the schedules attached hereto or referred to herein.

"City Manager" means the person appointed as the Buffalo City Metropolitan Municipal Manager in terms of appointed in terms of section 54A of the Municipal Systems Act and includes any person acting in that position or to whom authority has been delegated;

"Communal Land" means land under the jurisdiction of a traditional council determined in terms of section 6 of the Eastern Cape Traditional Leadership and Governance Act, (Act 4 of 2005) and which was at any time vested in -

(a) the government of the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or

(b) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971);

"Consent" means a land use right that may be obtained by way of consent from the municipality and is specified as such in the land use scheme;

"Consolidation" means the joining of two or more pieces of land into a single entity;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Council" means the municipal council of the Municipality;

"Deeds Registry" means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"Departure" for the purposes of Part H of Chapter 5, means an application for a temporary deviation from, or permanent amendment of, land use scheme provisions applicable to land;

"Desirability" refer to Clause 45(2) of these bylaws;

"Deviation" in relation to a spatial development framework or local spatial development framework- means a deviation from the provisions of a municipal spatial development framework as set out in section 22(2) of SPLUMA and 'departure' has a corresponding meaning.

"Diagram" means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

"File" means the lodgement of a document with the appeal authority of the municipality;

"Land" means -

(a) any erf, agricultural holding or farm portion, and includes any improvements or building on the land and any real right in land, and

(b) the area of communal land to which a household holds an informal right recognized in terms of the customary law applicable in the area where the land to which such right is held is situated and which right is held with the consent of, and adversely to, the registered owner of the land;

"Land Development Application" means an application as determined in Chapter 5 of this By-Law.

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

"Land Use Scheme" means the land use scheme adopted and approved in terms of Chapter 3 and for the purpose of these By-laws includes an existing scheme until such time as the existing scheme is replaced by the adopted and approved land use scheme.

"Long Term Lease" means a lease for a period of 10 years or longer.

"Member of the Executive Council" means the Member of the Executive Council responsible for local government in the Province;

"Minor amendment of a Spatial Development Framework" - means a minor variation of an aspect of an approved Spatial Development Framework that does not significantly increase the scale or intensity of development proposals of the Spatial Development Framework and does not raise any new issues for consideration which would otherwise warrant the need for a substantial, material and comprehensive review of a Spatial Development Framework, emanating from:

(a) a land development application that is not consistent with the proposals of an applicable Spatial Development Framework and to which no objections were received; or

(b) an internal Municipal decision to undertake a minor amendment to an SDF.

A minor amendment does not include an amendment of an Urban Edge.

A minor amendment must be consistent with the principles of SPLUMA and the objectives, strategies and outcomes of the applicable Spatial Development Framework.

"Municipal Area" means the area of jurisdiction of the Buffalo City Metropolitan Municipality, demarcated in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

"Municipal Planning Tribunal" means the Buffalo City Metropolitan Buffalo City Metropolitan Municipal Planning Tribunal established in terms of section 33;

"Municipality" means the Buffalo City Metropolitan Municipality or its successor in title as envisaged in section 155(1) of the Constitution, established by Notice No (1998/12/18 19614) in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and for the purposes of this By-law includes an employee or official acting in terms of a delegation issued under section 59 of the Municipal Systems Act, section 56 of the Act**;**

"Objector" means a person who has lodged an objection with the Municipality to a draft municipal spatial development framework, draft land use scheme or a land development and land use application;

"Planning Profession Act" means Act 36 of 2002, which provides for the establishment of the South African Council for Planners and the regulation of categories of planners, registration of planners, areas of work for planners, voluntary associations, to protect the public's interests, to maintain professional conduct and integrity; and to establish disciplinary mechanisms.

"Premier" means the Premier of the Province of Eastern Cape;

"Previous Planning Legislation" means any planning legislation that is repealed by the Act or the provincial legislation;

"Provincial Legislation" means legislation contemplated in section 10 of the Act promulgated by the Province;

"Province" means the Province of Eastern Cape referred to in section 103 of the Constitution;

''Public place'' means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for use by the general public and is owned by or vests in the ownership of a Municipal Council, and includes a public open space and a servitude for any similar purpose in favour of the general public;

"Regulations" means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015;

"Service Provider" means a person lawfully appointed by a municipality or other organ of state to carry out, manage or implement any service, work or function on behalf of or by the direction of such municipality or organ of state;

"Spatial Development Framework" means the overall Buffalo City Metropolitan Municipal Spatial Development Framework, Local Spatial Development Framework or Precinct Plan for a specific geographic area, prepared and adopted in terms of sections 20 and 21 of the Act and Chapter 2 of this By-Law**;** Where reference is made in this Bylaw to a Local Spatial Development Framework, it will be considered to also include a Precinct Plan.

"Subdivision" means the division of a piece of land into two or more portions;

"the Act" means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 and any subsidiary legislation or other legal instruments issued in terms thereof;

"Traditional Communities" means communities recognised in terms of section 3 of the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005).

2. Application of By-law

(1) This By-law applies to all land within the geographical area of the Municipality, including land owned by the state.

(2) This By-law binds every owner and their successor-in-title and every user of land, including the state.

3. Conflict of laws

(1) This By-law is subject to the relevant provisions of the Act and the provincial legislation.

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

(3) Where a provision of this By-law is in conflict with a provision of the Act or provincial legislation, the Municipality must institute the conflict resolution measures provided for in the Act or in provincial legislation, or in the absence of such measures, the measures provided for in the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005); to resolve the conflict and until such time as the conflict is resolved, the provisions of this By-law shall prevail.

(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.

CHAPTER 2
MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

4. Municipal spatial development framework

(1) The Municipality must draft a municipal spatial development framework in accordance with the provisions of sections 20 and 21 of the Act read with sections 23 to 35 of the Municipal Systems Act.

(2) The Municipality must strive to review the municipal spatial development framework every five years, or such longer intervals that may be considered appropriate.

(3) A municipal spatial development framework does not confer or take away land use rights but guides and informs decisions to be made by the Municipality relating to the spatial outcomes and development objectives relating to the development of land within municipal boundary.

(4) The provisions of this Chapter apply, with the necessary change, to the preparation, review or amendment of a municipal spatial development framework.

5. Contents of municipal spatial development framework

(1) A municipal spatial development framework must provide for the matters contemplated in section 21 of the Act, section 26 of the Municipal Systems Act and provincial legislation, if any, and the Municipality may for purposes of reaching its constitutional objectives include any matter which it may deem necessary for municipal planning.

(2) Over and above the matters required in terms of subsection (1), the Municipality may determine any further plans, policies and instruments by virtue of which the municipal spatial development framework must be applied, interpreted and implemented.

(3) A municipal spatial development framework must make provision for transitional arrangements with regard to the manner in which the municipal spatial development framework is to be implemented by the Municipality.

6. Intention to prepare, review or amend municipal spatial development framework

A Municipality which intends to prepare, review or amend its municipal spatial development framework -

(a) must publish a notice or cause a notice to be published in terms of the official language policy of Council of its intention to prepare, review or amend the municipal spatial development framework and the process to be followed in accordance with section 28(3) of the Municipal Systems Act in a newspaper circulating in the area concerned; and

(b) must register relevant stakeholders who must be invited to comment on the draft municipal

spatial development framework or draft amendment of the municipal spatial development framework as part of the process to be followed.

7. Institutional framework for preparation, review or amendment of municipal spatial development framework

(1) The Municipality must convene a project committee.;

(2) The purpose of the project committee contemplated in section (1) is to –

(a) prepare, review or amend the municipal spatial development framework for adoption by the Council;

(b) provide technical knowledge and expertise;

(c) monitor progress and ensure that the drafting, review or amendment of the municipal spatial development framework is progressing according to the approved process plan;

(d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed, where applicable;

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

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

(g) oversee the incorporation of amendments to the draft municipal spatial development framework or draft review or amendment of the municipal spatial development framework to address comments obtained during the process of drafting thereof;

(3) The project committee must consist of –

(a) the City Manager;

(b) municipal employees in the full-time service of the Municipality designated by the Municipality.; and

(c) a service provider (if appointed).

8. Preparation or review of municipal spatial development framework

(1) The project committee must compile a status quo document setting out an assessment of existing levels of development and development challenges in the municipal area..

(2) The project committee must prepare a first draft of the municipal spatial development framework or first draft review of the municipal spatial development framework and submit it to the Council, together with the report referred to in section 8(3), to approve the publication of a notice referred to in section 9, that the draft municipal spatial development framework or review thereof is available for public comment.

(3) The project committee must submit a written report as contemplated in subsection (2) which must at least —

(a) indicate the rationale in the approach to the drafting of the municipal spatial development framework;

(b) summarise the process of drafting the municipal spatial development framework;

(c) summarise the consultation process to be followed with reference to section 9 of this By-law;

(d) indicate the departments that were engaged in the drafting of the municipal spatial development framework;

(f) the alignment with the national and provincial spatial development frameworks;

(g) any sector plans that may have an impact on the municipal spatial development framework;

(h) indicate how the municipal spatial development framework complies with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Council; and

(i) recommend the adoption of the municipal spatial development framework for public participation as the draft municipal spatial development framework for the Municipality, in terms of the relevant legislation and this By-law.

(4) After consideration of the comments and representations, as a result of the publication contemplated in section 9, the project committee must compile a final municipal spatial development framework or final review of the municipal spatial development framework for adoption by the Council.

(5) If the final municipal spatial development framework or final review of the municipal spatial development framework, as contemplated in subsection (4), is materially different to what was published in terms of subsection (2), the Municipality must follow a further consultation and public participation process before it is adopted by the Council.

(6) The Council must adopt the final municipal spatial development framework or final review of the municipal spatial development framework, with or without amendments, and must within 21 days of its decision give notice of its adoption in the media and the Provincial Gazette.

9. Public participation

(1) Public participation undertaken by the Municipality must contain and comply with all the essential elements of any notices to be placed in terms of the Act or the Municipal Systems Act.

(2) In addition to the publication of notices in a newspaper that is circulated in the municipal area, the Municipality may, subject to section 21A of the Municipal Systems Act, use any other method of communication it may deem appropriate.

(3) The Municipality may for purposes of public engagement on the content of the draft municipal spatial development framework arrange -

(a) a consultative session with traditional councils and traditional communities;

(b) specific consultations with professional bodies, ward communities or other groups; and

(c) public meetings.

(4) The notice contemplated in section 9(2) must specifically state that any person or body wishing to provide comments shall-

(a) do so within a period of 60 days from the first day of publication of the notice;

(b) provide written comments; and

(c) provide their contact details as specified in the definition of contact details.

10. Local spatial development framework

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

(2) A local special development framework must align with and give further effect to the municipal spatial development framework.

(3) The purpose of a local spatial development framework is to:

(a) provide detailed spatial planning guidelines or further plans for a specific geographic area or parts of specific geographical areas and may include precinct plans;

(b) provide more detail in respect of a proposal provided for in the municipal spatial development framework or necessary to give effect to the municipal spatial development framework and or its integrated development plan and other relevant sector plans;

(c) address specific land use planning needs of a specified geographic area;

(d) provide detailed policy and development parameters for land use planning;

(e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; or

(f) guide decision making on land development applications;

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

11. Preparation or review of local spatial development framework

(1) If the Municipality prepares or reviews a local spatial development framework, it must comply with the requirements and procedures for the preparation or review of the municipal spatial development framework, including notification and public participation prescribed in terms of this Chapter and sections 5 to 9 apply with the necessary changes as the context may require.

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

12. Effect of local spatial development framework

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

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

13. Record of and access to municipal spatial development framework and local spatial development framework

(1) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved municipal or local spatial development framework and or any component thereof applicable within the jurisdiction of the Municipality.

(2) Should anybody or person request a copy of the municipal or local spatial development framework the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved municipal spatial development framework or any component thereof.

14. Minor amendment of a Municipal or Local Spatial Development Framework

(1) If the Municipality undertakes a minor amendment of a spatial development framework, either on its own initiative or, after considering the merits of a request from a Land Development applicant, Council must –

(a) Confirm that a notice has been published in the media and the provincial Gazette, to give details of the proposed minor amendment to a spatial development framework;

(b) Confirm that no objections were raised against the proposed minor amendment to the Spatial Development Framework;

(c) Consider a written report from the Municipal Planning Tribunal for amendment of the spatial development framework by an applicant.

(2) The municipality must, within 21 days of adopting minor amendments to spatial development framework, publish a notice of the decision in the Provincial Gazette.

15. Status of and deviation from, a municipal spatial development framework or local spatial development framework

(1) Unless covered by the Transitional Provisions contained in Section 166(2) of this bylaw: - In terms of section 22(1) of the Act, a Municipal Planning Tribunal, Authorised official or Appeals Tribunal may not make a decision in terms of this By-law or any other law relating to a land development application, which is inconsistent with a spatial development framework.

(2) In terms of section 22(2) of the Act, the Municipal Planning Tribunal or Authorised official, after giving due consideration to the impact (including potential cumulative impact of a decision setting a president), amenity and land use applicability, may support a land development application that will result in a deviation from the proposals contained in a Municipal Spatial Development Framework, or Local Spatial Development Framework or Precinct Plan in the following instances:

(a) If site-specific circumstances justify a deviation from the provisions of a Spatial Development Framework (including a Municipal or Local Spatial Development Framework or Precinct Plan);

(b) If site-specific circumstances do not justify a deviation from the proposals of a Spatial Development Framework, but:

i) the deviation will only require a minor amendment of the Spatial Development Framework;

ii) no objections are raised against the proposed land development or proposed deviation and required minor amendment of the Spatial Development Framework.

(3) For purposes of subsection (2)(a) above and section 22(2) of the Act, site specific circumstances include –

(a) a deviation that does not materially change the desired outcomes and objectives of a municipal and local spatial development framework, if applicable;

(b) a subsequent discovery that renders the site unsuitable for the proposed development as reflected in the municipal spatial development framework; or

(c) a unique circumstance pertaining to a discovery of national or provincial importance that results in an obligation in terms of any applicable legislation to protect or conserve such discovery.

(3) For purposes of subsection (2)(b) above, such application can only be approved if -

(a) The Municipal Planning Tribunal or Authorised Official informs the Council of their / his / her support and submits a written report to Council with reasons for the requested amendment to the spatial development framework and a recommendation for the adoption of the amendments to the spatial development framework; and

(b) Council approves a request for the required minor amendment of the municipal spatial development framework in terms of the provisions of this Chapter.

(4) For purposes of this section, “site” means a spatially defined area that is impacted by the decision, including neighbouring land.

CHAPTER 3
LAND USE SCHEME

16. Applicability of Act

Sections 24 to 30 of the Act apply to any land use scheme developed, prepared, adopted and amended by the Municipality.

17. Purpose of land use scheme

In addition to the purposes of a land use scheme stipulated in section 25(1) of the Act, the Municipality must determine the use and development of land within the municipal area to which it relates in order to promote -

(a) harmonious and compatible land use patterns;
(b) aesthetic considerations;
(c) sustainable development and densification;
(d) the accommodation of cultural customs and practices of traditional communities in land use management; and
(e) a healthy environment that is not harmful to a person's health.

18. General matters pertaining to land use scheme

(1) In order to comply with section 24(1) of the Act, the Municipality must -
    (a) develop a draft land use scheme as contemplated in section 18;
    (b) obtain Council approval for publication of the draft land use scheme as contemplated in section 21;
    (c) embark on the necessary public participation process as contemplated in section 22;
    (d) incorporate relevant comments received during the public participation process as contemplated in section 23;
    (e) prepare the land use scheme as contemplated in section 24;
    (f) submit the land use scheme to the Council for approval and adoption as contemplated in section 25;
    (g) publish a notice of the adoption and approval of the land use scheme in the Provincial Gazette as contemplated in section 26; and
    (h) submit the land use scheme to the Member of the Executive Council as contemplated in section 27.

(2) Zoning may be made applicable to a land unit or part thereof and must follow cadastral boundaries when situated inside the urban edge. For a land unit or part thereof which has

not been surveyed or which is situate outside the urban edge, a reference or description as generally approved by Council may be used to demarcate a zoning.

(3) The land use scheme of the Municipality must take into consideration:

(a) the Integrated Development Plan in terms of the Municipal Systems Act;

(b) the Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 2 of this By-law, and

(c) provincial legislation; and

(d) an existing town planning scheme.

19. Development of draft land use scheme

The Municipality which intends to prepare, review or amend its land use scheme -

(a) must convene a project committee in accordance with section 20;

(b) must publish a notice in a newspaper that is circulated in the municipal area of the municipality in the official language/s determined by the Council, having regard to language preferences and usage within its municipal area, as contemplated in section 21 of the Municipal Systems Act of its intention to prepare, review or amend the land use scheme;

(d) must register relevant stakeholders who must be invited to comment on the draft land use scheme or draft review or amendment of the land use scheme as part of the process to be followed;

(e) must determine the form and content of the land use scheme;

(f) must determine the scale of the land use scheme maps;

(g) must determine any other relevant issue that will impact on the development and final adoption of the land use scheme which will allow for it to be interpreted and or implemented; and

(h) must confirm the manner in which the land use scheme must inter alia set out the general provisions for land uses applicable to all land, categories of land use, zoning maps, restrictions, prohibitions and or any other provision that may be relevant to the management of land use, which may or may not require a consent or permission from the Municipality for purposes of the use of land.

20. Institutional framework for preparation, review or amendment of land use scheme

(1) The purpose of the project committee contemplated in section 19(a) is to –

(a) prepare, review or amend the land use scheme for adoption by the Council;

(b) provide technical knowledge and expertise;

(c) monitor progress and ensure that the development of the land use scheme or review or amendment thereof is progressing according to the approved project plan;

(d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;

(e) ensure alignment of the land use scheme with the municipal spatial development framework, development plans and strategies of other affected municipalities and organs of state;

(f) oversee the incorporation of amendments to the draft land use scheme or draft review or amendment of the land use scheme to address comments obtained during the process of drafting thereof;

(2) The project committee must consist of –

(a) the City Manager;

(b) employees in the full-time service of the Municipality and designated by the Municipality; and

(c) a service provider (if appointed).

21. Council approval for publication of draft land use scheme

(1) Upon completion of the draft land use scheme, the project committee must submit it to the Council for approval as the draft land use scheme.

(2) The submission of the draft land use scheme to the Council must be accompanied by a written report from the project committee and the report must at least –

(a) indicate the rationale in the approach to the drafting of the land use scheme;

(b) summarise the process of drafting the draft land use scheme;

(c) summarise the consultation process to be followed with reference to section 22 of this By-law;

(d) indicate the departments that were engaged in the drafting of the draft land use scheme;

(e) indicate how the draft land use scheme complies with the requirements of relevant national and provincial legislation, and relevant mechanism controlling and managing land use rights by the Municipal Council;

(f) recommend the approval of the draft land use scheme for public participation in terms of the relevant legislation and this By-law.

(3) An approval by the Council of the draft land use scheme and the public participation thereof must be in terms of this By-law and the relevant legislation referred to in section 16.

22. Public participation

(1) The public participation process must contain and comply with all the essential elements of any notices to be placed in terms of this By-law and in the event of an amendment of the land use scheme, the matters contemplated in section 28 of the Act.

(2) Without detracting from the provisions of subsection (1) above the Municipality must -

(a) publish a notice in a newspaper that is circulated in the municipal area of the municipality in the official language/s determined by the Council, having regard to language preferences and usage within its municipal area, as contemplated in section 21 of the Municipal Systems Act, once a week for two consecutive weeks; and

(b) enable traditional communities to participate through the appropriate mechanisms, processes and procedures established in terms of Chapter 4 of the Municipal Systems Act,

(c) use any other method of communication it may deem appropriate and the notice contemplated in subparagraph (a) must specifically state that any person or body wishing to provide comments and or objections shall:

(i) do so within a period of 60 days from the first day of publication of the notice; and

(ii) provide written comments; and

(iii) provide their contact details as specified in the notice.

(3) The Municipality may for purposes of public engagement arrange -

(a) consultative session with traditional councils and traditional communities;

(b) specific consultations with professional bodies, ward communities or other groups; and

(c) public meetings.

23. Incorporation of relevant comments

(1) Within 60 days after completion of the public participation process outlined in section 22 the project committee must –

(a) review and consider all submissions made in writing or during any engagements; and

(b) prepare a report including all information they deem relevant, on the submissions made; provided that:

(i) for purposes of reviewing and considering all submissions made, the City Manager may elect to hear the submission through an oral hearing process;

(ii) all persons and or bodies that made submissions shall be notified of the time, date and place of the hearing as may be determined by the Municipality not less than 30 days prior to the date determined for the hearing, by means of registered mail;

(iii) for purposes of the consideration of the submissions made on the land use scheme the Municipality may at any time prior to the submission of the land use scheme to the Council, request further information or elaboration on the submissions made from any person or body.

(2) The project committee must for purposes of proper consideration provide comments on the submissions made which comments must form part of the documentation to be submitted to the Council as contemplated in subsection (1)(b).

24. Preparation of land use scheme

The project committee must, where required and based on the submissions made during public participation, make final amendments to the draft land use scheme, provided that; if such amendments are in the opinion of the Municipality materially different to what was published in terms of section 22(2), the Municipality must follow a further consultation and public participation process in terms of section 22(2) of this By-law, before the land use scheme is adopted by the Council.

25. Submission of land use scheme to Council for approval and adoption

(1) The project committee must
   (a) within 60 days from the closing date for objections contemplated in section 22(2)(c)(i), or
   (b) if a further consultation and public participation process is followed as contemplated in section 22(3), within 60 days from the closing date of such further objections permitted in terms of section 23(3) read with section 22(2)(c)(i), submit the proposed land use scheme and all relevant supporting documentation to the Council with a recommendation for adoption

(2) The Council must consider and adopt the land use scheme with or without amendments.

26. Publication of notice of adoption and approval of land use scheme

(1) The Council must, within 60 days of its decision referred to in section 25(2), give notice of its decision to all persons who made submissions on the land use scheme, and publish such notice in the media and the Provincial Gazette.

(2) The date of publication of the notice referred to in subsection (1), in the Provincial Gazette, is the date of coming into operation of the land use scheme unless the notice indicates a different date of coming into operation.

27. Submission to Member of Executive Council

After the land use scheme is published in terms of section 26 the Municipality must submit the approved land use scheme to the Member of the Executive Council for cognisance.

28. Records

(1) The Municipality must, in hard copy and electronic format, keep record in the register of amendments to the land use scheme contemplated in section 30, of the land use rights in relation to each erf or portion of land and which information shall be regarded as part of its land use scheme.

(2) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved land use scheme and or any component thereof applicable within the municipal area of the Municipality.

(3) Should any person request a copy of the approved land use scheme or any component thereof, the Municipality must provide on payment by such person of the prescribed fee, a copy to them of the approved land use scheme or any component thereof in accordance with the provisions of its Promotion of Access to Information By-Law or policy, if applicable.

29. Contents of land use scheme

(1) The contents of a land use scheme prepared and adopted by the Municipality must include all the essential elements contemplated in Chapter 5 of the Act and provincial legislation and must contain –

(a) a zoning for all land within the municipal area in accordance with a category of zoning as approved by Council;

(b) land use regulations including specific conditions, limitations, provisions or prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved land use scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;

(c) provisions for public participation that may be required for purposes of any consent, permission or relaxation in terms of an approved land use scheme;

(d) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;

(e) servitudes for municipal services and access arrangements for all properties;

(f) provisions applicable to all properties relating to storm water;

(g) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;

(h) zoning maps as approved by Council that depicts the zoning of every property in the municipal area as updated from time to time in line with the land use rights approved or granted; and

(i) transitional arrangements with regard to the manner in which the land use scheme is to be implemented.

(2) The land use scheme may –

(a) determine the components of the land use scheme for purposes of it being applied, interpreted and implemented; and

(b) include any matter which it deems necessary for municipal planning in terms of the constitutional powers, functions and duties of a municipality; and

30. Register of amendments to land use scheme

The Municipality must keep and maintain a land use scheme register in a hard copy and electronic format as approved by the Council and it must contain the following but is not limited to:

(a) Date of application;

(b) name and contact details of applicant;

(c) type of application;

(d) property description and registration division;

(e) previous and approved zoning and existing land use;

(f) a copy of the approved site development plan;

(g) item number;

(h) item date;

(i) decision (approved/on appeal/not approved);

(j) reasons for the decision; and

(k) decision date.

CHAPTER 4
INSTITUTIONAL STRUCTURE FOR LAND USE MANAGEMENT DECISIONS

Part A: Division of Functions

31. Categories of applications for purposes of section 35(3) of Act

(1) The Council must, by resolution, categorise applications to be considered by the Authorised official and applications to be referred to the Municipal Planning Tribunal.

(2) When categorising applications contemplated in subsection (1), the Council must take cognisance of the aspects referred to in regulation 15(2) of the Regulations.

(3) If the Council does not categorise applications contemplated in subsection (1), regulation 15(1) of the Regulations apply.

32. Designation and functions of Authorised Official

(1) The Municipality must, in writing, determine that the incumbent of a particular post on the Municipality's post establishment is the Authorised official of the Municipality.

(2) The Authorised official must:

(a) assist the Municipality in the management of applications submitted to the Municipality;

(b) consider and determine categories of applications contemplated in section 31(1).

(3) The Authorised official may refer any application that he or she may decide in terms of section 31, to the Municipal Planning Tribunal.

Part B: Establishment of Municipal Planning Tribunal for Local Municipal Area

33. Establishment of Municipal Planning Tribunal for local municipal area

Subject to the provisions of Part C and D of this Chapter, the Buffalo City Metropolitan Municipality will establish a Municipal Planning Tribunal in compliance with section 35 of the Act.

34. Composition of Municipal Planning Tribunal for local municipal area

The Municipal Planning Tribunal must consist of at least five members or more if deemed necessary by the Municipal Council, made up as follows:

(a) Officials in the full-time service of the Municipality and at least one external person appointed by the Municipal Council who is not an official of this municipality, all of whom must have knowledge and experience of spatial planning, land use management and land development or laws related thereto.

35. Nomination procedure

(1) The Municipality may invite or may call for nominations as contemplated in Part B of the Regulations at least 90 days before the expiry of the term of office of the members serving on the Municipal Planning Tribunal

(2) The invitation to the organs of state and non-governmental organisations contemplated in regulation 3(2)(a) of the Regulations must be addressed to the organs of state and non-governmental organisations and must be in the form contemplated in Schedule 1 together with any other information deemed necessary by the Municipality.

(3) The call for nominations to persons in their individual capacity contemplated in regulation 3(2)(b) of the Regulations must be in the form contemplated in Schedule 2 and –

(a) must be publish a notice in a newspaper that is circulated in the municipal area of the municipality in the official language/s determined by the Council, having regard to language preferences and usage within its municipal area, as contemplated in section 21 of the Municipal Systems Act;

(b) may be submitted to the various professional bodies which registers persons in the fields of spatial planning, land use management, land development or laws related thereto with a request to distribute the call for nominations to their members and to advertise it on their respective websites;

(c) may advertise the call for nominations on the municipal website; and

(d) utilise any other method and media it deems necessary to advertise the call for nominations.

36. Submission of nomination

(1) The nomination must be in writing and be addressed to the City Manager.

(2) The nomination must consist of –

(a) the completed declaration contained in the form contemplated in Schedule 3 and all pertinent information must be provided within the space provided on the form;

(b) the completed declaration of interest form contemplated in Schedule 3;

(c) the motivation by the nominator contemplated in subsection (3)(a); and

(d) the summarised curriculum vitae of the nominee contemplated in subsection (3)(b).

(3) In addition to the requirements for the call for nominations contemplated in regulation 3(6) of the Regulations, the nomination must request –

(a) a motivation by the nominator for the appointment of the nominee to the Municipal Planning Tribunal which motivation must not be less than 50 words or more than 250 words; and

(b) a summarised curriculum vitae of the nominee not exceeding two A4 pages.

37. Initial screening of nomination by Municipality

(1) After the expiry date for nominations the Municipality must screen all of the nominations received by it to determine whether the nominations comply with the provisions of section 36.

(2) The nominations that are incomplete or do not comply with the provisions of section 36 must be rejected by the Municipality.

(3) Every nomination that is complete and that complies with the provisions of section 36 must be subjected to verification by the Municipality.

(4) If, after the verification of the information by the Municipality, the nominee is ineligible for appointment due to the fact that he or she –

(a) was not duly nominated;

(b) is disqualified from appointment as contemplated in section 38 of the Act;

(c) does not possess the knowledge or experience as required in terms of section 34(1), if applicable, the nomination must be rejected and may not be considered by the evaluation panel contemplated in section 38.

(5) Every nomination that has been verified by the Municipality and the nominee found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in section 38.

(6) The screening and verification process contained in this section must be completed within 30 days from the expiry date for nominations.

38. Evaluation panel

(1) The evaluation panel contemplated in regulation 3(1)(g) read with regulation 3(11) of the Regulations, consists of five officials in the employ of the Municipality appointed by the City Manager.

(2) The evaluation panel must evaluate all nominations within 30 days of receipt of the verified nominations and must submit a report with their recommendations to the Council for consideration.

39. Appointment of members to Municipal Planning Tribunal by Council

(1) Upon receipt of the report, the Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Municipal Planning Tribunal.

(2) After appointment of the members to the Municipal Planning Tribunal, the Council must designate a chairperson and a deputy chairperson from the members so appointed.

(3) The City Manager must, in writing, notify the members of their appointment to the Municipal Planning Tribunal and, in addition, to the two members who are designated as chairperson and deputy chairperson, indicate that they have been appointed as such.

(4) The City Manager must, when he or she publishes the notice of the commencement date of the operations of the first Municipal Planning Tribunal contemplated in section 44, publish the names of the members of the Municipal Planning Tribunal and their term of office in the same notice.

40. Term of office and conditions of service of members of Municipal Planning Tribunal for municipal area

(1) A member of the Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of five years, which is renewable once for a further period of five years, provided that a member may not serve as a member for a continuous period of more than ten years.

(2) The office of a member becomes vacant if that member -

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

(b) tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal;

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

(d) becomes permanently incapacitated or dies.

(3) The Council may remove a member of the Municipal Planning Tribunal if -

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

(b) a member contravenes the code of conduct contemplated in Schedule 4;

(c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act.

after giving the member an opportunity to be heard.

(4) An official of a municipality contemplated in section 34(1)(a) who serves on the Municipal Planning Tribunal –

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

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

(c) who is found guilty of misconduct under the collective agreement applicable to employees of the Municipality shall immediately be disqualified from serving on the Municipal Planning Tribunal.

(5) A person that is not an employee of the municipality that is appointed by a municipality in terms of section 34(a) to the Municipal Planning Tribunal -

(a) if that person is an employee of an organ of state, as contemplated in regulation 3(2)(a)(i) of the Regulations, he or she is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;

(b) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal;

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

(d) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal

that he or she sits on determined annually by the municipality in accordance with the Act;

(e) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, performance bonus, medical scheme contribution by municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.

(6) All members of the Municipal Planning Tribunal shall sign the Code of Conduct contained in Schedule 4 before taking up a seat on the Municipal Planning Tribunal.

(7) All members serving on the Municipal Planning Tribunal shall adhere to ethics adopted and applied by the Municipality and shall conduct themselves in a manner that will not bring the name of the Municipality into disrepute.

(8) The members of the Municipal Planning Tribunal in the execution of their duties shall comply with the provisions of the Act, provincial legislation, these By-laws and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

41. Vacancy and increase of number of members of Municipal Planning Tribunal

(1) A vacancy on the Municipal Planning Tribunal must be filled by the Council in terms of section 35.

(2) A member who is appointed by virtue of subsection (1) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.

(3) The Municipality may, during an existing term of office of the Municipal Planning Tribunal and after a review of the operations of the Municipal Planning Tribunal, increase the number of members appointed in terms of this Part and in appointing such additional members, it must adhere to the provisions of sections 35 to 40.

(4) In appointing such additional members the Municipality must ensure that the total number of members of the Municipal Planning Tribunal does not exceed 16 members.

(5) A member who is appointed by virtue of subsection (3) holds office for the unexpired portion of the period that the current members of the Municipal Planning Tribunal hold office.

42. Proceedings of Municipal Planning Tribunal for municipal area

(1) The Municipal Planning Tribunal must operate in accordance with the operational procedures determined by the Municipality.

(2) A minimum of at least three members designated by the Municipal Planning Tribunal, which must include at least one member who is not a municipal official, are required to hear, consider and decide a matter which comes before the Municipal Planning Tribunal as contemplated in section 40(1) of the Act, must hear, consider and decide that matter

(3) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members present at a meeting of Municipal Planning Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Municipal Planning Tribunal.

(4) Meetings of the Municipal Planning Tribunal must be held at the times and places determined by the chairperson of the Municipal Planning Tribunal in accordance with the operational procedures of the Municipal Planning Tribunal but meetings must be held at least once per month, if there are applications to consider.

(5) The chairperson may arrange multiple Municipal Planning Tribunal meetings on the same day constituted from different members of the Municipal Planning Tribunal and must designate a presiding officer for each of the meetings.

(6) If an employee of the Municipality makes a recommendation to the Municipal Planning Tribunal regarding an application, that employee may not sit as a member of the Municipal Planning Tribunal while that application is being considered and determined by the Municipal Planning Tribunal but such employee may serve as a technical adviser to the Municipal Planning Tribunal.

43. Tribunal of record

(1) The Municipal Planning Tribunal is a Tribunal of record and must record all proceedings, but is not obliged to provide the in-committee discussions to any member of the public or any person or body.

(2) The Municipality must make the record of the Municipal Planning Tribunal available to any person upon payment of the fee approved by the Council and in accordance with the provisions of its Promotion of Access to Information By-Law or policy, if applicable.

44. Commencement date of operations of Municipal Planning Tribunal for local municipal area

(1) The City Manager must within 30 days of the first appointment of members to the Municipal Planning Tribunal -

(a) obtain written confirmation form the Council that it is satisfied that the Municipal Planning Tribunal is in a position to commence its operations; and

(b) after receipt of the confirmation referred to in paragraph (a) publish a notice in the *Provincial Gazette* of the date that the Municipal Planning Tribunal will commence with its operation together with the information contemplated in section 39(4).

(2) The Municipal Planning Tribunal may only commence its operations after publication of the notice contemplated in subsection (1).

Part C: Decisions of Municipal Planning Tribunal or Authorised Official

45. General criteria for consideration and determination of an application by the Municipal Planning Tribunal or Authorised official

(1) When the Municipal Planning Tribunal or Authorised official considers an application submitted in terms of this By-law it, he or she must have regard to the following:

(a) the procedure followed in processing the application;

(b) the desirability of the proposed utilisation of land, principles set out in section 7 of SPLUMA and such other criteria that may be listed in the Spatial Development Framework of the Municipality;

(c) the comments in response to the notice of the application and the comments received from organs of state and internal departments;

(d) the response by the applicant (if applicable) to the comments referred to in paragraph (c);

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

(f) a written assessment by a professional planner registered in terms of the Planning Profession Act, 2002, in respect of the following applications:

(i) a rezoning;

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

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

(iv) an amendment, deletion or additional conditions in respect of an existing approval, listed in this paragraph;

(vi) a phasing, amendment or cancellation of a plan of subdivision or a part thereof or amendment of a consolidation, long term lease or servitude plan;

(vii) a determination of a zoning as contemplated in section 167;

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

(g) the integrated development plan and municipal spatial development framework;

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

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

(j) the provincial spatial development framework;

(k) where applicable, the regional spatial development framework;

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

(m) the matters referred to in section 42 of the Act;

(n) the relevant provisions of the land use scheme.

(2) For the purpose of subsection (1)(b), desirability is the degree of acceptability of the proposed utilisation of land and matters which impact on the desirability which may be considered by the Municipal Planning Tribunal or Authorised official are, including but not limited to:

(a) the land's suitability for proposed utilisation of land in terms of location, accessibility and physical characteristics;

(b) conformity with the municipal spatial development framework or the local spatial development framework, if applicable;

(c) the compatibility of the proposed utilisation of land with the character and the existing spatial structure of the surrounding area;

(d) the accessibility of the land regarding existing development and infrastructure;

(e) the cost and availability of required services and infrastructure;

(f) the external visual impact of the proposed utilisation of the land;

(g) any potential disruption of or damage to the environment or public nuisance as a result of the proposed utilisation of land and proposed mitigation measures;

(h) the potential impact on immediate neighbours and existing rights as well as the surrounding community;

(i) the proposed layout, including street pattern, density and open space and community facility provision; and

(j) traffic impact and access arrangements

(3) The professional planner defined in the Planning Professions Act, referred to in subsection (1)(f), must be in the full-time service of the Municipality and if there is no professional planner in the full-time service of the Municipality, a professional planner contracted by the Municipality to provide the assessment contemplated in that subsection.

46. Conditions of approval

(1) When the Municipal Planning Tribunal or Authorised official approves an application subject to conditions, the conditions must be reasonable conditions and must arise from the approval of the proposed utilisation of land.

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

(a) the provision of engineering services and infrastructure;

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

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

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

(f) agricultural or heritage resource conservation;

(g) biodiversity conservation and management;

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

(i) energy efficiency;

(j) requirements aimed at addressing climate change;

(k) the establishment of an Owners' Association in respect of the approval of a subdivision that forms part of a development that includes shared private internal services or a Body Corporate in respect of the approval of a sectional title development;

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

(m) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality or the registration of public places in the name of the municipality, and the transfer of ownership to the municipality of land needed for other public purposes;

(n) the implementation of a subdivision in phases;

(o) requirements of other organs of state.

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

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

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

(t) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;

(u) the setting of dates by which particular conditions must be met;

(v) requirements relating to engineering services as contemplated in Chapter 7;

(w) requirements for an occasional use that must specifically include –

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

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

(iii) parameters relating to a consent use in terms of the land use scheme;

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

(4) A condition contemplated in subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the Municipality in accordance with norms and standards, as may be prescribed by the Minister.

(5) Except for land needed for public places, social infrastructure or internal engineering services, any additional land required by the municipality or other organs of state arising from any approval of an application must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.

(6) Conditions which require a standard to be met must specifically refer to an approved or published standard.

(7) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment with the exception of a condition that requires the approval in terms of other legislation..

(8) If the Municipal Planning Tribunal or Authorised official approves a land development or use application subject to conditions, it, he or she must specify which conditions must be complied with before the sale, development or transfer of the land.

(9) After the applicant has been notified that his or her application has been approved, the Municipal Planning Tribunal or Authorised official or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of this section or add any further condition, provided that if the amendment is in the opinion of the Municipal Planning Tribunal or Authorised official so material as to constitute a new application, the Municipal Planning Tribunal or Authorised official may not exercise its, his or her powers in terms hereof and must require the applicant to submit an amended or new application and in the sole discretion of the Municipal Planning Tribunal or Authorised official to re-advertise the application in accordance with section 85.

Part D: Administrative Arrangements and General Provisions

47. Administrator for Municipal Planning Tribunal for municipal area

(1) The City Manager must designate an employee as the administrator for the Municipal Planning Tribunal.

(2) The person referred to in subsection (1) must—

(a) liaise with the relevant Municipal Planning Tribunal members and the parties in relation to any application or other proceedings filed with the Municipal Planning Tribunal;

(b) maintain a diary of hearings of the Municipal Planning Tribunal;

(c) allocate meeting dates and application numbers to applications;

(d) arrange the attendance of meetings by members of the Municipal Planning Tribunal;

(e) arrange venues for Municipal Planning Tribunal meetings;

(f) administer the proceedings of the Municipal Planning Tribunal;

(g) perform the administrative functions in connection with the proceedings of the Municipal Planning Tribunal;

(h) ensure the efficient administration of the proceedings of the Municipal Planning Tribunal, in accordance with the directions of the chairperson of the Municipal Planning Tribunal;

(i) arrange the affairs of the Municipal Planning Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;

(j) notify parties of orders and directives given by the Municipal Planning Tribunal;

(k) keep a record of all applications submitted to the Municipal Planning Tribunal and the outcome of each, including—

(i) decisions of the Municipal Planning Tribunal;

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

(iii) reasons for decisions; and

(iv) proceedings of the Municipal Planning Tribunal; and

(l) keep records by any means as the Municipal Planning Tribunal may deem expedient.

CHAPTER 5
DEVELOPMENT MANAGEMENT

Part A: Types of Applications

Land Development Applications in terms of this Bylaw may only be submitted by Registered Planners in terms of the Planning Professions Act 2002 (Act 36 of 2002).

48. Types of Land Development Applications

(1) A person may make application for the following in terms of this By-Law –

(a) subdivision of land;

(b) phasing of a subdivision;

(c) rezoning of land;

(d) removal, amendment or relaxation of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;

(e) consolidation of land;

(f) amendment or cancellation of a subdivision plan;

(g) permanent closure of any public place;

(h) consent use;

(i) development on communal land where there is a traditional community concerned;

(j) permanent or temporary departure from land use scheme

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

(l) the registration of a servitude or long term lease agreement (in excess of 10 years)

(m) exemption from the need for approval in terms of this By-Law as contemplated in section 56;

(n) determination of a zoning;

(o) amendment, deletion or addition of conditions in respect of an existing approval;

(p) any other application provided for in this By-Law;

(q) any other application which the Council may determine in terms of this By-Law.

(r) any combination of the applications referred to in this section submitted simultaneously as one application.

49. Land use and land development

(1) No person may use or commence with, carry on or cause the commencement with or carrying on of land development which is not permitted in the land use scheme or for which an approval is granted in terms of this By-Law.

(2) When an applicant or owner exercises a land use right granted in terms of an approval, he or she must comply with the conditions of the approval and the applicable provisions of the land use scheme, as contemplated in the definition of “Acted Apon”.

(3) In addition to the provisions of this Chapter, the provisions of Chapter 6 apply to any application submitted to the Municipality in terms of this Chapter.

(4) Any reference to the Municipality in this Chapter includes a reference to the Municipal Planning Tribunal and the Authorised official, as the case may be.

Part B: Subdivisions, Consolidations, Long Term Leases and Servitudes

50. Applications for subdivision, consolidations, long term leases and servitudes

(1) No person may subdivide land, consolidate land, register a long term lease or register a servitude without the approval of the Municipality, unless the subdivision, consolidation, long term lease or servitude is exempted under section 56.

(2) An applicant who wishes to subdivide land (including the grouping of multiple subdivisions into separate phases), consolidate land, register a long term lease or register a servitude, must apply to the Municipality for the subdivision of land in the manner provided for in Chapter 6.

(3) The Municipality must cause notice of the application to be given in the media as contemplated in section 85.

(4) The Municipality must, in approving an application for subdivision (including the grouping of multiple subdivisions into separate phases), consolidation, registration of a long term lease or registration of a servitude, set out any conditions of to such approval;

(5) The conditions must, read with directives that may be issued by the Registrar of Deeds, contain the following:

(a) Specify those conditions that must be complied with prior to registration by the Registrar of Deeds, including conditions relating to installation or removal of engineering services;

(b) the conditions that must remain applicable to erven created by the subdivision or consolidation;

(c) conditions of title to be incorporated into the title deeds of erven created by the subdivision or consolidation;

(d) third party conditions as required by the Registrar of Deeds;

(e) if a body corporate or owners' association is to be established for purposes of maintaining or transfer of erven created by the subdivision, the conditions that must apply to them;

(f) any other conditions and or obligation on the owner of erven created by the subdivision or consolidation, which are in the opinion of the Municipality deemed necessary for the proper implementation of land development linked to the subdivision or consolidation.

51. Lodging of subdivision, consolidation, long term lease or servitude for approval with the Surveyor-General

(1) If the Municipality approves an application for a subdivision, consolidation, long term lease or servitude, the applicant must within the period of validity lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require, including proof to the satisfaction of the Surveyor-General of—

(a) the Municipality's decision to approve the subdivision, consolidation, long term lease or servitude;

(b) the conditions of approval contemplated in section 50 (4) and (5); and

(c) the approved subdivision, consolidation, long term lease or servitude plan.

(2) If the applicant fails act upon such approved subdivision, consolidation, servitude or long term lease (ie. to lodge such plans, diagrams or other documents as contemplated in subsection (1) to enable transfer of at least one erf, register such consolidation, servitude or long term lease) within the period of validity of the approval, the approval lapses.

(3) The Municipality must for purposes of lodging the documents contemplated in subsection (1) determine street names for all public roads on the subdivision plan.

52. Compliance with conditions of approval

(1) The applicant must within the period of validity from the date of approval of the subdivision, consolidation, long term lease or servitude, provide proof to the satisfaction of the Municipality that all conditions of approval of an application as contemplated in section 50(4) and (5) have been complied with.

(2) The Municipality must certify that all the conditions of approval have been complied with by the applicant or owner as contemplated in section 50(4) and (5).

(3) The Municipality may agree to an extension of time as contemplated in subsection (1), after receiving a written application from the applicant for an extension of time: Provided that such application provides motivation for the extension of time.

(4) A confirmation from the Municipality in terms of subsection (2) that all conditions of approval have been met, which is issued in error, does not absolve the applicant from complying with the obligations imposed in terms of the conditions or otherwise complying with the conditions after confirmation of the long term lease, servitude, consolidation or subdivision.

53. Registration at Deeds Office

(1) The applicant shall lodge with the Registrar of Deeds the plans and diagrams contemplated in section 51 as approved by the Surveyor-General together with the relative title deeds for endorsement or registration, as the case may be.

(2) For purposes of subsection (1) the Registrar shall not accept such documents for endorsement or registration until such time as the Municipality has certified that the applicant has complied with all conditions of approval required to enable registration.

(3) The plans, diagrams and title deeds contemplated in subsection (1) and certification contemplated in subsection (2) shall be lodged with the Registrar of Deeds within the validity period.

(4) If the applicant fails to comply with the provisions of subsections (1), (2) and (3) within the specified validity period, the approval lapses.

(5) Having endorsed or registered the title deeds contemplated in subsection (1), the Registrar shall notify the Municipality forthwith of such endorsement or registration.

54. Extension of validity periods

(1) An approved subdivision, consolidation, long term lease or servitude lapses after 5 years (in terms of Section 43.(2) of the Act), or such longer period that may be determined by any future revision of the Act, if the applicant does not comply with section 50, 51 and 52.

(2) An applicant may apply for an extension of the period to comply with section 50, 51 and 52. Such application must be lodged in the manner provided for in Chapter 6 prior to the approval lapsing.

(3) An extension contemplated in subsection (2) may be granted for such period deemed appropriate to the development context of the subdivision, consolidation, long term lease or servitude, provided that the validity period, together with any extension that the Municipality grant, may not exceed the maximum period prescribed by the Act. If after the expiry of the extended period the requirements of section 50, 51 and 52 have not been complied with, the subdivision, consolidation, servitude or long term lease lapses and subsection (4) applies.

(4) If an approval of a subdivision, consolidation servitude or long term lease lapse under subsection (1) the Municipality must amend the zoning map and, where applicable, the register accordingly.

55. Amendment, cancellation or phasing of subdivision plan, or amendment or cancelation of a consolidation, long term lease or servitude plan.

(1) The Municipality may approve the amendment, cancellation or phasing of a subdivision plan, or amendment or cancellation of a consolidation, long term lease, servitude, including conditions of approval in relation to land units shown on the approved subdivision, consolidation, long term lease or servitude plan of which no registration or transfer has been effected in terms of the Deeds Registries Act.

(2) The Municipality may give notice of the application in the media as contemplated in section 80(2) if it is of the opinion that anybody may be materially affected by the proposed amendment.

(3) An approval of a subdivision, consolidation, long term lease, servitude in respect of which an amendment or cancellation is approved in terms of subsection (1), remains valid for the remainder of the period contemplated in the original approval.

56. Exemption of subdivisions, consolidations, leases, registration of servitudes

(1) The consolidation and subdivision of land and registration of servitudes or leases in the following circumstances do not require the approval of the Municipality:

(a) if the land to be consolidated all have the same ownership (registered in the name of the same person or legal entity) and zoning, and do not contain conditions of title restricting consolidation;

(b) if the subdivision arises from the implementation of a court ruling;

(c) if the subdivision arises from an expropriation;

(d) a minor amendment of the common boundary between two or more land units if the resulting change in area of any of the land units is not more than 10 percent;

(e) the registration of a servitude or long term lease agreement for the provision or installation of—

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

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

(f) the registration of a servitude or lease that is based on a binding agreement between two or more parties or land owners, where such servitude or long term lease does not impact any property that is not party to the agreement.

(g) the subdivision of a closed public place, provided that it will be consolidation with an abutting erf; and

(h) The subdivision of land for the purpose of construction or alteration of public roads or any other matter related thereto.

(i) The subdivision of land in order to bring about its conveyance to a local authority, semi-state institution or other statutory body.

(j) The subdivision of land in order to bring about its conveyance from a local authority, semi-state institution or other statutory body.

(k) The subdivision of land where any Government Department may require a survey, whether or not Government is the land-owner.

(l) The subdivision of land in existing public funded residential development projects in order to make private property ownership possible.

(2) In order for the Municipality to evaluate the merits of each potential exemption, sufficient information must be furnished to the Municipality, which will include, but not be limited to:

(a) Locality and other relevant plans of the property involved;

(b) Copy of Title Deed;

(c) Relevant Surveyor General or other survey diagrams of the property;

(d) Cover letter or written report setting out the merits / reasons for the possible exemption; and

(e) If the information and documentation listed herein or listed as required by the Municipality, is forwarded to the Municipality on behalf of a property owner, a power of attorney authorising such resprentative to act on behalf of the owner must be provided;

(3) The Municipality must, in each case, certify in writing that the subdivision, consolidation, servitude or lease referred to in sub-section (1) above has been exempted from the provisions of this Chapter and impose any condition it may deem necessary.

(4) The Municipality must indicate on the plan of subdivision, consolidation, servitude or lease that the subdivision, consolidation, servitude or lease has been exempted from the provisions of sections 50 to 55.

(5) Exemptions in terms of these provisions cannot lapse.

57. Services arising from subdivision

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

(a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:
    (i) gas mains;
    (ii) electricity cables;
    (iii) telephone cables;
    (iv) television cables;
    (v) other electronic infrastructure;
    (vi) main and other water pipes;
    (vii) foul sewers;
    (viii) storm water pipes; and
    (ix) ditches and channels;

(b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:
    (i) surface installations such as mini–substations;
    (ii) meter kiosks; and
    (iii) service pillars;

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

(d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

Part C: Rezoning of land

58. Application for rezoning of land

(1) An applicant, who wishes to rezone land, must apply to the Municipality for the rezoning of the land in the manner provided for in Chapter 6.

(2) A rezoning approval, including an extension of validity, may not exceed five years or such longer period stipulated in any future amendment of the Act, calculated from the date of approval if, within such specified period -
    (a) the conditions of approval contemplated in section 45 have not been met; and
    (b) the development charges referred to in Chapter 8 have not been paid or paid in the agreed instalments.
    (c) an occupation certificate has not been issued in terms of the National Building Regulations.

(3) When a rezoning approval is granted simultaneous and as part of a subdivision, then the rezoning will remain valid for such longer period for which the associated subdivision may be granted.

(4) An applicant may, prior to the lapsing of an approval, apply for an extension of the period contemplated in section 68, in the manner provided for in Chapter 6.

59. Exemption of rezonings

(1) The rezoning of property in the following circumstances do not require the approval of the Municipality:

(a) For purposes of adjusting the zoning back to what it was prior to the current approved and confirmed zoning, where –

(i) all development and structures on the property comply with the land development parameters and conditions of the previous zoning;

(ii) the character of the surrounding properties have remained compatible with the previous zoning;

(iii) all documentation as may be stipulated by the Municipality, such as bondholders' consents and powers of attorney is provided;.

(b) Where subdivisions exempted in terms of:

(i) Section 56(1)(d); and

(ii) Section 56(1)(g), (i) and (j) - that also meets the criteria of a minor amendment's 10% threshold -

includes conditions for simultaneous consolidation with an adjoining property or properties, the zoning of the subdivided portion may be, at the discretion of the Municipality, be adjusted to that of the dominant property in such consolidation.

(c) In cases of both (a) and (b) above, the Municipality reserves the right to require a full rezoning process to be followed if it deems it necessary.

(2) In order for the Municipality to evaluate the merits of each potential exemption, sufficient information must be furnished to the Municipality, which will include, but not be limited to:

(a) Locality and other relevant plans of the property involved;

(b) Copy of Title Deed;

(c) Relevant Surveyor General or other survey diagrams of the property;

(d) Cover letter or written report setting out the merits / reasons for the possible exemption; and

(e) If the information and documentation listed herein or listed as required by the Municipality, is forwarded to the Municipality on behalf of a property owner, a power of attorney authorising such representative to act on behalf of the owner must be provided;

(3) The Municipality must, in each case, certify in writing that the rezoning or adjusted zoning referred to in sub-section (1) above has been exempted from the provisions of this Chapter and impose any condition it may deem necessary.

(4) Exemptions in terms of these provisions cannot lapse.

Part D: Removal, Amendment or Relaxation of a Restrictive or Obsolete Condition, Servitude or Reservation Registered Against the Title of the Land

60. Requirements for removal, amendment, relaxation of restrictive conditions or obsolete condition, servitude or reservation registered against the title of the land

(1) The Municipality may, of its own accord or on application, amend, relax or remove any restrictive condition by notice in the Provincial Gazette, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified in the notice.

(2) An applicant who wishes to have a restrictive condition amended, relax or removed must apply to the municipality for the amendment, relaxation or removal of the restrictive condition in the manner provided for in Chapter 6.

(3) An approval for removal or relaxation, of the restrictive condition, servitude or reservation lapses after a specified period, calculated from the date of approval if the requirements in terms of section 61(1) have not been met.

(4) An applicant may, prior to the lapsing of approval, apply for an extension of the period contemplated in section 68, in the manner provided for in Chapter 6.

61. Aspects for the Municipality to consider in deciding on an amendment, relaxation or removal of restrictive conditions or obsolete condition, servitude or reservation registered against the title of the land

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

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

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

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

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

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

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

62. Endorsements in connection with amendment, relaxation or removal of restrictive conditions

(1) The applicant shall, after the amendment, relaxation or removal of a restrictive condition by notice in the Provincial Gazette as contemplated in section 62(1), submit the following to the Registrar of Deeds:
   (a) the original title deed;
   (b) the original letter of approval; and
   (c) a copy of the notification of the approval.

(2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the Provincial Gazette, as contemplated in section 59(1), 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, relaxation or removal of the restrictive condition.

Part E: Permanent Closure of Public Place

63. Closure of Public Places

(1) The Municipality may on it's own initiative initiate a request to the office of the Surveyor General for the closure of a public place or any portion thereof.

(2) Any member of the public may request the Municipality to initiate a process for closing of a public place.

(3) The ownership of the land comprised in any public place or portion thereof that is closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.

(4) The City Manager may, without complying with the provisions of this Chapter temporarily close a public place—
   (a) for the purpose of or pending the construction, reconstruction, maintenance or repair of the public place;
   (b) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
   (c) if the street or place is, in the opinion of the City Manager, in a state dangerous to the public;

(d) by reason of any emergency or public event which, in the opinion of the City Manager, requires special measures for the control of traffic or special provision for the accommodation of crowds, or

(e) for any other reason which, in the opinion of the City Manager, renders the temporary closing of the public place necessary or desirable.

(5) The Municipality must notify the Surveyor-General of an approval of the closure of a public place or any portion thereof..

Part F: Consent Use

64. Application for consent use

(1) An applicant may apply to the Municipality for a consent use provided for in the land use scheme in the manner provided for in Chapter 6.

(2) Where the development parameters for the consent use that is being applied for are not defined in an applicable land use scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval contemplated in section 46.

(3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval contemplated in section 46.

(4) A consent use granted for a specified period of time contemplated in subsection (3) must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.

(5) A consent use granted for a specific period of time or permanently, as contemplated in subsection (3), lapses if after the specified period of time, or if granted permanently, within a period of five years from the date of being granted:—

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

(b) where applicable, an occupation certificate has not been issued in terms of the National Building Regulations.

(6) An applicant may, prior to the lapsing of consent use, apply for an extension of validity as contemplated in Section 68, in the manner provided for in Chapter 6.

Part G: Traditional Use

65. Application for development on or change of land use on communal land

(1) An applicant who wishes to develop on or change the land use purpose of communal land located in the area of a traditional council where such change requires approval in terms of a land use scheme applicable to such area, must apply to the Municipality in the manner provided for in Chapter 6.

(2) No application pertaining to land development on or change the land use purpose of communal land may be submitted unless accompanied by power of attorney signed by the applicable traditional council.

(3) An approval lapses after a specified period, calculated from the date of approval if the conditions of approval contemplated in section 45 have not been met.

(4) An applicant may, prior to the lapsing of the approval, apply for an extension of validity as contemplated in Section 68, in the manner provided for in Chapter 6.

Part H: Departures from provisions of the Land Use Scheme

66. Application for permanent departures

(1) An applicant may apply for a permanent departure in the manner provided for in Chapter 6.

(2) Permanent departure applications are applications that will result in permanent amendment of land use scheme provisions applicable to land, such as:

(a) Relaxations of development restrictions such as building line, height, coverage or number of storeys.

(b) Departure from any other provisions of a land use scheme that will result in physical development or construction of a permanent nature on land.

(3) Permanent Departure approvals lapses after a specified period, calculated from the date of approval if the conditions of approval contemplated in section 45 have not been met.

(4) An applicant may, prior to the lapsing of the approval, apply for an extension of validity as contemplated in Section 68, in the manner provided for in Chapter 6.

67. Application for temporary departures

(1) An applicant may apply for a departure in the manner provided for in Chapter 6.

(2) Temporary departure applications are applications that do not result in an amendment of the land use scheme including:

(a) prospecting or mining rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(b) any other application to utilise land on a temporary basis for a purpose for which no provision is made in the land use scheme in respect of a particular zone.

(3) A Municipality may grant approval for a departure:

(a) contemplated in subsection (2)(a), for the period of validity specified in the prospecting or mining license;

(b) contemplated in subsection (2)(b), for a period of five years.

(4) In the event of a temporary departure being approved in terms of subsection (2), any improvements to the land must be permissible in terms of the land use restrictions that apply to the land in terms of its zoning and all such improvements are done at the risk of the applicant.

(5) Temporary Departures approvals lapses after a specified period, calculated from the date of approval if the conditions of approval contemplated in section 45 have not been met.

(6) An applicant may, prior to the lapsing of the approval, apply for an extension of validity as contemplated in Section 68, in the manner provided for in Chapter 6.

Part I: Amendment, deletion or addition of conditions in respect of an existing approval

68. Application for amendment of conditions of approval or changes to an approved site development plan

(1) An owner must apply to the Municipality for the amendment of any conditions of approval or changes to an approved site development plan in the manner provided for in Chapter 6.

(2) No building plan will be approved unless in line with an approved site development plan.

(3) Where an application for amendment of a site development plan is for a property that forms part of group housing or sectional title scheme, such plan must be accompanied by a letter from the Home Owners Association or Body Corporate to confirm the Association or Body Corporate's approval of the proposed amendment of the site development plan.

(4) An amendment to conditions or to a site development plan does not constitute an extension of validity of an existing authorisation.

Part J: Extension of Validity

69. An applicant may, prior to the lapsing of an approval, apply for an extension of the period, in the manner provided for in Chapter 6.

(1) The Municipality may grant an extension of the validity period, but the validity period together with any extension that the Municipality grants, may not exceed five years or such maximum period as may be stipulated in any future amendment of the Act.

(2) If an approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning as contemplated in section 166.

Part K: General Matters

70. Ownership of public places and land required for municipal engineering services and social facilities

(1) The ownership of any public place as shown on an approved subdivisional plan will vest in the Municipality upon confirmation of the subdivision.

(2) The Municipality may in terms of conditions imposed in terms of section 46 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision.

71. Restriction of transfer and registration

(1) A person may not apply to the Registrar of Deeds for transfer and registration, and the Registrar of Deeds may not register the transfer of any land, unless the Municipality has issued a compliance certificate in terms of this section.

(a) The Municipality must not issue a certificate to transfer land in terms of any law, or in terms of this By-law, unless the owner furnishes the Municipality with -

i.) proof that the land use and buildings constructed on the land comply with the requirements of the land use scheme, title deed conditions and the National Building Regulations.

(b) If a certificate contemplated in subsection (a) is issued in error,

i.) the new owner must still comply with all outstanding requirements contemplated in subsection (a) regardless of whether another person also has the duty to do so; and

ii.) The municipality is exempt from liability for damage which may be caused as a result such error.

(2) No person shall submit to the Office of the Surveyor-General or take any steps to register a sectional title scheme, sectional plan, or any amendment thereto in terms of applicable legislation, unless the Municipality has issued a compliance certificate that the establishment of the sectional title scheme complies with the applicable land use rights, zoning provisions, title deed conditions and the National Building Regulations. The Surveyor-General approval process and subsequent registration of a sectional title scheme shall not proceed in the absence of such municipal confirmation.

(3) Notwithstanding the provisions contained in this By-law or any conditions imposed in the approval of any land development application, the owner shall, at his or her cost and to the satisfaction of the Municipality, survey and register all servitudes required to protect the engineering services provided, constructed and installed as contemplated in Chapter 7.

72. First transfer

(1) Where an owner of land to which a subdivision application relates is required to:

(a) transfer land to the Municipality; or

(b) an owner's association or body corporate,

by virtue of a condition set out in the conditions to the subdivision approval of a land development application contemplated in section 46, the land shall be so transferred at the expense of the applicant upon registration of the first erf or portion, or the opening of a sectional title scheme.

73. National and provincial strategic interest

(1) In terms of section 52 of the Act an applicant shall refer any application which affects national or provincial interest respectively to the Minister and the Member of the Executive Council for comments, which comments are to be provided within 21 days as prescribed in subsection 52(5) of the Act.

(2) Where any application in terms of this By-law, which in the opinion of the City Manager affects national or provincial interest as defined in section 52 of the Act, is submitted, such application must be referred to the Minister or the Member of the Executive Council respectively and the provisions of subsections 52(5) to 52(7) of the Act, apply with the necessary changes.

(3) The Municipal Planning Tribunal or Authorised official as the case may be, as contemplated in this By-law and the Act, may direct that an application before it, be referred to the Minister and the Member of the Executive Council, if such an application in their opinion affects national or provincial interest and the provisions of subsections 52(5) to 52(7) of the Act, apply with the necessary changes.

(4) Subsections (1) to (3) shall be read with subsection 33(1) of the Act in that the national and or provincial departments becomes parties to the application that affects national or provincial interest, but the Municipality remains the decision maker of first instance.

74. Procedure subsequent to lapsing of conditional approvals

(1) If a conditional approval has lapsed as contemplated in the Act or provincial legislation or a condition of approval or this By-Law, the applicant may -

(a) if the applicant has substantially complied with the conditions of approval, within 90 days after the date that the conditional approval lapsed, submit a new application to the Municipality, and the Municipality may, in its sole discretion, determine which of the procedures required in Chapter 6, if any, apply to that new application; or

(b) request the Municipality to request an exemption from provision 43(2) of the Act as contemplated in section 55(1) of the Act.

(2) If a conditional approval has lapsed as contemplated in the Act, provincial legislation, a condition of approval of this By-Law and the applicant has not endeavoured to comply with the conditions of approval or has not substantially complied with the conditions of approval, he or she may submit a new application to the Municipality and the provisions of Chapter 6 apply to such application.

(3) The provisions of Chapter 5 apply to an application submitted after a conditional approval for subdivision has lapsed.

CHAPTER 6
GENERAL APPLICATION PROCEDURES

75. Applicability of this Chapter

This Chapter applies to all applications submitted to the Municipality in terms of Chapter 5.

76. Procedures for making application and pre-submission consultations

(1) In accordance with section 178, applications may only be submitted by persons registered as Technical Planners or Professional Planners in terms of section 13(1) of the Planning Professions Act 36 of 2002 ; and are in good standing as registered members of SACPLAN.

(2) All applicants must comply with the procedures set out in Chapter 6.

(3) The municipality may require an owner of land who intends to submit an application, to meet with an authorised employee and, where applicable, with employees of other relevant organs of state for the purpose of a pre-application consultation, before the submission of the application to the Municipality, in order to assist the owner/applicant to determine what information and documents must be submitted with the application.

(4) The Municipality may issue guidelines regarding:

(a) Which applications will require a pre-consultation;

(b) The nature of the information and documents which must be delivered with an application.

(5) The Municipality must keep a record of the proceedings of a pre-application consultation.

(6) Pre-application consultations are convened only to facilitate the administration of the any application. No outcome of a pre-application consultation will be binding on the Municipality but such outcome may be taken into account as a factor in deciding the on application.

(7) The Municipality may determine in relation to any application required in terms of this By-Law –

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

(b) the manner of submission of an application;

(c) any other procedural requirements not provided for in this By-Law in accordance with the guidelines determined by the Municipality in accordance with section 177, if the Municipality has determined guidelines.

(8) A determination contemplated in subsection (7) may –

(a) relate to the whole application or any part of it; and

(b) differentiate between types of applications contemplated in section 48, categories of applications contemplated in section 31 or the type of applicant contemplated in section 45 of the Act.

(9) An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter 6 or the relevant section of this By-law and the determination made by the City Manager.

77. Information required

(1) Any application required in terms of this By-Law must be duly completed on a form approved by the Council, signed by the applicant and submitted to the Municipality.

(2) Any application referred to in subsection (1) must be accompanied by -

(a) if the applicant is not the owner of the land, a power of attorney signed by the owner authorising the applicant to make the application on behalf of the owner and if the owner is married in community of property a power of attorney signed by both spouses;

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

(c) if the owner of the land is a trust, the application must be signed by the authorised representative of the trust. A copy of the resolution of the trustees must be included..;

(d) a written motivation for the application based on the criteria for consideration of the application;

(e) proof of payment of application fees; and

(f) if a property forms part of a group housing or sectional title scheme, as may be confirmed during a pre-submission consultation, a consent letter from the Home Owners Association or Body Corporate.

(g) in the case of an application for development on communal, a letter from the Traditional Council confirming that the applicant is permitted to bring the application..

(h) a copy of the title deed of the land and notarial deed of servitude (where applicable);

(i) a copy of the Surveyor General diagram for the land and servitude diagram (where applicable;

(j) a locality plan on an appropriate scale;

(k) a zoning plan or, where no zoning scheme applied in the past, a land use rights plan, in colour and on an appropriate scale, of the land and surrounding properties;

(j) if the property is encumbered by a bond, the consent of the bondholder (except for application for a departure from provisions of the land use scheme, which does not have to be accompanied by a consent of the bondholder).

(3) A written motivation in terms of subsection (2)(d) must contain at least the following information:

(a) The interest of the applicant in bringing the application.

(b) Land legal status of the land in terms of ownership, real rights such as servitudes, conditions of title, bonds.

(c) Details of the proposed Land Development activity / activities and associated approvals sought by the application.

(d) Details of other statutory authorizations required for land development activities (or elements thereof) and details of the application processes to be followed, underway of already obtained.

(e) Proposals of applicable Spatial Development Frameworks relevant to the land development area and indication of land development alignment / compliance with applicable proposals (if any).

(f) An indication of the anticipated impact of the land development activity / activities and where negative impact is anticipated, mitigation measures proposed in terms of the following:

i.) Surrounding properties

ii.) Surrounding persons / community

iii.) Infrastructure capacity (sanitation, water, electricity, roads / traffic and stormwater)

iv.) Natural environment

(g) The need and desirability of the proposed land development and alignment with SPLUMA principles of spatial justice, spatial sustainability, efficiency, spatial resilience and good administration (where applicable).

(4) In addition to the requirement of this section, the Municipality may make guidelines as contemplated in section 177 relating to the type of documentation required per type of application, the submission of additional information and procedural requirements.

78. Application fees

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

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

79. Grounds for refusing to accept application

(1) The Municipality may refuse to accept an application if—

(a) the application is submitted by a person that is not Registered Planners in terms of the Planning Professions Act 2002 (Act 36 of 2002).

(b) there is no proof of payment of fees;

(c) the application does not contain the documents required for the submission of an application as set out in section 85.

(d) a prescribed penalty fee required in terms of section 154 and 155 of this By-law, if applicable, has not been paid.

(2) The municipality may require an applicant to attend a pre-submission meeting with relevant officials of the Municipality and other organs of state that may be deemed necessary, to assist the applicant in ensuring that the application includes sufficient information and documentation to be accepted as contemplated in section 85.

The Municipality must keep a record of pre-submission meetings and issue formal correspondence to the applicant to confirm all required actions and resolutions taken at such meeting.

80. Receipt of application and request for further documents

The Municipality must—

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

(b) within 30 days of receipt of the application or such further period as may be agreed upon, notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require, failing which it is regarded that there is no outstanding information or documents.;

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81. Additional information

(1) The applicant must provide the Municipality with the information or documentation required for the completion of the application within 30 days of the request therefor or within the further period agreed to between the applicant and the Municipality.

(2) The Municipality may refuse to consider the application if the applicant fails to provide the information within the timeframes contemplated in subsection (1).

(3) The Municipality must notify the applicant in writing of the refusal to consider the application and must close the application.

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

(5) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must make a fresh application and pay the applicable application fees.

82. Confirmation of complete application

The Municipality must, within 30 days of receipt of the complete application or within 30 days of receipt of such additional plans, documents and other information that was required to make it a complete application, notify the applicant in writing that the application is complete and that the required notification processes for the application may commence.

83. Withdrawal of application

(1) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the Municipality.

(2) The owner of land must in writing inform the Municipality if he or she has withdrawn the power of attorney that authorised another person to make an application on his or her behalf.

84. Notice of applications in terms of integrated procedures

(1) The Municipality may, on prior written request and motivation by an applicant, determine that—

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

(b) notice of an application made in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms of other legislation;

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

(3) The Municipality must, within 30 days of having notified the applicant that the application is complete, simultaneously-

(a) cause public notice of the application to be given in terms of subsection 85(1); and

(b) forward a copy of the notice together with the relevant application to every municipal department, service provider and organ of state that has an interest in the application, unless it has been determined by the Municipality that a procedure in terms of

another law, as determined in subsection (1), is considered to be public notice in terms of this By-law.

(4) The Municipality may require the applicant to give the required notice of an application in the media.

(5) Where an applicant has published a notice in the media at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

85. Notification of application

(1) The Municipality must cause notice to be given in the media and cause notice to be served within 30 calendar days of confirmation of a complete application, in accordance with sub-section (2) and (3) and such other provisions that the Municipality may specify, of the following applications:

(a) a rezoning, or a rezoning on the initiative of the Municipality;

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

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

(d) the registration of a servitude or a long term lease;

(e) the closure of a public place;

(f) the removal of a restrictive condition;

(g) for a consent;

(h) for a temporary or permanent land use departure;

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

(2) Notice of the application must be served and proof of delivery produced in the following manner:

(a) Hand delivered to the registered owner or authorised representative of the owner. A signed confirmation of receipt of the notice by the owner or authorised representative must be sent to the relevant Planner, noting that a third party cannot sign the confirmation of acceptance on behalf of the owner or authorised representative; (note: a third party cannot sign the confirmation of acceptance on behalf of the owner or authorised representative); or

(b) Sent via the medium used by the Municipality to send Municipal rates accounts to each registered property owner; which may be either:.

(i) Sent via email. For emails, a copy of the email and proof of the delivery receipt and read-receipt must be sent to the relevant Planner; or

(ii) Sent via post, by registered mail. For registered letters, proof of the registered mail and delivery confirmation must be sent to the relevant Planner (reports from https://parcelsapp.com/en/tracking/ will be acceptable).

(3) Notice of the application in the media must be given by—

(a) publishing a notice of the application, in newspapers with a general circulation in the area concerned in terms of the official language determined by the Council, having regard to language preferences and usage within its municipal area, as contemplated in section 21 of the Municipal Systems Act.

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

(4) For application listed in sub-section (1) that are located on communal land under the area of a traditional council, the applicant must submit signed confirmations from both the applicable traditional council and Municipal Councillor for the local area that confirm:

(a) That residents and adjoining land-right holders have been notified of the proposed land development application;

(b) Whether any objections and /or concerns were raised and details of such if any were raised.

(5) Applications not referred to in subsection 1 shall not require public participation unless the Municipality determines that:

(a) there has been a material change in circumstances since the original approval;

(b) the application is accompanied by an amendment to the approval or its conditions that requires public participation in terms of this By-law; or

(c) the Municipality is satisfied that further public participation is necessary in the interests of procedural fairness.

86. Content of notice

(1) When notice of an application must be given in terms of section 85, the notice must contain the following information:

(a) the details of the applicant;

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

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

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

(e) state the contact details of the relevant municipal employee;

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

(g) state in which manner comments, objections or representations may be submitted;

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

(i) state that any person who cannot write may during office hours attend at an address stated in the notice where a named staff member of the Municipality will assist that person to transcribe that person's objections, comments or representations.

(2) For applications that involve required minor amendments to a Spatial Development Framework, as described in Section 14(1)(a), the notice must include details of such proposed minor amendment and the process to be followed.

87. Additional methods of public notice

(1) If the Municipality considers notice in accordance with section 85 will be ineffective or the, the Municipality may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:

(a) to display a notice contemplated in section 85 of a size of at least 60 cm by 42 cm on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—

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

(ii) the applicant must, within 21 days from the last day of display of the notice, submit to the Municipality—

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

(bb) at least two photos of the notice, one from nearby and one from across the street.

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

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

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

(e) to publish the application on the Municipality's website for the duration of the period that the public may comment on the application; or

(f) to obtain letters of consent or objection to the application.

(2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

88. Requirements for petitions

(1) All petitions must clearly state—

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

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

(c) the objection and reasons for the objection.

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

89. Requirements for objections, comments or representations

(1) A person may, in response to a notice received in terms of section 85, object, comment or make representations in accordance with this section.

(2) Any objection, comment or representation received as a result of a public notice process must be in writing and addressed to the person mentioned in the notice within the time period stated in the notice and in the manner set out in this section.

(3) The objection must state the following:

(a) the name of the person or body concerned;

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

(c) the interest of the body or person in the application;

(d) the reason for the objection, comment or representation.

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

(a) indicate the facts and circumstances which explains the objection, comment or representation;

(b) demonstrate the undesirable effect which the application will have on the area;

(c) demonstrate any aspect of the application which is not considered consistent with applicable policy.

(5) Any objection, comment or representation that is received after the closing date of the period referred to in subsection (2) is deemed not to be valid and the Municipality must not accept any such objection, comment or representation.

90. Requirements for intervener status.

(1) Where an application has been submitted to the Municipality, an interested person referred to in section 45(2) of the Act may, at any time during the proceedings, petition the Municipal

Planning Tribunal or the Authorised official in writing on the form approved by Council to be granted intervener status.

(2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –

(a) does not collude with any of the parties; and

(b) is willing to deal with or act in regard to the application as the Municipal Planning Tribunal or the Authorised official may direct.

(3) The Municipal Planning Tribunal or the Authorised official must determine whether the requirements of this section have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.

(4) The presiding officer of the Municipal Planning Tribunal or the Authorised official must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer or the Authorised official is final and must be communicated to the petitioner and the parties.

91. Amendments prior to approval

(1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-laws and prior to the approval thereof—

(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.

(2) If an amendment to an application increases the extent of the original application by more than 10%, or if such amendment, in the opinion of the Municipality, may negatively affect the rights of any person, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resent to municipal departments, organs of state and service providers.

92. Further public notice

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

(2) The Municipality may, at any stage during the processing of the application—

(a) require notice of an application to be republished or to be served again; and

(b) an application to be resent to municipal departments for comment,

if new information comes to its attention which is material to the consideration of the application.

93. Cost of notice

The applicant is liable for the costs of giving notice of an application.

94. Applicant's right to reply

(1) Copies of all objections, comments or representations lodged with a Municipality must be provided to the applicant within 30 days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section.

(2) The applicant may, within a period of 21 days from the date of receiving the last of the objections, comments or representations, submit written reply thereto with the Municipality..

(3) The applicant may before the expiry of the 21 day period referred to in subsection (2), apply to the Municipality for an extension of the period with a further period of 14 days to lodge a written reply.

(4) If the applicant does not submit comments within the period of 21 days or within an additional period 14 of days if applied for, the applicant is considered to have no comment.

(5) If as a result of the objections, comments or representations lodged with a Municipality, additional information regarding the application are required by the Municipality, the information must be supplied within the further period as may be agreed upon between the applicant and the Municipality.

(6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), section 89(2) to (5) with the necessary changes, applies.

95. Written assessment of application

(1) An employee authorised by the Municipality must in writing assess an application in accordance with section 45 and recommend to the decision-maker whether the application must be approved or refused.

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

96. Decision-making period

The Municipal Planning Tribunal and the Authorised official must, if no integrated process in terms of another law is being followed, consider and decide on the application within the period referred to in regulation 16(3)(4) and (5) of the Regulations.

97. Failure to act within time period

If no decision is made by the Municipal Planning Tribunal within the period required in terms of the Act, it is considered undue delay for purposes of these By-Laws and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal or Authorised official to the City Manager, who must report it to the municipal council and mayor.

98. Powers to conduct routine inspections

(1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a report.

(2) When conducting an inspection, the authorised employee may—

(a) request that any record, document or item be produced to assist in the inspection;

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

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

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

(3) No person may interfere with an authorised employee who is conducting an inspection as contemplated in subsection (1).

(4) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.

(5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

99. Determination of application

The Municipality, represented by the Authorised Official or Tribunal, may in respect of any application submitted in terms of this Chapter -

(a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;

(b) on the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;

(c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law, the Act and provincial legislation;

(d) conduct any necessary investigation;

(e) give directions relevant to its functions to any person in the service of a Municipality;

(f) decide any question concerning its own jurisdiction;

(g) appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of this By-law;

100. Notification of decision

(1) The Municipality must, within 30 days of its decision, in writing notify the applicant and any objector of the decision, including reasons for the decision and their right to appeal if applicable.

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

101. Duties of agent of applicant

(1) An applicant who is not the owner of the land concerned must ensure that he or she has the contact details of the owner of the property.

(2) The agent must ensure that all information furnished to the Municipality is accurate.

(3) The agent must ensure that no misrepresentations are made.

(4) The provision of inaccurate, false or misleading information is an offence.

102. Errors and omissions

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

(2) The Municipality may, of its own accord or on application by an applicant or interested party, upon good cause being shown, condone an error in the procedure provided that such condonation does not have material adverse impact on or unreasonably prejudice any party.

103. Withdrawal of approval for Consents or Temporary Departures

(1) The Municipality may withdraw an approval granted for a consent use or temporary departure if the applicant or owner fails to comply with a condition of approval.

(2) Prior to doing so, the Municipality must serve a notice on the owner—

(a) informing the owner of the alleged breach of the condition;

(b) instructing the owner to rectify the breach within a specified time period;

(c) allowing the owner to make representations on the notice within a specified time period.

104. Procedure to withdraw an approval

(1) The Municipality may withdraw an approval granted—

(a) after consideration of the representations made in terms of section 103(2)(c); and

(b) if the Municipality is of the opinion that the condition is still being breached and not being complied with at the end of the period specified in terms of section 103(2)(b).

(2) If the Municipality withdraws the approval, the Municipality must notify the owner of the withdrawal of the approval and instruct the owner to cease the activity immediately.

(3) The approval is withdrawn from date of notification of the owner.

105. Exemptions to facilitate expedited procedures

The Municipality may on application or on its own accord, in writing -

(a) exempt the following developments from compliance with the provisions of this By-law—

(i) integrated application processes as contemplated in section 84;

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

(iii) incremental upgrading of existing settlements;

provided that:

(iv) it will not prejudice the rights or interests of any person or organ of state;

(v) it is reasonable and justifiable in the circumstances;

(vi) will not conflict with the purpose and intent of this By-law or any applicable legislation; and

(vii) that sufficient information has been provided to enable the Municipality to properly consider and determine the application.

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

CHAPTER 7
APPEAL PROCEDURES

Part A: Establishment of Municipal Appeal Tribunal

106. Establishment of Municipal Appeal Tribunal

(1) The Municipality must, if it decides to implement section 51(6) of the Act, establish a Municipal Appeal Tribunal in accordance with the provisions of this Part and the Municipal Appeal Tribunal is hereby authorised to assume the obligations of the appeal authority.

107. Institutional requirements for establishment of Municipal Appeal Tribunal, if the Municipality decides to establish an external appeal authority-

(1) The Municipality, in establishing a Municipal Appeal Tribunal in terms of section 106, must, amongst others –

(a) determine the terms and conditions of service of the members of the Municipal Appeal Tribunal;

(b) identify any additional criteria that a person who is appointed as a member of the Municipal Appeal Tribunal must comply with;

(c) consider the qualifications and experience of the persons it is considering for appointment to the Municipal Planning Tribunal, make the appropriate appointments and designate the chief presiding officer;

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

(g) publish the names of the members of the Municipal Appeal Tribunal and their term of office in the *Provincial Gazette*;

(h) determine the location of the office where the Municipal Appeal Tribunal must be situated; and

(i) develop and approve operational procedures for the Municipal Appeal Tribunal.

(2) The Municipality may not appoint any person to the Municipal Appeal Tribunal if that person -

(a) is disqualified from appointment as contemplated in section 107; or

(b) if he or she does not possess the knowledge or experience required in terms of section 108 or the additional criteria determined by the Municipality in terms of subsection (1)(b).

(3) The Council must –

(a) remunerate members of the Municipal Appeal Tribunal for each hearing of the Municipal Appeal Tribunal in accordance with the rates determined by Treasury; and

(b) designate an employee of the Municipality or appoint a person as secretary to the Municipal Appeal Tribunal.

108. Composition, term of office and code of conduct of Municipal Appeal Tribunal

(1) The Municipal Appeal Tribunal must consist of between 3 and 5 members which must include at least:

(a) one member who is a professional planner registered with the South African Council for Planners and who has appropriate experience;

(b) one member who is qualified in law and who has appropriate experience; and

(c) one member who is registered as a professional with the Engineering Council of South Africa in terms of the Engineering Profession Act, 2000.

(2) The chief presiding officer must designate at least three members of the Municipal Appeal Tribunal to hear, consider and decide a matter which comes before it and must designate one member as the presiding officer.

(3) No member of the Municipal Planning Tribunal may serve on the Municipal Appeal Tribunal.

(4) If a person referred to in subsection (3) is a member of the Municipal Appeal Tribunal hearing the appeal, his or her membership renders the decision of the Municipal Appeal Tribunal on that matter void.

(5) The term of office of the members of the Municipal Appeal Tribunal is five years.

(6) After the first terms of office of five years referred to in subsection (5) has expired the appointment of members of the Municipal Appeal Tribunal for the second and subsequent terms of office must be in accordance with the provisions of this Part.

(7) A member whose term of office has expired may be re-appointed as a member of the Municipal Appeal Tribunal.

(8) Members of the Municipal Appeal Tribunal must sign and uphold the code of conduct contemplated in Schedule 4.

109. Disqualification from membership of Municipal Appeal Tribunal

(1) A person may not be appointed or continue to serve as a member of the Municipal Appeal Tribunal, if that person –

(a) is not a citizen of the Republic, and resident in the province;

(b) is a member of Parliament, a provincial legislature, House of Traditional Leaders or the Council or is an employee of the Municipality;

(c) is an un-rehabilitated insolvent;

(d) is of unsound mind, as declared by a court;

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

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

(g) has previously been removed from a Municipal Planning Tribunal or Municipal Appeal Tribunal for a breach of any provision of this Act.

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

110. Termination of membership of Municipal Appeal Tribunal

(1) A person's membership of the Municipal Appeal Tribunal may be terminated by a decision of the Municipalities if there are good reasons for doing so after giving such member an opportunity to be heard.

(2) The reasons for removal referred to in subsection (1) may include, but are not limited to –

(a) misconduct, incapacity or incompetence; and

(b) failure to comply with any provisions of the Act or this By-Law.

(3) If a member's appointment is terminated or a member resigns, the Municipality must publish the name of a person selected by the Municipality to fill the vacancy for the unexpired portion of the vacating member's term of office.

(4) The functions of the Municipal Appeal Tribunal must not be affected if any member resigns or his or her appointment is terminated.

Part B: Management of an Appeal Authority

111. Presiding officer of appeal authority

The presiding officer of the appeal authority is responsible for managing the judicial functions of that appeal authority.

112. Bias and disclosure of interest

(1) No presiding officer or member of an appeal authority may sit at the hearing of an appeal against a decision of a Municipal Planning Tribunal if he or she was a member of that Municipal Planning Tribunal when the decision was made or if he or she was the official contemplated in section 35(2) of the Act and he or she made the decision that is the subject of the appeal.

(2) A presiding officer or member of an appeal authority who has or appears to have a conflict of interest as defined in sub regulations (5) and (6) must recuse himself or herself from the appeal hearing.

(3) A party may in writing to the appeal authority request the recusal of the presiding officer or member of that appeal authority on the grounds of conflict of interest and the presiding officer must decide on the request and inform the party of the decision in writing.

(4) A decision by a presiding officer or member to recuse himself or herself or a decision by the appeal authority to recuse a presiding officer or member, must be communicated to the parties concerned by the registrar.

(5) For the purpose of this Chapter "conflict of interest" means any factor that may impair or reasonable give the appearance of impairing the ability of a member of an appeal authority to independently and impartially adjudicate an appeal assigned to the appeal authority.

(6) A conflict of interest arises where an appeal assigned to an appeal authority involves any of the following:

(a) A person with whom the presiding officer or member has a personal, familiar or professional relationship;

(b) a matter in which the presiding officer or member has previously served in another capacity, including as an adviser, counsel, expert or witness; or

(c) any other circumstances that would make it appear to a reasonable and impartial observer that the presiding officer's or member's participation in the adjudication of the matter would be inappropriate.

113. Registrar of appeal authority

(1) The City Manager is the registrar of the appeal authority.

(2) Notwithstanding the provisions of subsection (1), a municipal council may appoint a person or designate an official in its employ, to act as registrar of the appeal authority and if it so appoints or designates a person or an official, that person or official has delegated authority as contemplated in section 56 of the Act.

(3) Whenever by reason of absence or incapacity any registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the municipal council may, after consultation with the presiding officer of the appeal authority, authorise any other competent official in the public service to act in the place of the absent or incapacitated registrar during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(4) Any person appointed under subsection (2) or authorised under subsection (3) may hold more than one office simultaneously.

114. Powers and duties of registrar

(1) The registrar is responsible for managing the administrative affairs of the appeal authority and, in addition to the powers and duties referred to in this Chapter, has all the powers to do what is necessary or convenient for the effective and efficient functioning of the appeal authority and to ensure accessibility and maintenance of the dignity of the appeal authority.

(2) The duties of the registrar include –

(a) the determination of the sitting schedules of the appeal authority;

(b) assignment of appeals to the appeal authority;

(c) management of procedures to be adhered to in respect of case flow management and the finalisation of any matter before the appeal authority;

(d) transmit all documents and make all notifications required by the procedures laid down in the provincial spatial planning and land use management legislation;

(e) the establishment of a master registry file for each case which must record –

(i) the reference number of each appeal;

(ii) the names of the parties;

(iii) all actions taken in connection with the preparation of the appeal for hearing;

(iv) the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;

(v) the date of the hearing of the appeal;

(vi) the decision of the appeal authority;

(vii) whether the decision was unanimous or by majority vote; and

(viii) any other relevant information.

(3) The presiding officer of the appeal authority may give the registrar directions regarding the exercise of his or her powers under this Chapter.

(4) The registrar must give written notice to the presiding officer of all direct or indirect pecuniary interest that he or she has or acquires in any business or legal person carrying on a business.

PART C: APPEAL PROCESS

115. Commencing of appeal

(1) A person who feels his or her rights are affected by a decision of the Municipal Planning Tribunal or Authorised Official must commence an appeal by submitting a written notice with reasons for the appeal, along with the prescribed application form and proof of payment of the prescribed fee to the City Manager, within 21 days of the date of notification of a decision, as contemplated in section 51 of the Act.

(2) If a land use approval is granted and an appeal is submitted against the conditions of approval, the approval granted will remain valid until the appeal decision has been finalized.

116. Content of appeal

(1) An Appeal must clearly indicate:

(a) whether the appeal is against the whole decision or only part of the decision and if only a part, which part;

(b) where applicable, whether the appeal is against any conditions of approval of an application and which conditions;

(c) the grounds of appeal including any findings of fact or conclusions of law;

(d) a clear statement of the relief sought on appeal; and

(e) any issues that the appellant wants the appeal authority to consider in making its decision.

Part D: Parties to an appeal

117. Parties to appeal

(1) The parties to an appeal before an appeal authority are:

(a) the appellant who has lodged the appeal with the appeal authority in accordance with section 51(1) of the Act and this Chapter;

(b) the applicant, if the applicant is not the appellant as contemplated in paragraph (a);

(c) the Municipal Planning Tribunal or Official authorised by the municipality as contemplated in section 35(2) of the Act who made the decision;

(d) any person who has been made a party to the proceeding by the appeal authority after a petition to the appeal authority under section 45(2) of the Act to be granted intervener status.

118. Intervention by interested person

(1) Where an appeal has been lodged by an appellant to the appeal authority, an interested person referred to in section 45(2) of the Act may, at any time during the proceedings, petition the appeal authority in writing to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the Municipal Planning Tribunal or official referred to in section 35(2) of the Act and might therefore be affected by the judgement of the appeal authority.

(2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –

(a) does not collude with any of the appellants; and

(b) is willing to deal with or act in regard to the appeal as the appeal authority may direct.

(3) The registrar must determine whether the requirements of this regulation have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.

(4) The presiding officer of the appeal authority must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar.

Part E: Jurisdiction of Appeal Authority

119. Jurisdiction of appeal authority

An appeal authority may consider an appeal on one or more of the following:

(a) the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and

(b) the merits of the land development or land use application.

120. Oral or written appeal hearing by appeal authority

An appeal may be heard by an appeal authority by means of a written hearing and if it appears to the appeal authority that the issues for determination of the appeal cannot adequately be determined in the absence of the parties by considering the documents or other material lodged with or provided to it, by means of an oral hearing.

121. Representation before appeal authority

At the hearing of an appeal before an appeal authority, a party to the proceeding may appear in person or may be represented by another person.

122. Opportunity to make submissions concerning evidence

The appeal authority must ensure that every party to a proceeding before the appeal authority is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

Part F: Hearings of Appeal Authority

123. Notification of date, time and place of hearing

(1) The appeal authority must notify the parties of the date, time and place of a hearing no later than 14 days after the City Manager submitted the appeal to the appeal authority as contemplated in regulation 30(1) of the Regulations.

(2) The appeal authority will provide notification of the hearing to the appellant at the appellant's address for delivery.

124. Hearing date

(1) A hearing will commence on a date determined by the registrar, which hearing may not take place later than 60 days from the date on which the City Manager submitted the appeal to the appeal authority as contemplated in regulation 30(1) of the Regulations.

(2) The parties and the presiding officer may agree to an extension of the date referred to in subsection (1).

125. Adjournment

(1) If a party requests an adjournment more than one day prior to the hearing, the party must obtain the written consent of the other party and the presiding officer of the appeal authority.

(2) The party requesting an adjournment must deliver to the appeal authority a completed form including reasons for the request.

(3) The appeal authority will notify the parties in writing of the decision of the presiding officer of the appeal authority.

(4) If the presiding officer of the appeal authority or the other party does not consent to the request for an adjournment, the hearing will not be adjourned.

(5) If a party requests an adjournment within one day prior to the hearing, the request must be made to the appeal authority at the hearing and may be made notwithstanding that a prior request was not consented to.

126. Urgency and condonation

(1) The registrar may –

(a) on application of any party to an appeal, direct that the matter is one of urgency, and determine such procedures, including time limits, as he or she may consider desirable to fairly and efficiently resolve the matter;

(b) on good cause shown, condone any failure by any party to an appeal to comply with these Regulations or any directions given in terms hereof, if he or she is of the opinion that such failure has not unduly prejudiced any other person;

(2) Every application for condonation made in terms of this regulation must be –

(a) served on the registrar;

(b) accompanied by a memorandum setting forth the reasons for the failure concerned; and

(c) determined by the presiding officer in such manner as he or she considers proper.

(3) Where a failure is condoned in terms of subregulation (1)(b), the applicant for condonation must comply with the directions given by the registrar when granting the condonation concerned.

127. Withdrawal of appeal

An appellant or any respondent may, at any time before the appeal hearing, withdraw an appeal or opposition to an appeal and must give notice of such withdrawal to the registrar and all other parties to the appeal.

Part G: Oral Hearing Procedure

128. Location of oral hearing

An oral hearing must be held in a location within the area of jurisdiction of the municipality where the land affected by the decision is located, but may not be held in the office of the Municipal Planning Tribunal or the Authorised official authorised in terms of section 35(2) of the Act whose decision is under appeal.

129. Presentation of each party's case

(1) Each party has the right to present evidence and make arguments in support of that party's case.

(2) The appellant will have the opportunity to present evidence and make arguments first, followed by the Municipal Planning Tribunal or the Authorised official.

130. Witnesses

(1) Each party may call witnesses to give evidence before the panel.

(2) A witness may not be present at the hearing before giving evidence unless the witness is:

(a) an expert witness in the proceedings;

(b) a party to the appeal; or

(c) a representative of a party to the appeal.

131. Proceeding in absence of party

(1) If a party does not appear at an oral hearing, the appeal authority may proceed in the absence of the party if the party was notified of the hearing.

(2) Prior to proceeding, the appeal authority must first determine whether the absent party received notification of the date, time and place of the hearing.

(3) If the notice requirement was not met, the hearing cannot proceed and the presiding officer of the appeal authority must reschedule the hearing.

132. Recording

Hearings of the appeal authority must be recorded in hard copy and electronic format.

133. Oaths

Witnesses (including parties) are required to give evidence under oath or confirmation.

134. Additional documentation

(1) Any party wishing to provide the appeal authority with additional documentation not included in the appeal record should provide it to the appeal authority at least three days before the hearing date.

(2) The registrar must distribute the documentation to the other party and the members of the appeal authority.

(3) If the party is unable to provide the additional documentation to the appeal authority at least 3 days prior to the hearing, the party may provide it to the appeal authority at the hearing.

(4) The party must bring copies of the additional documentation for the members of the appeal authority and the other party.

(5) If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the appeal authority.

Part H: Written Hearing Procedure

135. Commencement of written hearing

The written hearing process commences with the issuance of a letter from the appeal authority to the parties establishing a submissions schedule.

136. Presentation of each party's case in written hearing

(1) Each party must be provided an opportunity to provide written submissions to support their case.

(2) The appellant will be given 21 days to provide a written submission.

(3) Upon receipt of the appellant's submission within the timelines, the appeal authority must forward the appellant's submission to the Municipal Planning Tribunal or the Authorised official.

(4) The Municipal Planning Tribunal or the Authorised official has 21 days in which to provide a submission in response.

(5) If no submission is received by a party in the time established in the submissions schedule, it will be deemed that the party declined the opportunity to provide a submission.

137. Adjudication of written submissions

(1) Following receipt of any written submissions from the parties, the registrar must forward the appeal record, which includes the written submissions, to the appeal authority for adjudication.

(2) If no written submissions are received from the parties, the registrar will forward the existing appeal record to the appeal authority for adjudication.

(3) Any submission received after the date it was due but before the appeal authority for adjudication has rendered its decision will be forwarded to the presiding officer of the appeal authority to decide whether or not to accept the late submission.

(4) The appeal authority must issue a decision in writing to the parties and, if the submission is accepted, the other party will be given seven days to provide a written submission in response.

Part I: Decision of Appeal Authority

138. Further information or advice

After hearing all parties on the day of the hearing, the appeal authority –

(a) may in considering its decision request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;

(b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a decision as contemplated by paragraph (c);

(c) must within 21 days after the last day of the hearing, issue its decision on the appeal together with the reasons therefore.

139. Decision of appeal authority

(1) The appeal authority may confirm, vary or revoke the decision of the Municipal Planning Tribunal or Authorised official and may include an award of costs.

(2) The presiding officer must sign the decision of the appeal authority and any order made by it.

140. Notification of decision

The registrar must notify the parties of the decision of the appeal authority together with the reasons therefor within seven days after the appeal authority handed down its decision.

141. Directives to municipality

(1) The appeal authority must, in its decision, give directives to the municipality concerned as to how such a decision must be implemented and which of the provisions of the Act and the Regulations have to be complied with by the municipality as far as implementation of the decision is concerned.

(2) The validity period of a land development approval that was the subject of an appeal process will only commence once the appeal process is concluded and the decision of the Municipality to approve the application was upheld by the appeal authority.

Part J: General

142. Expenditure

Expenditure in connection with the administration and functioning of the appeal authority must be defrayed from moneys appropriated by the applicable municipality.

CHAPTER 8

ENGINEERING SERVICES AND DEVELOPMENT CHARGES

Part A: Provision and Installation of Engineering Services

143. Responsibility for providing engineering services

(1) Every land development area must be provided with such engineering services as the Municipality may deem necessary for the appropriate development of the land.

(2) An applicant is responsible for the provision and installation of internal engineering services required for a development at his or her cost when a land development application is approved.

(3) The Municipality is responsible for the installation and provision of external engineering services, unless the engineering services agreement referred to in section 145 provides otherwise.

144. Installation of engineering services

(1) The applicant must provide and install the internal engineering services, including private internal engineering services, in accordance with the conditions of establishment 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.

(2) The Municipality shall have regard to such standards as the Minister/MEC may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act.

(3) If an engineering service within the boundaries of the land development area is intended to serve any other area within the municipal area, such engineering service and the costs of provision thereof must be treated as an internal engineering service to the extent that it serves the land development and as an external engineering service to the extent that it serves any other development.

(4) The Municipality must, where any private roads, private open spaces or any other private facilities or engineering services are created or to be constructed with the approval of any land development application set the standards for the width and or any other matter required to provide sufficient access and engineering services; including but not limited to:

(a) roadways for purposes of sectional title schemes to be created;

(b) the purpose and time limit in which private roads, private engineering services and private facilities are to be completed;

145. Engineering services agreement

(1) An applicant of a land development application and the Municipality must enter into an engineering service agreement if the Municipality requires such agreement.

(2) The engineering services agreement must –

(a) classify the services as internal engineering services, external engineering services or private engineering services;

(b) be clear when the applicant and the Municipality are to commence construction of internal engineering services, whether private engineering services or not, and external engineering services, at which rate construction of such services is to proceed and when such services must be completed;

(c) provide for the inspection and handing over of internal engineering services to the Municipality or the inspection of private internal engineering services;

(d) determine that the risk and ownership in respect of such services must pass to the Municipality, the body corporate or the owners' association as the case may be, when the Municipality is satisfied that the services are installed to its standards;

(e) require the applicant and the Municipality to take out adequate insurance cover in respect of such risks as are insurable for the duration of the land development; and

(f) provide for the following responsibilities after the internal services have been handed over to the Municipality, the body corporate or the owners' association:

(i) when normal maintenance by the relevant authority, the body corporate or owners' association must commence;

(ii) the responsibility of the applicant for the rectification of defects in material and workmanship; and

(iii) the rights of the relevant authority, the body corporate or owners' association if the applicant fails to rectify any defects within a reasonable period after having been requested to do so;

(g) if any one of the parties is to provide and install an engineering service at the request and at the cost of the other, such service must be clearly identified and the cost or the manner of determining the cost of the service must be clearly set;

(h) determine whether additional bulk services are to be provided by the Municipality

and, if so, such services must be identified;

(i) determine which party is responsible for the installation and provision of service connections to residential, business, industrial, community facility and municipal erven, and the extent or manner, if any, to which the costs of such service connections are to be recovered;

(j) define the service connections to be made which may include all service connections between internal engineering services and the applicable erf or portion of the land and these include –

(i) a water-borne sewerage pipe terminating at a sewer connection;

(ii) a water-pipe terminating at a water meter; and

(iii) an electricity house connection cable terminating on the relevant erf; and

(k) clearly identify the level and standard of the internal engineering services to be provided and installed and these include, amongst others –

(i) water reticulation;

(ii) sewerage reticulation, sewage treatment facilities and the means of disposal of effluent and other products of treatment;

(iii) roads and storm-water drainage;

(iv) electricity reticulation (high and low tension);

(v) street lighting.

(3) The engineering services agreement may –

(a) require that performance guarantees be provided, or otherwise, with the provision that -

(i) the obligations of the parties with regard to such guarantees are clearly stated;

(ii) such guarantee is irrevocable during its period of validity; and

(iii) such guarantee is transferable by the person to whom such guarantee is expressed to be payable; and

(b) provide for the manner in which the parties are to finance their relative responsibilities in terms of the engineering services agreement and where appropriate, either party may undertake to provide bridging finance to the other party.

(4) Where only basic services are to be provided initially, the timeframes and the responsibility of the parties for the upgrading (if any) of services must be recorded in the engineering services agreement.

146. Abandonment or lapsing of application

Where an application is abandoned by the applicant or has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreement referred to in section 145 lapses and if the applicant had installed any engineering services before the lapsing of the application in terms of the engineering services agreement, he or she shall have

no claim against the Council with regard to the provision and installation of any engineering services of whatsoever nature.

147. Internal and external engineering services

For the purpose of this Chapter:

(a) **"external engineering services"** has the same meaning as defined in section 1 of the Act and consist of both "bulk services" and "link services";

(b) **"bulk services"** means all the primary water, sewerage, waste disposal, sewage treatment facilities and means of disposal of effluent and other products of treatment, electricity and storm-water services, as well as the road network in the system to which the internal services are to be linked by means of link services;

(c) **"link services"** means all new services necessary to connect the internal services to the bulk services; and

(d) **"internal engineering services"** has the same meaning as defined in section 1 of the Act and includes any link services linking such internal services to the external engineering services.

Part B: Development Charges

148. Payment of development charge

(1) The Municipality must develop a policy for development charges and may levy a development charge in accordance with the policy, for the provision of -

(a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improve such services as a result of the commencement of an approved development; and

(b) open spaces or parks or other uses, such as social facilities and services, where the commencement of an approved development will bring about a higher residential density.

(2) If a land development application is approved by the Municipal Planning Tribunal subject to, amongst others, the payment of a development charge, the applicant or owner of the land to which the scheme relates, must, subject to section 149, pay the development charge to the Municipality.

(3) An applicant or owner who is required to pay a development charge in terms of this By-law shall pay such development charges to the Municipality before:

(a) a written statement contemplated in section 118 of the Municipal System Act is furnished in respect of the land;

(b) a building plan is approved in respect of:

(i) the proposed alteration of or addition to an existing building on the land;

(ii) the erection of a new building on the land, where that building plan, were it not for the approval of an application, would have been in conflict with the land use scheme in operation;

(c) the land is used in a manner or for a purpose which, were it not for the approval of an application would have been in conflict with the land use scheme in operation.

149. Offset of development charge

(1) An agreement concluded between the Municipality and the applicant in terms of section 49(4) of the Act, to offset the provision of external engineering services against the applicable development charge, must be in writing and must include the estimated cost of the installation of the external engineering services.

(2) The applicant or the owner must submit documentary proof of the estimated cost of the installation of the external engineering services.

(3) The amount to be offset against the applicable development charge must be determined by the Municipality.

(4) if the cost of the installation of the external engineering services exceed the amount of the applicable development charge, the Municipality may refund the applicant or the owner if there are funds available in the Municipality's approved budget.

(5) This section does not oblige the Municipality to offset any costs incurred in the provision of external engineering services other than that which may have been agreed upon in the engineering services agreement contemplated in section 145.

150. Payment of development charge in instalments

The Municipality may -

(a) in the circumstances contemplated in subparagraph (b) or (c), allow payment of the development charge contemplated in section 148 in instalments agreed to in the engineering services agreement which must comply with the timeframes provided for in the Municipality's Credit Control and Debt Collection By-Law or, if last-mentioned By-Law does not provide for such instalments, over a period not exceeding three years;

(b) in any case, allow payment of the development charge contemplated in section 148 to be postponed for a period not exceeding three months where security for the payment is given to its satisfaction;

(c) in exercising the power conferred by subparagraphs (a) or (b), impose any condition, including a condition for the payment of interest.

151. Refund of development charge

No development charge paid to the Municipality in terms of section 148 or any portion thereof shall be refunded to an applicant or owner: Provided that where the owner paid the applicable charge prior to the land use rights coming into operation and the application is abandoned in terms of section 104 the Municipality may, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

152. General matters relating to contribution charges

(1) Notwithstanding any provision to the contrary, where a development charge or contribution for open space is paid to the Municipality, such funds must, in terms of the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), be kept separate and only applied by the Municipality towards the improvement and expansion of the services infrastructure or the provision of open space or parking, as the case may be, to the benefit and in the best interests of the general area where the land area is situated or in the interest of a community that occupies or uses such land area.

(2) The Municipality must annually prepare a report on the development charges paid to the Municipality together with a statement of the expenditure of such amounts and the purposes of such expenditure and must submit such report and statement to the Premier.

CHAPTER 9
COMPLIANCE AND ENFORCEMENT

153. Enforcement

The Municipality must comply and enforce compliance with—

(a) the provisions of this By-law;

(b) the provisions of a land use scheme;

(c) conditions imposed in terms of this By-law or previous planning legislation; and

(d) title deed conditions.

154. Offences and penalties

(1) Any person who—

(a) contravenes or fails to comply with section 58 of the Act and subsection (2);

(b) fails to comply with a compliance notice issued in terms of section 156;

(c) utilises land in a manner other than prescribed by the land use scheme of the Municipality;

(d) upon registration of the first land unit arising from a subdivision, fails to transfer all common property, including private roads and private places originating from the subdivision, to the body corporate or owners' association;

(e) supplies particulars, information or answers in an application or in an appeal to a decision on a land development application, knowing it to be false, incorrect or misleading or not believing them to be correct;

(f) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or

(g) hinders or interferes an authorised employee in the exercise of any power or the performance of any duty of that employee, is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.

(2) An owner who permits land to be used in a manner set out in subsection (1)(c) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of the land use scheme of the Municipality, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

(3) A person convicted of an offence under this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

(4) The Municipality may adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

155. **Payment of Administrative Penalties Prior to Acceptance of a Retrospective Land Development Application**

(1) Where a land use application is submitted to regularise a land use or development that commenced or is being conducted in contravention of this By-law, the applicant shall first settle any administrative penalty or fine lawfully imposed by the Municipality in respect of the contravention.

(2) No application contemplated in subsection (1) shall be accepted for processing or registered until proof of payment of the applicable administrative penalty or fine has been submitted to the Municipality.

(3) Payment of an administrative penalty or fine shall not be construed as condoning, authorising or approving the unlawful land use or development, nor shall it create any right or legitimate expectation that the land use application will be approved.

(4) The Municipality shall consider the land use application on its planning merits and in accordance with the applicable legislation, policies and development principles, irrespective of the payment of any administrative penalty or fine.

(5) The Municipality may continue with enforcement proceedings or institute any civil or criminal proceedings permitted in terms of this By-law or any other applicable legislation, notwithstanding the submission or consideration of a land use application.

156. Service of compliance notice

(1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person or owner is guilty of an offence contemplated in terms of section 161.

(2) A compliance notice must direct the occupier and owner to cease the unlawful land use activity within 30 days or such shorter period specified by the Municipality.

(3) A person who received a compliance notice in terms of this section may lodge representations to the Municipality within 30 days of receipt of the compliance notice to request an extension of the timeframe for ceasing the unlawful activity.

157. Content of compliance notices

(1) A compliance notice must—

(a) identify the person to whom it is addressed;

(b) describe the activity concerned and the land on which it is being carried out;

(c) state that the activity is illegal and inform the person of the particular offence contemplated in section 154 which that person allegedly has committed or is committing through the carrying on of that activity;

(d) the steps that the person must take and the period within which those steps must be taken;

(e) anything which the person may not do, and the period during which the person may not do it;

(f) provide for an opportunity for a person to lodge representations contemplated in terms of section 156 with the contact person stated in the notice;

(g) issue a warning to the effect that—

(i) the person could be prosecuted for and convicted of and offence contemplated in section 154;

(ii) on conviction of an offence, the person will be liable for the penalties as provided for;

(iii) the person could be required by an order of court to demolish, remove or alter any building, structure or work illegally erected or constructed or to rehabilitate the land concerned or to cease the activity;

(iv) in the case of a contravention relating to a consent use or temporary departure, the approval could be withdrawn;

(v) in the case of an application for authorisation of the activity or development parameter, that a contravention penalty including any costs incurred by the Municipality, will be imposed;

(2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Municipality has agreed to suspend the operation of the compliance notice in terms of section 156.

158. Failure to comply with compliance notice

If a person fails to comply with a compliance notice the Municipality may—

(a) lay a criminal charge against the person;

(b) apply to the High Court for an order restraining that person from continuing the illegal activity,

(c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and then act in terms of section 158.

159. Urgent matters

(1) In cases where an activity must be stopped urgently, the Municipality may dispense with the procedures set out above and issue a compliance notice calling upon the person or owner to cease immediately.

(2) If the person or owner fails to cease the activity immediately, the Municipality may apply to the High Court for an urgent interdict or any other relief necessary.

160. Subsequent application for authorisation of activity

If instructed to rectify or cease an unlawful land use, a person may make an application to the Municipality for any land development contemplated in Chapter 5. A rectification application or process does not permit the continuation of an unlawful activity.

161. Power of entry for enforcement purposes

(1) An authorised employee may, at any reasonable time, and without a warrant, and without previous notice, enter upon land or enter a building or premises for the purpose of ensuring compliance with this By-law.

(2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of this By-law.

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

162. Power and functions of authorised employee

(1) In ascertaining compliance with this By-law as contemplated in section 154, an authorised employee may exercise all the powers and must perform all the functions granted to him or her under section 32 of the Act.

(2) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

163. Warrant of entry for enforcement purposes

(1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or building or premises if the—

(a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or

(b) purpose of the inspection would be frustrated by the prior knowledge thereof.

(2) A warrant referred to in subsection (1) may be issued by a judge of a High Court or by a magistrate who has jurisdiction in the area where the land in question is situated, and may only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that—

(a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;

(b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;

(c) there are reasonable grounds for suspecting that a contravention contemplated in section 154 has occurred and an inspection of the premises is likely to yield information pertaining to that contravention; or

(d) the inspection is reasonably necessary for the purposes of this By-law.

(3) A warrant must specify which of the acts mentioned in section 161 may be performed under the warrant by the person to whom it is issued and authorises the Municipality to enter upon the land or to enter the building or premises and to perform any of the acts referred to in section 161 as specified in the warrant on one occasion only, and that entry must occur—

(a) within one month of the date on which the warrant was issued; and

(b) at a reasonable hour, except where the warrant was issued on grounds of urgency.

164. Regard to decency and order

The entry of land, a building or structure under this Chapter must be conducted with strict regard to decency and order, which must include regard to a person's right to respect for and protection of his or her dignity.

165. Court order

Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in section 161, the Municipality may apply to the High Court for an order compelling that person to—

(a) rehabilitate the land concerned;

(c) compelling that person to cease with the unlawful activity; or

(d) any other appropriate order.

CHAPTER 10
TRANSITIONAL PROVISIONS

166. Transitional provisions

(1) Any land development application in terms of the Municipality's applicable SPLUMA Bylaw, or other land development related matter in terms of any provision of National or Provincial legislation, that is pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with and finalised in terms of that legislation or version of the Municipality's SPLUMA Bylaw.;

(2) A land development application that has been prepared after due pre-submission consultation with the Municipality, submitted and is being processed by the Municipality, may not be declined if such decision is solely on the grounds of non-compliance that results from a subsequent change that has been approved in a revision of a Spatial Development Framework or a subsequent provision of a new Spatial Development Framework.

(3) Where on the date of the coming into operation of an approved land use scheme in terms of section 26(1) of the Act, any land or building that is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been reserved or zoned in terms of the provisions of a land use scheme in terms of this By-law read with section 27 of the Act, but which is otherwise lawful and not subject to any prohibition in terms of this By-law, the use for that purpose may, subject to the provisions of this subsection (3), be continued after that date read with the provisions of a Town Planning Scheme or land use scheme.

(4) The right to continue using any land or building by virtue of the provisions of subsection (2) shall;

(a) where the right is not exercised in the opinion of the Municipality for a continuous period of 15 months, lapse at the expiry of that period;

(b) lapse at the expiry of a period of 15 years calculated from the date contemplated in subsection (2);

(c) where on the date of the coming into operation of an approved land use scheme -

(i) a building, erected in accordance with an approved building plan, exists on land to which the approved land use scheme relates;

(ii) the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the approved land use scheme, the building shall for a period of 15 years from that date be deemed to comply with that provision.

(d) where a period of 15 years has, in terms of subsection (2), commenced to run from a particular date in the opinion of the Municipality in respect of any land or building, no regard shall, for the purposes of those subsections, be had to an approved scheme which comes into operation after that date.

(e) within one year from the date of the coming into operation of an approved land use scheme -

(i) the holder of a right contemplated in subsection (2) may notify the Municipality in writing that he is prepared to forfeit that right;

(ii) the owner of a building contemplated in subsection (3)(c) may notify the Municipality in writing that he is prepared to forfeit any right acquired by virtue of the provisions of that subsection;.

(5) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of subsection (3)(a), such allegation shall be deemed to be correct until the contrary is proved.

(6) Where any land use provisions are contained in any title deed, deed of grant or 99 year leasehold, which did not form part of a town planning scheme, such land use provisions shall apply as contemplated in subsection (2).

(7) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the land use scheme or town planning scheme applicable to that land remains in force until the Municipality amends, repeals or replaces it.

167. Determination of zoning

(1) Notwithstanding the provisions of section 167(2) and (3), the owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in section 26(3) of the Act

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

(a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;

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

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

(d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and

(e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.

(3) If the lawful zoning of land contemplated in subsection (2) cannot be determined, the Municipality must determine a zoning.

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

CHAPTER 11
GENERAL PROVISIONS

168. Delegations

Any power conferred in this By-law on the Municipality, Council or City Manager may be delegated by the Municipality, Council and the City Manager subject to section 56 of the Act and section 59 of the Local Government: Municipal Systems Act.

169. Repeal of by-laws

Any existing conflicting land use management or related by-law are hereby repealed.

170. Fees payable

Any fee payable to the Municipality in terms of this By-Law is determined annually in terms of section 24(2) of the Municipal Finance Management Act, 2003 read with sections 74 and 75 of the

Municipal Systems Act and forms part of the By-Law to constitute the Tariff Structure of the Municipality.

171. Policy, procedure, determination, standard, requirement and guidelines

(1) The Municipality may adopt a policy, procedure, determination, standard, requirement or guidelines, not inconsistent with the provisions of the Act and this By-Law, for the effective administration of this By-Law.

(2) Unless the power to determine is entrusted to the Council, another person or body, the City Manager may determine anything which may be determined by the Municipality in terms of the Act, the Regulations or this By-Law.

(3) The Municipality must make available any policy, procedure, determination, standard, requirement or guidelines.

(4) An applicable policy, procedure, determination, standard, requirement and guidelines apply to an application submitted and decided in terms of this By-Law.

172. Planning Services provided by external services providers

Any external service provider (ie. not in the employ of the Municipality) rendering planning services to the Municipality or on behalf of an external entity or property owner:

(1) Must be registered as a Technical Planner or Professional Planner in terms of section 13(1) of the Planning Professions Act 36 of 2002; and

(2) Must be a registered member in good standing with SACPLAN

173. Short title and commencement

(1) This By-law is called the By-law on Spatial Planning and Land Use Management.

(2) This By-law comes into operation on the date of publication in the Provincial Gazette.

SCHEDULE 1

INVITATION TO NOMINATE A PERSON TO BE APPOINTED AS A MEMBER TO THE BUFFALO CITY METROPOLITAN MUNICIPAL PLANNING TRIBUNAL

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the Buffalo City Metropolitan Municipality hereby invites nominations for officials or employees of the (*insert name of organ of state or non-governmental organisation contemplated in regulation (3)(2)(a) of the Regulations*) to be appointed to the Buffalo City Metropolitan Municipal Planning Tribunal for its first term of office.

The period of office of members will be five years calculated from the date of appointment of such members by the Buffalo City Metropolitan Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 34(1)(b) – (g) of the Buffalo City Metropolitan Municipal Spatial Planning and Land Use Management By-law, 2016, who have leadership qualities and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

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

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

(b) The designation or rank of the nominee in the organ of state or non-governmental organisation;

(c) A short curriculum vitae of the nominee (not exceeding two pages);

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

Nominations must be sent to:

The City Manager

Buffalo City Metropolitan Municipality

P.O. Box 134

East London

5200

For Attention: The City Manager

For Enquiries: The City Manager

Tel: 043-705 2000

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* I, ……..…..(full names of nominee),

ID No (of nominee) ……..,

hereby declare that –

(a) I am available to serve on the Buffalo City Metropolitan Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me OR I am not willing to serve a chairperson or deputy chairperson (*delete the option not applicable*);

(b) there is no conflict of interest OR I have the following interests which may conflict with the the Buffalo City Metropolitan Municipal Planning Tribunal which I have completed on the declaration of interest form (*delete the option not applicable*);

(c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the the Buffalo City Metropolitan Municipal Planning Tribunal and I authorise the Buffalo City Metropolitan Municipality to verify any record in relation to such disqualification or requirement.

(d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the the Buffalo City Metropolitan Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

CLOSING DATE: (*Insert Date***)**

_____

Signature of Nominee

_____

Full Names of Nominee

_____

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

_____

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

SCHEDULE 2

CALL FOR NOMINATIONS FOR PERSONS TO BE APPOINTED AS MEMBERS TO THE BUFFALO CITY METROPOLITAN MUNICIPAL PLANNING TRIBUNAL

CLOSING DATE: (*Insert Date***)**

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

The period of office of members will be five years calculated from the date of appointment of such members by the Buffalo City Metropolitan Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 34(1)(b) – (g) of the Buffalo City Metropolitan Municipal Spatial Planning and Land Use Management By-law, 2016, who have leadership qualities and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

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

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

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

(d) Motivation by the nominator for the appointment of the nominee to the Buffalo City Metropolitan Municipal Planning Tribunal (no less than 50 words and no more than 250 words);

(e) A short curriculum vitae of the nominee (not exceeding two pages);

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

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

Nominations must be sent to:

The City Manager

Buffalo City Metropolitan Municipality

P.O. Box 134

East London

5200

For Attention: The City Manager

For Enquiries: The City Manager

Tel: 043-705 2000

---

* I, ……..…..(full names of nominee),

ID No (of nominee) ……..,

hereby declare that –

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

(b) there is no conflict of interest OR I have the following interests which may conflict with the Buffalo City Metropolitan Municipal Planning Tribunal and which I have completed on the declaration of interest form (*delete the option not applicable*);

(c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the Buffalo City Metropolitan Municipal Planning Tribunal and I authorise the Buffalo City Metropolitan Municipality to verify any record in relation to such disqualification or requirement;

(d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the Buffalo City Metropolitan Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

_____

Signature of Nominee

_____

Full Names of Nominee

SCHEDULE 3

DISCLOSURE OF INTERESTS FORM

I, the undersigned,

Full names: _____

Identity Number: _____

Residing at: _____

_____

_____

_____

do hereby declare that -

(a) the information contained herein fall within my personal knowledge and are to the best of my knowledge complete, true and correct, and

(b) that there is no conflict of interest between myself and the Buffalo City Metropolitan Municipal Planning Tribunal; or

(c) I have the following interests which may conflict or potentially conflict with the interests of the Buffalo City Metropolitan Municipal Planning Tribunal;

CONFLICTING INTERESTS

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

1. NON-EXECUTIVE DIRECTORSHIP	
Name of Company	**Period**
1.	
2.	
3.	
4.	
5.	

2. REMUNERATIVE WORK, CONSULTANCY & RETAINERSHIPS			
Name of Company & Occupation	**Type of Business**	**Rand amount per month**	**Period**
1.			
2.			
3.			
4.			
5.			

3. CRIMINAL RECORD	
Type of Offence	**Dates/Term of Sentence**
1.	

(e) I am South African citizen or a permanent resident in the Republic

(f) I am not a member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;

(g) I am not an un-rehabilitated insolvent;

(h) I have not been declared by a court of law to be mentally incompetent and have not been detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002);

(i) I have not at any time been convicted of an offence involving dishonesty;

(j) I have not at any time been removed from an office of trust on account of misconduct;

(k) I have not previously been removed from a tribunal for a breach of any provision of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Spatial Planning and Land Use Management By-Laws, 2016 enacted by the Buffalo City Metropolitan Municipality;

(l) I have not been found guilty of misconduct, incapacity or incompetence; or

(m) I have not failed to comply with the provisions of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Spatial Planning and Land Use Management By-Laws, 2016, enacted by the Buffalo City Metropolitan Municipality.

Signature of Nominee: _____

Full Names: _____

SWORN to and **SIGNED** before me at _____on this _____day of_____.

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

_____

COMMISSIONER OF OATHS

FULL NAMES: _____

DESIGNATION: _____

ADDRESS: _____

SCHEDULE 4

CODE OF CONDUCT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

I, the undersigned,

Full names: _____

Identity Number: _____

Residing at: _____

_____

_____

_____

do hereby declare that I will uphold the Code of Conduct of the Buffalo City Metropolitan Municipal Planning Tribunal contained hereunder:

General conduct

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

Gifts

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

Undue influence

4. A member of the Municipal Planning Tribunal may not—
   (a) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;
   (b) use confidential information acquired in the course of his or her duties to further a personal interest;
   (c) disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons; and
   (d) commit a deliberately wrongful act that reflects adversely on the Municipal Planning Tribunal, the Municipality, the government or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions of the Municipal Planning Tribunal by improper means.

Signature of Nominee: _____

Full Names: _____

Date: _____

SCHEDULE 5

CODE OF CONDUCT FOR MEMBERS OF THE MUNICIPAL APPEAL TRIBUNAL

I, the undersigned,

Full names: _____

Identity Number: _____

Residing at: _____

_____

_____

_____

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

General conduct

1. I, as a member of the Municipal Appeal Tribunal will at all times—
   (a) act in accordance with the principles of accountability and transparency;
   (b) disclose my personal interests in any decision to be made in the appeal process in which I serve or have been requested to serve;
   (c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which I have a personal interest and I will leave any chamber in which such matter is under deliberation unless my personal interest has been made a matter of public record and the Municipality has given written approval and has expressly authorised my participation.

3. I will not, as a member of the Municipal Appeal Tribunal -
   (a) use the position or privileges as a member of the Municipal Appeal Tribunal or confidential information obtained as a member of the Municipal Appeal Tribunal for personal gain or to improperly benefit another person; and
   (b) participate in a decision concerning a matter in which I or my spouse, partner or business associate, has a direct or indirect personal interest or private business interest.

Gifts

3. I will not, as a member of the Municipal Appeal Tribunal receive or seek gifts, favours or any other offer under circumstances in which it might reasonably be inferred that the gifts, favours or offers are intended or expected to influence my objectivity as a member of the Municipal Appeal Tribunal.

Undue influence

4. I will not, as a member of the Municipal Appeal Tribunal -

(e) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;

(f) use confidential information acquired in the course of my to further a personal interest;

(g) disclose confidential information acquired in the course of my duties unless required by law to do so or by circumstances to prevent substantial injury to third persons; and

(h) commit a deliberately wrongful act that reflects adversely on the Municipal Appeal Tribunal, the Municipality, the government or the planning profession by seeking business by stating or implying that I am prepared, willing or able to influence decisions of the Municipal Appeal Tribunal by improper means.

Signature of Member: _____

Full Names: _____

Date: _____

SCHEDULE 6
OWNERS' ASSOCIATIONS AND BODY CORPORATES

General

1. The Municipality may, when approving an application for a sectional title development or subdivision of land in a development where shared private internal services will be required, impose conditions relating to the compulsory establishment of a body corporate or owners' association by the applicant for an area determined in the conditions.
2. A body corporate or owners' association that comes into being by virtue of subsection 1 is a juristic person and must have a constitution.
3. The constitution of a body corporate or owners' association must be finalised before the transfer of the first land unit and must provide for—
   (a) the body corporate or owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
   (b) control over and maintenance of buildings, services or amenities arising from the subdivision;
   (c) the regulation of at least one yearly meeting with its members;
   (d) control over the design guidelines of the buildings and erven arising from the subdivision;
   (e) the ownership by the body corporate or owners' association of private open spaces, private roads and other services arising out of the subdivision;
   (f) enforcement of conditions of approval or management plans;
   (g) procedures to obtain the consent of the members of the body corporate or owners' association to transfer an erf in the event that the body corporate or owners' association ceases to function;
   (h) the implementation and enforcement by the body corporate or owners' association of the provisions of the constitution.
4. The constitution of a body corporate or owners' association may have other objects as set by the body corporate or association but may not contain provisions that are in conflict with any law.
5. The constitution of a body corporate or owners' association may be amended when necessary provided that an amendment that affects the Municipality or a provision referred to in subsection 3 is approved by the Municipality.

6 A body corporate or owners' association which comes into being by virtue of subsection 1 -
   (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the body corporate or association; and
   (b) is upon registration of the first land unit, automatically constituted.

7. The design guidelines contemplated in subsection 3(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.
8. If a body corporate or owners' association fails to meet any of its obligations contemplated in subsection 3 and any person is, in the opinion of the Municipality, adversely affected by that failure, the Municipality may take appropriate action to rectify the failure and recover from the members referred to in subsection 6(a), the amount of any expenditure incurred by it in respect of those actions.
9. The amount of any expenditure so recovered is, for the purposes of subsection 8, considered to be expenditure incurred by the body corporate or owners' association.

Owners' association or Body Corporate ceases to function

1. If a body corporate or owners' association ceases to function or carry out its obligations, the Municipality may—
   (a) take steps to instruct the body corporate or association to hold a meeting and to reconstitute itself;
   (b) subject to the amendment of the conditions of approval remove the obligation to establish a body corporate or owners' association; or
   (c) subject to amendment of title conditions pertaining to the body corporate or owners' association remove any obligations in respect of a body corporate or owners' association.
2. In determining which option to follow, the Municipality must have regard to—
   (a) the purpose of the body corporate or owners' association;
   (b) who will take over the maintenance of infrastructure which the body corporate or owners' association is responsible for, if at all; and
   (c) the impact of the dissolution or the body corporate or owners' association on the members and the community concerned.

ANNEXURE A

GUIDELINES FOR SITE SPECIFIC CIRCUMSTANCES PERTAINING SECTION 15(3) OF THIS BYLAW

In South African planning law, **"site-specific circumstances"** is a critical concept governed by Section 22(2) of the Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA). This provision serves as the exclusive legal mechanism permitting a decision-maker, such as a Municipal Planning Tribunal (MPT), to approve a land development application that departs from a municipality's overarching **Spatial Development Framework (MSDF) or a Local Spatial Development Framework.**

While Section 22(1) establishes the general rule that decisions must be consistent with the MSDF, Section 22(2) provides a necessary exception, by identifying that a departure is permissible only if justified by compelling site-specific circumstances.

This exception recognises that MSDFs are broad, forward-planning documents, that cannot anticipate the granular realities of every land parcel; thus, **this clause prevents the SDF from becoming an inflexible barrier to context-appropriate development.**

Core Principles and the Burden of Proof

The **discretion to depart from the MSDF is not unfettered** and must be exercised based on relevant facts. The MPT is the sole body authorized to consider the merits of such an application, and the burden of proof rests entirely on the applicant. The applicant must provide concrete, evidence-backed arguments and professional reports to demonstrate that the deviation is warranted. Furthermore, an application departing from the MSDF must describe its overall impact on the framework.

Criteria for Site-Specific Circumstances

A site-specific circumstance is broadly defined as an attribute, characteristic, or condition that is exceptionally unique to the subject land. To qualify legally, a development proposal must generally meet these fundamental criteria:

1. **Uniqueness:** The circumstance **must be unique to the specific site** and/or could not easily be developed on another site. It must represent an unusual or exceptional condition not contemplated when the MSDF was adopted.
2. **Precedent:** The recognition of a particular site specific circumstance must be of such a nature as to not create a precedent that could be used by developers to justify future land development applications that would compromise the MSDF.
3. **Localised Impact**: The deviation must have very little or no negative influence on neighbouring properties or land.
4. **Strategic Alignment:** The departure must not materially change or conflict with the overall desired spatial outcomes, objectives, and intent of the municipal and local spatial development framework.

5. **SPLUMA Alignment**: The development must still align with SPLUMA's development principles, such as spatial justice and spatial sustainability.

Types of Site-Specific Circumstances

1. Based on planning jurisprudence and municipal by-laws, the following situations are recognized as valid site-specific circumstances that may justify a departure from the MSDF:
2. **Topographical and Physical Constraints**: Unusual physical features unique to the land parcel—such as severe slopes, rock formations, wetlands, or irregular plot shapes—that make standard development physically impossible or unsafe under current macro-guidelines.
3. **Outdated or incorrect property data**: A subsequent discovery where it is evident that incorrect or outdated property data (such as cadastral or zoning) was used when compiling an MSDF or Local Spatial Development Framework (LSDF), which creates an objective factual disconnect with the site realities.
4. **Unrecognized Prior Approvals:** Instances where the LSDF or MSDF has failed to recognize previously approved developments, making them technically contrary to the framework.
5. **Existing Non-Conforming Rights**: The presence of an existing non-conforming use right on the land that has not lapsed
6. **Outdated Planning Frameworks**: The age of an LSDF can also form part of this argument, provided there is concrete evidence that the framework's assumptions are no longer applicable to current conditions.
7. **Threat of Illegal Land Invasions:** While a legally complex and high-threshold argument, the imminent threat of land invasion can justify a departure if it is unique to the site. Rezoning the land for a manageable use (like formal low-cost housing) to prevent unplanned, un-serviced settlements can be seen as serving the broader public interest. However, the threat cannot be the sole basis for departure without supporting planning merits.
8. **Discoveries of Importance:** A unique circumstance involving the discovery of items of national or provincial importance, resulting in a legislative obligation to protect or conserve the site
9. **Unforeseen but Aligned Proposals**: Land development proposals that, while not explicitly addressed in the MSDF, are not in conflict with its overall objectives and will not defeat the spatial vision for the wider area.
10. **Socioeconomic Transformations:** Small-scale projects that directly advance core SPLUMA principles and spatial objectives (like providing integrated housing) on a unique parcel without compromising surrounding urban tissue.

Conclusion

Navigating Section 22(2) of SPLUMA requires balancing strict regulatory alignment with necessary flexibility. While site-specific circumstances provide an essential avenue for context-appropriate development, they require rigorous, evidence-based motivation to ensure that localized departures do not compromise a municipality's broader spatial vision.

ANNEXURE B

CATEGORIES OF LAND DEVELOPMENT APPLICATIONS

1) Category 1 applications are applications for:
    a) The rezoning of land, where a Municipal or Local Spatial Development Framework does not contain clear proposals for the desired development of the area within which the land is situated.
    b) The subdivision of any land into more than 20 units
    c) Permanent closure of any public place.
    d) Consent Use applications on communal land/traditional community concerned.
    e) All Category 2 applications which are opposed.

2) Category 2 applications are applications for:
    a) The rezoning of land, where a Municipal or Local Spatial Development Framework makes clear proposals for the desired development of the area within which the land is situated.
    b) The subdivision of land into less than 20 units.
    c) Consent Use of the municipality for any land use purpose provided for in a land use scheme or departure or variance in terms of a provision of a land use scheme.
    d) The removal, amendment or relaxation of a restrictive or obsolete condition, servitude or reservation registered against the title of the land.
    e) Any consent or approval required in terms of a condition of title or a condition of establishment of a township (provided it does not include an application listed under Category I.
    f) Departures: either permanent or temporary
    g) Amendments to Land Use approvals
    h) Extension of Time
    i) Exemptions