eThekwini, South Africa

Planning and Land Use Management By-law, 2016

Legislation as at 31 August 2017

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eThekwini
South Africa

Planning and Land Use Management By-law, 2016

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To provide for the Municipal Spatial Development Framework and the land use scheme of the Municipality; to provide for the development of the package of plans; to regulate and manage spatial and land use planning and development; to provide for the categorisation of land development applications; to provide for processes and procedures for land development applications; to provide for compliance with the land use scheme; to provide for an Appeal Authority; to provide for offences and penalties and to provide for matters incidental thereto.

WHEREAS the Municipality has competence in terms of Part B of Schedule 4 of the Constitution to administer matters pertaining to municipal planning;

WHEREAS the Municipality must contribute to the progressive realisation of fundamental rights contained in the Constitution;

WHEREAS the Municipality is committed to sustainable, developmentally orientated and integrated developmental municipal planning;

WHEREAS the Municipality must promote the development principles of spatial justice; spatial sustainability; spatial resilience; efficiency and good administration in municipal planning;

WHEREAS the Municipality must observe and enforce compliance of its land use scheme;

WHEREAS the Municipality must maintain open, transparent and sound accountable practices in its planning administration;

WHEREAS the Municipality recognises the principles of co-operative government in planning matters in order to provide for open, transparent and accountable government;

AND WHEREAS the Municipality recognises the need to facilitate the involvement of the community and public participation in planning processes and developments;

NOW THEREFORE The Municipal Council of the eThekwini Metropolitan Municipality, acting in terms of section 156 read with Part B of Schedule 4 of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

Chapter 1
Interpretation

1. Definitions

In this By-law, unless the context indicates otherwise–

"**adjoining owner**" means any owner whose land shares a common boundary or corner beacon with the land which is the subject of the land development application, and includes the owner whose land may be separated by a road;

"**affected owner**" means any owner of land whom the Municipality may consider to be affected by a land development application; and may include a Traditional Authority;

"**Appeal Authority**" means an appeal authority contemplated in terms of Chapter 12 of this By-law;

"**applicant**" means any person who makes a land development application as contemplated in section 21(4) of this By-law;

"**authorisation**" means any authorisation or authorisations required in terms of applicable legislation issued by an organ of state which must be lodged with a land development application, including but not limited to–

(a) a Record of Decision pursuant to an Environment Impact Assessment issued in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);

(b) a Water Use Licence issued in terms of the National Water Act, 1998 (Act No. 36 of 1998); or

(c) any authority which has been issued in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

"**authorised official**" means a person authorised to implement the provisions of this By-law, including but not limited to–

(a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal or metropolitan Police Officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such enforcement officers employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"**Category 2 application**" means a complete application which is categorised for consideration and decision making by the Tribunal;

"**Category 3 application**" means a complete application which is categorised for consideration and decision making by the Head;

"**Category 4 application**" means a complete application which is categorised for consideration and decision making by the Deputy Head;

"**circulated application**" means an application made to the Municipality for approval, and excludes a land development application;

"**Code of Conduct**" means a written code setting out rules and standards relating to the ethics, practice and conduct of the members of the Tribunal;

"**combined application**" means an application which contains multiple types of land development applications which may be combined and considered in its entirety as provided for in Chapter 8 of this By-law;

"**complete application**" means a land development application which is ready to be advertised or has undergone the pre-submission process, and is accompanied by, including but not limited to, payment of the prescribed application fee, authorisations, comments and specialist reports and studies;

"**compliance certificate**" means a certificate issued on–

(a) compliance by an applicant with the conditions of approval contained in a decision notice within six months from the date of notification of the commencement of any operations on the land; or

(b) resolution of a contravention;

"**consolidation**" means where two or more erven are combined to form a new erf;

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

"**contravention**" means a contravention of the land use scheme, a contravention of a condition of approval contained in a decision notice or a contravention of a provision of this By-law;

"**contravention notice**" means a notice served by the Municipality on an owner or person who has committed or is suspected of committing a contravention;

"**Council**" or "Municipal Council" means the eThekwini Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

"**days**" means business days, which excludes Saturdays, Sundays and Public Holidays;

"**decision maker**" means the Tribunal, Head or Deputy Head as the case may be;

"**decision notice**" means the written notification of the outcome of a land development application;

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

"**Deputy Head**" means the Deputy Head of the relevant department dealing with development planning, environment and management who has been authorised by the Municipality as contemplated in terms of section 35(2) of SPLUMA to consider and determine land development applications;

"**development principles**" means the principles of spatial justice, spatial sustainability, efficiency, spatial resilience and good administration as contemplated in Chapter 2 of SPLUMA;

"**development rights**" means a development right which is conferred on land by virtue of its zoning; includes a pre-scheme or non-conforming use right and which may be subject to specialist studies;

"**diagram**" means a diagram as defined in terms of section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997);

"**environmental management instrument**" means an environmental management instrument contemplated in section 24(5)(bA) of the National Environmental Management Act, 1998(Act No. 107 of 1998);

"**Executive Authority**" means the executive committee or executive mayor of eThekwini Municipality as the case may be, as contemplated by section 44(2) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"**exemption**" means a provision contained in the land use scheme where the consent of adjoining or affected owners is required for a particular type of land development application;

"**general plan**" means a general plan as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997);

"**guidelines for social facilities and open spaces**" means a set of guidelines adopted by Council which provides the standards to be applied for the provision of social facilities and open spaces within the eThekwini Municipal area;

"**Head**" means the Head of the relevant department dealing with development planning, environment and management who has been authorised by the Municipality as contemplated in terms of section 35(2) of SPLUMA to consider and determine land development applications;

"**IDP**" means an Integrated Development Plan as contemplated in terms of section 25 of the Systems Act;

"**intervener**" means an interested person who has been granted intervener status by a decision maker or the Appeal Authority in terms of section 86 of this By-law;

"**Joint Advisory Committee**" means an advisory committee established in terms of section30 of this By-law comprising of municipal officials who are Registered Planners

and who make recommendations to a decision maker on land development applications;

"**land**" means any erf, plot, stand, farm portion, or agricultural holding and includes any improvement or building on the land, any real right or share in land and includes land in the area of a Traditional Authority;

"**land development**" means the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land uses or uses permitted in terms of the land use scheme;

"**land development application**" means an application for land development lodged with the Municipality for consideration and decision making and "application" shall have a corresponding meaning;

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

"**land use scheme**" means the adopted scheme regulations and maps of each region, including the register of amendments to the scheme and "scheme" shall have a corresponding meaning;

"**local area plan**" means an intermediary combination plan containing local area and functional area plans on a strategic level;

"**Municipality**" means eThekwini Municipality, a category A Municipality as envisaged in terms of section 155(1) of the Constitution;

"**Municipal Manager**" means a person appointed in terms of section 54A of the Systems Act as the head of administration of the Municipal Council;

"**Municipal Spatial Development Framework**" means a spatial development framework adopted in terms of Chapter 5 of this By-law;

"**newspaper**" means a local daily newspaper circulating in the region of the eThekwini Municipal area;

"**organ of state**" means an organ of state as contemplated in terms of section 239 of the Constitution, and includes a state owned enterprise;

"**owner**" means the person registered in the Deeds Registry as the owner of land, and includes the beneficial owner of the land, and the owner of land by virtue of vesting in terms of any applicable law;

"**package of plans**" means a suite of plans which guides integrated planning in the Municipality as referred to in section 11 of this By-law;

"**person**" includes natural and juristic persons, partnerships, trusts, body corporates, home owners associations and organs of state;

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

"**private road**" refers to a street, thoroughfare, path or roadway where the naming rights for that road does not vest in the Municipality;

"**public road**" refers to a municipal road where the naming rights for that road vests in the Municipality and includes a street, thoroughfare, path or roadway;

"**public open space**" means any open 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 Municipality or any other organ of state, and includes a public open space and a servitude for any similar purpose in favour of the general public;

"**public notice**" means the notification of a land development application by publication of a notice in the newspaper, the display of a site notice, and service of a notice on adjoining owners, the ward councillor, organ of state and where applicable affected owners for the purposes of public participation in terms of Chapter 9 of this By-law;

"**Regional Co-ordinator**" means a municipal official who is a Registered Planner dealing with land use and land use management;

"**Registered Planner**" means a person who is registered as a professional planner or a technical planner as contemplated in the Planning Profession Act, 2002 (Act No. 36 of 2002) as amended;

"**Regional offices**" means the five regional offices for the Durban Central, Durban South, Durban North, Inner West and Outer West regions;

"**relaxation**" means an application for the relaxation of any building line, side or rear space as determined in terms of the land use scheme;

"**service**" means the delivery of a notice, order or other document in terms of this Bylaw and "serve" shall have a corresponding meaning;

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

"**SPLUMA office**" means the Municipality's Central office for the processing of applications and all matters relating to applications and appeals;

"**subdivision**" means the division of land into two or more pieces;

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

"**Tribunal**" means the Municipal Planning Tribunal established in terms section 38 of this By-law;

"**township**" means land divided into 11erven or more and includes private and public open places and roads as indicated on the general plan; and

"**Traditional Authority**" means the Traditional Council of any land administered in terms of traditional land use practices and situated within the eThekwini Municipal Area, and includes the Ingonyama Trust Board where applicable.

2. Interpretation of By-law

If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

Chapter 2
Objects of by-law

3. Objects of By-law

The objects of this By-law are to–

(a) provide for a package of plans which shall inform the social, economic, environmental and infrastructural development in the Municipality;

(b) provide a uniform, effective, comprehensive, and interrelated framework for spatial planning and land use management;

(c) provide for the inclusive, developmental, equitable and efficient planning in the spirit of co-operative governance;

(d) provide a framework for co-operative and cross-border relationships with all spheres of Government and to ensure the integration of planning between the Municipality and neighbouring Municipalities;

(e) provide a framework for policies, principles, norms and standards for spatial development planning and land use management;

(f) provide a framework for the monitoring, coordination and review of the spatial planning and land use management system;

(g) regulate land development application and decision-making procedures;

(h) provide for the establishment, functions and operations of the Tribunal;

(i) provide for facilitation and enforcement of land use and development measures;

(j) provide for an appeal authority; and

(k) provide penalties for breach of its provisions.

Chapter 3
Application

4. Application of By-law

This By-law applies to all land which falls within the municipal area under eThekwini Municipality and is binding on all persons to the extent applicable.

Chapter 4
Planning functions of the three spheres of government

5. Municipal planning

Municipal planning, as provided for in SPLUMA, consists of the following elements:

(a) the compilation, approval and review of IDPs;

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

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

6. Provincial planning

Provincial planning, as provided for in SPLUMA, consists of the following elements:

(a) the compilation, approval and review of a provincial spatial development framework, approval, review and implementation of land use management systems;

(b) the planning by a province for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and

(c) the making and review of policies and laws necessary to implement provincial planning.

7. National planning

National planning, as provided for in SPLUMA, consists of the following elements:

(a) the compilation, approval and review of spatial development plans and policies or similar instruments, including a national spatial development framework;

(b) the planning by the national sphere for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and

(c) the making and review of policies and laws necessary to implement national planning, including the measures designed to monitor and support other spheres in the performance of their spatial planning, land use management and land development functions.

Chapter 5
Municipal spatial development framework

8. Status of Municipal Spatial Development Framework

(1) A decision maker required or mandated to make a land development decision in terms of this By-law or any other law relating to land development, may not make a decision which is inconsistent with the Municipal Spatial Development Framework: Provided that the Tribunal may depart from the provisions of the Municipal Spatial Development Framework where site specific circumstances justify such a deviation.

(2) The site specific circumstances contemplated in subsection (1) include but are not limited to where–

(a) the Municipal Council has adopted a local area plan and such plan has yet to be translated into the land use scheme; or

(b) there is an existing pre-scheme or non-conforming use right on the land: Provided that the use right has not ceased to operate for a period of 18 months or more.

(3) The Tribunal must take into consideration the impact, amenity and land use applicability when making a decision to deviate based on site specific circumstances.

(4) The Municipality must keep a register containing information regarding the type of deviation and reason for the deviation, in respect of any decisions taken to deviate from the provisions of the Municipal Spatial Development Framework.

9. Preparation and application of Municipal Spatial Development Framework

(1) The Municipality must prepare a Municipal Spatial Development Framework that–

(a) interprets and represents the spatial development vision of the Municipality;

(b) is informed by a long-term spatial development vision statement and plan;

(c) represents the integration of all relevant sector policies and plans;

(d) guides planning and development decisions across all sectors of government;

(e) guides the Municipality in taking any decision or exercising any discretion in terms of SPLUMA or any other law relating to spatial planning and land use management systems;

(f) contributes to a coherent, planned approach to spatial development;

(g) provides clear and accessible information to the public and private sector and provides direction for investment purposes;

(h) includes previously disadvantaged areas, areas governed by a Traditional Authority, informal settlements, slums and land holdings of state-owned enterprises and government agencies and addresses their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere;

(i) addresses historical spatial imbalances in development;

(j) identifies the long-term risks of particular spatial patterns of growth and development and the policies and strategies necessary to mitigate those risks;

(k) provides direction for strategic developments, infrastructure investment, promotes efficient, sustainable and planned investments by all sectors and indicates priority areas for investment in land development;

(l) promotes a rational and predictable land development environment to create trust and stimulate investment;

(m) takes cognisance of any environmental management instrument adopted by the relevant environmental management authority;

(n) gives effect to national legislation and policies on sustainable utilisation and protection of agricultural resources; and

(o) considers and where necessary incorporates the outcomes of substantial public engagement including direct participation in the process through public meetings, public exhibitions, public debates and discourses in the media and any other forms or mechanisms that promote such direct involvement.

(2) (a) The Municipal Spatial Development Framework prepared by the Municipality must be co-ordinated, aligned and in harmony with national and provincial spatial development frameworks.

(b) Once the Municipal Spatial Development Framework is adopted as provided for in SPLUMA, it must guide and inform the exercise of any discretion or of any decision taken in respect of a land development application.

(3) The national spatial development framework must contribute to and give spatial expression to national development policy and plans as well as integrate and give spatial expression to policies and plans emanating from the various sectors of national government and may include any regional spatial development framework.

(4) The provincial spatial development frameworks must contribute to and express provincial development policy as well as integrate and spatially express policies and plans emanating from the various sectors of the provincial and national spheres of government as they apply at the geographic scale of the province.

(5) The Municipal Spatial Development Framework must–

(a) be prepared as part of the Municipality's IDP in accordance with the provisions of the Systems Act; and

(b) assist in integrating, co-ordinating, aligning and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal area.

(6) Any spatial development framework must outline specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in the priority spatial structuring areas identified in spatial development frameworks.

10. Content of Municipal Spatial Development Framework

(1) A Municipal Spatial Development Framework must–

(a) give effect to the development principles and norms and standards set out in Chapter 2 of SPLUMA;

(b) include a written and spatial representation of a five year spatial development plan for the spatial form for the Municipality;

(c) include a long term spatial development vision statement for the municipal area which indicates a desired spatial growth and development pattern for between 10 and 20 years into the future;

(d) identify current and future significant structuring and restructuring elements of the spatial form of the Municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated;

(e) include population growth estimates for the following five years;

(f) include estimates of the demand for housing units across different socio-economic categories and the planned location and densities of future housing developments;

(g) include estimates of economic activity and employment trends and locations in the municipal area over a five year period;

(h) identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs over a five year period;

(i) identify the designated areas where national or provincial inclusionary housing policy maybe applicable;

(j) include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural and coastal access strips where applicable;

(k) identify the designation of areas in the Municipality where incremental upgrading approaches to development and regulation will be applicable;

(l) identify the designation of areas in which–

(i) more detailed local plans must be developed; and

(ii) where shortened land use development procedures may be applicable and land use schemes may be so amended;

(m) provide the spatial expression of the co-ordination, alignment and integration of sectoral policies of all municipal departments;

(n) determine a capital expenditure and capital investment framework for the Municipality's development programmes depicted spatially;

(o) determine the purpose, desired impact and structure of the land use management scheme to apply in that municipal area; and

(p) include an implementation plan comprising of–

(i) sectoral requirements including budgets and resources for implementation;

(ii) necessary amendments to a land use scheme;

(iii) specification of institutional arrangements necessary for implementation;

(iv) specification of implementation targets, including dates and monitoring indicators;

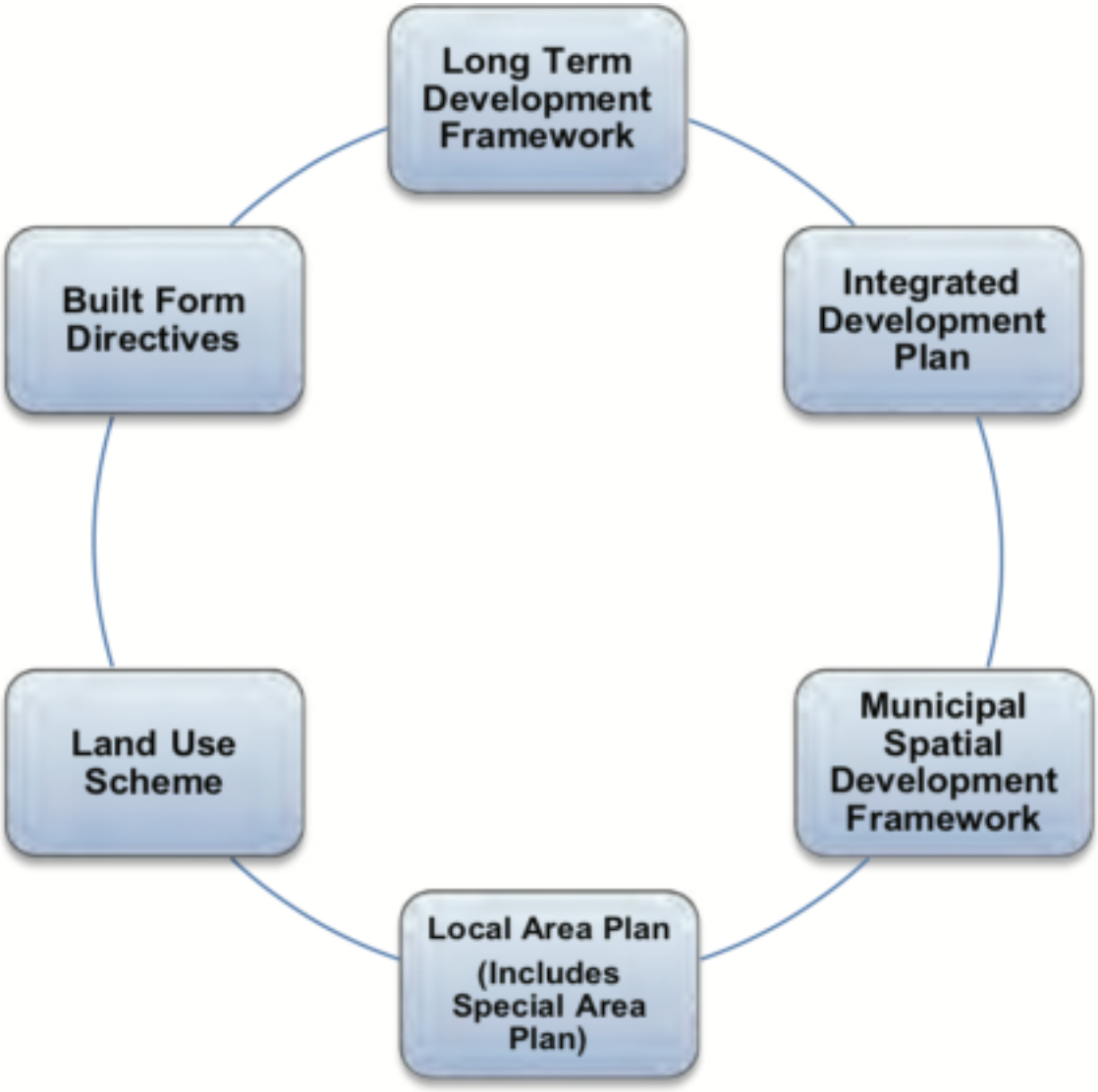
(v) specification, where necessary, of any arrangements for partnerships in the implementation process; and

(vi) take cognisance of any norms and standards issued by the Minister.

11. Package of plans

(1) The Development Planning Unit of the Municipality must prepare all plans forming part of the Municipal Spatial Development Framework.

(2) The package of plans of the Municipality as set out in the diagram below is an iterative package of plans:



(3) The Long Term Development Framework provides for the strategic, economic, social and environmental objectives of the Municipality in order to inform its strategic development direction.

(4) The IDP provides for the strategic implementation direction and imperatives of the Municipality.

(5) The Municipal Spatial Development Framework provides for the strategic spatial development objectives of the Municipality based on the Long Term Development Framework and IDP and–

(a) aligns the Municipality's spatial development goals, strategies and policies with relevant national and provincial spatial principles, strategies and policies;

(b) provides a long-term vision of the desired spatial form and the structure of the Municipality;

(c) guides the proposals contained in the more detailed Spatial Development Plans which cover a shorter time frame and the preparation of local area plans;

(d) assists in the spatial coordination, prioritisation and alignment of public investment in terms of the IDP;

(e) identifies the areas not suitable for development and areas where the impacts of development need to be managed;

(f) provides policy guidance to direct decision making on the nature, form, scale and location of urban development, land use change, infrastructure development, disaster mitigation and environmental resource protection; and

(g) promotes public good.

(6) The local area plan is a detailed physical plan which provides for–

(a) physical planning directives refining land use, transport, environment and infrastructure to levels that inform the preparation of a land use scheme;

(b) the inclusion of urban design directives for public and privately owned land;

(c) the inclusion of implementation proposals; and

(d) a Special Area Plan, where applicable, which contains–

(i) detailed physical planning directives, including areas with special environmental, economic and heritage characteristics;

(ii) detailed urban design directives or proposals; and

(iii) the inclusion of implementation proposals.

(7) The land use scheme provides for zoning and development control regulations and is the detailed land use management tool and provides for the allocation of potential development rights to public and privately owned land.

(8) A Built Form Directive is a plan which may include–

(a) site specific details, including three dimensional modelling; and

(b) built form directives, including but not limited to, coverage, floor area ratio, parking and planting.

12. Adoption of a Municipal Spatial Development Framework

(1) The Municipal Council must prepare and adopt a Municipal Spatial Development Framework which gives effect to the principles of SPLUMA and this By-law.

(2) The Municipal Spatial Development Framework must be prepared as part of the Municipality's IDP in accordance with the provisions of the Systems Act.

(3) The Municipality, in the preparation and adoption of its Municipal Spatial Development Framework must ensure that its Municipal Spatial Development Framework is aligned with the provincial and national spatial development frameworks.

(4) Prior to the adoption of the Municipal Spatial Development Framework contemplated in subsection (1) and any proposed amendments to the Municipal Spatial Development Framework, the Municipality must–

(a) give notice of the proposed Municipal Spatial Development Framework in two newspapers;

(b) invite the public to submit written representations in respect of the proposed Municipal Spatial Development Framework to the Municipality within 60 days after the publication of the notice referred to in paragraph (a); and

(c) consider all representations received in respect of the proposed Municipal Spatial Development Framework.

(5) The Municipality must give notice in the Provincial Government Gazette and two newspapers of its adoption of a Municipal Spatial Development Framework.

(6) The Municipal Spatial Development Framework must give effect to the intention of the IDP and provide a framework for the future spatial development of the Municipality.

(7) The Municipal Council may on its own initiative give effect to the development principles through an amendment to the Municipal Spatial Development Framework.

(8) The Municipality must review its land use scheme in order to achieve consistency with the Municipal Spatial Development Framework, and must do so at least every five years.

Chapter 6
Land use scheme

13. Resolution to prepare a land use scheme

The Municipal Council must adopt a resolution to commence the preparation of a land use scheme where no land use scheme exists.

14. Preparation of a land use scheme

(1) The Municipal Council must, after public consultation, adopt a land use scheme for its entire area within five years from the commencement of SPLUMA.

(2) Prior to the adoption of the land use scheme contemplated in subsection (1) and before any proposed amendments to the land use scheme, the Municipality must–

(a) give notice of the proposed land use scheme in two newspapers;

(b) invite the public to submit written representations in respect of the proposed land use scheme to the Municipality within 60 days after the publication of the notice referred to in paragraph (a); and

(c) consider all representations received in respect of the proposed land use scheme.

(3) The Municipality must advise the public by notification in two newspapers of the adoption of or amendment to the land use scheme.

(4) The Municipality must, in the performance of its duties in terms of this By-law, allow the participation of a Traditional Authority in the manner agreed upon between the Municipality and the Traditional Authority.

(5) The land use scheme must include suitable categories of land use zoning and regulations for the entire municipal area including areas not previously subject to a land use scheme.

(6) In addition to the provisions of subsection (5), the following factors shall serve as guiding principles in the adoption of a land use scheme–

(a) any environmental management instrument adopted by the relevant environmental management authority;

(b) the inclusion of provisions to promote the inclusion of affordable housing in residential land development;

(c) the inclusion of land use and development incentives to promote the effective implementation of the Municipal Spatial Development Framework and other development policies;

(d) the inclusion of land use and development provisions specifically to promote the effective implementation of national and provincial policies;

(e) the provisions of the Municipal Spatial Development Framework and IDP; and

(f) any land allocation rules set by a Traditional Authority in the area concerned.

(7) A land use scheme may include provisions relating to–

(a) specific requirements relating to any special zones identified to address the development priorities of the Municipality; and

(b) the variation of conditions of a land use scheme other than a variation which may materially alter or affect conditions relating to the use, size and scale of buildings and the intensity or density of land use.

15. Purpose and content of land use scheme

(1) A land use scheme must give effect to and be consistent with the Municipal Spatial Development Framework and determine the use and development of land within the municipal area to which it relates in order to promote–

(a) economic growth;

(b) social inclusion;

(c) efficient land development;

(d) minimal impact on public health, the environment and natural resources; and

(e) the development principles.

(2) A land use scheme must include–

(a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;

(b) a map indicating the zoning of the municipal area into land use zones; and

(c) a land use scheme register of all amendments to such land use scheme.

(3) The land use scheme must reflect and give effect to the development principles.

16. Legal effect of a land use scheme

(1) An adopted land use scheme–

(a) has the force of law and all land owners and users of land, including a Municipality and an organ of state, within the municipal area are bound by the provisions of such a land use scheme;

(b) replaces all existing schemes within the municipal area to which the land use scheme applies; and

(c) provides for land use and development rights.

(2) Land may be used only for the purposes permitted–

(a) by the land use scheme;

(b) by a town planning scheme, until such scheme is replaced by a land use scheme; or

(c) in terms of subsection (3).

(3) Where no town planning scheme or land use scheme applies to a piece of land, before a land use scheme is approved and adopted, such land may only be used in–

(a) in accordance with an approval which was granted in terms of section 11(2) of the Town Planning Ordinance, 1949 (Act No. 27 of 1949);

(b) in terms of an approval granted in terms of any other applicable legislation;

(c) in terms of pre-scheme uses; or

(d) in terms of existing non-conforming land uses.

(4) Notwithstanding the provisions of subsection (1)(b),any land which was being lawfully used before the adoption of a land use scheme for a purpose which does not conform to the land use scheme may continue to be used for that purpose.

(5) If the use of the land contemplated in subsection (4) is discontinued for an uninterrupted period of more than 18 months, the land may no longer be used for that purpose.

(6) A land use scheme which is adopted must address and resolve any conflict with an existing scheme not repealed or replaced by the new land use scheme.

17. Amendment of municipal boundaries

Where the boundaries of a municipal area are changed or altered, the affected municipalities must in consultation with each other, amend their respective land use schemes accordingly and, until the necessary amendments are effected, the provisions of the land use schemes remain in force in the areas in which they applied before the boundary changed, and the Municipalities may agree as to whom must assume responsibility for their enforcement.

18. Amendment of land use scheme and rezoning

(1) The Municipality may, after public consultation contemplated in section 14(2), amend its land use scheme if the amendment is–

(a) in the public interest;

(b) to advance the interest of or in the interest of a disadvantaged community; or

(c) in order to further the vision and development goals of the Municipality.

(2) Notwithstanding the provisions of subsection (1), the Municipality may, after public consultation contemplated in section 14(2), amend its land use scheme by zoning or rezoning any land considered necessary by the Municipality to achieve the development goals and objectives of the Municipal Spatial Development Framework.

(3) Any amendment to the land use scheme of the Municipality affecting the scheme regulations may only be authorised by Council.

(4) Any appeal arising from a decision of Council contemplated in subsection (3) must be decided upon by the appropriate Appeal Authority.

19. Review and monitoring of land use scheme

(1) The Municipality may undertake a review and monitoring of its land use scheme on an annual basis and, in accordance with section 14(2), amend its land use scheme.

(2) The Municipality must as contemplated in SPLUMA or in terms of any other applicable Planning Legislation, submit its approved land use scheme to the Premier of the KwazuluNatal province for purposes of monitoring the performance of the Municipality.

20. Record of amendments for land use scheme

(1) The Municipality must keep and maintain, in both hard and soft copies, a written record of all applications submitted together with reasons for the decision, in respect of applications for the amendment of the land use scheme.

(2) The written record referred to in subsection (1) must be accessible to members of the public during normal office hours at the Municipality's Regional offices.

Chapter 7
Land development applications

21. Land development applications

(1) No person may commence, carry on or continue with any land development without the prior written approval having been granted in terms of this By-law.

(2) All land development applications must be submitted to the Municipality, as the authority of first instance.

(3) Notwithstanding the provisions of subsection (2) above, where any authorisation is required from an organ of state, such authorisation must accompany the submission of the land development application to the Municipality.

(4) A land development application may be submitted by–

(a) an owner;

(b) a person acting on behalf of the owner in terms of a written consent to that effect or in any other capacity;

(c) a person to whom land has been made available for development in writing by an organ of state or such person's authorised agent; or

(d) a service provider responsible for the provision of infrastructure, utilities or other related services.

(5) Notwithstanding the provisions of subsection (4), all Category 2, Category 3 and special consent applications may only be prepared and compiled by a professional person in the built environment who is registered with his or her appropriate governing body, or a person admitted to practice as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979) or as an advocate in terms of the Advocates Act, 1964 (Act No. 74 of 1964) as amended.

(6) The Municipality shall only accept a land development application for consideration and decision making where all required information, supporting documentation and payment of the prescribed fee has been made.

(7) Any person who wishes to commence land development on land situate outside a town planning scheme and which development falls within a Category 2, Category 3 or Category 4 application, must submit–

(a) a land development application for extension of the scheme boundary and, where applicable, a zoning application and proof of any approval granted in terms of section 11(2) of the Town Planning Ordinance, 1949 (Act No. 27 of 1949); and

(b) any other approval granted in terms of any other applicable legislation or other applicable proof.

(8) Prior to the submission of the zoning application contemplated in subsection (7), authorisation in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970) must be obtained if required.

22. Planning enquiry

(1) The Municipality may conduct an initial consultation with an applicant to advise or give direction on any requirements, procedures or any other issue relating to the submission of a land

development application, including whether an application may be of National or Provincial interest.

(2) An applicant is required to obtain all such authorisations from any organ of state and comments from internal departments for submission with the land development application as the Municipality might in its discretion require.

(3) The outcome of the consultation contemplated in subsection (1) does not confer or constitute an approval of a land development application.

23. Submission of a land development application

(1) An application for land development must be made to the Municipality on the prescribed form and signed and dated by the applicant.

(2) In all instances the land development application must be accompanied by–

(a) proof of ownership of the land;

(b) consent of the bondholder or bondholders or proof that there is no bond registered over the land;

(c) a comprehensive motivation;

(d) an address at which notification or service of a document may be delivered, including a physical address, facsimile or e-mail address; and

(e) written confirmation from an applicant that there is no appeal or pending appeal in respect of an authorisation submitted with the application.

(3) A land development application must, where applicable, be accompanied by the documents specified hereunder to the extent that such documents are applicable to the application:

(a) a certified copy of a power of attorney;

(b) a certified copy of a resolution or authority authorising a person to act on behalf of a company, close corporation, trust, body corporate or home owners' association;

(c) a certified copy of company registration documents and proof that the company or close corporation has not been deregistered;

(d) a certified copy of a trust deed and letters of authority;

(e) a copy of the Surveyor General's diagram or general plan;

(f) any written comments by the applicant in response to written comments made on an application by an internal department;

(g) any required consents;

(h) a consent to the giving of public notice where required;

(i) subject to sections 21 (3) and 22 (2) above, any required authorisations from organs of state or comments from internal departments;

(j) any other necessary plans or diagrams;

(k) specialist studies or reports; and

(l) proof of planning enquiry, where applicable.

(4) In addition to subsection (3), the applicant is required to submit any other information or documents which may be required by the Municipality.

(5) The Municipality may adopt a policy that provides for guidelines for the submission and processing of land development applications.

24. Complete application

(1) The Municipality must advise the applicant in writing and, where applicable electronically, that an application is complete.

(2) An applicant may in writing at any time prior to a decision being made, withdraw an application.

(3) An applicant must submit a new application where an application has been withdrawn as contemplated in subsection (2).

Chapter 8
Categorisation of land development applications

25. Categorisation of land development applications

(1) The Municipality must categorise all land development applications.

(2) Any land development application which constitutes a combined application shall be

(a) processed by the Regional offices; and

(b) sent to the SPLUMA office, where it will be directed to and decided upon in accordance with section 27 and 28 below.

26. Category 1 land development determinations

(1) A Category 1 determination must be considered, approved and adopted by the Municipal Council and includes the following:

(a) the adoption of the land use scheme; and

(b) the amendment or review of the land use scheme.

27. Category 2 land development applications

(1) A Category 2 application must be considered and decided by the Tribunal and includes–

(a) land development applications where there is a departure from the provisions of the Municipal Spatial Development Framework;

(b) an application for rezoning of land where objections to the application have been lodged;

(c) an introduction of a new area and an existing zone into the land use schemes;

(d) zoning of land; and

(e) a combined application, which includes one or more of the land development uses set out in (a) to (d) as well as any land uses falling within category 3 and 4.

28. Category 3 land development applications

(1) A Category 3 application must be considered and decided upon by the Head: Provided that where an objection has been lodged during the public participation process in respect of an application for the rezoning of land contemplated in subsection 2(f), the Tribunal must consider and decide upon such application.

(2) A category 3 application includes–

(a) a special consent application;

(b) an application for subdivision;

(c) an application for subdivision and consolidation;

(d) an application for a township establishment;

(e) an application for the closure of roads and public open spaces;

(f) an application for the rezoning of land which is in line with the Municipal Spatial Development Framework;

(g) an application for the removal, amendment or suspension of a restrictive condition;

(h) an application for the development of land outside of a land use scheme; and

(i) a combined application, which includes one or more of the land development uses set out in (a) to (h) above as well as any land uses falling within category 4 land development applications.

29. Category 4 land development applications

(1) A Category 4 application must be considered and decided upon by the Deputy Head.

(2) A Category 4 application includes–

(a) an application for a relaxation where the necessary consent or consents have been obtained;

(b) an application for an exemption from the provisions of the land use scheme where the necessary consent or consents have been obtained;

(c) an application for a notarial tie of adjacent land; and

(d) an application for the development of land outside of a scheme in respect of an application for a relaxation or exemption where the necessary consent or consents have been obtained.

30. Joint Advisory Committee

(1) The Joint Advisory Committee is hereby established.

(2) The function of the Joint Advisory Committee is to make recommendations to the decision maker on land development applications.

(3) The Head shall appoint a minimum of four municipal officials who are Registered Planners to serve as members on the Joint Advisory Committee.

(4) The Head shall appoint a Chairperson from the members.

(5) In the event that the Chairperson is unavailable, one of the Regional Co-ordinators shall be nominated to chair the meeting.

(6) Three members of the Joint Advisory Committee must be present in order for a meeting to proceed.

(7) The Joint Advisory Committee must meet as often as is required in order to perform its functions.

(8) The Head shall determine the internal procedures and processes of the Joint Advisory Committee.

(9) Prior to any application being placed on the agenda of the Joint Advisory Committee, the report must be signed off in the Regional Offices and the Regional Co-ordinator must compile, sign and submit a planner's certificate to the Joint Advisory Committee for all Category 2 and Category 3 land development applications received confirming that the application complies with this By-law.

(10) In addition to the certificate contemplated in sub-section (9), the Regional Co-ordinator must submit the application together with supporting documents to the Joint Advisory Committee within the prescribed timeframes after he or she deems the application to be complete.

(11) The Joint Advisory Committee must submit its recommendations to the decision maker within 14 days of having made such recommendation.

31. Commenting on circulated applications

The Head may make a recommendation for approval or refusal of any circulated application received by an internal line department for comment.

Chapter 9
Public participation

32. Types of land development applications which require public participation

(1) An applicant must give public notice of a land development application in the manner stipulated in this chapter for the following types of applications:

(a) special consent applications;

(b) zoning and re-zoning applications;

(c) removal, amendment or suspension of restrictive conditions applications;

(d) closure of roads and public open spaces; and

(e) any Category 2 application.

(2) An applicant shall only be required to serve written notice of a land development application on adjoining owners, and where applicable, affected owners requesting their consent for the following types of applications:

(a) an application for exemption; and

(b) an application for relaxation.

(3) Where an adjoining owner or affected owner does not provide his or her consent in writing to an application contemplated in subsection (2), such application must be lodged as a special consent application.

33. Public participation

(1) An applicant may only proceed to give public notice in respect of a land development application once the Municipality has confirmed in writing that the application is complete.

(2) The applicant must commence with public notice in the manner and form provided for in section 34 within 14 days of receipt of the notification contemplated in subsection (1).

(3) The Municipality may, where it deems it impractical to serve notices on all affected and adjoining owners, for the purposes of public participation call for a public meeting and publish a notice in a newspaper inviting–

(a) interested and affected persons to attend a public meeting; and

(b) objections from the public, to be received by the Municipality by a specified date not less than 30 days after the publication of the notice.

(4) The public meeting contemplated in subsection (3) must be held not less than seven days and not more than 60 days after the date of the publication of the notice referred to in subsection (3).

34. Form of public participation

(1) A notice appearing in the newspapers, a site notice and the notice served on adjoining owners, affected owners, organs of state and the ward councillor must contain the following information:

(a) full names of the applicant;

(b) capacity in which the applicant is acting if he or she is not the owner of the land concerned;

(c) full property description, location or other means of identifying the property;

(d) brief summary of the application;

(e) name of person and address where written objections may be lodged;

(f) that written objections must be lodged with the Municipality and the applicant within 30 days of–

(i) publication of the notice in the newspaper;

(ii) delivery of the notice; or

(iii) display of the site notice;

(g) place and time where particulars of the application may be inspected; and

(h) any other additional information which the Municipality may require to be included in the notice.

(2) An applicant must give notice of a land development application by publication thereof once, in two newspapers that circulate in the area: Provided that where the dates of publication differ, the date of the last publication is deemed to be the date of publication.

(3) A notice contemplated in subsection (2) must be published in the language of the newspaper.

(4) An applicant must, on or before the date of the publication in the newspapers contemplated in subsection (2), display the site notice or notices and serve a written notice on adjoining owners, affected owners, organs of state and the ward councillor.

(5) An applicant must display a site notice or site notices on all road frontages.

(6) The site notice or site notices displayed must be

(a) A3 in size and in accordance with the manner and form prescribed by the Municipality in respect of the content and location of the notice or notices; and

(b) displayed in a legible condition for the duration of the period for public notice.

(7) An applicant is liable for all costs associated with the giving of public notice.

(8) Where an adjoining owner or affected owner is a member of a Body Corporate or Home Owners Association, service on the Body Corporate or Home Owners Association is deemed to be service on all the owners of the Body Corporate or Home Owners Association.

35. Proof of public participation

(1) An applicant must provide proof of publication in the newspapers by lodging the full newspaper tear sheets with the Municipality within seven days of date of closing of the period allowed for the lodging of objections.

(2) In addition to the proof contemplated in subsection (1), the applicant must simultaneously submit to the Municipality–

(a) proof of service of the notice on adjoining owners, affected owners, any organ of state and the ward councillor;

(b) an affidavit confirming display of the site notice or site notices; and

(c) photographs confirming display of the site notice which must–

(i) be legible and clear showing the position, wording and visibility of notice; and

(ii) contain the date on which the photograph was taken.

36. Objections to land development applications

(1) A written objection in respect of any land development application must be served on both the applicant and the Municipality within the 30 day period allowed for the lodging of objections.

(2) An applicant may submit to the Municipality a written response to any objection lodged within the period contemplated in subsection (1).

(3) An objection must contain the following information–

(a) the name and physical address of the person making the objection;

(b) the address at which the person shall receive service of any notice, which may include a facsimile or e-mail address;

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

(d) the reason for the objection; and

(e) the reason for any request made for an extension of the period for the submission of objections.

37. Amended land development applications

(1) The Head may permit an applicant to amend his or her application prior to a decision being made where such proposed amendment does not change the nature of the application.

(2) Where the Head permits an amended application as contemplated in subsection (1), he or she may–

(a) require the applicant to re-circulate the amended application to internal departments and organs of state for comment; and

(b) if required, determine the manner and form of any further public participation which the applicant may be required to undertake.

(3) Where the Head requires an applicant to undertake public participation for an amended application as contemplated in subsection (2)(b), any person who lodged objections previously to the application shall be advised that their previously submitted objections shall lapse and only objections submitted during the public participation process for the amended application shall be considered.

Chapter 10
Municipal planning tribunal

38. Establishment of the Tribunal

(1) The Municipality must establish a Tribunal to consider and decide land development applications assigned to it in terms of this By-law.

(2) The Tribunal must consist of officials in the full-time service of the Municipality and external persons appointed by the Municipal Council.

(3) A Municipal Councillor may not be appointed as a member of the Tribunal.

(4) The Tribunal must exercise its powers in an independent manner and in accordance with the principles of integrity, impartiality, objectivity and professionalism.

(5) The Municipality, an organ of state or any other person may not interfere with the functioning of the Tribunal.

(6) A member of the Tribunal shall serve impartially and carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice.

(7) The Tribunal may issue a written directive to any official or employee within the Municipality, compelling him or her to appear before the Tribunal for the purposes of providing information relevant to the application before it.

39. Procedure to appoint a member of the Tribunal

(1) The Municipality must, by notice in two newspapers, call for nominations for the appointment of external persons to be members of the Tribunal.

(2) Any external person who responds to the notice must–

(a) lodge a written application in the prescribed form together with supporting documents within the prescribed timeframes; and

(b) comply with the requirements and criteria for appointment to the Tribunal.

(3) The Municipality must constitute an evaluation panel comprised of municipal officials who shall make recommendations to Council in respect of the appointment of external persons to serve on the Tribunal.

(4) Any person appointed to serve on the Tribunal must be provided with a letter of appointment containing the terms and conditions of such appointment as may be determined by the Council and in accordance with any applicable norms and standards.

(5) A designated official is bound by his or her conditions of service and is not entitled to any additional remuneration, allowances, leave or sick leave or other employee benefits as a result of his or her membership on the Tribunal.

(6) The Tribunal may only commence operations after the Municipal Manager has placed a notice in the Provincial Gazette confirming the constitution of the Tribunal, the names of the members of the Tribunal and its date of commencement.

(7) The Municipality must call for further nominations in accordance with the process set out in this section where nominations received do not meet the stipulated criteria.

40. Composition of the Tribunal

(1) The Tribunal must consist of–

(a) designated officials in the full-time service of the Municipality; and

(b) external persons appointed by the Municipal Council.

(2) Any person designated or appointed as a member of the Tribunal must have the relevant qualifications, professional registrations where applicable, knowledge of and practical experience in spatial planning, land use management and land development or the law related thereto.

(3) The designated officials in the full-time service of the Municipality must be–

(a) a Registered Planner;

(b) a registered Environmental Practitioner; and

(c) a Senior Legal Advisor, Chief Legal Advisor, Deputy Head or Head of the Municipality's Legal and Compliance Unit.

(4) The external persons appointed by the Municipal Council must be–

(a) a Registered Planner who has experience in Strategic Planning; and

(b) a Registered Planner who has experience in the submission of land use applications.

(5) 50% percent plus 1 of the number of members of the Tribunal constitute a quorum for a meeting: Provided that a Registered Planner and a legal official contemplated in section 40 (3)(c) must be present in order for a meeting to proceed.

(6) The Tribunal may, in the performance of its duties, co-opt, appoint or employ the services of a technical adviser or a specialist in the field of concern.

(7) A technical adviser or a specialist contemplated in subsection (6) is not a member of and has no voting rights in the proceedings of the Tribunal.

(8) A technical adviser who is not a public service official or in the employ of the Municipality may be remunerated accordingly.

(9) The term of office of members of the Tribunal is five years or such shorter period as the Council may determine, provided that a member may not serve as a member for a continuous period of more than ten years.

(10) A Municipality may designate a municipal official as a temporary member of the Tribunal, in place of a member designated as such in terms of paragraph (1)(a), where such member has been indisposed due to ill health or maternity leave and has been granted a leave of absence by the Chairperson.

(11) The member appointed on a temporary basis in terms of subsection (10) must be employed by the Municipality in the same professional capacity as the member he or she is substituting.

41. Appointment of Chairperson

(1) The Council must designate a member of the Tribunal to serve as Chairperson and such person must hold office for a term not exceeding five years.

(2) The Council must designate a member of the Tribunal as Deputy Chairperson and such person must hold office for a term not exceeding five years.

(3) The Deputy Chairperson must act as Chairperson of the Tribunal when the Chairperson is absent or is unable to perform his or her duties: Provided that in the event that both the Chairperson

and Deputy Chairperson are absent or are unable to perform their duties, the members may elect another member to preside for the duration of the meeting.

(4) The Chairperson, or where applicable the Deputy Chairperson, is the signatory of the Tribunal.

(5) The Chairperson must direct the work of the Tribunal, represent the Tribunal in all administrative matters and preside at the meetings of the Tribunal.

(6) The Chairperson shall determine the times and places for meetings of the Tribunal.

(7) The Chairperson is assisted by the SPLUMA office in the execution of his or her management duties.

(8) A decision of a majority of the members of the Tribunal is a final decision of the Tribunal.

(9) If on any question there is an equality of votes, the presiding officer who has been appointed for the meeting, shall have the deciding vote in addition to that member's vote as a member.

42. Term of office of members of Tribunal

The Municipal Council may appoint an external member to serve on the Tribunal for five years or such shorter period as the Council may determine.

43. Disqualification from membership of Tribunal

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

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

(b) is a member of or has been nominated as a member of Parliament, a Provincial legislature, any municipal council or House of Traditional Leaders;

(c) is an unrehabilitated insolvent;

(d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002);

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

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

(g) has previously been removed from a Tribunal for a breach of any provision of SPLUMA, provincial legislation enacted in terms of SPLUMA or this By-law;

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

(i) fails to comply with the provisions of SPLUMA, any provincial legislation enacted in terms of SPLUMA or this By-law;

(j) is declared incapable of managing his or her own affairs by a court of law or is placed under curatorship;

(k) fails to disclose an interest and proceeds to participate in a meeting;

(l) is absent for two consecutive meetings without a leave of absence being granted by the Chairperson; or

(m) is a member of the Joint Advisory Committee.

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

(3) A vacancy in the Tribunal occurs when–

(a) a member resigns in writing;

(b) the term of office of the member has expired;

(c) a member dies; or

(d) a member is subject to a disqualification contemplated in subsection (1).

(4) If a vacancy exists, the Tribunal shall not be prevented from carrying out its functions and the Municipality must immediately appoint or designate a member to the Tribunal.

(5) The Council may remove an external member of the Tribunal from office after he or she has been given an opportunity to submit representations in response to the grounds upon which his or her removal from office have been based.

(6) A member of the Tribunal may not absent himself or herself from a meeting without the prior written approval of the Chairperson, and must make provision for the proper performance of his or her duties during any absence.

(7) A breach by an employee must be dealt with in accordance with the disciplinary procedures of the Municipality contained in section 67(1)(h) of the Systems Act.

(8) A member of the Tribunal–

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

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

(9) A member of the Tribunal has a conflict of interest if–

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

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

(10) If at any stage during the course of a meeting, it appears that a member has or may have a conflict of interest, the–

(a) member must fully disclose the nature of the conflict of interest and leave the meeting; and

(b) disclosure must be recorded in the minutes of the meeting.

(11) The Municipal Manager must keep a register of all disclosures of conflict of interest made by members of the Tribunal.

(12) All members of the Tribunal must adhere to the Municipality's Code of Conduct for members of the Tribunal.

(13) A member of the Tribunal who is in the full-time service of the Municipality must, in addition to the Code of Conduct referred to in subsection (12), adhere to the provisions of the Code of Conduct for Municipal Staff Members as provided for in Schedule 2 of the Systems Act.

(14) The Municipality may indemnify and provide legal representation to a member of the Tribunal or Appeal Authority or a decision maker where legal proceedings have been instituted against such person arising out of any act in the performance of their duties or exercise of their powers and where they acted in good faith and without negligence in accordance with the provisions of any policy adopted by Council setting out the terms and conditions for indemnification.

Chapter 11
Decisions on land development applications

44. Deciding a land development application

(1) When deliberating on any application, a decision maker must, where applicable, consider the following, which includes but is not limited to–

(a) the Constitution;

(b) the Constitutional transformation imperatives and the related duties of organs of state;

(c) the development principles;

(d) the type of application and motivation submitted by the applicant;

(e) the procedure followed in assessing the application;

(f) the IDP and Municipal Spatial Development Framework;

(g) the developmental goals and vision of the Municipality;

(h) the provisions of the land use scheme;

(i) the national and provincial Spatial Development Frameworks and, where applicable, regional Spatial Development Frameworks;

(j) the package of plans;

(k) any objections or comments lodged in response to the public participation process or filed by persons who have been granted intervener status;

(l) any written response lodged by an applicant to objections or comments received or filed by persons granted intervener status;

(m) any comments received from internal departments and organs of state;

(n) public interest;

(o) the state and impact of the application on engineering services, social infrastructure and open space requirements;

(p) development charges applicable under law at the time of lodgement of the application;

(q) the facts and circumstances relevant to the application, including the matters referred to in the Planning and Development Act as being relevant to the type of application concerned;

(r) the respective rights and obligations of all those affected by the application;

(s) written evaluation and recommendation of the Regional office;

(t) compliance with environmental legislation and any other applicable legislation dealing with planning and land use management;

(u) recommendations made by the Joint Advisory Committee;

(v) the role and interest of a Traditional Authority in the application;

(w) any applicable policy of the Municipality with regards to decision making, planning and land use management;

(x) any other factor which to the mind of the decision maker is relevant, including timeframes for making decisions;

(y) policies, principles, norms and standards or other guidelines set by National and Provincial Government; and

(z) section 42 of SPLUMA.

(2) The decision notice must contain the following information:

(a) the details of the application;

(b) the outcome of the application;

(c) the reasons for the decision contemplated in paragraph (b);

(d) any conditions subject to which the application was approved;

(e) any directives in respect of the Surveyor-General, where applicable;

(f) the reason for any changes made to the application;

(g) the closing date for the lodgement of an appeal; and

(h) the effective date of the Municipality's decision.

(3) Any clerical mistake or error in any document recording a decision may be corrected by the presiding officer of the Tribunal, the Head or Deputy Head as the category of application requires.

45. Functions and powers of the decision maker

(1) A decision maker must–

(a) consider and determine all applications lawfully referred or submitted to it;

(b) consider the recommendations submitted by the Joint Advisory Committee before making a decision on an application;

(c) keep a record of all proceedings;

(d) provide written reasons for any decisions taken; and

(e) keep a register of all decision notices.

(2) The decision maker may–

(a) impose any reasonable conditions including conditions related to the provision of engineering services and the payment of any development charges in terms of any applicable law at the time of lodgement of the application;

(b) amend or waive a condition imposed by it: Provided that the Municipality must give notice to any person affected by it or in whose favour the condition was imposed, and only after considering any representation made by such persons regarding the proposed amendment or waiver;

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

(d) conduct an investigation into any matter relevant to an application under its consideration.

(e) request the Council to designate a municipal official or appoint any other person in terms of section 32 (3) of SPLUMA as an inspector to conduct an investigation;

(f) request further information from the applicant;

(g) give directions relevant to its decision making functions to any person in the service of the Municipality;

(h) conduct a site inspection;

(i) decide on any question concerning its own jurisdiction;

(j) appoint a technical adviser to advise or assist in the performance of their functions in terms of SPLUMA and this By-law; and

(k) make a determination as to whether a person qualifies as an interested person to be granted intervener status in a land development application and may limit the interested person's participation to only those issues in respect of which their interest has been established.

46. Decision making

(1) The decision maker may–

(a) approve an application in whole or in part;

(b) approve an application subject to conditions;

(c) refuse an application; or

(d) postpone its decision on an application in order for a site inspection or other investigations to be conducted, or for technical advice or further information requested form the applicant to be obtained: Provided the decision may not be postponed for a period exceeding 30 days.

(2) The Tribunal may request a hearing and must notify the applicant, any person who lodged an objection and any person who was granted intervener status, of the date, time and place of the hearing.

(3) Where applicable, the notice of the hearing contemplated in subsection (2) must–

(a) specify the place, date and time of hearing;

(b) state the purpose of the hearing;

(c) inform parties of their right to be present or to be represented at the hearing;

(d) inform parties of their right to state their case or lead evidence in support of their case; and

(e) include any other necessary information.

(4) The applicant and any person who intends to be present at the hearing must inform the Tribunal of their intention prior to the hearing.

(5) The persons contemplated in subsection (2) may be permitted to call one or more expert witnesses and must furnish the Tribunal and parties to the hearing with a summary of the expert witnesses' evidence seven days prior to the hearing.

(6) The summary of the evidence to be given by an expert witness must contain at least sufficient information to enable the other party to determine the basis for the expert's opinion and the extent to which he or she agrees or disagrees with the evidence of such expert.

(7) The Tribunal must where a hearing was held in respect of an application, make a decision on the application within 30 days of the last day of the hearing.

(8) Subject to section 45(1) of this By-law, the Tribunal must where there was no hearing for an application, make a decision on an application within seven days of receiving the recommendation from the Joint Advisory Committee.

(9) Subject to section 45(1) of this By-law, the Head or Deputy Head must make a decision on an application within seven days of receiving the recommendation from the Joint Advisory Committee.

(10) The decision maker must forward the signed and dated decision notice to the applicant and to any person who objected, any person who was granted intervener status, the Regional Co-ordinator,

service provider, organ of state and any other person or body where applicable, within seven days of making a decision.

(11) The decision maker must, if unable to make a decision on the application within the time specified, notify the applicant in writing of any such delay and provide the reasons thereof, together with an indication as to the date when a decision on the application can be expected.

(12) Where a decision maker has refused an application, the Municipality may permit the applicant to submit a new application only where such person can demonstrate a change in circumstances.

(13) Where no appeal has been lodged, the decision becomes effective on the day following the expiry of the prescribed period for the lodgement of an appeal: Provided that where public participation was not required for an application and the applicant has waived their right of appeal, the decision is effective on the date of the decision.

(14) The Municipality must advise all parties contemplated in subsection (10) in writing of the effective date of the decision within seven days of the date of expiry of the period contemplated in subsection (13).

(15) Where an appeal has been lodged in terms of the By-law, the decision is suspended pending the outcome of the appeal.

47. Conditional approval of land development application

(1) An application may be approved subject to such conditions as determined by the decision maker.

(2) A conditional approval of an application lapses if a condition is not complied with, within–

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

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

(3) A decision notice must provide the period for which such approval shall be valid and the approval shall lapse if, where applicable, no building plan has been submitted to the Municipality within the specified period: Provided that the Municipality may on request and prior to the lapsing extend the validity period.

(4) Where an activity requires a land development application approval and building plan approval, the approval of the land development application must be obtained prior to an approval for a building plan being granted: Provided that an approval granted in terms of this By-Law does not confer an approval in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

(5) An applicant must advise the Municipality in writing when he or she is ready to commence operations on the land.

(6) The Municipality must certify that the conditions of approval have been complied with prior to the–

(a) erection of a structure on the land or the use of land in accordance with the approval;

(b) construction of a building on the land;

(c) occupation of the land; or

(d) registration of the land in separate ownership, as the nature of the condition may require.

(7) The provisions of subsection (6) do not prohibit the use of the land for the purposes it was lawfully used before the approval of the application unless the decision maker has directed otherwise in the conditions of approval.

(8) An agreement for the alienation of a subdivision or consolidation of land that was approved by the Municipality but for which it has not issued a certificate that the applicant has complied with the

conditions of approval before it may be registered in separate ownership must contain a clause disclosing that the–

(a) applicant has not as yet complied with the conditions of approval; and

(b) property is not registerable as contemplated in section 1 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

48. Notification to Surveyor-General and Registrar of Deeds

A decision maker must, within the prescribed period after a land use decision affecting the use of land not in accordance with a condition in a title deed, notify the–

(a) Registrar of Deeds in whose office the deed or document is filed of such approval; and

(b) Office of the Surveyor-General, where such approval affects a diagram or general plan filed in that office.

49. Removal, amendment and suspension of restrictive conditions

(1) The Municipality shall not permit an application to be lodged for the removal, amendment or suspension of a restrictive condition in respect of a–

(a) registered mining right;

(b) condition in favour of the KwaZulu-Natal Conservation Board without the Board's written consent to remove, amend or suspend the condition;

(c) condition in favour of the South African Roads Board imposed in terms of the South African Road Boards Act, 1988 (Act No. 74 of 1988);

(d) condition imposed by South African National Roads Agency Limited (SANRAL);

(e) condition imposed by a Member of the Executive Council in terms of the KwaZuluNatal Provincial Roads Act, 2001 (Act No. 4 of 2001);

(f) condition relating to the sale of land, including a right to purchase property and a condition that the value of a building must exceed a minimum amount; or

(g) condition relating to the inheritance of land, including a condition that grants a person the right to use the land for the person's lifetime.

(2) A condition in a title deed relating to omnibus and general servitudes may only be amended with the permission of the Municipality.

(3) In considering an application to remove, amend or suspend a restrictive condition, the decision maker is not liable to compensate any person for any loss arising from or related to a decision made in good faith.

(4) An applicant must publish in two newspapers a notice of the approval granted to remove, amend or suspend a restrictive condition.

(5) A Conveyancer's Certificate must be lodged with an application for the removal, amendment or suspension of a condition confirming that–

(a) he or she has examined the title deed; and

(b) no further conditions of title shall be affected by the removal, amendment or suspension of the condition.

(6) An applicant must submit the original title deed together with the decision notice, the certificate issued by the Municipality confirming compliance with conditions of approval, and the proof of notice given in subsection (4), to the Registrar of Deeds and Surveyor-General within the prescribed

timeframes in order for the appropriate entries and endorsements on any relevant register, title deed, diagram or plan to be made in the respective offices.

50. Township establishment

(1) The approval of a land development application for township establishment may be subject to conditions of establishment.

(2) The Municipality shall together with the decision notice issue a certificate containing the conditions of establishment contemplated in subsection (1).

(3) The Municipality must notify the Registrar of Deeds and Surveyor-General of the approval of the application and conditions of establishment imposed within 30 days of the decision.

(4) The applicant must after the approval of the application lodge with the Surveyor-General such plans and diagrams for approval that may be necessary within the prescribed timeframes and provide the Municipality with a copy of the approved general plan and diagrams by the Surveyor-General.

(5) An applicant may only submit a building plan to the Municipality once he or she has obtained and submitted to the Municipality all the necessary certificates evidencing that the conditions of establishment have been complied with, or has obtained written approval from the Municipality to build in advance of obtaining such certificates and complying with specified conditions of establishment.

(6) The Municipality may permit the sale of erven in the township prior to the proclamation of the township.

(7) The applicant must lodge with the Municipality written proof of compliance with the conditions of establishment confirming–

(a) compliance with the imposed conditions of establishment; and

(b) that all internal and external services have been installed in the township to the satisfaction of the Municipality.

(8) The Municipality shall issue a certificate to the applicant confirming compliance with subsection (7).

(9) The Registrar of Deeds may not permit the registration of the transfer of any erf in a township–

(a) without the certificate issued by the Municipality confirming compliance contemplated in subsection (8);

(b) where the Municipality has advised the Registrar that conditions of establishment have not been complied with; or

(c) where the approval has lapsed.

(10) The Registrar of Deeds must advise the Municipality if a general plan has been registered, of the opening of the township register and of the endorsement or registration of any deeds.

(11) The Municipality may issue a certificate of approval of the township on notification by the Registrar of Deeds contemplated in subsection (10): Provided that where there is a phasing of the township, the applicant must obtain a certificate of approval for each phase.

(12) A public open space or public road must, prior to or simultaneously with registration of transfer of the final erf in the township and at the cost of the applicant, be transferred to the Municipality.

(13) A social facility must, prior to or simultaneously with registration of transfer of the first erf in the township and at the cost of the applicant, be transferred to the Municipality.

51. Closure of roads and public open spaces

(1) An application for the closure of a road or public open space may require the submission of an Environmental Impact Assessment and compliance with any other applicable legislation.

(2) The Municipality must advise the Surveyor-General of the closure of a road and make application for the amendment of the relevant general plan.

(3) The Registrar of Deeds must, where the ownership of the closure of a road or public open space vests in the Municipality or in another organ of state, make the necessary entries.

52. Land for parks, public open spaces and social facilities

(1) An approval of a land development application which provides for the use of land for residential purposes may be subject to the provision of land for parks, public open spaces or social facilities by the applicant.

(2) The land required for parks, public open spaces or social facilities must be provided within the land area to which the land development application relates: Provided that the Municipality may consider an alternative land area for the provision of parks, public open spaces or social facilities where it is more feasible to do so.

(3) The Municipality's guidelines for social facilities and open spaces provision and any other tool adopted by the Municipality shall serve as the Municipality's norm and standard for the determination of the number of public open spaces and social facilities required.

(4) The Municipality shall prepare a plan providing for off-sets for parks and open spaces: Provided that the Municipality may consider and accept a proposal for an off-set submitted by an applicant.

(5) The land required by the Municipality for use as a park, public open space or social facility must be regarded as land the ownership of which vests in the Municipality as contemplated in section 32 of the Deeds Registries Act.

53. Consultation with other land development authorities

(1) The Municipality must consult any organ of state responsible for administering legislation relating to any aspect of an activity that also requires approval in terms of this Bylaw in order to co-ordinate activities and give effect to the respective requirements of such legislation and to avoid duplication.

(2) The Municipality, in giving effect to Chapter 3 of the Constitution, may after consultation with the organ of state contemplated in subsection (1), enter into a written agreement with that organ of state to avoid duplication in the submission of information or the carrying out of a process relating to any aspect of an activity that also requires authorisation in terms of this By-law.

(3) After the Municipality has concluded an agreement contemplated in subsection (2), the relevant decision maker may take account of any process authorised under the legislation covered by that agreement as adequate for meeting the requirements of this By-law.

54. Authorisations

(1) Where an activity requiring authorisation is also regulated in terms of another law, the Municipality and the organ of state empowered to authorise the activity in terms of the other law may exercise their respective powers by issuing–

(a) separate authorisations; or

(b) an integrated authorisation.

(2) An integrated authorisation contemplated in paragraph (1)(b) may be issued only if the–

(a) relevant provisions of all applicable legislation have been complied with; and

(b) integrated authorisation specifies the–

(i) relevant provisions in terms of which it has been issued; and

(ii) authorities that have issued it.

Chapter 12
Appeals

55. Appeal Authority

(1) The Executive Authority is the Appeal Authority for the purposes of this By-law.

(2) Notwithstanding the provisions of subsection (1), the Municipality may, in place of its Executive Authority, authorise that a body or institution outside of the Municipality to assume the obligation of an Appeal Authority either generally or in relation to a specific appeal or categories of appeal.

(3) The Executive Authority contemplated in subsection (1) may delegate its authority to hear certain categories of appeals to a political office bearer, committee, official or panel of officials as contemplated in terms of section 56 of SPLUMA.

(4) Where the Executive Authority has made a delegation as contemplated in subsections (2) or (3), the provisions of this Chapter are mutatis mutandis applicable to the delegated authority insofar as its function as an Appeal Authority is concerned.

56. Powers of the Appeal Authority

The Appeal Authority may–

(a) uphold or dismiss an appeal and impose any conditions with regard to the subject of an appeal;

(b) make any appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law;

(c) conduct any necessary investigation including site inspections;

(d) decide any question concerning its own jurisdiction;

(e) subpoena any person to appear before it;

(f) on its own initiative, obtain expert evidence or opinion;

(g) condone any failure by any party to an appeal to comply with any directions given by the Appeal Authority; and

(h) postpone the matter for a reasonable period to obtain further information or advice.

57. Declaration of conflict of interest

(1) A member of the Appeal Authority–

(a) must make full disclosure of any conflict of interest including any potential conflict of interest in any matter which he or she is designated to consider; and

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

(2) For the purposes of this section, a member has a conflict of interest if the member–

(a) or an immediate family member, partner or business associate of the member is the applicant in terms of this By-law, or has a pecuniary or other interest in the matter before the Appeal Authority;

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

(c) was a member of the Tribunal when the decision was made or was a decision maker who made the decision;

(d) has previously served in another capacity in the matter, including as an adviser, expert or witness; or

(e) or his or her immediate family member, business partner or associate is associated with any person objecting to the application.

58. Powers and duties of presiding officer

(1) The Municipality must appoint a presiding officer to the Appeal Authority.

(2) The powers and duties of a presiding officer include the following:

(a) to conduct a fair and impartial hearing;

(b) to take appropriate action to avoid unnecessary delay in the disposition of proceedings;

(c) to maintain order;

(d) to administer oaths and affirmations;

(e) to accept and receive relevant, competent, and probative evidence or documentation;

(f) to regulate the course of the proceedings and the conduct of the parties and their representatives;

(g) to consider and rule, orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;

(h) to issue a summary of the decision taken;

(i) to sign the notice containing the decision on the appeal;

(j) to confirm or postpone matters; and

(k) on good cause stated on the record, to exclude from participation in any proceedings any party, participant, or representative who violates the proceedings.

59. Conduct of Appeal Authority

The conduct of the Appeal Authority at a hearing must be impartial and must not prejudice or promote the interests of any party to the hearing.

60. Lodging of appeal

(1) A person whose rights are affected by a decision taken by a decision maker in terms of this By-law may appeal against that decision by lodging a Notice of Appeal together with the prescribed administration fee with the Municipal Manager within 21 days of the date of notification of the decision.

(2) A person whose rights are affected within the provisions of subsection (1) includes–

(a) an applicant;

(b) the Municipality; and

(c) an interested person who objected, or who was entitled to but who failed to object during a public participation process, who provides a reasonable explanation for such failure and

who may reasonably be expected to be affected by the outcome of the land development application proceeding on the grounds that his or her pecuniary or proprietary interests are adversely affected by the decision.

(3) An objector for the purpose of subsection 2(c) must be a person having a direct and substantial pecuniary or proprietary interest in the municipal area, who is adversely affected or able to demonstrate that he or she will be adversely affected by the decision of the decision maker in respect of such decision.

(4) A person who has lodged an appeal with the Municipal Manager must also simultaneously serve the Notice of Appeal on the applicant, any person who was granted intervener status, and any other person who has noted an appeal against the same decision.

(5) Any person who has been served with a Notice of Appeal contemplated in subsection (4) may oppose the appeal by submitting a Notice to Oppose Appeal to the Municipality within 21 days of receipt of the Notice of Appeal.

(6) No appeal in respect of a decision taken pursuant to this By-law may be lodged in terms of section 62 of the Systems Act.

61. Access to records

Any person who requires access to records or documents relating to a land development application must make such request in writing.

62. Notice of appeal

(1) A Notice of Appeal must be fully completed and signed by the person lodging an appeal, and accompanied by any necessary information, documentation and payment of the prescribed administration fee.

(2) A Notice of Appeal and a Notice to Oppose Appeal must set out the grounds of fact and law on which the appeal is based.

63. Pre-screening of appeal

(1) The Municipal Manager must within five days of expiry of the period allowed for the lodging of Notices to Oppose Appeal submit all documentation relating to the appeal to the applicable Appeal Authority.

(2) The Appeal Authority may on receipt of the documentation contemplated in subsection (1) screen the documentation to determine whether–

(a) the Notice of Appeal and Notice to Oppose Appeal, where applicable, have been fully completed and signed;

(b) the Notice of Appeal and where applicable, the Notice to Oppose Appeal have been submitted within the required timeframes;

(c) service of the Notice of Appeal has been effected on all the necessary persons;

(d) proof of payment is furnished; and

(e) the Appeal Authority has jurisdiction over the appeal.

(3) The Appeal Authority must notify all parties in writing that an appeal shall not be entertained where the–

(a) appeal has been submitted outside the permitted timeframes; or

(b) Appeal Authority does not have jurisdiction over the appeal.

64. Hearings of Appeal Authority

(1) The Appeal Authority must consider and decide on an appeal within 100 days of receipt of the documentation from the Municipal Manager contemplated in section 60(1).

(2) The Appeal Authority may consider an appeal by means of considering written submissions only or conducting an oral hearing.

(3) The Appeal Authority must notify the parties of the date, time and place of the appeal hearing 14 days prior to the commencement of the hearing.

(4) The Notice of Appeal Hearing must contain–

(a) the names of all the parties;

(b) subject matter of the appeal;

(c) the date, time and venue of the hearing; and

(d) any other relevant information.

65. Postponement of an appeal hearing

(1) Any party to an appeal hearing may request in writing, at least 10 days prior to the hearing, that the hearing be postponed and state the basis for such request.

(2) Any request for a postponement must be served on the Appeal Authority and the parties referred to in section 60(4) above and the appeal authority.

(3) Any person wishing to oppose the application for a postponement must do so in writing and state the basis of opposition.

(4) The notice of opposition must be served on the Appeal Authority and the parties referred to in section 60(4) above, at least three days prior the hearing.

(5) The presiding officer may grant a postponement upon good cause shown and must notify the parties of such decision within five days of the party's request for postponement.

(6) If the postponement is opposed, the presiding officer may request the parties to the hearing to make representations before ruling on the matter.

66. Appeal considered on written submissions

(1) The Appeal Authority may consider an appeal without an oral hearing where in its view the issues for determination can be adequately determined in the absence of the parties by considering all documentation which has been submitted in respect of such appeal.

(2) The Appeal Authority may request a party to an appeal and the decision maker to provide written submissions in response to the Notice of appeal or the grounds set out in the Notice to Oppose Appeal within seven days of such request.

67. Oral hearing

(1) An Appeal Authority may hold an oral hearing–

(a) where, in its view, the issues for determination cannot be adequately determined in the absence of the parties by considering all documentation which has been submitted to it; or

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

(2) A party to an oral hearing may–

(a) appear in person or be represented by another person;

(b) present his or her case;

(c) inspect any document before the Appeal Authority and make submissions;

(d) present evidence and make arguments at the hearing;

(e) call witnesses to give evidence: Provided that the Appeal Authority shall determine which relevant witnesses may be called; and

(f) cross examine any witness.

(3) A party must advise the appeal authority and the parties referred to in section 60(4) of any documentation in their possession that they intend using during the hearing not less than14 days prior to the hearing and simultaneously provide sufficient copies of such documentation for use by all members of the appeal authority and the other parties to the appeal.

68. Oral hearing of appeal in absence of parties

The Appeal Authority may, after a Notice of Appeal Hearing has been served on all the parties, hear an oral appeal in the absence of an appellant or any other party if–

(a) such appellant or other party has notified the appeal authority that he or she does not wish to be present at the hearing; or

(b) such appellant or any other party fails to attend the hearing without providing a reason for non-attendance which, in the sole discretion of the Appeal Authority, is sufficient to justify an adjournment of the hearing.

69. Determination of appeal

(1) The Appeal Authority may confirm, vary or revoke the decision of a decision maker and must provide reasons therefore.

(2) A decision of the majority of the members of the Appeal Authority is a decision of the Appeal Authority.

(3) The presiding officer has a casting vote in the event there is an equality of votes.

(4) The Appeal Authority must decide on an appeal within 14 days after the hearing of the appeal.

(5) The presiding officer must sign the decision of the Appeal Authority and any order made by it.

(6) Any clerical mistake or error in any document recording a decision of the Appeal Authority may be corrected by the presiding officer.

(7) After the finalisation of the decision of the Appeal Authority, the Municipal Manager must inform all parties to the appeal of the outcome in writing within 14 days of being notified of the outcome of the appeal and indicate their right to request reasons within 21 days of being notified of the outcome of the appeal where reasons have not been given.

(8) No further appeals in respect of the decision may be lodged in terms of this By-law after notice has been given in terms of subsection (7).

(9) The Municipality must give effect to the decision of the Appeal Authority.

70. Records of appeal hearing

(1) The Appeal Authority must keep a record of every appeal lodged, documents related thereto, minutes of the proceedings and the decisions made.

(2) The records referred to above shall be kept in hard and electronic copies.

71. Fees

(1) The fees applicable to the lodging of appeals are in accordance with the tariff adopted by Council from time to time.

(2) Any person required to appear before the Appeal Authority in order to give evidence, produce a book, plan or other document or object, must be paid the witness fees that are paid to any witness in terms of the magistrates' court tariffs.

(3) A municipal official or public official who attends the hearing in the course of his or her duties is not entitled to be paid witness fees.

Chapter 13
Compliance and enforcement

72. Appointment of enforcement officer

(1) The Municipality–

(a) may designate a municipal official or appoint any other personas an enforcement officer to ensure compliance with this By-law; and

(b) must issue each enforcement officer with a written designation or appointment.

(2) When an enforcement officer performs any function in terms of this By-law, he or she must–

(a) on request produce his or her written designation or appointment; and

(b) not be a person having a direct or indirect personal or private interest in the matter to be investigated.

(3) Any person who performs the function of an enforcement officer must be appointed as a peace officer as contemplated in the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

73. Functions and powers of enforcement officers

(1) An enforcement officer may–

(a) investigate complaints submitted to the officer;

(b) subject to this By-law and any other applicable law which authorises such officer to conduct an inspection, monitor and enforce compliance with this By-law;

(c) conduct an inspection in terms of this By-law; and

(d) exercise the powers conferred on a peace officer by law.

(2) Subject to the provisions of section 74, an enforcement officer contemplated in subsection (1) may–

(a) at any reasonable time and without previous notice enter any land for the purposes of ensuring compliance with this By-law;

(b) question any person who is or was on or in such land, either alone or in the presence of any other person;

(c) require from any person who has control over or custody of a book, record, register or other document on or in respect of such land, to produce to him or her forthwith, or at such time and place as may be determined by him or her, such book, record, register or other document;

(d) examine, make extracts from and copies of any such book, record or other document;

(e) require from such a person an explanation of any entry in such book, record or other document;

(f) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;

(g) seize any such book, record, register or other document or any such article, substance, electronic data storing devices, plant or machinery or a part or sample thereof which, in his or her opinion, there is a reasonable belief or suspicion that such book, record, register, document or article may serve as evidence at the trial of any person charged with an offence under this By-law or the common law: Provided that the user of the book, record, register, document or article may make copies of such book, record, register, document or article before such seizure; and

(h) direct any person to appear before him or her at such time and place as may be determined by him or her and question such person either alone or in the presence of any other person on any matter to which this By-law relates: Provided that where a person has been directed to appear before an officer he or she is not obliged to answer any question if the answer is self-incriminating.

(3) An enforcement officer may enter and search premises, other than private premises, without a warrant if the officer on reasonable grounds believes that–

(a) a warrant would be issued by a judge or magistrate if the officer made application for the warrant; and

(b) the delay in obtaining a warrant is likely to defeat the object of the entry and search.

(4) An investigation contemplated above must be conducted during the day, unless the execution thereof by night is justifiable and necessary.

(5) When an enforcement officer enters any land in terms of subsection (2), any person who controls or manages the land must at all times provide such facilities as are reasonably required by the officer to enable him or her to perform effectively and safely his or her functions in terms of this By-law.

(6) When an enforcement officer removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (2)(f) or (g), he or she must compile an inventory of such items and shall prior to leaving the premises, sign the inventory and hand a copy thereof to the person in charge.

(7) An inspection of a private dwelling may only be carried out by an enforcement officer when authorised in terms of a warrant issued by a competent court: Provided that a warrant is not required where reasonable notice has been given and the person in charge of the premises consents to the entry and search by the officer.

(8) An enforcement officer may, where necessary, be accompanied by a police official or any other person reasonably required to assist him or her in conducting the inspection.

(9) An enforcement officer may issue a contravention notice to the person who controls or manages the land or the owner or person in control of a private dwelling if a provision of this By-law has not been complied with.

(10) A contravention notice remains in force until the contravention has been resolved or this By-law has been complied with and the enforcement officer has issued a compliance certificate in respect of that notice.

(11) An enforcement officer who enters and searches any land or private dwelling under this section, with or without a warrant, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(12) Any person who hinders or obstructs an enforcement officer in the exercise of his or her powers under this By-law shall be guilty of an offence.

74. Warrant

(1) An enforcement officer may apply to a magistrate or a judge for the issue of a warrant and the magistrate or judge may issue such warrant if it appears from information on oath or affirmation that–

(a) there are reasonable grounds for suspecting that a contravention of the By-law has taken place, is taking place or is likely to take place on such premises;

(b) that a search of the premises is likely to yield information pertaining to such contravention; and

(c) that the search is reasonably necessary for the enforcement of this By-law.

(2) A warrant to enter and search may only be executed during the day, unless the magistrate or judge who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

75. Lodging and investigation of complaints

(1) Any person, who is affected by or becomes aware of an alleged contravention, may where applicable, in writing, request the Municipality to investigate the alleged contravention.

(2) A written complaint must contain–

(a) substantial information about the alleged contravention, supported by relevant documentation and other evidence, where applicable; and

(b) the complainant's name, address and contact number.

(3) The Municipality must acknowledge receipt of the written complaint where applicable, and allocate the complaint to an enforcement officer for investigation.

(4) The Municipality must notify the person against whom the complaint was lodged and request such person to submit an affidavit in response to the written complaint within five days of notification.

(5) The submission of false or misleading evidence to the Municipality constitutes an offence.

(6) The Municipality must investigate the complaint within seven days from the date of the lodgement of the complaint.

(7) In investigating the complaint, the Municipality may circulate the complaint to identified internal departments for comment, conduct a site inspection and take photographic evidence of the alleged contravention.

(8) The Municipality must where applicable inform the complainant of the outcome of the investigation where the contravention has been confirmed.

(9) Where the Municipality confirms the contravention after conducting a site inspection, it may implement a property rates adjustment in accordance with the use of the property and the Property Rates Policy which has been adopted by Council required in terms of the Municipal Property Rates Act, 2004 (Act No.6 of 2004).

76. Contravention notice

(1) For purposes of this section "owner" means the person in whose name the land is registered in the relevant deeds office and includes the following:

(a) the trustees of a body corporate, where the common property of a sectional title scheme is at issue;

(b) the administrator of the body corporate of the sectional title scheme where the common property of a sectional title scheme is at issue and there are no elected trustees of the body corporate;

(c) the executor, where the owner of the land is deceased and the land has not yet been transferred out of the deceased's estate;

(d) the curator, where the owner of the land, has been declared by any court to be incapable of managing his or her own affairs or declared as a prodigal;

(e) the administrator, where the owner of the land is a mental health care user as defined in section 1of the Mental Health Act, 2002 (Act No. 17 of 2002);

(f) the executor, where the estate of the owner has been sequestrated;

(g) the liquidator, where the owner of the land is a judicial person or a trust and has been liquidated;

(h) the former members of a close corporation which has been deregistered and in respect of which they have a continuing liability as contemplated in section 26 of the Close Corporations Act, 1984 (Act No. 69 of 1984), read with sections 83(2) and (3) of the Companies Act, 2008 (Act No. 71 of 2008);

(i) the business rescue practitioner, where the owner of the land has been placed under business rescue;

(j) the managing agent, where the owner of the land is absent from the Republic of South Africa, trustees or directors of companies cannot be located or where the Municipality has, after reasonable attempts, not been able to determine his or her whereabouts; or

(k) any person who is entitled to occupy or use the land, or who does occupy or use the building, where–

(i) the owner of the land is absent from the Republic of South Africa;

(ii) the Municipality has, after reasonable attempts, not been able to determine the whereabouts of the owner of the land; and

(iii) there is no managing agent.

(2) The Municipality may serve a contravention notice on an owner or person if it has confirmed that a contravention has taken place or if it has reasonable grounds to suspect that an owner or person has contravened–

(a) provision of this By-law;

(b) provision of a land use scheme; or

(c) condition of approval contained in the decision notice.

(3) The Municipality may, where applicable, include an instruction in a contravention notice directing the owner or person to–

(a) cease the activity, operation or process on the land with immediate effect;

(b) remove or alter any unauthorised structure or work and rehabilitate the environment or restore the land, as the case may be, to its original form;

(c) comply with a condition of approval contained in the decision notice within the prescribed timeframes;

(d) submit a land development application in terms of this By-law within 30 days of service of the contravention notice: Provided that a land development application for rezoning of land will not be permitted to be made; and

(e) pay a fine within 30 days of service of the contravention notice.

(4) An instruction to submit a land development application in terms of subsection (3)(d)does not confer an approval of a land development application.

(5) The Municipality may, where the owner or person fails to take the steps stipulated in contravention notice contemplated in subsection (2), apply to court for–

(a) an order interdicting any owner or person from using land in contravention of the land use scheme or this By-law;

(b) an order interdicting any owner or person to cease any activity, operation or process which constitutes a contravention;

(c) an order directing the owner or person to undertake any other appropriate or remedial measure within a specified period; or

(d) any other appropriate order.

(6) Notwithstanding the provisions of subsection (5), the Municipality may withdraw an approval granted in terms of a decision notice in writing to the owner or person where he or she has failed to take the steps contained in the contravention notice and allow the owner or person to make representations to the Municipality as to why such approval should not be withdrawn.

(7) Any person served with a contravention notice contemplated in subsection (2) may make written representations to the Municipality to review the notice within seven days of receipt of the notice.

(8) The Municipality may after considering any written representations contemplated in subsection (7) confirm, amend or set aside the notice.

(9) Where the Municipality confirms or amends all or part of the notice, the person must comply with the directives and time period specified in the notice.

(10) The remedies provided for in this By-law are in addition to any other statutory or common law criminal or civil remedies that a Municipality may have at its disposal.

77. Urgency

(1) Where the Municipality believes that there is imminent or irreversible threat or harm to the environment or the health, safety or well-being of any person or the public, the Municipality may take urgent action to remedy the situation and dispense with the requirements of section 76 by making an urgent application to court for an order–

(a) interdicting any owner or person from using land in contravention of the land use scheme or this By-law;

(b) interdicting any owner or person to cease any activity, operation or process which is the subject of the contravention; and

(c) directing the owner or person to undertake any other appropriate or remedial measure within a specified period.

(2) If urgent action is needed as contemplated in subsection (1), the Municipality may take reasonable measures to remedy the situation and may recover all costs incurred from such owner or person.

(3) The recovery of costs contemplated in subsection (2) is in addition to any fine or penalty which may be imposed on an owner or person.

(4) No person shall be entitled to compensation for any loss or damage arising out of any bona fide action or decision taken by the Municipality or any authorised official in terms of this section.

(5) Where the Municipality has obtained an order of court, a copy of such order shall be affixed in a conspicuous place on the land concerned.

(6) Any person who removes, destroys or tampers with the display of a court order contemplated in subsection (5) shall be guilty of an offence.

78. Compliance certificate

A contravention notice remains in force until it has been complied with to the satisfaction of the Municipality, and the Municipality has issued a compliance certificate to that effect.

Chapter 14
Traditional areas

79. Agreements with Traditional Authority

(1) The Municipality may conclude a service level agreement with a Traditional Authority with regards to processing of land development applications.

(2) Should the Municipality conclude a service level agreement with the Traditional Authority as contemplated in subsection (1), that Authority must carry out its functions in its area in accordance with the provisions of the service level agreement.

(3) Where a land development application or an application for the allocation of land has been made to the Traditional Authority, the Traditional Authority is responsible for informing the Municipality and providing proof of the allocation of land rights in terms of the customary law applicable in that traditional area, in order to promote–

(a) economic growth;

(b) social inclusion;

(c) efficient land development;

(d) minimal impact on public health, the environment and natural resources; and

(e) the development principles of SPLUMA, within that traditional area.

Chapter 15
Allocation of street numbers and road naming

80. Submission of street numbers and road names in land development applications

(1) An applicant, where applicable, must indicate the proposed street numbers for all erven and road names.

(2) The Municipality may amend street numbers indicated in the application where such numbers are not in accordance with the Municipality's policy dealing with street numbers and road naming.

81. Naming of private roads

(1) All private road names submitted to the Municipality for consideration must be in compliance with the policy dealing with street numbers and road naming.

(2) Where the proposed private road name is not supported, the applicant may consult with the Municipality on other possible private road names before resubmitting the name to the Municipality for approval.

(3) All private road names are subject to the Municipality's final approval.

82. Naming of public roads

(1) All matters concerning the naming of a public road vests in the Municipality.

(2) The naming of public roads must be in compliance with the Municipality's policy dealing with road naming and the South African Geographical Names Council Act, 1998 (Act No. 118 of 1998).

(3) All proposed public road names must be approved by Council resolution.

83. Street numbers and road names of existing buildings

(1) The Municipality may from time to time–

(a) re-assign street numbers to existing erven in order to ensure compliance with the Municipality's street numbering policy; and

(b) request from the body or person managing an existing development a full listing of the-

(i) street number for all properties; and

(ii) road names, within a development.

(2) Street numbers and road names may not be changed without first obtaining approval from the Municipality.

Chapter 16
Offences and penalties

84. Offences

(1) A person commits an offence if such person–

(a) obstructs, threatens or hinders in any manner whatsoever an authorised official who is performing a function under this By-law;

(b) refuses to provide to an authorised official such information as is required to allow an authorised official to perform a function in terms of this By-law;

(c) knowingly gives false or misleading information to an authorised official;

(d) unlawfully prevents the owner of any premises, or a person working for the owner, from entering the premises in order to comply with the requirement of this By-law;

(e) impersonates an authorised official;

(f) contravenes or fails to comply with any provision of this By-law or condition of a decision notice;

(g) contravenes or fails to comply with any order or notice lawfully issued under this By-law;

(h) contravenes any provision of a land use scheme or town planning scheme;

(i) contravenes any decision taken or conditions, restrictions or prohibitions imposed in terms of this By-law;

(j) uses land in a manner other than permitted by the zoning scheme; or

(k) alters or destroys land to the extent that the property cannot be used for the purpose set out in the land use scheme.

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

(3) A person commits a continuing offence if they continue with an offence after–

(a) notice has been served on them in terms of this By-law requiring them to cease committing such offence; or

(b) they have been convicted of such offence.

85. Penalties

(1) Any person who is convicted of an offence under this By-law is liable to a fine or imprisonment not exceeding 20 years, or to both such fine and imprisonment.

(2) In the case of a continuing offence, an additional fine or imprisonment for a period not exceeding three months, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

Chapter 17
Miscellaneous provisions

86. Application for intervener status

(1) The decision maker or the appropriate Appeal Authority may consider an application by an interested person to intervene in a land development application or an appeal.

(2) An interested person seeking to intervene must submit together with the relevant application, form an affidavit confirming that he or she–

(a) does not collude with any applicant, objector or appellant; and

(b) is willing to deal with or act in accordance with the directions of the decision maker or Appeal Authority.

(3) The decision maker or Appeal Authority shall forward the application to intervene to, where applicable, the applicant, objector, appellant and all other persons already granted leave to intervene, who may lodge written representations in response to the application to intervene.

(4) The decision maker or Appeal Authority may take the following matters into account for the granting of intervener status:

(a) whether public participation was required for the application;

(b) whether the person was given notice of the application;

(c) the written motivation for intervening;

(d) the written consent by parties to the application if they did consent;

(e) any prejudice which may be suffered by the applicant;

(f) the persons prospects of success for intervention;

(g) whether similar objections or comments have been lodged;

(h) written submissions received by an applicant, objector or appellant in response to an application by a person to intervene; and

(i) any other relevant factor.

(5) The decision maker or Appeal Authority must approve or refuse an application for leave to intervene and advise the petitioner in writing of its decision.

(6) The decision maker or Appeal Authority may determine the manner and extent of participation of a petitioner granted leave to intervene.

87. Change of ownership

(1) An owner who has taken transfer of land which is the subject of a land development application may continue with the application as the legal successor-in-title of the previous owner.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue with the land development application and provide the necessary contact details.

88. Cession of rights in respect of objections or comments

(1) An owner who submitted comments or objections in respect of a land development application may in writing cede his or her rights conferred in respect of such objection or comment to the new owner of his or her property.

(2) The new owner must provide the applicant and the Municipality with a copy of the written cession and his or her contact details.

89. Service and receipt of notices

(1) Whenever a notice is required to be served on a person in terms of this By-law, it is deemed to have been effectively and sufficiently served on such person–

(a) when it has been delivered to him or her personally;

(b) when it has been left at his or her place of residence or business in the Republic of South Africa with a person apparently over the age of 16 years;

(c) when it has been posted by registered or certified mail to his or her last known residential or business address in the Republic of South Africa and an acknowledgement of the posting thereof is produced;

(d) if his or her address in the Republic of South Africa is unknown, when it has been served on his or her agent or representative in the Republic of South Africa in the manner contemplated in paragraphs (a), (b) or (c);

(e) if his or her address and agent in the Republic of South Africa are unknown, when it has been affixed to a conspicuous place on the property or premises; or

(f) by electronic transmission to an e-mail address or facsimile address.

(2) The date of notification or receipt in respect of any notice served in terms of this By-law is–

(a) on the fourth day after the postmarked date upon the receipt for registration when it is served by registered mail;

(b) the date of delivery, when it is served on the person personally;

(c) the date that the notice was left at a person's place of residence or place of business in the Republic with a person apparently over the age of sixteen years;

(d) the date on which the notice was successfully transmitted, if the document is served by electronic transmission, to the e-mail address or facsimile address; or

(e) the date on which the notice was displayed in a conspicuous place on the property or premises to which it relates.

(3) Where service of any notice is by registered post, such service shall be proven by the production of documentary proof of dispatch, which may include a track and trace report.

(4) The provisions of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) apply to any mode of electronic communication contemplated in this By-law.

90. Delegations

(1) Subject to the Constitution and applicable national and provincial laws, any–

(a) power, excluding a power referred to in section 160(2) of the Constitution;

(b) function; or

(c) duty, conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor, or staff member, to an entity within, or a staff member employed by, the Municipality: Provided that any such delegation must be in writing and must specify full particulars and the limitations of such a delegation.

(2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) and the criteria set out in section 59(2) of the Systems Act.

(3) Any delegation contemplated in this section must be recorded in a Register of Delegations, which must contain information on the–

(a) entity or person issuing the delegation or sub-delegation;

(b) recipient of the delegation or sub-delegation; and

(c) conditions attached to the delegation or sub-delegation.

91. Transitional provisions

In the absence of a cadastrally based Spatial Development Framework, all local area plans and functional area plans adopted by Council shall also be used to direct and manage development.

92. Short title and commencement

This By-law is called the Planning and Land Use Management By-law, 2016 and takes effect on the date of publication thereof in the Provincial Gazette.