



NELSON MANDELA BAY DRAFT BYLAW

Draft Spatial Planning and
Land Use Management
(SPLUM) Bylaw

*Working Draft 4.0 for Public
Participation*

September 2017

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**NELSON MANDELA BAY METROPOLITAN MUNICIPALITY:
SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS**

Under the powers conferred by section 156 of the Constitution of the Republic of South Africa, 1996 the Nelson Mandela Bay Metropolitan Municipality enacts as follows –

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CHAPTER 1
DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS

1. Definitions

In this By-Law, unless the context indicates otherwise, a word or expression defined in the Act or provincial legislation has the same meaning as in this By-law and -

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

“amendment scheme” means any amendment to a land use scheme;

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

“authorised official” means an employee of the local authority authorised by the local authority or authorised by any delegated official of the local authority, to implement and enforce the provisions of this By-law;

“building” means a structure or a building for which building plans are required to be submitted to the municipality for approval in terms of the National Building Standards and Building Regulations Act, 103 of 1997;

“By-Law” mean this By-Law and includes the schedules and forms attached hereto or referred to herein.

“cadastral line” means a line representing the official boundary of a land unit as registered in the Deeds Office or as recorded on a diagram or General Plan approved by the Surveyor-General.

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

“consent use” means acquiring an additional land use right or a variation on a development management provision that is permitted in terms of this By-law in a particular use zone with the consent of the municipality after the prescribed process has been adhered to;

“consolidation” means the joining of two or more land parcels into a single land unit;

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

“Council” means the municipal council of the Municipality;

“departure” for the purposes of Part I of Chapter 5, means an application for a temporary deviation from, or permanent amendment of, land use scheme provisions applicable to land;

“develop” in relation to land means the erection of a building on land, the change of the permitted use of land or the reversion of land, and includes the installation of

- engineering services on land for which approval is required in terms of the Act, this By-law or a Land Use Scheme;
- “development charges”** means the payment required to be made by an applicant or owner to the municipality in respect of engineering services, refuse sites and parks or open spaces and **development contributions** has a corresponding meaning;
- “development parameters”** means a land use provisions made under this By-law or a provisions of a Land Use Scheme which controls zoning and which may authorise the granting of departures and subdivisions;
- “development rights”** means any approval granted to a land development application;
- “diagram”** means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);
- “deeds registry”** means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);
- “department”** “ means the department responsible for development planning in the Municipality;
- “engineering service”** means an engineering service as defined in the Act;
- “file”** means the lodgement of a document with the appeal authority of the municipality;
- “land”** means -
- (a) any erf, agricultural holding or farm portion, and includes any improvements or building on the land and any real right in land, and
 - (b) the area of communal land to which a household holds an informal right recognized in terms of the customary law applicable in the area where the land to which such right is held is situated and which right is held with the consent of, and adversely to, the registered owner of the land;
- “land development area”** means an erf or the land which is delineated in a land development application submitted in terms of this By-law or any other legislation governing the change in land use and “land area” has a similar meaning;
- “land development officer”** means an official who may consider and determine applications as contemplated in section 35(2) of the Act;
- “land unit”** means any erf, lot or portion of land registered or capable of being registered in the Deeds Registry as an erf, plot or stand or shown on a general plan, and includes every defined portion of a piece of land whether or not it has been recognized, approved or established as such, in terms of any existing or previous law;
- “land use”** means the purpose for which land is used or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purpose;
- “land use management system”** means a land use management system as defined in the Act;
- “land use regulation”** means a regulation made under this By-law or a regulation of a Land Use Scheme which controls zoning and which may authorise the granting of departures and subdivisions;
- “land use restriction”** means a restriction, in terms of zoning or land use zone, on the extent of the improvement to land or an erf;
- “land use right”** in relation to a land unit, means the right to utilize or improve land in accordance with its zoning, development right or land use right including any lawful consent or departure therefrom;
- “land use scheme”** means the land use scheme adopted and approved in terms of Chapter 3 and for the purpose of this By-law include an existing scheme until such time as the existing scheme is replaced by an adopted and approved land use scheme;

- “land use zone”** means that part of the Zoning Scheme, which has been shown on the zoning map by means of a specific notation or bordering or any other distinguishing manner, in order to identify the permitted use of the land or erf;
- “layout plan”** means a plan showing the relative location of erven, public places and roads, on land intended for development, subdivision or consolidation, and purposes for which the erven are intended to be used;
- “Member of the Executive Council”** means the Member of the Executive Council responsible for local government in the Province;
- “municipal area”** means the area of jurisdiction of the Nelson Mandela Bay Metropolitan Municipality as demarcated in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- “Municipal Manager”** means the person appointed as the Municipal Manager of the Nelson Mandela Bay Metropolitan Municipality in terms of section 54A of the Municipal Systems Act and includes any person acting in that position or to whom authority has been delegated;
- “Municipal Planning Tribunal”** means the Nelson Mandela Bay Metropolitan Municipality Municipal Planning Tribunal established in terms of section 35;
- “municipality”** means the Nelson Mandela Bay Metropolitan Municipality, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and where the context so requires includes any political structure, political office bearer, councillor, duly authorised agent, any employee or the Tribunal acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent, employee or Tribunal;
- “objector”** means a person who has lodged an objection with the Municipality to a draft municipal spatial development framework, draft land use scheme or a land development and land use application;
- “open space”**, in relation to a land area, means land set aside or to be set aside for the use by a community as a recreation area, irrespective of the ownership of such land;
- “overlay zone”** means a mapped overlay superimposed on one or more established zoning areas which may be used to impose supplemental restrictions on uses in these areas or permit uses otherwise disallowed;
- “owner”** means the person registered in a deeds registry as the owner of land or who is the beneficial owner in law;
- “Premier”** means the Premier of the Province of Eastern Cape;
- “previous planning legislation”** means any planning legislation that is repealed by the Act or the provincial legislation;
- “provincial legislation”** means legislation contemplated in section 10 of the Act promulgated by the Province;
- “Province”** means the Province of Eastern Cape referred to in section 103 of the Constitution;
- “public place”** means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram which is for use by the general public and is owned by or vests in the ownership of a Municipality, and includes a public open space and a servitude for any similar purpose in favour of the general public;
- “register”** means the register maintained by the municipality in which is recorded all rezoning, departure, consent uses, environmental management plans, site development plans and conditions relating to use rights or the development and management of special zones;
- “registrar of the appeal authority”** means the municipal manager of a municipality and “registrar” has a corresponding meaning;

- “Regulations”** means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters R239 promulgated in GG 8594 dated 23 March 2015;
- “restrictive condition”** means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;
- “removal of restrictive condition”** means an application for alteration, removal or suspension of a condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;
- “rezoning”** – means the alteration of a zoning scheme in terms of ‘Section 28 of the Act’ in order to effect a change of zoning in relation to a particular land unit;
- “sectional Title”** means land or buildings which have been divided into sections of private as well as common ownership in terms of the Sectional Titles Act, Act 95 of 1986;
- “service provider”** means a person lawfully appointed by a municipality or other organ of state to carry out, manage or implement any service, work or function on behalf of or by the direction of such municipality or organ of state;
- “servitude”** means a servitude registered against a title deed of land;
- “site development plan”** means a plan on an acceptable scale, which reflects full details of the intended development, including the relative location of existing and future buildings and structures, the location of engineering services, access to the land, parking, existing developments and features that will be retained, areas for landscaping and any other required information or details;
- “spatial development framework”** means the Nelson Mandela Bay Metropolitan Municipality Municipal Spatial Development Framework;
- “special use”** means a use which is such, or in respect of which the development parameters or land use regulations are such, that provision is not made therefore in the land use scheme regulations and it is not otherwise provided for in the applicable land use scheme;
- “statement of conditions”** means conditions imposed on a developer in the process of deciding on an application for land development and **conditions of establishment** has a corresponding meaning;
- “subdivide”** in relation to land, means to subdivide the land whether by survey, the allocation, with a view to the separate registration of land units, of undivided portions thereof in any manner or the preparation thereof for such subdivision;
- “subdivision”** means the creation of two or more erven or land units, capable of being registered separately in the Deeds Registry;
- “the Act”** means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 and any subsidiary legislation or other legal instruments issued in terms thereof;
- “temporary use”** means a land use right granted on a temporary basis in terms of an approved Land Use Scheme;
- “title deed”** means a title deed as defined in the Act;
- “township”** means an area of land subdivided into erven, and may include public places and roads and which is indicated as a township on a general plan;
- “traditional use”** means a traditional use recognised in terms of Section 3 of the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act 4 of 2005);
- “zone”** means a zone as defined in the Act;
- “zoning”** when used as a noun, means a category of directions regulating the development of land and setting out the purpose for which land may be used and the land use development parameters applicable in respect of the said category of directions, as determined by a Land Use Scheme; and
- “zoning map”** means an approved map or maps showing the erven within the relevant municipality’s area of jurisdiction and applicable land use zoning.

2. Application of By-law

- (1) This By-law applies to all land within the geographical area of the Municipality, including land owned by the state.
- (2) This By-law binds every owner and their successor-in-title and every user of land, including the state.

3. Conflict of laws

- (1) The provisions of the By-law is subject to the relevant provisions of the Act and the provincial legislation.
- (2) When considering an apparent conflict between this By-law and another law, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.
- (3) Where a provision of this By-law is in conflict with a provision of the Act or provincial legislation, the Municipality must institute the conflict resolution measures provided for in the Act or in provincial legislation, or in the absence of such measures, the measures provided for in the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005); to resolve the conflict and until such time as the conflict is resolved, the provisions of this By-law shall prevail.
- (4) Where a provision of the land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.
- (5) Where there is a conflict between this By-law and another By-law of the Municipality, this By-Law prevails over the affected provision of the other By-law in respect of any municipal planning matter.

CHAPTER 2
MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

4. Municipal spatial development framework

- (1) The Municipality must draft a municipal spatial development framework in accordance with the provisions of sections 20 and 21 of the Act read with sections 23 to 35 of the Municipal Systems Act.
- (2) The municipal spatial development framework does not confer or take away land use rights but guides and informs decisions to be made by the Municipality relating to land development.
- (3) The provisions of this Chapter apply, with the necessary change, to the review or amendment of a municipal spatial development framework.

5. Contents of municipal spatial development framework

- (1) The spatial development framework must provide for the matters contemplated in section 21 of the Act, section 26 of the Municipal Systems Act and provincial legislation, if any, and the Municipality may for purposes of reaching its constitutional objectives include any matter which it may deem necessary for municipal planning.
- (2) Over and above the matters required in terms of subsection (1), the Municipality may determine any further plans, policies and instruments by virtue of which the municipal spatial development framework must be applied, interpreted and implemented.
- (3) The spatial development framework must make provision for transitional arrangements with regard to the manner in which the municipal spatial development framework is to be implemented by the Municipality.

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

The Municipality, when it intends to prepare, amend or review its municipal spatial development framework-

- (a) may convene an intergovernmental steering committee and must convene a project committee in accordance with section 7;
- (b) must publish a notice in two of the official languages of the Municipality of its intention to prepare, amend or review the municipal spatial development framework and the process to be followed in accordance with section 28(3) of the Municipal Systems Act in a newspaper circulating in the area concerned;
- (c) must inform the Member of the Executive Council in writing of -
 - (i) its intention to prepare, amend or review the municipal spatial development framework;
 - (ii) the process that will be followed in the drafting or amendment of the municipal spatial development framework including the process for public participation; and
- (d) must register relevant stakeholders who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process to be followed.

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

- (1) The purpose of the intergovernmental steering committee contemplated in section 6(a) is to co-ordinate the applicable contributions into the municipal spatial development framework and to-
 - (a) provide technical knowledge and expertise;
 - (b) provide input on outstanding information that is required to draft the municipal spatial development framework or an amendment or review thereof;
 - (c) communicate any current or planned projects that have an impact on the municipal area;
 - (d) provide information on the locality of projects and budgetary allocations; and
 - (e) provide written comment to the project committee at each of various phases of the process.
- (2) The Municipality must, before commencement of the preparation, amendment or review of the municipal spatial development framework, in writing, invite nominations for representatives to serve on the intergovernmental steering committee from—
 - (a) departments in the national, provincial and local sphere of government, other organs of state, community representatives, engineering services providers, traditional councils; and
 - (b) any other body or person that may assist in providing information and technical advice on the content of the municipal spatial development framework.
- (3) The purpose of the project committee contemplated in section 6(a) is to –
 - (a) prepare, amend or review the municipal spatial development framework for adoption by the Council;
 - (b) provide technical knowledge and expertise;
 - (c) monitor progress and ensure that the drafting municipal spatial development framework or amendment of the municipal spatial

- development framework is progressing according to the approved process plan;
- (d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;
 - (e) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and organs of state as contemplated in section 24(1) of the Municipal Systems Act;
 - (f) facilitate the integration of other sector plans into the municipal spatial development framework;
 - (g) oversee the incorporation of amendments to the draft municipal spatial development framework or draft amendment or review of the municipal spatial development framework to address comments obtained during the process of drafting thereof;
 - (h) if the Municipality decides to establish an intergovernmental steering committee –
 - (i) assist the Municipality in ensuring that the intergovernmental steering committee is established and that timeframes are adhered to; and
 - (ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- (4) The project committee may consist of, but is not limited to –
- (a) the Municipal Manager or his delegate;
 - (b) municipal employees from the relevant municipal departments; and
 - (c) councillors nominated by Council.

8. Preparation, amendment or review of municipal spatial development framework

- (1) The project committee must compile a status quo document setting out an assessment of existing levels of development and development challenges in the municipal area and must submit it to the intergovernmental steering committee for comment.
- (2) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the status quo document and submit it to the Council for adoption.
- (3) The project committee must prepare a first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and must submit it to the intergovernmental steering committee for comment.
- (4) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework and submit it to the Council, together with the report referred to in subsection (5), to approve the publication of a notice referred to in section 6(b) that the draft municipal spatial development framework or an amendment or review thereof is available for public comment.
- (5) The project committee must submit a written report as contemplated in subsection (4) which must at least –
 - (a) indicate the rationale in the approach to the drafting of the municipal spatial development framework;
 - (b) summarise the process of drafting the municipal spatial development framework;
 - (c) summarise the consultation process to be followed with reference to section 154 of this By-law;

- (d) indicate the involvement of the intergovernmental steering committee, if convened by the Municipality;
 - (e) indicate the departments that were engaged in the drafting of the municipal spatial development framework;
 - (f) the alignment with the national and provincial spatial development frameworks;
 - (g) any sector plans that may have an impact on the municipal spatial development framework;
 - (h) indicate how the municipal spatial development framework complies with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Council; and
 - (i) recommend the adoption of the municipal spatial development framework for public participation as the draft municipal spatial development framework for the Municipality, in terms of the relevant legislation and this By-law.
- (6) After consideration of the comments and representations, as a result of the publication contemplated in subsection (4), the project committee must compile a final municipal spatial development framework or final amendment or review of the municipal spatial development framework for adoption by the Council.
- (7) If the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, as contemplated in subsection (6), is materially different to what was published in terms of subsection (4), the Municipality must follow a further consultation and public participation process before it is adopted by the Council.
- (8) The Municipal spatial development framework must be reviewed at least once every five years.
- (9) If no intergovernmental steering committee is convened by the Municipality, the project committee submits the draft and final municipal spatial development framework or amendment or review thereof directly to the Member of the Executive Council, provided that it had been approved by Council.

9. Decision on the adoption or amendment of the municipal spatial development Framework

The Municipal Council may —

- (a) accept the report envisaged in section 8(5) and adopt the draft municipal spatial development framework; or
- (b) refer the report on the adoption of the draft municipal spatial development framework or draft amendment back for specified information or consultation or both.

10. Publication of the adopted or amended municipal spatial development framework

- (1) Within 10 days of the Municipal Council adopting the municipal spatial development framework or an amendment thereof, the Municipal Manager or his delegate must submit the following to the Provincial Member of the Executive Council responsible for local government —
- (a) a written notice of the decision to adopt or amend the municipal spatial development framework;
 - (b) the adopted or amended municipal spatial development framework;
- (2) Within 14 days of the Municipal Council adopting the municipal spatial development framework or an amendment thereof, the Municipal Manager must —
- (a) publish the adopted or amended municipal spatial development framework in the Provincial Gazette; and

- (b) give notice to the public and publicise a summary in accordance with section 25(4) of the Municipal Systems Act.

11. Local spatial development framework

- (1) The Municipality must adopt a local spatial development framework for a specific geographical area of a portion of the municipal area.
- (2) The purpose of a local spatial development framework is to:
 - (a) provide detailed spatial planning guidelines or further plans for a specific geographic area or parts of specific geographical areas and may include precinct plans;
 - (b) provide more detail in respect of a proposal provided for in the municipal spatial development framework or necessary to give effect to the municipal spatial development framework and or its integrated development plan and other relevant sector plans;
 - (c) address specific land use planning needs of a specified geographic area;
 - (d) provide detailed policy and development parameters for land use planning;
 - (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; or
 - (f) guide decision making on land development applications;
 - (g) or any other relevant provision that will give effect to its duty to manage municipal planning in the context of its constitutional obligations.

12. Compilation, amendment or review of local spatial development framework

- (1) If the Municipality intends to compile, amend or review a local spatial development framework, the Municipality must —
 - (a) specify the geographic area concerned; and
 - (b) approve the process plan, including the public participation process to be followed for the compilation, amendment, review or adoption of the local spatial development framework.
- (2) The municipality must establish a steering committee as contemplated in section 7(4).
- (3) Upon completion of the consultation process and the adopted process plan, the project committee must submit a written report to which must at least -
 - (a) indicate the rationale in the approach to the drafting of the local spatial development framework;
 - (b) summarise the process of drafting the local spatial development framework;
 - (c) summarise the consultation process to be followed;
 - (e) indicate the municipal departments that were engaged in the drafting of the local spatial development framework;
 - (f) the alignment with the municipal spatial development framework;
 - (g) any sector plans that may have an impact on the local spatial development framework;
 - (h) indicate how the local spatial development framework complies with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Council; and
 - (i) recommend the adoption of the local spatial development framework for public participation as the draft local spatial development framework for the geographic area concerned, in terms of the relevant legislation and this By-law.

13. Decision on the adoption or amendment of the local spatial development Framework-

The Municipal Council may —

- (a) accept the report envisaged in section 12(3) and adopt the draft local spatial development framework ; or
- (b) refer the report on the adoption of the draft local spatial development framework or draft amendment back for further specified information or consultation or both.

14. Publication of the adopted or amended local spatial development framework

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

15. Effect of local spatial development framework

- (1) A local spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in **section 10(2)**.
- (2) A local spatial development framework guides and informs decisions made by the Municipality relating to land development as contemplated in section 22(1) of the Act, but it does not confer or take away rights.

16. Deviation from municipal spatial development framework or a local spatial development framework

- (1) For purposes of section 22(2) of the Act, site specific circumstances include –
 - (a) a departure, deviation or amendment that does not change the desired outcomes and objectives of a municipal and local spatial development framework, if applicable; or
 - (b) a unique circumstance pertaining to a discovery of national or provincial importance that results in an obligation in terms of any applicable legislation to protect or conserve such discovery.
- (2) If the effect of an approval of an application will be a material change of the municipal spatial development framework or local spatial development framework, the Municipality may amend the municipal spatial development framework or local spatial development framework in terms of the provisions of this Chapter, and must approve the amended spatial development framework, or local spatial development framework prior to taking a decision which constitutes a deviation from the municipal spatial development framework or local spatial development framework.
- (3) For purposes of this section, “site” means a spatially defined area that is impacted by the decision, including neighbouring land.

17. Record of and access to municipal spatial development framework

- (1) The Municipality must keep, maintain and make accessible to the public, including on the Municipality’s website, the approved municipal or local spatial development framework and or any component thereof applicable within the jurisdiction of the Municipality.
- (2) Should anybody or person request a hard copy of the municipal or local spatial development framework the Municipality must provide on payment by such body or person of the prescribed fee, a copy to them of the approved municipal spatial development framework or any component thereof.

CHAPTER 3
LAND USE SCHEME

18. Applicability of Act

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

19. Purpose of land use scheme

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

- (a) harmonious and compatible land use patterns;
- (b) aesthetic considerations;
- (c) sustainable development and densification; and
- (d) the accommodation of cultural customs and practices of traditional communities in land use management.

20. General matters pertaining to land use scheme

- (1) In order to comply with section 24(1) of the Act, the Municipality must -
 - (a) develop a draft land use scheme as contemplated in section 21;
 - (b) obtain Council approval for publication of the draft land use scheme as contemplated in section 22;
 - (c) embark on the necessary public participation process as contemplated in section 154;
 - (d) incorporate relevant comments received during the public participation process as contemplated in section 154;
 - (e) prepare the land use scheme as contemplated in section 21;
 - (f) submit the land use scheme to the Council for approval and adoption as contemplated in section 22;
 - (g) publish a notice of the adoption and approval of the land use scheme in the Provincial Gazette as contemplated in section 26; and
 - (h) submit the land use scheme to the Member of the Executive Council as contemplated in section 27.
- (2) The Municipality may, on its own initiative or on application, create an overlay zone for land.
- (3) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (4) The land use scheme of the Municipality must take into consideration:
 - (a) the principles of spatial planning;
 - (b) the Integrated Development Plan in terms of the Municipal Systems Act;
 - (c) the Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 2 of this by-law; and
 - (d) Applicable provincial and local legislation.

21. Development of draft land use scheme

- (1) Before the Municipality commences with the development of a draft land use scheme, the Council must take a resolution to develop and prepare a land use scheme, provided that in its resolution the Council must:
 - (a) adopt a process for drafting the land use scheme which complies with the

¹ A land use scheme must give effect to and promote: Economic growth, social inclusion, efficient land development and minimal impact on public health, the environment and natural resources.

- (b) confirm over and above that which is contained in the applicable legislation the public participation to be followed;
 - (c) determine the form and content of the land use scheme;
 - (d) determine the scale and whether it should be available in an electronic media;
 - (e) determine any other relevant issue that will impact on the drafting and final adoption of the land use scheme which will allow for it to be interpreted and or implemented; and
 - (f) confirm the manner in which the land use scheme shall inter alia set out the general provisions for land uses applicable to all land, categories of land use, zoning maps, restrictions, prohibitions and or any other provision that may be relevant to the management of land use, which may or may not require a consent or permission from the Municipality for purposes of the use of land.
- (2) After the resolution is taken by the Council, the department responsible for spatial planning and land use management in the Municipality must develop the draft land use scheme in accordance with the provisions of the Act, provincial legislation and this Chapter.

22. Council approval for publication of draft land use scheme

- (1) Upon completion of the draft land use scheme, the department must submit it to the Council for approval as the draft land use scheme.
- (2) The submission of the draft land use scheme to the Council must be accompanied by a written report from the department and the report must at least –
- (a) indicate the rationale in the approach to the drafting of the land use scheme;
 - (b) summarise the process of drafting the draft land use scheme;
 - (c) summarise the consultation process to be followed with reference to section 154 of this By-law;
 - (d) indicate the departments that were engaged in the drafting of the draft land use scheme;
 - (e) indicate how the draft land use scheme complies with the requirements of relevant national, provincial and local legislation , and relevant mechanism controlling and managing land use rights by the Municipal Council;
 - (f) recommend the approval of the draft land use scheme for public participation in terms of the relevant legislation and this By-law.
- (3) The Council may approve the draft land use scheme and authorise the public participation thereof in terms of this By-law.

23. Incorporation of relevant comments

- (1) After the public participation process outlined in section 154 the department must –
- (a) review and consider all submissions made in writing or during any engagements; and
 - (b) prepare a report including all information they deem relevant, on the submissions made; provided that:
 - (i) for purposes of reviewing and considering all submissions made, the Municipal Manager may elect to hear the submission through an oral hearing process;
 - (ii) all persons and or bodies that made submissions shall be notified of the time, date and place of the hearing as may be determined by the

Municipality not less than 30 days prior to the date determined for the hearing, by means of registered mail;

- (iii) for purposes of the consideration of the submissions made on the land use scheme the Municipality may at any time prior to the submission of the land use scheme to the Council, request further information or elaboration on the submissions made from any person or body.
- (2) The department must for purposes of proper consideration provide comments on the submissions made which comments must form part of the documentation to be submitted to the Council as contemplated in section 8.

24. Preparation of land use scheme

The department must, where required and based on the submissions made during public participation, make final amendments to the draft land use scheme, provided that if such amendments are materially different to what was published in terms of **section 20**, the Municipality must follow a final consultation and public participation process in terms of section 154 of this By-law, before the land use scheme is adopted by the Council.

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

- (1) The department must submit the proposed land use scheme and all relevant supporting documentation to the Council with a recommendation for adoption.
- (2) The Council must consider and adopt the land use scheme.

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

- (1) The Council must, within 60 days of its decision referred to in **section 25**, give notice of its decision to all persons or bodies who gave submissions on the land use scheme, and publish such notice on its website, in the media and the *Provincial Gazette*.
- (2) The date of publication of the notice referred to in subsection (1), in the *Provincial Gazette*, is the date of coming into operation of the land use scheme unless the notice indicates a different date of coming into operation.

27. Submission to Member of Executive Council

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

28. Records

- (1) The Municipality must keep record of the land use rights in relation to each erf or portion of land in hard copy and in electronic media or a data base and such information will be regarded as part of its land use scheme.
- (2) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved land use scheme and any component thereof applicable within the municipal area of the Municipality.
- (3) Should anybody or person request a copy of the approved land use scheme, the Municipality must provide, on payment by such body or person of the prescribed fee, a copy of the approved land use scheme or any component thereof: Provided that in order to provide the said copy it will take officials unreasonably away from their substantive duties such request for a copy can be dealt with in terms of the Promotion of Access to Information Act, 2000.

29. Contents of land use scheme

- (1) The contents of a land use scheme developed and prepared by the Municipality

must include all the essential elements contemplated in Chapter 5 of the Act and provincial legislation and must contain –

- (a) a zoning for all properties within the geographic area of the Municipality in accordance with a category of zoning as contemplated in Annexure 1 of this By-law;
 - (b) land use regulations including specific conditions, limitations, provisions or development parameters relating to the exercising of any land use rights or zoning approved on a property in terms of the approved land use scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;
 - (c) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;
 - (d) servitudes for municipal services and access arrangements for all properties;
 - (e) provisions applicable to all properties relating to storm water;
 - (f) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;
 - (g) zoning maps **as prescribed in Schedule X** that depicts the zoning of every property in the Municipality's geographical area as updated from time to time in line with the land use rights approved or granted or deemed to be approved or granted and transitional arrangements with regard to the manner in which the land use scheme is to be implemented.
- (2) The land use scheme may –
- (a) determine the components of the land use scheme for purposes of it being applied, interpreted and implemented; and
 - (b) include any matter which it deems necessary for municipal planning in terms of the constitutional powers, functions and duties of a municipality.

30. Land use scheme register

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

- (a) Date of application
- (b) Name and contact details of owner
- (c) Type of Application
- (d) Township, farm or allotment name
- (e) Erf or farm number
- (f) Portion/Remainder
- (g) Physical address of property
- (h) Existing Zoning
- (i) Density
- (j) FAR
- (k) Height
- (l) Coverage
- (m) Building Line
- (n) Application type number and date
- (o) Decision (Approved or Not Approved)

31. Replacement and consolidation of amendment scheme

- (1) The Municipality may of its own accord in order to replace or consolidate an

amendment scheme or several amendment schemes, map(s), annexure(s) or schedule(s) of the approved land use scheme, of more than one property, prepare a certified copy of documentation as the Municipality may require, for purposes of replacing or consolidating the said amendment scheme(s), which consolidated or replacement amendment scheme shall from the date of the signing thereof, be in operation; provided that:

- (a) such replacement and consolidation shall not take away any land use rights granted in terms of an approved land use scheme, for purposes of implementation of the land use rights and may include a provision for consolidation of property for purposes of consolidating land use schemes; provided that if a consolidation is required, the Municipality only do so after consultation with the owner(s).
 - (b) after the Municipality has signed and certified a consolidation or replacement amendment scheme, it must publish it in the *Provincial Gazette*.
- (2) Where as a result of a repealed legislation, the demarcation of municipal boundaries or defunct processes it is necessary for certain areas where land use rights are governed through a process, other than a land use scheme; the Municipality may for purposes of including such land use rights into a land use scheme prepare an amendment scheme and incorporate it into the land use scheme.
- (3) The provisions of sections 20 to 28 apply, with the necessary changes, to the review or amendment of an existing land use scheme other than a rezoning or similar application relating to a property or properties or multiple portions thereof, which is dealt with as a land development application.

CHAPTER 4: INSTITUTIONAL STRUCTURE FOR LAND USE MANAGEMENT DECISIONS

Part A: Division of Functions

32. Division of functions between Municipal Planning Tribunal and Authorized Official

- (1) For purposes of section 35(3) of the Act, the following categories of applications defined in section 33 must be considered and determined -
- (a) by the Municipal Planning Tribunal:
 - (i) All category 1 applications; and
 - (ii) All opposed category 2 applications;
 - (b) by the Authorized Official
 - (i) All category 2 applications that are not opposed;
- (2) For the purposes of subsection (1), an opposed application means an application on which negative comments or objections were received from any person during and up to the closing date for public participation.

33. Categorisation of applications for purposes of section 35(3) of Act

- (1) The categories of land development and land use applications for the Municipality, as contemplated in section 35(3) of the Act, are as follows -
- (a) Category 1 applications; and
 - (b) Category 2 applications.
- (2) Category 1 applications are applications for -
- (a) the amendment of an existing town planning scheme or land use scheme by the rezoning of land which is not in compliance within a Spatial

- Development Framework or Local Spatial Development Framework area, if applicable;
- (b) subject to subsection (3), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
 - (c) the subdivision of any land into more than 20 units;
 - (d) permanent closure of any public place;
 - (e) any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme;
 - (f) instances where the Municipality acting on its own accord wishes to remove, amend a restrictive or obsolete condition, servitude or reservation registered against the title deed of a property or properties which may also arise out of a condition of approval of a land use or land development application or any other legislation;
 - (g) any consent or approval provided for in a provincial law;
 - (h) any land development on communal land that will have a high impact on the traditional community concerned; and
 - (i) any combination of the above applications submitted as one application.
- (3) Category 2 applications are applications for -
- (a) the subdivision of land into less than 20 units;
 - (b) the consent of the municipality for any land use purpose or departure or variance in terms of a land use scheme or existing scheme which does not constitute a land development application;
 - (c) the removal, amendment or suspension of a restrictive title condition relating to building lines or density of residential development on a specific erf where the building lines or residential density is regulated by a land use scheme in operation; and
 - (d) the amendment of an existing town planning scheme or land use scheme by the rezoning of land which is within a Municipal or Local spatial development framework area or relevant Council Policy, if applicable;
 - (e) the change to the land use purpose in the event of communal land;
 - (f) temporary use;
 - (g) any combination of the above applications submitted as one application;
 - (h) site development applications; and
 - (i) consolidation applications.
- (4) If a single application consists of a combination of applications from both Category 1 and Category 2 applications, that application is deemed to be a Category 1 application.

Part B : Municipal Planning Tribunal

34. Municipal assessment for the establishment of Municipal Planning Tribunal

- (1) The decision of a municipality to –
 - (a) establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act; or
 - (b) establish a Municipal Planning Tribunal for its municipal area, must be preceded by an assessment of the factors referred to in subsection (2).
- (2) The assessment referred to in subsection (1) includes, amongst others, the following factors -
 - (a) the impact of the Act on the municipality's financial, administrative and professional capacity;
 - (b) the ability of the municipality to effectively implement the provisions of the

- Act;
- (c) the average number of applications dealt with by the municipality annually in terms of existing planning legislation; and
 - (d) the development pressures in the municipal area.

Part C: Establishment of Municipal Planning Tribunal for Municipal area

35. Establishment of Municipal Planning Tribunal for municipal area

- (1) Subject to the provisions of this Chapter, the Municipality may by council resolution establish the Nelson Mandela Bay Metropolitan Municipal Planning Tribunal for the municipal area of Nelson Mandela Bay, in compliance with section 35 of the Act.
- (2) The provisions of subsection (1) do not apply if, after the assessment contemplated in section 34, the municipality decides to establish a joint Municipal Planning Tribunal or a district Municipal Planning Tribunal.

36. Composition of Municipal Planning Tribunal for municipal area

The Municipal Planning Tribunal consists of at least 10 members made up as follows:

- (a) Seven officials in the full-time service of the Municipality with at least five years' experience in the field in which they are performing their services, comprising:
 - (i) two persons registered as a professional planner with the South African Council for the Planning Profession in terms of the Planning Profession Act, 2002 (Act No. 36 of 2002) with a minimum of 5 years of experience in their field;
 - (ii) a person registered as a professional with the Engineering Council of South Africa in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000); with a minimum of 5 years of experience in their field
 - (iii) one environmental management specialist with a minimum of 5 years of experience who is registered with a voluntary association;
 - (iv) one registered Electrical Engineer with a minimum of 5 years of experience with the Engineering Council of South Africa in terms of the Engineering Profession Act, 2000 (Act No. 46 of 2000);
 - (v) an economist or economic development specialist with a minimum of 5 years' experience in their field;
 - (vi) the Chairperson is appointed by Council by resolution of the Nelson Mandela Bay Metropolitan Municipality; and
 - (vii) the Deputy Chairperson is elected from the members contemplated in subsections 1(a)(i) – (v) as per Council Resolution of the Nelson Mandela Bay Metropolitan Municipality.
- (b) Three persons appointed by Council who are not municipal officials and who have knowledge and at least 5 years' experience in spatial planning, land use management and land development or the law related thereto.

37. Nomination procedure

- (1) The Municipality must -
 - (a) in the case of the first appointment of members to the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the Regulations; and
 - (b) in the case of the subsequent appointment of members to the Municipal Planning Tribunal, 90 days before the expiry of the term of office of the members serving on the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of the Regulations.
- (2) The invitation to the organs of state and non-governmental organizations

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

- (3) The call for nominations to persons in their individual capacity contemplated in regulation 3(2)(b) of the Regulations must be in the form contemplated in Schedule 2 of this By-law and –
- (a) must be published in one local newspaper that is circulated in the municipal area of the Municipality in two languages commonly spoken in the area;
 - (b) may be submitted to the various professional bodies which registers persons referred to in section 36(a) with a request to distribute the call for nominations to their members and to advertise it on their respective websites;
 - (c) may advertise the call for nominations on the municipal website; and
 - (d) utilise any other method and media it deems necessary to advertise the call for nominations.

38. Submission of nomination

- (1) The nomination must be in writing and be addressed to the Municipal Manager.
- (2) The nomination must consist of –
 - (a) the completed declaration contained in the form contemplated in Schedule 2 and all pertinent information must be provided within the space provided on the form;
 - (b) the completed declaration of interest form contemplated in Schedule 2;
 - (c) the motivation by the nominator contemplated in subsection (3)(a); and
 - (d) the summarized curriculum vitae of the nominee contemplated in subsection (3)(b).
- (3) In addition to the requirements for the call for nominations contemplated in regulation 3(6) of the Regulations, the nomination must request –
 - (a) a motivation by the nominator for the appointment of the nominee to the Municipal Planning Tribunal which motivation must not be less than 50 words or more than 250 words; and
 - (b) a summarized curriculum vitae of the nominee not exceeding two A4 pages.

39. Initial screening of nomination by Municipality

- (1) After the expiry date for nominations the Municipality must screen all of the nominations received by it to determine whether the nominations comply with the provisions of section 38 of the Act.
- (2) The nominations that are incomplete or do not comply with the provisions of section 38 of the Act must be rejected by the Municipality.
- (3) Every nomination that is complete and that complies with the provisions of section 38 of the Act must be subjected to verification by the Municipality.
- (4) If, after the verification of the information by the Municipality, the nominee is ineligible for appointment due to the fact that he or she –
 - (a) was not duly nominated;
 - (b) is disqualified from appointment as contemplated in section 38 of the Act;
 - (c) does not possess the knowledge or experience as required in terms of section 36; or
 - (d) is not registered with the professional councils or voluntary bodies contemplated in section 36(a), if applicable, the nomination must be rejected and may not be considered by the evaluation panel contemplated in section 36.
- (5) Every nomination that has been verified by the Municipality and the nominee

found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in section 40.

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

40. Evaluation panel

- (1) The evaluation panel contemplated in Regulation 3(1)(g) read with regulation 3(11) of the Regulations, consists of five officials in the employ of the Municipality appointed by the Municipal Manager.
- (2) The evaluation panel must evaluate all nominations within 30 days of receipt of the verified nominations and must submit a report with their recommendations to the Council for consideration.

41. Appointment of members to Municipal Planning Tribunal by Council

- (1) Upon receipt of the report, the Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Municipal Planning Tribunal.
- (2) After appointment of the members to the Municipal Planning Tribunal, the Council must designate a chairperson and a deputy chairperson from the members so appointed.
- (3) The Municipal Manager must, in writing, notify the members of their appointment to the Municipal Planning Tribunal and notify the two members who are designated as chairperson and deputy chairperson that they have been appointed as such.
- (4) The Municipal Manager must, when he or she publishes the notice of the commencement date of the operations of the first Municipal Planning Tribunal contemplated in **section 46**, publish the names of the members of the Municipal Planning Tribunal and their term of office in the same notice.

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

- (1) A member of the Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of five years, which is renewable once for a further period of five years.
- (2) The office of a member becomes vacant if that member -
 - (a) is absent from two consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;
 - (b) tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal;
 - (c) is removed from the Municipal Planning Tribunal under subsection (3); or
 - (d) dies.
- (3) The Council may remove a member of the Municipal Planning Tribunal if -
 - (a) sufficient reasons exist for his or her removal;
 - (b) a member contravenes the code of conduct contemplated in Schedule 4;
 - (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act.after giving the member an opportunity to be heard.
- (4) An official of a municipality contemplated in section 36(a) who serves on the Municipal Planning Tribunal –
 - (a) may only serve as member of the Municipal Planning Tribunal for as long as he or she is in the full-time employ of the municipality;
 - (b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her

- membership on the Municipal Planning Tribunal;
- (c) who is found guilty of misconduct under the collective agreement applicable to employees of the Municipality shall immediately be disqualified from serving on the Municipal Planning Tribunal.
- (5) A person appointed by a municipality in terms of section 36(b) to the Municipal Planning Tribunal -
 - (a) is not an employee on the staff establishment of that municipality;
 - (b) if that person is an employee of an organ of state as contemplated in regulation 3(2)(a) of the Regulations, is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
 - (c) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her;
 - (d) sits at such meetings of the Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
 - (e) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on as determined annually by the municipality in accordance with the Act;
 - (f) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, any performance bonus, medical scheme contribution by the municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.
- (6) All members of the Municipal Planning Tribunal shall sign the Code of Conduct contain in Schedule 4 before taking up a seat on the Municipal Planning Tribunal.
- (7) All members serving on the Municipal Planning Tribunal must adhere to the Code of Ethics adopted and applied by the Municipality and shall conduct themselves in a manner that will not bring the Municipality into disrepute.
- (8) The members of the Municipal Planning Tribunal in the execution of their duties shall comply with the provisions of the Act, provincial legislation, this By-law and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

43. Vacancy

- (1) A vacancy on the Municipal Planning Tribunal must be filled by the Council in terms of section 42(2) and such position does not have to be advertised.
- (2) A member who is appointed by virtue of subsection (1) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.

44. Proceedings of Municipal Planning Tribunal for municipal area

- (1) The Municipal Planning Tribunal must operate in accordance with the operational procedures determined by the Municipality.
- (2) A quorum for a meeting of a full Municipal Planning Tribunal is a majority of 6 members, including the Chairperson appointed for that decision meeting and a quorum for a sub-committee of the Municipal Planning Tribunal will be 3 members as stipulated in Section 40 (1) of the Act
- (3) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members present, and in the event of an equality of votes on any matter, the person presiding at the meeting will have a deciding vote in addition to his or her deliberative vote as a member of the Municipal Planning Tribunal.
- (4) Meetings of the Municipal Planning Tribunal must be held at the times and places

determined by the chairperson of the tribunal in accordance with its operational procedures, but meetings must be held at least once per month if there are applications to consider.

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

45. Tribunal of record

- (1) The Municipal Planning Tribunal is a Tribunal of record and must record all proceedings, but is not obliged to provide the in-committee discussions to any member of the public or any person or body.
- (2) The Municipality must make the record of the Municipal Planning Tribunal available to any persons upon payment of any fees prescribed in terms of the Municipal Systems Act.

46. Commencement date of operations of Municipal Planning Tribunal for municipal area

- (1) The Municipal Manager must within 30 days of the first appointment of members to the Municipal Planning Tribunal -
- (a) obtain written confirmation from the Council that it is satisfied that the Municipal Planning Tribunal is in a position to commence its operations; and
- (b) after receipt of the confirmation referred to in paragraph (a) publish a notice in the *Provincial Gazette* of the date that the Municipal Planning Tribunal will commence with its operation together with the information contemplated in section 414).
- (2) The Municipal Planning Tribunal may only commence its operations after publication of the notice contemplated in subsection (1).

Part D: Decisions of Municipal Planning Tribunal

47. General criteria for consideration and determination of application by Municipal Planning Tribunal.

When the Municipal Planning Tribunal considers an application it must;

- (a) Take cognizance of the Development Principles and Norms and Standards set out in Chapter 2 of the Act;
- (b) Not make a decision which is inconsistent with a Municipal Spatial Development Framework, as contemplated by Section 22 (1) of the Act;
- (c) in terms of Section 42 (1) (c) of the Act, take into account-
- (i) the public interest;
- (ii) the constitutional transformation imperatives and the related duties of the State;
- (iii) the facts and circumstances relevant to the application;
- (iv) the respective rights and obligations of all those affected;
- (v) the state and impact of engineering services, social infrastructure and open space requirements; and
- (vi) any factors that may be prescribed, including timeframes for making decisions.
- (d) have regard to the following:
- (i) the application submitted in terms of this By-law;
- (ii) the procedure followed in processing the application;
- (iii) the desirability of the proposed utilisation of land and any guidelines issued by the member of the Executive Council regarding proposed land uses;
- (iv) the comments in response to the notice of the application and the

- comments received from organs of state and internal departments;
- (v) the response by the applicant to the comments referred to in paragraph (d);
- (vi) investigations carried out in terms of other laws which are relevant to the consideration of the application;
- (vii) a written assessment by an NMBMM official registered as a professional planner in terms of the Planning Profession Act, 2002, recommending the full support, partial support or refusal in respect of the following applications:
 - (aa) a rezoning;
 - (bb) a subdivision of more than 20 cadastral units;
 - (cc) a removal, suspension or amendment of a restrictive condition, if it relates to a change of land use.
 - (dd) an amendment, deletion or additional conditions in respect of an existing approval, listed in this paragraph;
 - (ee) an approval of an overlay zone as provided in the land use scheme;
 - (ff) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
 - (gg) a determination of a zoning as contemplated in section 152;
 - (hh) a closure of a public place or part thereof;
- (viii) the integrated development plan and municipal spatial development framework;
- (ix) the applicable local spatial development frameworks adopted by the Municipality;
- (x) the applicable structure plans;
- (xi) the applicable policies of the Municipality that guide decision-making;
- (xii) the provincial spatial development framework;
- (xii) where applicable, the regional spatial development framework;
- (xiv) the policies, principles, planning and development norms and criteria set by national and provincial government;
- (xv) the matters referred to in section 42 of the Act;
- (xvi) the relevant provisions of the land use scheme.

48. Conditions of approval

- (1) When the Municipal Planning Tribunal approves an application subject to conditions, the conditions must be reasonable and must be relevant to the approval of the proposed utilization of land.
- (2) Conditions imposed in accordance with subsection (1) may relate, but are not limited to—
 - (a) the provision of engineering services and infrastructure;
 - (b) the cession of land or the payment of money;
 - (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (d) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;
 - (e) settlement restructuring;
 - (f) agricultural or heritage resource conservation;
 - (g) biodiversity conservation and management;
 - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (i) energy efficiency;
 - (j) requirements aimed at addressing climate change;
 - (k) the establishment of an owners' association in respect of the approval of a subdivision;

- (l) the provision of land needed by other organs of state;
 - (m) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality or the registration of public places in the name of the municipality, and the transfer of ownership to the municipality of land needed for other public purposes;
 - (n) the implementation of a subdivision in phases;
 - (o) requirements of other organs of state.
 - (p) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
 - (q) agreements to be entered into in respect of certain conditions;
 - (r) the phasing of a development, including lapsing clauses relating to such phasing;
 - (s) the delimitation of development parameters or land uses that are set for a particular zoning;
 - (t) particular zoning;
 - (u) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;
 - (v) the setting of dates by which particular conditions must be met;
 - (x) requirements relating to engineering services as contemplated in Chapter 7;
 - (y) requirements for an occasional use that must specifically include –
 - (i) parking and the number of ablution facilities required;
 - (ii) maximum duration or occurrence of the occasional use; and
 - (iii) parameters relating to a consent use in terms of the land use scheme.
- (3) If a Municipal Planning Tribunal imposes a condition contemplated in subsection (2)(a), an engineering services agreement must be concluded between the municipality and the owner of the land concerned before the construction of infrastructure commences on the land.
- (4) A condition contemplated in subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefore arising from the approval, as determined by the municipality in accordance with norms and standards, as may be prescribed.
- (5) Municipal public expenditure contemplated in subsection (3) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—
- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
 - (b) conservation purposes;
 - (c) energy conservation;
 - (d) climate change; or
 - (e) engineering services.
- (6) Except for land needed for public places or internal engineering services, any additional land required by the municipality or other organs of state arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.
- (7) A Municipal Planning Tribunal may not approve a land development or land use application subject to a condition that approval in terms of other legislation is required.
- (8) Conditions which require a standard to be met must specifically refer to an approved or published standard.
- (9) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.

- (10) If the Municipal Planning Tribunal approves a land development or use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.
- (11) The Municipal Planning Tribunal may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.

Part G: Administrative Arrangements

49. Administrator for Municipal Planning Tribunal for municipal area

- (1) The Municipal Manager may designate an administrator and administrative support staff who are employees of the Municipality as administrator and administrative support staff for the Municipal Planning Tribunal.
- (2) The persons referred to in subsection (1) must—
 - (a) liaise with the relevant Municipal Planning Tribunal members and the parties in relation to any application or other proceedings filed with the tribunal;
 - (b) maintain a diary of hearings of the tribunal;
 - (c) allocate meeting dates and application numbers to applications;
 - (d) arrange the attendance of meetings by members of the tribunal;
 - (e) arrange venues for tribunal meetings;
 - (f) administer the proceedings of the tribunal;
 - (g) perform the administrative functions in connection with the proceedings of the tribunal;
 - (h) ensure the efficient administration of the proceedings of the tribunal, in accordance with the directions of the chairperson of the tribunal;
 - (i) arrange the affairs of the tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
 - (j) notify parties of orders and directives given by the tribunal;
 - (k) keep a record of all applications submitted to the tribunal and the outcome of each, including—
 - (i) decisions of the tribunal;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the tribunal; and
 - (l) keep records by any means as the tribunal may deem expedient.

50. Opportunity to make submissions and inspect documents

The registrar of the Municipal Planning Tribunal must ensure that every party to a proceeding before the Municipal Planning Tribunal is given an opportunity to present his or her case and in particular, to inspect documents to which the tribunal proposes to consider in reaching a decision in the proceeding and to make submissions in relation to those documents.

Part C: Authorised Official

51. Jurisdiction of the Authorised Official

- (1) Authorised official for the purposes of this Part means an official who may consider and determine applications as contemplated in Section 35(2) of the Act.
- (2) The Authorised Official must consider and determine such applications designated by the Municipality.
- (3) The Authorised Official will be appointed by Council.

52. General criteria for consideration and determination of application by Authorised Official

When the Authorised Official considers and determines an application he or she must have regard for the same considerations provided for in **Section 44(1) to (4)**.

53. Conditions of approval

- (1) When the Authorised Official approves an application subject to conditions, the conditions must be reasonable and it must be relevant to the approval of the proposed utilization of land.
- (2) Conditions imposed in accordance with **Section 60** may include but not limited to conditions stipulated **in Section 48(2) to (11)**.

54. Opportunity to make submissions and inspect documents

The Administrator to the Municipal Planning Tribunal must ensure that every party to a proceeding before the tribunal is given an opportunity to present his or her case and in particular, to inspect documents to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

CHAPTER 5
DEVELOPMENT MANAGEMENT

Part A: Applications Required

55. Applications required

- (1) No person may commence with, carry on or cause the commencement with or carrying on of land development without the approval of the Municipality.
- (2) No person may commence with, carry on or cause the commencement with or carrying on of land development which is not permitted in the land use scheme.
- (3) When an applicant or owner exercises a use right granted in terms of an approval he or she must comply with the conditions of the approval and the applicable provisions of the land use scheme.
- (4) In addition to the provisions of this Chapter, the provisions of Chapter 6 apply to any application submitted to the Municipality in terms of this Chapter.

56. Eligibility of application submissions

- (1) A development application may only be submitted by—
 - (a) an owner, including the State, of the land concerned;
 - (b) a person acting as the duly authorised agent of the owner;
 - (c) a person to whom the land concerned has been made available for development in writing by an organ of state or such person's duly authorised agent; or
 - (d) a service provider responsible for the provision of infrastructure, utilities or other related services.
- (2) A Category 1 application submitted in terms of subsection (1)(b) may only be submitted by a planner that is registered in terms of the Planning Profession Act 36 of 2002.

Part B: Subdivision

57. Application for subdivision

- (1) No person may subdivide land without the approval of the Municipality, unless the subdivision is exempted under section 68.
- (2) An applicant who wishes to subdivide land must apply to the Municipality for the subdivision of land in accordance with Chapter 6 and **Section 64**.
- (3) The Municipality must give notice of the application in the media as contemplated in **section 92**.
- (4) The Municipality must, in approving an application for subdivision, set out:
 - (a) the conditions of approval in a statement of conditions;
 - (b) the statement of conditions must substantially be in accordance with this By-law.
- (5) The statement of conditions, read with directives that may be issued by the Registrar of Deeds, must contain the following:
 - (a) Specify those conditions that must be complied with prior to registration by the Registrar of Deeds, including conditions relating to the installation of engineering services;
 - (b) the conditions that must remain applicable to erven created by the subdivision;
 - (c) conditions of title to be incorporated into the title deeds of erven created by the subdivision;
 - (d) third party conditions as required by the Registrar of Deeds;
 - (e) if a non-profit company is to be established for purposes of maintaining or transfer of erven created by the subdivision, the conditions that must apply to them;
 - (f) any other conditions and obligations on the owner of erven created by the subdivision, which the Municipality deems necessary for the proper implementation of land development linked to the subdivision.

58. Phasing of subdivision

- (1) An applicant who has been notified in terms of section 89 that his or her application has been approved may, within the period permitted by the Municipality, apply to the Municipality for the phasing in of subdivision.
- (2) On receipt of an application in terms of subsection (1) the Municipality must evaluate the application and may for purposes of the evaluation of the application require the applicant to indicate whether the necessary documents were lodged with the Surveyor-General or provide proof that he or she consulted with the Surveyor General.
- (3) Where the Municipality approves an application it may impose any additional condition it may deem expedient and must notify the applicant in writing of such approval and of any conditions imposed.
- (4) When the municipality approves an application which has different phases, the application must reflect the phasing.
- (5) The applicant must, within a period of 3 months, or such longer period approved by the Municipality, from the date of the notice contemplated in sub-section (3), submit to the Surveyor-General such plans, diagrams, conditions or other documents and furnish such information as may be required by the Surveyor-General in respect of each separate phase of development.
- (6) On receipt by the applicant of the documents or information contemplated in sub-section (5) from the Surveyor-General the Municipality must notify the Registrar of Deeds in writing of the approval of the application for phasing and such notice must be accompanied by a copy of the plan of each separate phase of development.

59. Lodging of subdivision for approval with the Surveyor-General

- (1) If the Municipality approves an application for a subdivision, the applicant must within a period of five years or such shorter period as the Municipality may determine, from the date of approval of the subdivision or the date that the approval comes into operation, lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require, including proof to the satisfaction of the Surveyor-General of—
 - (a) the Municipality's decision to approve the subdivision;
 - (b) the conditions of approval contemplated in section 57(4) and (5); and
 - (c) the approved subdivision plan.
- (2) If the applicant fails to lodge such plans, diagrams or other documents as contemplated in subsection (1) to enable transfer of at least one erf within the period of validity of the approval, the approval lapses.
- (3) For purposes of subsection (1), the Municipality must provide to the applicant a final schedule as contemplated in section 57(4) and (5); of the conditions of approval together with a stamped and approved subdivision plan.
- (4) The Municipality may for purposes of lodging the documents contemplated in subsection (1) determine street names and numbers on the subdivision plan.
- (5) Where the applicant fails, within a reasonable time determined by the Municipality, after he or she has lodged the plans, diagrams or other documents contemplated in subsection (1), to comply with any requirement the Surveyor-General may lawfully determine, the Surveyor-General must notify the Municipality that he or she is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, and thereupon the approval lapses.
- (6) After an applicant has been notified that his or her application has been approved, the municipality may:
 - (i) where the documents contemplated in subsection (1) have not yet been lodged with the Surveyor General; or
 - (ii) where the documents contemplated in subsection (1) have been lodged with the Surveyor General, after consultation with the Surveyor General, consent to the amendment of such documents, unless the amendment is so material that it constitutes a new application.

60. Compliance with conditions of approval

- (1) The applicant must within a period of five years or such shorter period as the Municipality may determine, from the date of approval of the subdivision or the date that the approval comes into operation, provide proof to the satisfaction of the Municipality within the timeframes prescribed in terms of this By-law, that all conditions contained in the schedule to the approval of an application have been complied with.
- (2) The Municipality must certify that all the conditions that have to be complied with by the applicant or owner have been complied with including the provision of guarantees and payment of monies that may be required.
- (3) The Applicant must at the same time notify the Registrar of Deeds and Surveyor-General of the certification by the Municipality in terms of subsection (2).
- (4) The Municipality may agree to an extension of time as contemplated in subsection (1), after receiving a written application from the applicant for an extension of time: Provided that such application provides motivation for the extension of time.
- (5) A confirmation from the Municipality in terms of subsection (2) that all conditions of approval have been met, which is issued in error, does not absolve the applicant from complying with the obligations imposed in terms of the conditions or otherwise complying with the conditions after confirmation of the subdivision.

61. Registration at Deeds Office

- (1) The applicant must lodge with the Registrar of Deeds the plans and diagrams contemplated in section 59 as approved by the Surveyor-General together with the relative title deeds for endorsement or registration, as the case may be.
- (2) For purposes of subsection (1) the Registrar may not accept such documents for endorsement or registration until such time as the Municipality has certified that the applicant has complied with such conditions as the Municipality may require to be fulfilled.
- (3) The plans, diagrams and title deeds contemplated in subsection (1) and certification contemplated in subsection (2) must be lodged within a period of five years or such shorter period may be determined by the Municipality, from the date of approval of the subdivision or the date that the approval comes into operation, or such further period as the Municipality may allow.
- (4) If the applicant fails to comply with the provisions of subsections (1), (2) and (3), the application lapses.
- (5) Having endorsed or registered the title deeds contemplated in subsection (1), the Registrar must notify the Municipality forthwith of such endorsement or registration.

62. Extension of validity periods of municipal approval

- (1) An approved subdivision or a portion thereof lapses if the applicant does not comply with sections 58-61.
- (2) An applicant may apply for an extension of the period to comply with sections 58-61 or must comply with subsection (5). Such application must be lodged prior to the approval lapsing.
- (3) An extension contemplated in subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period the requirements of sections 58-61 has not been complied with, the subdivision lapses and subsection (6) applies.
- (4) The Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.
- (5) If only a portion of the general plan, contemplated in subsection 63(1) complies with sections 59-61, the general plan must be withdrawn and a new general plan must be submitted to the Surveyor-General.
- (6) If an approval of a subdivision or part thereof lapses under subsection (1) —
 - (a) the Municipality must—
 - (i) amend the zoning map and, where applicable, the register accordingly; and
 - (ii) notify the Surveyor-General accordingly; and
 - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

63. Amendment or cancellation of subdivision plan

- (1) The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.
- (2) The Municipality must give notice of the application in the media as contemplated in section 92(2).
- (3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.

- (4) An approval of a subdivision in respect of which an amendment or cancellation is approved in terms of subsection (1), remains valid for the remainder of the period contemplated in sections 58-61 applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of subsection (1).

64. Exemption of subdivisions

- (1) The subdivision of land in the following circumstances does not require the approval of the Municipality:
- (a) If the subdivision arises from the implementation of a court ruling;
 - (b) If the subdivision arises from an expropriation;
 - (c) Where it is for a minor amendment of the common boundary between two or more land units if the resulting change in area of any of the land units is not more than 10 per cent;
 - (d) For the registration of a servitude or lease agreement for the provision or installation of—
 - (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (ii) telecommunication lines by or on behalf of a licensed telecommunications operator; or
 - (iii) the imposition of height restrictions;
 - (e) Where it is for the exclusive utilisation of land for agricultural purposes, if the utilisation—
 - (i) requires approval in terms of legislation regulating the subdivision of agricultural land; and
 - (ii) does not lead to urban expansion.
 - (f) For the subdivision of a closed public place and closed public roadway, provided that will be consolidation with an abutting erf; and
 - (g) Where it is for the granting of a right of habitation or usufruct.
 - (h) If the subdivision of land is for the purpose of the construction or alteration of roads or any other matter related thereto.
 - (i) If the purpose of the subdivision is to bring about its conveyance to a local authority, semi-state institution or other statutory body.
 - (j) If the purpose of the subdivision is to bring about its conveyance from a local authority, semi-state institution or other statutory body, excluding land units which are alienated for development.
 - (k) Where the subdivision is to allow the State to conduct a survey, whether the State is the land-owner or not.
 - (l) For the subdivision of land in existing housing schemes in order to make private property ownership possible.
- (2) The Municipality must, in each case, certify in writing that the subdivision has been exempted from the provisions of this Chapter and it may impose any condition it may deem necessary.
- (3) The Municipality must indicate on the plan of subdivision that the subdivision has been exempted from the provisions of sections 57 to 61.

65. Services arising from subdivision

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

- (a) allow without compensation that the following may cross his or her land unit in respect of, or for the benefit of other land units:
 - (i) gas mains;

- (ii) electricity cables;
 - (iii) telephone cables;
 - (iv) television cables;
 - (v) other electronic infrastructure;
 - (vi) main and other water pipes;
 - (vii) foul sewers;
 - (viii) storm water pipes; and
 - (ix) ditches and channels;
- (b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:
- (i) surface installations such as mini-substations;
 - (ii) meter kiosks; and
 - (iii) service pillars;
- (c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs (a) and (b); and
- (d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

Part C: Rezoning of land

66. Application for amendment of a land use scheme by rezoning of land

- (1) An applicant, who wishes to rezone land, must apply to the Municipality for the rezoning of the land in the manner provided for in this By-law.
- (2) A rezoning approval lapses after a period of five years, or a shorter period as the municipality may determine, if, within that five year period or shorter period -
- (a) the zoning is not utilised in accordance with the approval thereof; or
 - (b) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).
- (3) The Municipality may grant extensions to the periods contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.
- (4) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning as contemplated in section 152.

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

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

- (1) An applicant who wishes to have a restrictive condition amended, suspended or removed must apply to the municipality for the amendment, suspension or removal of the restrictive condition in the manner provided for in this By-law.

- (2) The Municipality may, of its own accord or on application by notice in the Provincial Gazette and a local newspaper amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any specified condition, any restrictive condition.
- (3) In addition to the procedures set out in Chapter 6, the applicant must—
 - (a) submit the original title deed to the Municipality or a certified copy thereof; and
 - (b) submit the bondholder's consent to the application, where applicable.
- (4) The Municipality must effect a notice of its intention to consider an application under subsection (1) to be served on—
 - (a) all organs of state that may have an interest in the title deed restriction;
 - (b) every holder of a bond encumbering the land;
 - (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application;
 - (d) all persons mentioned in the title deed for whose benefit the restrictive condition exists; and
 - (e) any other person who the municipality considers to be a person who may have an interest in the application.
- (5) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:
 - (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant piece of land;
 - (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
 - (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed;
 - (d) the social benefit of the restrictive condition remaining in place in its existing form;
 - (e) the social benefit of the removal or amendment of the restrictive condition; and
 - (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

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

- (1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the Provincial Gazette as contemplated in section 67, submit the following to the Registrar of Deeds:
 - (a) the original title deed;
 - (b) the original letter of approval; and
 - (c) a copy of the notification of the approval.
- (2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the Provincial Gazette and local newspaper make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

Part E: Consolidation

69. Application for consolidation

- (1) No person may consolidate land without the approval of the Municipality, unless the consolidation is exempted in terms of section 71.
- (2) No person may construct a building or structure that extends over the boundaries of two or more properties without the prior written approval of the Municipality.
- (3) The Municipality may approve a consolidation and impose any condition it may deem necessary.
- (4) If the Municipality approves an application for consolidation, the applicant must within a period of five years or such shorter period as the Municipality may determine, from the date of approval of the consolidation, comply with the following requirements:
 - (a) obtain approval from the Surveyor-General of the consolidation diagram;
 - (b) furnish proof to the satisfaction of the Municipality that all relevant conditions contemplated in subsection (3) have been met; and
 - (c) obtain registration of the new consolidated land unit in terms of the Deeds Registries Act.
- (5) Upon confirmation of the registration by the Registrar of Deeds, the Municipality must amend the zoning map and, where applicable, the register accordingly.

70. Lapsing of consolidation and extension of validity periods

- (1). If a consolidation of land units is approved but no consequent registration by the Registrar of Deeds takes place within five years of the approval, the consolidation approval lapses, unless the consolidation of land units form part of a land use application which has been approved for a longer period.
- (2) An applicant may apply for an extension of the period to comply with subsection (1) and such application must be lodged prior to the approval lapses.
- (3). An extension contemplated in subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period the requirements of subsection (1) has not been complied with, the consolidation lapses.
- (4) If an approval of a consolidation lapses under subsection (1) the Municipality must notify the Surveyor-General accordingly and the applicant must withdraw the diagram.

71. Exemption of consolidation

The consolidation of two erven or more land units with the same zoning for non-development purposes.

Part F: Permanent Closure of Public Place

72. Closure of public places

- (1) The Municipality may on its own initiative initiate a request to the office of the Surveyor General for the closure of a public place or any portion thereof.
- (2) Any member of the public may request the Municipality to initiate a process for closing of a public place.
- (3) The ownership of the land of any public place or portion thereof that is closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.
- (4) The municipal manager may, without complying with the provisions of this Chapter temporarily close a public place—
 - (a) for the purpose of or pending the construction, reconstruction, maintenance or repair of the public place;

- (b) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
- (c) if the street or place is in such a state that it is dangerous to the public;
- (d) by reason of any emergency or public event which requires special measures for the control of traffic or special provision for the accommodation of crowds; or
- (e) for any other reason which renders the closing of the public place necessary or desirable.

Part G: Consent Use

73. Application for consent use

- (1) An applicant may apply to the Municipality for a consent use provided for in the land use scheme in the manner provided for in Chapter 6 and Section 55 of this By-law.
- (2) Where the development parameters for the consent use that is being applied for are not defined in an applicable land use scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval contemplated in section 48.
- (3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval contemplated in section 48.
- (4) A consent use granted for a specified period of time contemplated in subsection (3) must not have the effect of preventing the property from being utilised in future for the primary uses permitted in terms of the zoning of the land.
- (5) A consent use contemplated in subsection (1) lapses after a period of five years or the shorter period as the Municipality may determine from the date that the approval comes into operation if, within that five year period or shorter period—
 - (a) the consent use is not utilised in accordance with the approval thereof; or
 - (b) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).
- (6) The Municipality may grant extensions to the period contemplated in subsection (5), which period together with any extensions that the Municipality grants, may not exceed 10 years.

Part H: Traditional Use

74. Application for development on or change to land use purpose of communal land

- (1) An applicant who wishes to develop on or change the land use purpose of communal land located in the area of a traditional council where such development will have a high impact on the community or such change requires approval in terms of a land use scheme applicable to such area, must apply to the Municipality in the manner provided for in Chapter 6.
- (2) For the purpose of this section, “high impact” means a land use that could negatively impact on the health and welfare of the community.

Part I: Departures from provisions of the Land Use Scheme

75. Application for permanent or temporary departures

- (1) Permanent departure applications are applications that will result in permanent amendment of land use scheme provisions applicable to land, such as:
 - (a) Relaxations of development parameters such as building line, height, coverage or number of storeys.
 - (b) Departure from any other provisions of a land use scheme that will result in physical development or construction of a permanent nature on land.
- (2) Temporary departure applications are applications that do not result in an amendment of the land use scheme including:
 - (a) prospecting or mining rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
 - (b) any other application to utilise land on a temporary basis for a purpose for which no provision is made in the land use scheme in respect of a particular zone.
- (3) An applicant may apply for a departure in the manner provided for in Chapter 6 and Section 55.
- (4) A Municipality may grant approval for a departure:
 - (a) contemplated in subsection (2)(a), for the period of validity specified in the prospecting or mining license;
 - (b) contemplated in subsection (2)(b), for a period of five years.
- (5) The Municipality may grant extensions to the periods contemplated in subsection (4).
- (6) A temporary departure contemplated in subsection (2) may be granted more than once in respect of a particular use on a specific land unit.
- (7) In the event of a temporary departure being approved in terms of subsection (2), any improvements to the land must be permissible in terms of the land use restrictions that apply to the land in terms of its zoning and all such improvements are done at the risk of the applicant.

Part J: Site Development Plans

76. Application for a Site Development Plan

- (1) Site Development Plans must be submitted to the municipality in order to obtain approval of the form and layout of development in order to avoid unnecessary delays and stumbling blocks when building plans are submitted.
- (2) Site Development Plans, where required, should therefore be submitted to the municipality for approval;
- (3) Where Site Development Plans are required, no building plan or subdivision plan, will be approved unless in terms of an approved Site Development Plan.
- (4) The erection of a building or commencement of construction work before the approval of a site development plan or otherwise than in accordance with the approved site development plan will be a contravention of the Town Planning Scheme.
- (5) The Municipality may, upon receipt of an application, consent to the amendment of a Site Development Plan.

Part K: General Matters

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

- (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan, vest in the Municipality upon confirmation of the subdivision or a part thereof.
- (2). The Municipality may in terms of conditions imposed in terms of section 48 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

78. Restriction of transfer and registration

- (1) Notwithstanding the provisions contained in this By-law or any conditions imposed in the approval of any land development application, the owner shall, at his or her cost and to the satisfaction of the Municipality, survey and register all servitudes required to protect the engineering services provided, constructed and installed as contemplated in Chapter 7.
- (2) No erf or unit in a land development area may be alienated or transferred into the name of a purchaser and no Certificate of Registered Title may be registered in the name of the owner, prior to the Municipality certifying to the Registrar of Deeds that:
 - (a) All engineering services have been designed and constructed to the satisfaction of the Municipality, including guarantees for services having been provided to the satisfaction of the Municipality as may be required; and
 - (b) all engineering services and development charges have been paid; and
 - (c) all engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes; and
 - (d) all conditions of the approval of the land development application have been complied with or that arrangements have been made to the satisfaction of the Municipality for the compliance thereof within 3 months of having certified to the Registrar in terms of this section that registration may take place; and
 - (e) that the Municipality is in a position to consider a final building plan; and
 - (f) that all the properties have either been transferred or will be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.

79. First transfer

Where an owner of land to which a land development application relates is required to:

- (a) transfer land to the Municipality; or
- (b) an owner's association, by virtue of a condition set out in the conditions to the approval of a land development application, the land shall be transferred at the expense of the applicant within a period of 6 months from the date of the land use rights coming into operation, or within such further period as the Municipality may allow, but in any event prior to any registration or transfer of any erf, portion, opening of a sectional title scheme or unit within the development.

80. Certification by Municipality

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

- (2) The Municipality may not issue a certificate to transfer a land unit in terms of any law, or in terms of this By-law, unless the owner furnishes the Municipality with—
 - (a) a certificate of a conveyancer confirming that funds due by the transferor in respect of land, have been paid;
 - (b) proof of payment of any penalty imposed for contraventions of this By-law or proof of compliance with a directive contemplated in Chapter 9;
 - (c) proof that the land use and buildings constructed on the land unit comply with the requirements of the land use scheme;
 - (d) proof that all common property including private roads and private places originating from the subdivision, has been transferred to the owners' association as contemplated in Schedule 5; and
 - (e) proof that the conditions of approval that must be complied with before the transfer of erven have been complied with.

81. National and provincial interest

- (1) In terms of section 52 of the Act an applicant must refer any application which affects national or provincial interest to the Minister and the Member of the Executive Council respectively for comments, which comments are to be provided within 21 working days as prescribed in subsection 52(5) of the Act.
- (2) Where any application in terms of this By-law affects national or provincial interest as defined in section 52 of the Act is submitted, such application must be referred to the Minister or the Member of the Executive Council respectively and the provisions of sections 52(5) to 52(7) of the Act, apply with the necessary changes.
- (3) The Municipal Planning Tribunal or Land Development Officer as the case may be, as contemplated in this By-law and the Act, may direct that an application before it be referred to the Minister and the Member of the Executive Council, if such an application affects national or provincial interest and the provisions of sections 52(5) to 52(7) of the Act apply with the necessary changes.
- (4) Subsections (1) to (3) shall be read with section 33(1) of the Act in that the national and or provincial departments becomes parties to the application that affects national or provincial interest, but the Municipality remains the decision maker of first instance.

CHAPTER 6

GENERAL APPLICATION PROCEDURES

82. Applicability of Chapter

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

83. Procedures for submitting applications

An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter 5 of this By-law.

84. Information required

- (1) An application, other than an application contemplated in subsection (2), must be accompanied by the following documents:
 - (a) an approved application form, completed and signed by the applicant;
 - (b) if the applicant is not the owner of the land, a power of attorney authorising the applicant to make the application on behalf of the owner;
 - (c) if the owner of the land is a company, closed corporation, trust, body corporate or home owners' association, written proof that the person is

- authorised to act on behalf of the company, closed corporation, trust, body corporate or a home owners' association;
- (d) except if the application relates to communal land, the relevant bondholder's consent;
 - (e) a written motivation for the application based on the criteria for consideration of the application;
 - (f) a copy of the Surveyor-General's diagram of the subject property or if it does not exist, an extract from relevant general plan, if required;
 - (g) a locality plan and site development plan, when required, or a plan showing the proposal in its cadastral context;
 - (h) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
 - (i) the location of the proposed land units;
 - (ii) the proposed zonings in respect of the proposed land units;
 - (iii) footprint of all existing structures on the property and abutting properties;
 - (iv) the public places and the land needed for public purposes;
 - (v) the existing access points;
 - (vi) all servitudes;
 - (vii) contours with at least a one meter interval or such other interval as may be approved by the Municipality;
 - (viii) all infrastructure, such as light, electrical and telephone poles, electrical transformers and mini substations, storm water channels and catch pits, sewerage lines and connection points;
 - (ix) any significant natural features; and
 - (x) the scale and all distances and areas. The scale and all distances and requirements as stipulated in the application form
 - (i) any other plans, diagrams, documents or information that the Municipality may require;
 - (j) the proof of payment of application fees;
 - (k) a full copy of the current title deeds indicating all existing title conditions; and
 - (l) if required by the Municipality, a certificate of a conveyancer indicating that no restrictive condition in respect of the application is contained in such title deeds.
- (2) An application for a change in land use purpose as contemplated in **section 35(2)(h) and 35(3)(e) read with section 78**, must be accompanied by the following documents:
- (a) an approved application form, completed and signed by the applicant;
 - (b) proof of community approval granted as a result of a community participation process conducted in terms of Customary Law and the procedures in terms of the Interim Protection of Informal Land Rights Act;
 - (c) a site development plan;
 - (d) the proof of payment of application fees.
- (3) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

85. Application fees

- (1) An applicant must pay the application fees determined by the Municipality prior to submitting an application in terms of this By-law.
- (2) Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany the application.

86. Grounds for refusing to accept application

The Municipality may refuse to accept an application if—

- (a) the municipality has already decided on the application;
- (b) there is no proof of payment of fees; or
- (c) the application is not in the form required by the Municipality or does not contain the documents required for the submission of an application as set out in section 84.

87. Receipt of application and request for further documents

The Municipality must—

- (a) record the receipt of an application in writing or by affixing a stamp on the application on the day of receipt;
- (b) notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require within 30 days of receipt of the application or the further period as may be agreed upon, failing which it is regarded that there is no outstanding information or documents; and
- (c) if the application is complete, notify the applicant in writing that the application is complete within 30 days of receipt of the application.

88. Additional information

- (1) The applicant must provide the Municipality with additional information or documentation required for the completion of the application within 30 days of the request therefor or within the further period agreed to between the applicant and the Municipality.
- (2) The Municipality may refuse to consider the application if the applicant fails to provide the information within the timeframes contemplated in subsection (1).
- (3) The Municipality must notify the applicant in writing of the refusal to consider the application and must close the application.
- (4) An applicant has no right of appeal to the Appeal Authority in respect of a decision or notification contemplated in subsections (2) and (3).
- (5) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (2) and (3), the applicant must submit a fresh application and pay the applicable application fees.

89. Confirmation of complete application

- (1) The Municipality must notify the applicant in writing that the application is complete within 21 days of receipt of the additional plans, documents or information required by it or if further information is required as a result of the furnishing of the additional information.
- (2) If further information is required, **section 88** applies to the further submission of information that may be required.

90. Withdrawal of application

- (1) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the Municipality.
- (2) The owner of land must in writing inform the Municipality if he or she has withdrawn the power of attorney that authorised another person to make an application on his or her behalf.

91. Notice of applications in terms of integrated procedures

- (1) The Municipality may, upon receipt of a prior written request and motivation by an applicant, determine that—

- (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-law; or
- (b) notice of an application made in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms other legislation;
- (2) If a Municipality determines that an application may be published as contemplated in subsection (1)(b) an agreement must be entered into by the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.
- (3) The Municipality must, within 30 days of having notified the applicant that the application is complete, simultaneously—
 - (a) cause public notice of the application to be given in terms of section 92(1); and
 - (b) forward a copy of the notice together with the relevant application to every municipal department, service provider and organ of state that has an interest in the application, unless it has been determined by the Municipality that a procedure in terms of another law, as determined in subsection (1), is considered to be public notice in terms of this By-law.
- (4) The Municipality may require the applicant to give the required notice of an application in the media.
- (5) Where an applicant has published a notice in the media at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

92. Notification of application in media

- (1) The Municipality must cause notice to be given in the media, in accordance with this By-law and in terms of the categories of applications, of the following applications:
 - (a) an application for a rezoning or a rezoning on the initiative of the Municipality;
 - (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (d) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (e) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (f) the closure of a public place as defined in the Act;
 - (g) an application in respect of a restrictive condition;
 - (h) other applications that will materially affect the public interest or the interests of the community if approved.
- (2) Notice of the application in the media must be given by—
 - (a) publishing a notice of the application in newspapers with a general circulation in the area concerned in at least two of the official languages of the Province most spoken in the area concerned; or an official language determined by the Council, having regard to language preferences and

usage within its municipal area, as contemplated in section 21 of the Municipal Systems Act

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

93. Serving of notices

- (1) Notice of an application contemplated in section 92(1) and subsection (2) -
 - (a) is considered as having been served when:
 - (i) it has been delivered to that person personally;
 - (ii) it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
 - (iii) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;
 - (iv) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (i), (ii) or (iii); or
 - (v) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.
 - (b) must be in at least two of the official languages of the Province most spoken in the area concerned; and
 - (c) must be served on any person who has an interest in the matter or whose rights may be affected by the approval of the application.
- (2) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law.
- (3) The Municipality may require notice of its intention to consider all other applications not listed in subsection (2) to be given in terms of section 93.
- (4) The Municipality may require the applicant to attend to the serving of a notice of an application contemplated in subsection (1).
- (5) Where an applicant has served a notice at the request of a Municipality, the applicant must provide proof that the notice has been served as required.
- (6) The date of notification in respect of a notice served in terms of this section—
 - (a) when it has been served by certified or registered post is the date of registration of the notice; and
 - (b) when it has been delivered to that person personally is the date of delivery to that person;
 - (c) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years is the date on which it has been left with that person; or
 - (d) when it has been posted in a conspicuous place on the property or premises to which it relates is the date that it is posted in that place.

94. Content of notice

When notice of an application must be given in terms of section 90 or served in terms of section 93, the notice must contain the following information:

- (a) the details of the applicant;
- (b) identify the land or land unit to which the application relates by giving the property description and the physical address;
- (c) state the intent and purpose of the application;

- (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
- (e) state the contact details of the relevant municipal employee;
- (f) invite members of the public to submit written comments, objections or representations together with the reasons therefor in respect of the application;
- (g) state in which manner comments, objections or representations may be submitted;
- (h) state the date by when the comments, objections or representations must be submitted which may not be less than 30 days from the date on which the notice was given;
- (i) state that any person who cannot write may during office hours attend at an address stated in the notice where a named staff member of the Municipality will assist that person to transcribe that person's objections, comments or representations.

95. Additional methods of public notice

- (1) If the Municipality considers notice in accordance with sections 91 or 92 to be ineffective or if the Municipality decides to give notice of any application in terms of this By-law, the Municipality may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:
 - (a) to display a notice contemplated in section 94 of a size of at least 60 cm by 42 cm on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
 - (i) the notice must be displayed for a minimum of 30 days during the period that the public may comment on the application;
 - (ii) the applicant must, within 21 days from the last day of display of the notice, submit to the Municipality—
 - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
 - (bb) at least two photos of the notice, one from nearby and one from across the street.
 - (b) to convene a meeting for the purpose of informing the affected members of the public of the application;
 - (c) to broadcast information regarding the application on a local radio station in a specified language;
 - (d) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
 - (e) to publish the application on the Municipality's website for the duration of the period that the public may comment on the application; or
 - (f) to obtain letters of consent or objection to the application.
- (2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

96. Requirements for petitions

- (1) All petitions must clearly state—
 - (a) the contact details of the authorised representative of the signatories of the petition;
 - (b) the full name, identity or passport number and physical address of each signatory; and
 - (c) the objection and reasons for the objection.

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

97. Requirements for objections, comments or representations

- (1) A person may, in response to a notice received in terms of sections 91, 92 or 95, object, comment or make representations in accordance with this section.
- (2) Any objection, comment or representation received as a result of a public notice process must be in writing and addressed to the person mentioned in the notice within the time period stated in the notice and in the manner set out in this section.
- (3) The objection must state the following:
 - (a) the name of the person or body concerned;
 - (b) the address or contact details at which the person or body concerned will accept notice or service of documents;
 - (c) the interest of the body or person in the application; and
 - (d) the reason for the objection, comment or representation.
- (4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to—
 - (a) indicate the facts and circumstances which explains the objection, comment or representation;
 - (b) demonstrate the undesirable effect which the application will have on the area; and
 - (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.
- (5) The Municipality may refuse to accept an objection, comment or representation received after the closing date.

98. Amendments prior to approval

- (1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-laws and prior to the approval thereof—
 - (a) at the applicant's own initiative;
 - (b) as a result of objections and comments made during the public notification process; or
 - (c) at the request of the Municipality.
- (2) If an amendment to an application is material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resent to municipal departments, organs of state and service providers.

99. Further public notice

- (1) The Municipality may require that fresh notice of an application be given if more than 18 months has elapsed since the first public notice of the application and if the application has not been considered by the Municipality.
- (2) The Municipality may, at any stage during the processing of the application—
 - (a) require notice of an application to be republished or to be served again; and
 - (b) an application to be resent to municipal departments for comment, if new information comes to its attention which is material to the consideration of the application.

100. Cost of notice

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

101. Applicant's right to respond

- (1) Copies of all objections, comments or representations lodged with a Municipality must be provided to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section.
- (2) The applicant may, within a period of 30 days from the date of the provision of the objections, comments or representations, submit written response thereto with the Municipality and must serve a copy thereof on all the parties that have submitted objections, comments or representations.
- (3) The applicant may before the expiry of the 30-day period referred to in subsection (2), apply to the Municipality for an extension of the period with a further period of 14 days to lodge a written reply.
- (4) If the applicant does not submit comments within the period of 30 days or within an additional period 14 of days if applied for, the applicant is considered to have no comment.
- (5) If as a result of the objections, comments or representations lodged with a Municipality, additional information regarding the application are required by the Municipality, the information must be supplied within the further period as may be agreed upon between the applicant and the Municipality.
- (6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), section 84(2) to (5) with the necessary changes, applies.

102. Written assessment of application

- (1) An employee authorised by the Municipality must in writing assess an application in accordance with section 51 and recommend to the decision-maker whether the application must be approved or refused.
- (2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

103. Decision-making period

- (1) When the power to take a decision is delegated to an authorised employee and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days of the closing date for the submission of comments, objections or representations.
- (2) When the power to take a decision is not delegated to an authorised employee and no integrated process in terms of another law is being followed, the Municipal Planning Tribunal must decide on the application within 120 days of the closing date for the submission of comments, objections or representations.

104. Failure to act within time period

If no decision is made by the Municipal Planning Tribunal within the period required in terms of the Act, it is considered undue delay for purposes of this By-law and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal or Land Development Officer to the municipal manager, who must report it to the municipal council and mayor.

105. Powers to conduct routine inspections

- (1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a report.
- (2) When conducting an inspection, the authorised employee may—
 - (a) request that any record, document or item be produced to assist in the inspection;

- (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
 - (c) on providing a receipt, remove a record, document or other item that is related to the inspection; or
 - (d) inspect any building or structure and make enquiries regarding that building or structure.
- (3) No person may interfere with an authorised employee who is conducting an inspection as contemplated in subsection (1).
- (4) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

106. Determination of application

The Municipality may in respect of any application submitted in terms of this Chapter -

- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;
- (b) upon the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;
- (c) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-law and provincial legislation;
- (d) conduct any necessary investigation;
- (e) give directions relevant to its functions to any person in the service of a Municipality or municipal entity;
- (f) decide any question concerning its own jurisdiction; and
- (g) appoint a technical adviser to advise or assist in the performance of the Municipal Planning Tribunal's functions in terms of this By-law.

107. Notification of decision

- (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and any person whose rights are affected by the decision, of the decision, and their right to appeal if applicable.
- (2) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the Municipality.

108. Duties of agent of applicant

- (1) An applicant who is not the owner of the land concerned must ensure that he or she has the contact details of the owner of the property.
- (2) The agent must ensure that all information furnished to the Municipality is accurate.
- (3) The agent must ensure that no misrepresentations are made.
- (4) The provision of inaccurate, false or misleading information is an offence.

109. Errors and omissions

- (1) The Municipality may at any time correct an error in the wording of its decision provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition of its approval.
- (2) The Municipality may, of its own accord or on application by an applicant or interested party, upon good cause being shown, condone an error in the procedure provided that such condonation does not have material adverse impact on or unreasonably prejudice any party.

110. Withdrawal of approval

- (1) The Municipality may withdraw an approval granted for a consent use or temporary departure if the applicant or owner fails to comply with a condition of approval.
- (2) Prior to doing so, the Municipality must serve a notice on the owner—
 - (a) informing the owner of the alleged breach of the condition;
 - (b) instructing the owner to rectify the breach within a specified time period;
 - (c) allowing the owner to make representations on the notice within a specified time period.

111. Procedure to withdraw an approval

- (1) The Municipality may withdraw an approval granted—
 - (a) after consideration of the representations made in terms of **section 108(2)(c)**; and
 - (b) if the condition is still being breached and not being complied with at the end of the period specified in terms of **section 108(2)(b)**.
- (2) If the Municipality withdraws the approval, the Municipality must notify the owner of the withdrawal of the approval and instruct the owner to cease the activity immediately.
- (3) The approval is withdrawn from date of notification to the owner.
- (4) The withdrawal must be referred to the decision making body for noting purposes.

112. Exemptions to facilitate expedited procedures

The Municipality may in writing -

- (a) exempt a development from compliance with the provisions of this By-law to reduce the financial or administrative burden of—
 - (i) integrated application processes as contemplated in **section 89**;
 - (ii) the provision of housing with the assistance of a state subsidy; or
 - (iii) incremental upgrading of existing settlements;
- (b) in an emergency situation authorise that a development may depart from any of the provisions of this By-law (THIS SECTION WILL BE REMOVED AFTER ALL INPUTS WERE RECEIVED AND THE SECTION NUMBERING AND CRSS REFERENCES WILL HAVE TO BE AMENDED)

CHAPTER 7 ENGINEERING SERVICES AND DEVELOPMENT CHARGES

Part A: Provision and Installation of Engineering Services

113. Definitions for the purposes of Chapter 7

For the purpose of this Chapter:

- (a) **"external engineering services"** has the same meaning as defined in section 1 of the Act and consist of both "bulk services" and "link services";
- (b) **"bulk services"** means all the primary water, sewerage, waste disposal, sewage treatment facilities and means of disposal of effluent and other products of treatment, electricity and storm-water services, as well as the road network in the system to which the internal services are to be linked by means of link services;
- (c) **"link services"** means all new services necessary to connect the internal services to the bulk services; and
- (d) **"internal engineering services"** has the same meaning as defined in section 1 of the Act and includes any link services linking such internal services to the external engineering services.

114. Responsibility for providing engineering services

- (1) Every land development area must be provided with such engineering services as the Municipality may deem necessary for the appropriate development of the land.
- (2) An applicant is responsible for the provision and installation of internal engineering services required for a development at his or her cost when a land development application is approved.
- (3) The Municipality is responsible for the installation and provision of external engineering services, unless the engineering services agreement referred to in section 116 provides otherwise.

115. Installation of engineering services

- (1) The applicant must provide and install the internal engineering services, including private internal engineering services, in accordance with the conditions of establishment and to the satisfaction of the Municipality, and for that purpose the applicant must lodge with the Municipality such reports, diagrams and specifications as the Municipality may require.
- (2) The Municipality must have regard to such standards as the Minister/MEC may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act.
- (3) If an engineering service within the boundaries of the land development area is intended to serve any other area within the municipal area, such engineering service and the costs of provision thereof must be treated as an internal engineering service to the extent that it serves the land development and as an external engineering service to the extent that it serves any other development.
- (4) The Municipality must, where any private roads, private open spaces or any other private facilities or engineering services are created or to be constructed with the approval of any land development application set the standards for the width and or any other matter required to provide sufficient access and engineering services; including but not limited to:
 - (a) roadways for purposes of sectional title schemes to be created;
 - (b) the purpose and time limit in which private roads, private engineering services and private facilities are to be completed;

116. Engineering services agreement

- (1) An applicant of a land development application and the Municipality must enter into an engineering service agreement if the Municipality requires such agreement.
- (2) The engineering services agreement must –
 - (a) classify the services as internal engineering services, external engineering services or private engineering services;
 - (b) be clear when the applicant and the Municipality are to commence construction of internal engineering services, whether private engineering services or not, and external engineering services, at which rate construction of such services is to proceed and when such services must be completed;
 - (c) provide for the inspection and handing over of internal engineering services to the Municipality or the inspection of private internal engineering services;
 - (d) determine that the risk and ownership in respect of such services must pass to the Municipality or the owners' association as the case may be, when the Municipality is satisfied that the services are installed to its standards;
 - (e) require the applicant and the Municipality to take out adequate insurance cover in respect of such risks as are insurable for the duration of the land

- development; and
- (f) provide for the following responsibilities after the internal services have been handed over to the Municipality or the owners' association:
 - (i) when normal maintenance by the relevant authority or owners' association must commence;
 - (ii) the responsibility of the applicant for the rectification of defects in material and workmanship; and
 - (iii) the rights of the relevant authority or owners' association if the applicant fails to rectify any defects within a reasonable period after having been requested to do so;
- (g) if any one of the parties is to provide and install an engineering service at the request and at the cost of the other, such service must be clearly identified and the cost or the manner of determining the cost of the service must be clearly set;
- (h) determine whether additional bulk services are to be provided by the Municipality and, if so, such services must be identified;
- (i) determine which party is responsible for the installation and provision of service connections to residential, business, industrial, community facility and municipal erven, and the extent or manner, if any, to which the costs of such service connections are to be recovered;
- (j) define the service connections to be made which may include all service connections between internal engineering services and the applicable erf or portion of the land and these include –
 - (i) a water-borne sewerage pipe terminating at a sewer connection;
 - (ii) a water-pipe terminating at a water meter; and
 - (iii) an electricity house connection cable terminating on the relevant erf; and
- (k) clearly identify the level and standard of the internal engineering services to be provided and installed and these include, amongst others –
 - (i) water reticulation;
 - (ii) sewerage reticulation, sewage treatment facilities and the means of disposal of effluent and other products of treatment;
 - (iii) roads and storm-water drainage;
 - (iv) electricity reticulation (high and low tension);
 - (v) street lighting.
- (3) The engineering services agreement may –
 - (a) require that performance guarantees be provided, or otherwise, with the provision that -
 - (i) the obligations of the parties with regard to such guarantees are clearly stated;
 - (ii) such guarantee is irrevocable during its period of validity; and
 - (iii) such guarantee is transferable by the person to whom such guarantee is expressed to be payable; and
 - (b) provide for the manner in which the parties are to finance their relative responsibilities in terms of the engineering services agreement and where appropriate, either party may undertake to provide bridging finance to the other party.
- (4) Where only basic services are to be provided initially, the timeframes and the responsibility of the parties for the upgrading (if any) of services must be recorded in the engineering services agreement.

117. Abandonment or lapsing of land development application

Where a land development application is abandoned by the applicant or has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-

law, the engineering services agreement referred to in section 116 lapses and if the applicant had installed any engineering services before the lapsing of the application in terms of the engineering services agreement, he or she shall have no claim against the Council with regard to the provision and installation of any engineering services of whatsoever nature.

Part B: Development Charges

118. Payment of development charge

- (1) The Municipality must develop a policy for development charges and may levy a development charge in accordance with the policy, for the provision of -
 - (a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improves such services as a result of the commencement of an approved development; and
 - (b) open spaces or parks or other uses, such as social facilities and services, where the commencement of an approved development will bring about a higher residential density.
- (2) If a land development application is approved by the Municipal Planning Tribunal subject to, amongst others, the payment of a development charge, the applicant or owner of the land to which the scheme relates, must, subject to section 114, pay the development charge to the Municipality.
- (3) An applicant or owner who is required to pay a development charge in terms of this By-law shall pay such development charges to the Municipality before:
 - (a) a written statement contemplated in section 118 of the Municipal Systems Act is furnished in respect of the land;
 - (b) a building plan is approved in respect of:
 - (i) the proposed alteration of or addition to an existing building on the land;
 - (ii) the erection of a new building on the land, where that building plan, were it not for the approval of an application, would have been in conflict with the land use scheme in operation;
 - (c) the land is used in a manner or for a purpose which, were it not for the approval of an application would have been in conflict with the land use scheme in operation.

119. Offset of development charge

- (1) An agreement concluded between the Municipality and the applicant in terms of section 49(4) of the Act, to offset the provision of external engineering services against the applicable development charge, must be in writing and must include the estimated cost of the installation of the external engineering services.
- (2) The applicant or the owner must submit documentary proof of the estimated cost of the installation of the external engineering services.
- (3) The amount to be offset against the applicable development charge must be determined by the Municipality.
- (4) if the cost of the installation of the external engineering services exceed the amount of the applicable development charge, the Municipality may refund the applicant or the owner if there are funds available in the Municipality's approved budget.
- (5) This section does not oblige the Municipality to offset any costs incurred in the provision of external engineering services other than that which may have been agreed upon in the engineering services agreement contemplated in section 116.

120. Payment of development charge in instalments

The Municipality may -

- (a) in the circumstances contemplated in subparagraph (b) or (c), allow payment of the development charge contemplated in section 118 in instalments agreed to in the engineering services agreement which must comply with the timeframes provided for in the Municipality's Credit Control and Debt Collection By-Law or, if last-mentioned By-Law does not provide for such instalments, over a period not exceeding three years;
- (b) in any case, allow payment of the development charge contemplated in section 118 to be postponed for a period not exceeding three months where security for the payment is given to its satisfaction;
- (c) in exercising the power conferred by subparagraphs (a) or (b), impose any condition, including a condition for the payment of interest.

121. Refund of development charge

No development charge paid to the Municipality in terms of section 118 or any portion thereof shall be refunded to an applicant or owner: Provided that where the owner paid the applicable charge prior to the land use rights coming into operation and the application is abandoned in terms of section 117 the Municipality may, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

122. General matters relating to contribution charges

- (1) Notwithstanding any provision to the contrary, where a development charge or contribution for open space is paid to the Municipality, such funds must, in terms of the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), be kept separate and only applied by the Municipality towards the improvement and expansion of the services infrastructure or the provision of open space or parking, as the case may be, to the benefit and in the best interests of the general area where the land area is situated or in the interest of a community that occupies or uses such land area.
- (2) The Municipality must annually prepare a report on the development charges paid to the Municipality together with a statement of the expenditure of such amounts and the purposes of such expenditure and must submit such report and statement to the Premier.

CHAPTER 8: APPEALS

Part A : Management Of The Appeal Authority

123. Appeal Authority

- (1) The Executive Authority of the Nelson Mandela Bay Municipality shall serve as the Appeal authority in respect of decisions of the Municipal Planning Tribunal or the authorised official
- (2) If the Executive Authority delegates its authority to hear appeals to a political office holder or an official in the employ of the municipality it shall do so as contemplated in Section 56 of the Act and Section 29 of the Regulations
- (3) An appeal authority may consider an appeal on one or more of the following:
 - (a) the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
 - (b) the merits of the land development or land use application.
- (4) When the Appeal Authority considers an appeal it must have regard to the assessment criteria provided for in terms of **Section 52(1)**.

124. Presiding officer of appeal authority

The Executive Authority or his or her appointee will serve as the presiding officer of the appeal authority and such presiding officer is responsible for managing the judicial functions of that appeal authority.

125. Bias and disclosure of interest

- (1) The appeal authority may not delegate its power to hear an appeal to an official in the employ of the municipality who decided the application or who is a member of the Municipal Planning Tribunal that made a decision on the application that forms the subject matter of the appeal.
- (2) No person may act as presiding officer or member of an appeal authority at the hearing of an appeal against a decision of a Municipal Planning Tribunal if he or she was a member of that Municipal Planning Tribunal when the decision was made or if he or she was the official contemplated in section 35(2) of the Act and he or she made the decision that is the subject of the appeal.
- (3) A presiding officer or member of an appeal authority who has or appears to have a conflict of interest as defined in subsections (6) and (7) must recuse himself or herself from the appeal hearing.
- (4) A party may in writing to the appeal authority request the recusal of the presiding officer or member of that appeal authority on the grounds of conflict of interest and the presiding officer must decide on the request and inform the party of the decision in writing.
- (5) A decision by a presiding officer or member to recuse himself or herself or a decision by the appeal authority to recuse a presiding officer or member, must be communicated to the parties concerned by the registrar.
- (6) For the purpose of this Chapter “conflict of interest” means any factor that may impair or reasonably give the appearance of impairing the ability of a member of an appeal authority to independently and impartially adjudicate an appeal assigned to the appeal authority.
- (7) A conflict of interest arises where an appeal assigned to an appeal authority involves any of the following:
 - (a) A person with whom the presiding officer or member has a personal, familiar or professional relationship;
 - (b) a matter in which the presiding officer or member has previously served in another capacity, including as an adviser, counsel, expert or witness; or
 - (c) any other circumstances that would make it appear to a reasonable and impartial observer that the presiding officer’s or member’s participation in the adjudication of the matter would be inappropriate.

126. Registrar of appeal authority

- (1) The municipal manager of a municipality is the registrar of the appeal authority.
- (2) Notwithstanding the provisions of subsection (1), a municipal council may appoint a person or designate an official in its employ, to act as registrar of the appeal authority and if it so appoints or designates a person or an official, that person or official has delegated authority as contemplated in section 56 of the Act.
- (3) Whenever by reason of absence or incapacity any registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the municipal council may, after consultation with the presiding officer of the appeal authority, authorise any other competent official in the public service to act in the place of the absent or incapacitated registrar during such absence or incapacity or to act in the vacant office until the vacancy is filled.
- (4) Any person appointed under subsection (2) or authorised under subsection (3) may hold more than one office simultaneously.

127. Powers and duties of registrar

- (1) The registrar is responsible for managing the administrative affairs of the appeal authority and, in addition to the powers and duties referred to in this Chapter, has all the powers to do what is necessary or convenient for the effective and efficient functioning of the appeal authority and to ensure accessibility and maintenance of the dignity of the appeal authority.
- (2) The duties of the registrar include –
 - (a) the determination of the sitting schedules of the appeal authority;
 - (b) assignment of appeals to the appeal authority;
 - (c) management of procedures to be adhered to in respect of case flow management and the finalisation of any matter before the appeal authority; including setting of due dates for comments and technical input
 - (d) transmit all documents and make all notifications required by the procedures laid down in the provincial spatial planning and land use management legislation;
 - (e) the establishment of a master registry file for each case which must record –
 - (i) the reference number of each appeal;
 - (ii) the names of the parties;
 - (iii) all actions taken in connection with the preparation of the appeal for hearing;
 - (iv) the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
 - (v) the date of the hearing of the appeal;
 - (vi) the decision of the appeal authority;
 - (vii) whether the decision was unanimous or by majority vote; and
 - (viii) any other relevant information.
- (3) The presiding officer of the appeal authority may give the registrar directions regarding the exercise of his or her powers under this Chapter.
- (4) The registrar must give written notice to the presiding officer of all direct or indirect pecuniary interest that he or she has or acquires in any business or legal person carrying on a business.

Part B: Processing Of Appeals

128. Commencing of appeal

An appellant must commence an appeal by delivering a Notice of Appeal specified in Annexure (Appeal form?) to the registrar of the relevant appeal authority within 21 days of the date of notification of the decision as contemplated in section 51 of the Act.

129. Notice of appeal

A Notice of Appeal must clearly indicate:

- (a) whether the appeal is against the whole decision or only part of the decision and if only a part, which part;
- (b) where applicable, whether the appeal is against any conditions of approval of an application and which conditions;
- (c) the grounds of appeal including any findings of fact or conclusions of law;
- (d) a clear statement of the relief sought on appeal; and
- (e) any issues that the appellant wants the appeal authority to consider in making its decision; and

130. Screening of appeal

- (1) When the appeal authority receives a Notice of Appeal, it must screen such Notice to determine whether:

- (a) It complies with the form approved by Council;
 - (b) it is submitted within the required time limit;
 - (c) the appeal authority has jurisdiction over the appeal; and
 - (d) the appellant, if not the original applicant, has submitted proof of payment of the appeal fees as determined by the Municipality to the Registrar of Appeals
- (2) If a Notice of Appeal does not comply with the form approved by Council, the appeal authority must return the Notice of Appeal to the appellant, indicating what information is missing and require that information to be provided and returned to the appeal authority by the appellant within a specific time period.
 - (3) If the Notice of Appeal is not provided and returned to the appeal authority with the requested information within the specified time period, the appellant's appeal will be considered abandoned and the appeal authority must notify the parties in writing accordingly.
 - (4) If the Notice of Appeal is received by the appeal authority after the required time limit has expired, the party seeking to appeal is deemed to have abandoned the appeal and the appeal authority will notify the parties in writing.
 - (5) If the appeal relates to a matter that appears to be outside the jurisdiction of the appeal authority, it must notify the parties in writing.
 - (6) The appeal authority may invite the parties to make submissions on its jurisdiction and it will then determine, based on any submissions received, if it has jurisdiction over the appeal and must notify the parties in writing of the decision.

131. Parties to appeal

The parties to an appeal before an appeal authority are:

- (a) the appellant who has lodged the appeal with the appeal authority;
- (b) the applicant, if the applicant is not the appellant as contemplated in paragraph (a);
- (c) the Municipal Planning Tribunal that or the official authorised by the municipality as contemplated in section 35(2) of the Act who made the decision;
- (d) any person who has been made a party to the proceeding by the appeal authority after a petition to the appeal authority under section 45(2) of the Act to be granted intervener status.

132. Opportunity to make submissions and inspect documents

The appeal authority must ensure that every party to a proceeding before the appeal authority is given an opportunity to present his or her case and in particular, to inspect documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

133. Pre-hearing Process

- (1) The pre-hearing process is the process during which all the necessary documentation must be obtained, the applicant and objectors must be informed and the appeal referred to the appeal authority.
- (2) The prehearing process must be completed within 150 days from the date of receipt of the notice of the appeal by the municipal manager
- (3) The municipal manager must, as soon as practicable, but no later than 14 days after the completion of the pre-hearing process, submit the appeal to the appeal authority to hear the appeal

134. Hearings of Appeal Authority

- (1) An appeal may be heard by the appeal authority by means of:

- (a) An oral hearing; or
- (b) A hearing based on written submissions.
- (2) A **written** hearing may be held if it appears to the appeal authority that the issues to be determined can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
- (3) An **oral** hearing may be held:
 - (a) If it appears to the appeal authority that the issues of determination of the appeal cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
 - (b) if such hearing would assist in the expeditious and fair disposal of the appeal; and
 - (c) the decision of the presiding officer of the appeal authority on whether to grant or decline a request for an oral hearing, subject to the provisions of subsections(3)(a) and (b) is final and must be communicated to the petitioner and the parties by the registrar.
- (4) The appeal authority must notify the parties of the date, time and place of a hearing at least five days before the hearing commences.
- (5) If a party was notified of a hearing and fails to appear at an oral hearing, the appeal authority may proceed in the absence of such party.
- (6) If the appeal authority decides to hold an oral hearing, any party to the appeal proceedings may appear in person or may be represented by another person.
- (7) If appropriate in the circumstances, an oral hearing may be held by electronic means.
- (8) A hearing will commence within 14 days after the completed Notice of Appeal has been delivered to the appeal authority, unless the parties and the presiding officer of the appeal authority consent to a later date.
- (9) A hearing must be held in a location within the area of jurisdiction of the municipality where the land affected by the decision is located, but may not be held in the office of the Municipal Planning Tribunal or the Land Development Officer authorised in terms of section 35(2) of the Act
- (10) After hearing all parties on the day of the hearing, the appeal authority –
 - (a) may, in considering its decision, request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;
 - (b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a decision as contemplated by paragraph (c);
 - (c) must within 21 days after the last day of the hearing, issue its decision on the appeal together with the reasons therefore. Those decisions are under appeal.
- (10) Hearings of the appeal authority must be recorded.

135. Decisions of the Appeal Authority

- (1) The appeal authority must:
 - (a) Consider and determine appeals lawfully submitted to it;
 - (b) confirm, vary and revoke the decision of the Municipal Planning Tribunal or authorised official;
 - (c) provide reasons for any decision made by it;
 - (d) give directions relevant to its functions to the municipality;
 - (e) keep a record of all its proceedings; and
 - (f) determine whether the appeal falls within its jurisdiction.
- (2) The appeal authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal: Provided that such technical advisor may not be an official in the employ of the municipality who assessed or

decided on the application or who is a member of the Municipal Planning Tribunal that made a decision on the application that forms the subject matter of the appeal.

- (3) If the appeal authority revokes a decision of the Municipal Planning Tribunal or authorised official it may re-submit the matter to the Municipal Planning Tribunal or authorised official or replace the decision with any decision it regards necessary.
- (4) The presiding officer must sign the decision of the appeal authority.
- (5) The Registrar must notify parties of the decision of the appeal authority in terms of Section 135 within 7 days after the appeal authority handed down its decisions
- (6) The appeal authority must, in its decision, give directives to the Municipality as to how such a decision must be implemented and which of the provisions of the Act, the Regulations and By-laws have to be complied with in the implementation of the decision concerned.

136. Withdrawal of appeal

An appellant or any respondent may, at any time before the appeal hearing, withdraw an appeal or opposition to an appeal and must give notice of such withdrawal to the registrar and all other parties to the appeal.

137. Expenditure

Expenditure in connection with the administration and functioning of the appeal authority must be defrayed from moneys appropriated by the Municipality.

CHAPTER 9: COMPLIANCE AND ENFORCEMENT

Part A: Introductory provisions for Chapter 9

138. Definitions in this Chapter

In this Chapter, unless the context indicates otherwise –

“**owner**”, in addition to the definition in section 1, is deemed to also include –

- (a) if the registered owner is deceased and if an executor has not been appointed, an heir; and if there is no heir or if the Municipality is unable to determine the identity of the heir – the person who is entitled to the benefit of the use of the land or building or who enjoys such benefit;
- (b) if the registered owner is a close corporation that is deregistered – a member of the close corporation at the time of deregistration;
- (c) if the registered owner is absent from the Republic or their whereabouts are unknown – a person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other moneys in respect of the land or building or who is responsible therefor; and
- (d) if the Municipality is unable to determine the identity of a person otherwise defined as owner – a person who is entitled to the benefit of the use of the land or building or who enjoys such benefit.

139. Choice of enforcement measure

The Municipality may take any one or more of the enforcement measures contemplated in this Chapter, and may take them in any order or combination or with one as an alternative to another in the event of a failure to comply, or sequentially.

Part B: Complaint

140. Complaint

- (1) A person, who is affected by an alleged contravention of this By-Law, may in writing and using the prescribed form or in a manner determined by a policy, request the Municipality Manager to investigate the alleged contravention and to act in terms of this Chapter.
- (2) The Municipality must investigate the complaint within the time and in accordance with the procedure set out in guidelines adopted by the Department.
- (3) The Municipality must inform the complainant of the outcome of the investigation within 30 days of the investigation being completed and the steps to be taken in the event that this By-Law is being contravened.

Part C: Civil enforcement

141. Compliance notice

- (1) The Municipality may serve a notice on an owner or other person if there are reasonable grounds for believing that the owner or other person is in contravention of this By-Law.
- (2) The notice must –
 - (a) describe the land unit;
 - (b) describe the conduct constituting a contravention of this By-Law;
 - (c) indicate which provision of this By-Law, condition of approval or other provision the conduct contravenes;
 - (d) if relevant, state that the unlawful conduct constitutes an offence and indicate the penalties;
 - (e) instruct the owner or other person to cease the unlawful conduct and to comply with this By-Law, condition of approval or other provision immediately or within a time period determined by the Municipality, and where relevant must specify the steps to be taken to comply;
 - (f) state that a failure to comply with the notice constitutes an offence and indicate the penalties; and
 - (g) state that, in the event of non-compliance with the notice, the Municipality may take one or more of the following measures –
 - (i) if relevant, take steps contemplated in section 142 to withdraw an approval for a temporary departure or an approval granted for a limited period of time;
 - (ii) take steps contemplated in section 143 to issue a directive in the terms specified in the notice;
 - (iii) apply in terms of section 144 for the determination of an administrative penalty;
 - (iv) apply to a competent court for appropriate relief including the costs of the application; and
 - (v) institute a criminal prosecution.
- (3) If relevant, the notice may advise the owner or other person of their right to apply for rectification of the contravention as contemplated in section 145, and may state that the Municipality intends to take the measures contemplated in subsection (2)(g) in the event that the owner or other person fails to apply for rectification of the contravention within a specified time.
- (4) The notice may invite the owner or other person within a specified time to inform the Municipality what steps have been taken to comply with the notice.
- (5) There is no appeal against a decision to issue or not to issue a compliance notice in terms of this section.

142. Withdrawal of approval

- (1) If an owner or another person is not complying with an approval for a temporary departure or an approval granted for a limited period of time, the Municipality may serve a notice on the owner or other person –
 - (a) setting out the information contemplated in sections 101(2)(a)-(c); and
 - (b) inviting the owner or other person within a specified time to make written representations on the notice and to give reasons why the approval should not be withdrawn.
- (2) After considering any representations and reasons submitted, and if it is satisfied that this By-Law is being contravened, the Municipality may decide to withdraw the approval contemplated in subsection (1).
- (3) If the Municipality decides to withdraw the approval –

- (a) the Municipality must notify the owner or other person as contemplated in section 110(2); and
 - (b) the approval is withdrawn from the effective date of decision contemplated in section 111(2).
- (4) Once the withdrawal of an approval is effective, the Municipality must –
- (a) notify the owner or other person of the withdrawal and instruct the owner or other person to cease the activity in question and to take any other which the Municipality considers necessary to comply with this By-Law immediately or within a time determined by the Municipality; and
 - (b) update the zoning register.

143. Directive

- (1) If an owner or another person is in contravention of this By-Law, the Municipality may serve a notice on the owner or the other person –
- (a) setting out the information contemplated in sections 110(2)(a)-(c); and
 - (b) inviting the owner or other person within a specified time to make written representations on the notice and give reasons why the Municipality should not direct the owner or other person within a specified time to –
 - (i) submit documentation including a diagram or plan to the Municipality or appoint a professional person selected by the Municipality to conduct an investigation and to report to the Municipality on the nature and extent of the contravention;
 - (ii) demolish a building or part thereof which contravenes this By-Law and restore the building or rehabilitate the land as the case may be to a form and within the time period specified in the directive; or
 - (iii) address another impact of the contravention.
- (2) After considering any representations and reasons submitted, and if it is satisfied that this By-Law is being contravened, the Municipality may decide to issue a directive in terms which are the same as, substantially similar to or less onerous than those contemplated in subsection (1)(b).
- (3) A directive must –
- (a) clearly set out the instructions the Municipality requires compliance with;
 - (b) include the information contemplated in section 110(2);
 - (c) state that a failure to comply with a duty imposed by the directive constitutes an offence and indicate the penalties; and
 - (d) state that instead of, or in addition to prosecuting the owner or other person, without further notice, the Municipality may apply to a competent court for enforcement of the directive and other appropriate relief including the costs of the application.
- (4) The owner or other person must comply with a directive from the effective date of a decision contemplated in section 111(2).

144. Administrative penalty

- (1) A person who is in contravention of this By-Law, and who wishes to rectify the contravention in terms of section 141, may apply to the Municipality for the determination of an administrative penalty if the Municipality has not issued a demolition directive in respect of the land or building or part thereof concerned.
- (2) A person making an application contemplated in subsection (1) must –
- (a) submit an application;
 - (b) pay the prescribed fee;
 - (c) provide the information contemplated in subsections (7) and (8); and
 - (d) comply with the duties of an applicant in **section 78**.

- (3) The Municipality Manager may apply to the Municipal Planning Tribunal for an order that a person who has contravened this By-Law must pay an administrative penalty in an amount determined by the Municipal Planning Tribunal, and must provide the information contemplated in subsections (7) and (8) to the extent that it is known to the Municipality Manager.
- (4) If the Municipality Manager makes an application contemplated in subsection (3), the Municipal Planning Tribunal must invite the person concerned within a specified time to make written representations on the application.
- (5) The Department must provide a written report to the Municipal Planning Tribunal.
- (6) The Municipal Planning Tribunal may –
 - (a) call for additional information to decide an application in terms of this section; and
 - (b) draw an adverse inference against a person who fails or refuses to provide, to the satisfaction of the Municipal Planning Tribunal, information contemplated in subsection (2)(c) or paragraph (a).
- (7) After considering the Departmental report, the representations by the Municipality Manager and any representations from the person concerned, if the Municipal Planning Tribunal decides to impose an administrative penalty on a person who has contravened this By-Law, it must determine an amount which –
 - (a) for building work in contravention of this By-Law – may not be less than 10% and not more than 100% of the value of the building, construction and engineering work unlawfully carried out, as determined by the Municipality;
 - (b) for land use in contravention of this By-Law – may not be less than 10% and not more than 100% of the municipal valuation of the area that is used unlawfully, as determined by the Municipality; and
 - (c) for building work and land use in contravention of this By-Law – must comprise the penalties in both paragraphs (a) and (b).
- (8) When determining an appropriate administrative penalty, the Municipal Planning Tribunal must consider at least the following factors –
 - (a) the nature, duration, gravity and extent of the contravention;
 - (b) the conduct of the person involved in the contravention;
 - (c) whether the unlawful conduct was stopped; and
 - (d) whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.
- (9) The Municipal Planning Tribunal must notify the person who has contravened this By-Law of its decision and if it decides to impose an administrative penalty, the notice must –
 - (a) set out the administrative penalty;
 - (b) include the information contemplated in section 110(2);
 - (c) state that the person must pay the administrative penalty to the Municipality within 30 days of the effective date of decision contemplated in section 111(2) or within such further period that the Municipal Planning Tribunal may decide;
 - (d) state that the payment of an administrative penalty in terms of this section does not limit the Municipality's power to investigate an offence or institute a criminal prosecution; and
 - (e) state that, without further notice, the Municipality may apply to a competent court for an order confirming the administrative penalty and other appropriate relief including the costs of the application.
- (10) The Municipality may apply to the High Court for an order confirming the order of the Municipal Planning Tribunal to pay an administrative penalty.

145. Rectification of contravention

- (1) A person who is in contravention of this By-Law may apply to the Municipality in terms of this By-Law for the necessary approval.
- (2) Subject to subsection (3), a person contemplated in subsection (1) must submit an application for and pay an administrative penalty determined in terms of section 144 before the Municipality may consider an application contemplated in subsection (1).
- (3) If an application for an administrative penalty contemplated in section 144 has been submitted but not yet determined, or an administrative penalty determined in terms of section 144 has not yet been paid, in exceptional circumstances the Municipality may consider an application contemplated in subsection (1) provided that the Municipality, when granting an approval or making a determination, must impose appropriate conditions to ensure payment of any administrative penalty.
- (4) The submission of an application for, determination of, or payment of an administrative penalty in terms of section 144, or the approval of an application contemplated in this section, does not limit the Municipality's power to investigate an offence or institute a criminal prosecution.

146. Enforcement litigation

Notwithstanding that this Chapter may give the Municipality an alternative remedy, the Municipality may apply to the High Court for appropriate relief, including orders compelling the owner or other person to –

- (a) demolish, remove or alter any building, structure or work erected in contravention of this By-Law, and rehabilitate the land concerned; and
- (b) cease or modify conduct in contravention of this By-Law, to comply with this By-Law, or to address another impact of the contravention.

147. Urgent matters

If the Municipality believes that urgent action is required to cease or modify conduct in contravention of this By-Law, to comply with this By-Law, or to address an impact of the contravention, the Municipality may –

- (a) serve an appropriate compliance notice on the owner or other person by telephone, by email or some other form of electronic communication contemplated in the Electronic Communications and Transactions Act, 2002 (25 of 2002) or by placing the notice on the land unit or by a combination of these methods; or
- (b) apply to the High Court on an urgent basis for appropriate relief, including an interdict.

Part 4: Criminal enforcement

148. Offences and penalties

- (1) A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she—
 - (a) contravenes or fails to comply with **sections 15(1) and (5), 20(1), 21(4), 31(1), 59(3), 62(2) or 88(2);**
 - (b) utilises land in a manner other than prescribed by a zoning scheme without the approval of the Municipality;
 - (c) upon registration of the first land unit arising from a subdivision, fails to transfer all common property arising from the subdivision to the owners' association;
 - (d) supplies particulars, information or answers in an application, or in an appeal against a decision on an application, or in any documentation or representation related to an application or an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct;
 - (e) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
 - (f) hinders or interferes with an authorised employee in the exercise of any power or the performance of any duty of that employee.
- (2) An owner who permits his or her land to be used in a manner set out in subsection (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to contravene the zoning scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence in terms of this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.
- (4) The Municipality must adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

- (5) Upon conviction of an offence in this By-Law a person is liable to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment.
- (6) A person convicted of an offence under this By-Law who, after conviction, continues with the conduct in respect of which he or she was so convicted, is guilty of a continuing offence and upon conviction is liable to a fine or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment, in respect of each day on which he or she so continues with that conduct.
- (7) An owner –
 - (a) who permits their land to be used, or fails to take reasonable steps to ensure that their land is not used in a manner which constitutes an offence under this By-Law is guilty of an offence and upon conviction is liable to the penalties contemplated in subsection (5);
 - (b) who is convicted of an offence contemplated in paragraph (a) who, after conviction, continues with the conduct in respect of which he or she was so convicted, is guilty of a continuing offence and upon conviction is liable to the penalties contemplated in subsection (6).

149. Prosecution of corporate body and partnership

A person is personally guilty of an offence contemplated in terms of this By-Law if –

- (a) the offence was committed by –
 - (i) a corporate body established in terms of any law; or
 - (ii) a partnership;
- (b) at the time that the offence was committed the person was a partner in the partnership, or a member of the board, executive committee or other managing body of the corporate body; and
- (c) the person knew or reasonably ought to have known that an offence was being committed and failed to take reasonable steps to prevent the offence.

Part E: Investigative and enforcement powers of authorised official

150. Powers and functions of an authorised official

- (1) The Municipality may authorise an official or any other person to act in terms of this section for the purposes of investigating any matter in connection with this By-Law.
- (2) An official appointed by the Municipality is considered to be an authorised official contemplated in subsection (1);
- (3) An authorised official may, subject to subsection (4) and (5), at any reasonable time, and without prior notice, enter and inspect any land, building or premises for the purpose of ensuring compliance with this By-Law.
- (4) An authorised official may at any reasonable time and after reasonable notice has been given to the owner or occupier of the land or building and after obtaining the consent of the owner or lawful occupier or person in control of the building, enter and inspect a private dwelling without a warrant for the purpose of ensuring compliance with this By-Law.
- (5) An authorised official may, if consent is not obtained as contemplated in subsection (4), with a warrant of entry obtained, enter and inspect a private dwelling for the purpose of ensuring compliance with this By-Law.
- (6) The authorised official is not required to give reasonable or any notice to enter land or a building other than a private dwelling and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if –

- (a) he or she believes on reasonable grounds that a warrant will be issued to him or her; and
 - (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action.
- (7) An authorised official must be in possession of a certificate signed by the Municipality Manager stating that he or she has been designated as an authorised official for the purposes of this By-Law or must show proof that he or she is a law enforcement officer.
- (8) An authorised official must produce a certificate on the request of any person being affected by the exercise of a power in terms of this section.
- (9) An authorised official may not investigate a matter in which he or she has a direct or indirect personal or private interest.
- (10) In ascertaining compliance with this By-Law, an authorised official may –
 - (a) be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;
 - (b) question any person who is or was on that land and who may be able to furnish information on a matter to which this By-Law relates;
 - (c) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute a contravention of this By-Law;
 - (d) question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for to the investigation;
 - (e) examine any book, record or other written or electronic information and make a copy thereof or an extract therefrom and remove such document, book, record or written or electronic information in order to make copies or extracts;
 - (f) require a person to produce or to deliver to a place specified by the authorised official, any document, book, record, or any written or electronic information referred to in paragraph (e) for inspection;
 - (g) require from such person an explanation of any entry in such document, book, record or written or electronic information;
 - (h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
 - (i) seize any book, record or other document, details or any article, substance, plant or machinery or a part or sample thereof which may serve as evidence at the trial of any person charged with an offence under this By-Law, provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;
 - (j) direct any person to appear before him or her at such time and place as may be determined by the authorised official and question such person either alone or in the presence of any other person on any matter to which this By-Law relates; and
 - (k) take photographs or make audio visual recordings or tape recordings of any person or anything for the purpose of his or her investigation.
- (11) When an authorised official removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he or she must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.

- (12) Where an authorised official enters any land in terms of subsection (3), a person who controls or manages the land must at all times provide such facilities as are reasonably required by the authorised official to enable him or her to perform his or her functions effectively and safely under this By-Law.
- (13) An authorised official who enters and searches any land or private dwelling under this section, 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.

CHAPTER 10: TRANSITIONAL PROVISIONS

151. Transitional provisions

- (1) Any land development application or other matter in terms of any provision of National or Provincial legislation dealing with land development applications that are pending before the Municipality on the date of the coming into operation of this By-law, shall be dealt with in terms of that legislation or if repealed in terms of its transitional arrangements or in the absence of any other provision, in terms of this By-law, read with section 2(2) and section 60 of the Act;
- (2) Where on the date of the coming into operation of an approved land use scheme in terms of section 26(1) of the Act, any land or building is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been reserved or zoned in terms of the provisions of a land use scheme in terms of this By-law read with section 27 of the Act, but which is otherwise lawful and not subject to any prohibition in terms of this By-law, the use for that purpose may, subject to the provisions of this subsection (3), be continued after that date read with the provisions of a Town Planning Scheme or land use scheme.
- (3) The right to continue using any land or building by virtue of the provisions of subsection (2) shall;
 - (a) where the right is not exercised for a continuous period of 15 months, lapse at the expiry of that period;
 - (b) lapse at the expiry of a period of 15 years calculated from the date contemplated in subsection (2);
 - (c) where on the date of the coming into operation of an approved land use scheme -
 - (i) a building, erected in accordance with an approved building plan, exists on land to which the approved land use scheme relates;
 - (ii) the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the approved land use scheme, the building shall for a period of 15 years from that date be deemed to comply with that provision.
 - (d) where a period of 15 years has, in terms of subsection (3), commenced to run from a particular date in respect of any land or building, no regard shall, for the purposes of those subsections, be had to an approved scheme which comes into operation after that date.
 - (e) within one year from the date of the coming into operation of an approved land use scheme -
 - (i) the holder of a right contemplated in subsection (2) may notify the Municipality in writing that he is prepared to forfeit that right;
 - (ii) the owner of a building contemplated in subsection (3)(c) may notify the Municipality in writing that he is prepared to forfeit any right acquired by virtue of the provisions of that subsection;.

- (4) Where at any proceedings in terms of this By-law it is alleged that a right has lapsed in terms of subsection (2)(a), such allegation shall be deemed to be correct until the contrary is proved.
- (5) Where any land use provisions are contained in any title deed, deed of grant or 99 year leasehold, which did not form part of a town planning scheme, such land use provisions shall apply as contemplated in subsection (2).
- (6) If the geographic area of the Municipality is demarcated to incorporate land from another municipality then the land use scheme or town planning scheme applicable to that land remains in force until the Municipality amends, repeals or replaces it.

152. Determination of zoning

- (1) Notwithstanding the provisions of this By-law, the owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in section 26(3) of the Act
- (2) When the Municipality considers an application in terms of subsection (1) it must have regard to the following:
 - (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;
 - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
 - (c) any departure or consent use that may be required in conjunction with that zoning;
 - (d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and
 - (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If the lawful zoning of land contemplated in subsection (1) cannot be determined, the Municipality must determine a zoning and give notice of its intention to do so in terms of section 92.
- (4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be the lawful land use.

CHAPTER 11: GENERAL PROVISIONS

153. Intervention by interested person

- (1) Where an application has been lodged by an applicant to the Municipal Planning Tribunal, an interested person referred to in section 45(2) of the Act and Section 31(1) of the Regulations may, at any time during the proceedings, but within 7 days of becoming aware of the proceedings, petition the Municipal Planning Tribunal in writing on the prescribed to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the Municipal Planning Tribunal .
- (2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –
 - (a) does not collude with any of the objectors or other interested person as contemplated in Section 131(d); and

- (b) is willing to deal with or act in regard to the application as the Municipal Planning Tribunal may direct.
- (3) The registrar must determine whether the requirements of this by-law, the Act and the regulations published in terms of the Act have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.
- (4) The chairperson of the Municipal Planning Tribunal must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar.

154. Public participation

- (1) Where the municipality intends to amend its land use scheme by rezoning any land or where it is necessary to determine the content of the spatial development framework, or where any person may be affected by any decision or amendment, the municipality must undertake a public participation process to ensure that all affected parties have the opportunity to make representations on, object to, and appeal such decision.
- (2) The Municipality may for purposes of public engagement on the content of the draft municipal spatial development framework arrange -
 - (a) specific consultations with professional bodies, ward communities or other groups; and
 - (b) public meetings.
- (3) The municipality must at least:
 - (a) publish a notice in three local newspapers that is circulated in the municipal area of the municipality in three languages commonly spoken in the area, once a week for two consecutive weeks; and
 - (c) may use any other method of communication it may deem appropriate
- (4) All notices and forms of communication must specifically state that any person or body wishing to submit comments or objections must:
 - (i) do so within a period of 30 days from the first day of publication of the notice; and
 - (ii) provide written comments, if interested parties wish to make oral submissions, such submissions will be reduced to writing by an official; and
 - (iii) provide their contact details as required in the notice or communication.
- (4) The Municipality must inform the Member of the Executive Council in writing of the intention to draft a land use scheme and provide him or her with a copy of the draft land use scheme after it has been approved by the Council.

155. Delegations

Any power conferred in this By-law on the Municipality may be delegated by the municipality subject to section 56 of the Act and section 59 of the Local Government: Municipal Systems Act.

156. Repeal of by-laws

The (insert the name of the applicable by-laws) are hereby repealed.

157. Fees payable

Any fee payable to the Municipality in terms of this By-Law is determined annually in terms of section 24(2) of the Municipal Finance Management Act, 2003 read with sections 74 and 75A of the Municipal Systems Act and forms part of the By-Law to constitute the Tariff Structure of the Municipality.

158. Short title and commencement

This By-law is the Nelson Mandela Bay Metropolitan Municipality Spatial Planning and Land Use Management and comes into operation on the date of publication in the Provincial Gazette.

SCHEDULE 1

**INVITATION TO NOMINATE A PERSON TO BE APPOINTED AS A MEMBER OF
THE NELSON MANDELA BAY MUNICIPAL PLANNING TRIBUNAL**

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the Nelson Mandela Bay Municipality hereby invites nominations for officials or employees of the (*insert name of organ of state or non-governmental organisation contemplated in regulation (3)(2)(a) of the Regulations*) to be appointed to the Nelson Mandela Bay Municipal Planning Tribunal for its first term of office. The period of office of members will be five years calculated from the date of appointment of such members by the Nelson Mandela Bay Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (f) of this By-law and who must have leadership qualities and knowledge and experience of spatial planning, land use management and land development or the law related thereto.

Each nomination must be in writing and must contain the following information:

- (a) The name, address and identity number of the nominee;
- (b) The designation or rank of the nominee in the organ of state or non-governmental organisation;
- (c) A short curriculum vitae of the nominee (not exceeding two pages);
- (d) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

Nominations must be sent to:

The Municipal Manager
Nelson Mandela Bay Municipality

P.O. Box _____

For Attention: _____

For Enquiries: _____

Tel _____

Nelson Mandela Bay Municipality
DRAFT SPLUMA BYLAW FOR PUBLIC PARTICIPATION: VERSION 4

* I,(full names of nominee),

ID No (of nominee),

hereby declare that –

- (a) I am available to serve on _____ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me OR I am not willing to serve a chairperson or deputy chairperson (*delete the option not applicable*);
- (b) there is no conflict of interest OR I have the following interests which may conflict with the _____ Municipal Planning Tribunal which I have completed on the declaration of interest form (*delete the option not applicable*);
- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the _____ Municipal Planning Tribunal and I authorise the _____ Municipality to verify any record in relation to such disqualification or requirement.
- (d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the _____ Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

CLOSING DATE: (INSERT DATE)

Signature of Nominee

Full Names of Nominee

Signature of Person signing on behalf of the Organ of State or Non-Governmental Organisation

Full Names of Person signing on behalf of the Organ of State or Non-Governmental Organisation

SCHEDULE 2

**CALL FOR NOMINATIONS FOR PERSONS TO BE APPOINTED AS MEMBERS TO
THE - _____ MUNICIPAL PLANNING TRIBUNAL**

CLOSING DATE: (INSERT DATE)

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the _____ Municipality hereby call for nominations for members of the public to be appointed to the _____ Municipal Planning Tribunal for its first term of office.

The period of office of members will be five years calculated from the date of appointment of such members by the _____ Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (g) of the By-law on Municipal Land Use Planning, 2015, who have leadership qualities and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

Each nomination must be in writing and must contain the following information:

- (a) The name and address of the nominator, who must be a natural person and a person may nominate himself or herself;
- (b) The name, address and identity number of the nominee;
- (d) Motivation by the nominator for the appointment of the nominee to the _____ Municipal Planning Tribunal (no less than 50 words and no more than 250 words);
- (e) A short curriculum vitae of the nominee (not exceeding two pages);
- (f) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

Please note that failure to comply with the above requirements may result in the disqualification of the nomination.

Nominations must be sent to:

The Municipal Manager
_____ Municipality

P.O. Box _____

For Attention: _____

For Enquiries: _____

Tel _____

* I,(full names of nominee),

ID No (of nominee),

hereby declare that –

- (a) I am available to serve on _____ Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the Council designate me / I am not willing to serve a chairperson or deputy chairperson (*delete the option not applicable*);
- (b) there is no conflict of interest OR I have the following interests which may conflict with the _____ Municipal Planning Tribunal and which I have completed on the declaration of interest form (*delete the option not applicable*);
- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the _____ Municipal Planning Tribunal and I authorise the _____ Municipality to verify any record in relation to such disqualification or requirement;
- (d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the _____ Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

Signature of Nominee

Full Names of Nominee

**SCHEDULE 3
DISCLOSURE OF INTERESTS FORM**

I, the undersigned,

Full names: _____

Identity Number: _____

Residing at: _____

hereby declare that -

- (a) the information contained herein fall within my personal knowledge and are to the best of my knowledge complete, true and correct, and
- (b) that there is no conflict of interest between myself and the _____ Municipal Planning Tribunal; or
- (c) I have the following interests which may conflict or potentially conflict with the interests of the _____ Municipal Planning Tribunal;

CONFLICTING INTERESTS

- (d) the non-executive directorships previously or currently held and remunerative work, consultancy and retainership positions held as follows:

1. NON-EXECUTIVE DIRECTORSHIP	
Name of Company	Period
1.	
2.	
3.	
4.	
5.	

2. REMUNERATIVE WORK, CONSULTANCY & RETAINERSHIPS			
Name of Company & Occupation	Type of Business	Rand amount per month	Period
1.			
2.			
3.			
4.			
5.			

3. CRIMINAL RECORD	
Type of Offence	Dates/Term of Sentence
1.	

- (e) I am South African citizen or a permanent resident in the Republic
- (f) I am not a member of Parliament, a provincial legislature, a Municipal Council or a House of Traditional Leaders;
- (g) I am not an un-rehabilitated insolvent;
- (h) I have not been declared by a court of law to be mentally incompetent and have not been detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (i) I have not at any time been convicted of an offence involving dishonesty;
- (j) I have not at any time been removed from an office of trust on account of misconduct;
- (k) I have not previously been removed from a tribunal for a breach of any provision of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the _____ Municipality.;
- (l) I have not been found guilty of misconduct, incapacity or incompetence; or
- (m) I have not failed to comply with the provisions of the Spatial Planning and Land Use Management Act, 2013 or provincial legislation or the Land Use Planning By-Laws, 2015 enacted by the _____ Municipality.

Signature of Nominee: _____

Nelson Mandela Bay Municipality
DRAFT SPLUMA BYLAW FOR PUBLIC PARTICIPATION: VERSION 4

Full Names: _____

SWORN to and **SIGNED** before me at _____ on this _____ day
of _____.

The deponent having acknowledged that he knows and understands the contents of this affidavit, that the contents are true, and that he or she has no objection to taking this oath and that he or she considers the oath to be binding on his or her conscience.

COMMISSIONER OF OATHS

FULL NAMES: _____

DESIGNATION: _____

ADDRESS: _____

SCHEDULE 4

CODE OF CONDUCT FOR MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

I, the undersigned,

Full names: _____

Identity Number: _____

Residing at: _____

do hereby declare that I will uphold the Code of Conduct of the _____
Municipal Planning Tribunal contained hereunder:

General conduct

1. A member of the Municipal Planning Tribunal must at all times—
 - (a) act in accordance with the principles of accountability and transparency;
 - (b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve;
 - (c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the municipality has given written approval and has expressly authorised his or her participation.
2. A member of the Municipal Planning Tribunal may not—
 - (a) use the position or privileges of a member of the Municipal Planning Tribunal or confidential information obtained as a member of the Municipal Planning Tribunal for personal gain or to improperly benefit another person; and
 - (b) participate in a decision concerning a matter in which that member or that members' spouse, partner or business associate, has a direct or indirect personal interest or private business interest.

Gifts

3. A member of the Municipal Planning Tribunal may not receive or seek gifts, favours or any other offer under circumstances in which it might reasonably be

inferred that the gifts, favours or offers are intended or expected to influence a person's objectivity as an advisor or decision-maker in the planning process.

Undue influence

4. A member of the Municipal Planning Tribunal may not—
- (a) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;
 - (b) use confidential information acquired in the course of his or her duties to further a personal interest;
 - (c) disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons; and
 - (d) commit a deliberately wrongful act that reflects adversely on the Municipal Planning Tribunal, the Municipality, the government or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions of the Municipal Planning Tribunal by improper means.

Signature of Nominee: _____

Full Names: _____

Date: _____

SCHEDULE 5

OWNERS' ASSOCIATIONS

General

1. The Municipality may, when approving an application for a subdivision of land impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
2. An owners' association that comes into being by virtue of subitem 1 is a juristic person and must have a constitution.
3. The constitution of an owners' association must be approved by the Municipality before the transfer of the first land unit and must provide for—
 - (a) the owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
 - (b) control over and maintenance of buildings, services or amenities arising from the subdivision;
 - (c) the regulation of at least one yearly meeting with its members;
 - (d) control over the design guidelines of the buildings and erven arising from the subdivision;
 - (e) the ownership by the owners' association of private open spaces, private roads and other services arising out of the subdivision;
 - (f) enforcement of conditions of approval or management plans;
 - (g) procedures to obtain the consent of the members of the owners' association to transfer an erf in the event that the owners' association ceases to function;
 - (h) the implementation and enforcement by the owners' association of the provisions of the constitution.
4. The constitution of an owners' association may have other objects as set by the association but may not contain provisions that are in conflict with any law.
5. The constitution of an owners' association may be amended when necessary provided that an amendment that affects the Municipality or a provision referred to in subitem 3 is approved by the Municipality.
6. An owners' association which comes into being by virtue of subitem 1 -
 - (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and
 - (b) is upon registration of the first land unit, automatically constituted.
7. The design guidelines contemplated in subitem 3(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.
8. If an owners' association fails to meet any of its obligations contemplated in subitem 3 and any person is adversely affected by that failure, the Municipality may take appropriate action to rectify the failure and recover from the members referred to in subitem 6(a), the amount of any expenditure incurred by it in respect of those actions.
9. The amount of any expenditure so recovered is, for the purposes of subitem 8, considered to be expenditure incurred by the owners' association.

Owners' association ceases to function

1. If an owners' association ceases to function or carry out its obligations, the Municipality may—
 - (a) take steps to instruct the association to hold a meeting and to reconstitute itself;
 - (b) subject to the amendment of the conditions of approval remove the obligation to establish an owners' association; or
 - (c) subject to amendment of title conditions pertaining to the owners' association remove any obligations in respect of an owners' association.
2. In determining which option to follow, the Municipality must have regard to—
 - (a) the purpose of the owners' association;
 - (b) who will take over the maintenance of infrastructure which the owners' association is responsible for, if at all; and
 - (c) the impact of the dissolution or the owners' association on the members and the community concerned.