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LIMPOPO PROVINSIE  
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PROFENSE YA LIMPOPO  
VUNDU LA LIMPOPO  
IPHROVINSI YELIMPOPO

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LOCAL AUTHORITY NOTICES • PLAASLIKE OWERHEIDS KENNISGEWINGS

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LOCAL AUTHORITY NOTICE 149 OF 2016

**THE SPATIAL  
PLANNING AND  
LAND USE  
MANAGEMENT BY-  
LAW OF BA-  
PHALABORWA  
LOCAL  
MUNICIPALITY**

**BY-LAW FOR BA-PHALABORWA LOCAL MUNICIPALITY  
SPATIAL PLANNING AND LAND USE MANAGEMENT**

The municipal council for Ba-Phalaborwa Local Municipality adopted the following by-law at its meeting held on the 26<sup>th</sup> May 2016 in terms of section 162 (1) of the Constitution of Republic of South Africa (Act No. 108 of 1996) and hereby publishes the by-law in terms of section 13 (a) of the Local Government: Municipal Systems Act, 2000 to come into effect on the date of publication hereof in the Provincial Gazette.

**PREAMBLE**

WHEREAS Section 156(1) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) confers on municipalities the executive authority and right to administer local government matters set out in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution;

WHEREAS Part B of Schedule 4 to the Constitution lists municipal planning as a local government matter;

WHEREAS Section 156(2) of the Constitution empowers municipalities to make and administer laws for the effective administration of matters that it has the right to administer;

WHEREAS Parliament has enacted the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) which among other things set out development principles which apply to all organs of state responsible for the implementation of legislation regulating the use and development of land;

NOW THEREFORE Ba-Phalaborwa Local Municipality has adopted this By-Law in terms of Section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) for promulgation as set out hereunder.

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## CHAPTER 1 DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS

### 1. DEFINITIONS

In these By-Law, unless the context indicates otherwise, a word or expression defined in the Act or Provincial Legislation has the same meaning as in these By-Law and -

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

**“Appeal Authority”** means the executive authority of the Municipality as established by the Council Resolution in terms of section 51 of the Act 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;

**“Appeals tribunal”** means the appeal authority as contemplated in the Act;

**“Approved township”** means in the context of any land development application in terms of this By-law, a township of which notice has been given in the Provincial Gazette in terms of land use scheme as contemplated in section 16 of this

By-law read together with section 56 of the Act or an approved township in terms of any other legislation, a township approved in terms of any repealed law relating to townships and a proclaimed township shall have a corresponding meaning;

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

**“Communal Land”** means land under the jurisdiction of a Traditional Council determined in terms of section 6 of the Limpopo Traditional Leadership and Governance Act, 2003 (Act No. 41 of 2003) and which was at any time vested in-

- (a) the Government of the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or
- (b) the Government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971);

**“Conditions of Establishment”** means conditions imposed by the Municipality in the process of approval of a township establishment;

**“Consent”** means a land use right that may be obtained by way of consent from the Municipality and is specified as such in the adopted Land Use Scheme of the municipality;

**“Consolidation”** means the joining of two or more adjacent erven into a single registered entity through the registration thereof in the deeds registry, but excludes the consolidation of farm portions for purposes of this By-law read with the Land Survey Act, 1997 (Act 8 of 1997) and shall not mean the spreading or amending of a zoning of the subject property;

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

**“Contact Details”** means sufficient details including but not limited to a name, surname, telephone number – business or private, e-mail address, postal and residential addresses that will enable a Municipality or organ of state to contact a person for purposes of executing their functions in terms of the Act or this By-law and in so far as it relates to an organ of state, the details of a contact person within the employ of the organ of state;

**“departure”** is a land development or land use application submitted to the Municipality that seek to effect change of a land use, may be similar to a rezoning application;

**“diagram”** means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997); but for purposes of this By-law shall be an approved diagram in terms of the Land Survey Act, 1997;

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

**“filing of Documents”** means the lodgement of a document with the appeal authority of the Municipality;

**“high Impact Development”** refers to all Category 1 and opposed applications of Category 2 and 3;

**“intergovernmental Steering Committee”** it is the Committee established in terms of the provisions of section 7 of this By-Law; (1)

**“interested person”** for the purpose of this Part means a person who -

(a) does not have a direct or indirect pecuniary or proprietary interest in the land affected by the decision of the District Municipal Planning Tribunal or Land Development Officer referred to in section 34(2) of the Act and might therefore be affected by the judgement of the Appeal Authority; and

- (c) who submitted written comments or made oral representations during the decision-making process of the District Municipal Planning Tribunal or Land Development Officer referred to in subsection 9(a).

**“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 the registered owner of the land;

(c) any land which is surveyed or un-surveyed within the borders of the Municipality.

**“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 use scheme”** means the land use scheme adopted by Ba-Phalaborwa Municipal Council including any amendment scheme to the Land Use Scheme; and Town Planning Scheme and Land Use Scheme Regulations shall have the same meaning

**“layout plan”** means a plan indicating such information relevant to a land development application and includes the relative locations of erven, public places, or roads, on land intended for development, subdivision or consolidation, and the purposes for which the erven are intended to be used read with any notation or conditions contained thereon;

**“Member of the Executive Council (MEC)”** means the Member of the Executive Council responsible for Local Government in the Province;

**“municipal area”** means the area of jurisdiction of Ba-Phalaborwa Local Municipality delineated in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

**“municipal council”** means the Municipal council in terms of the Municipal Structures Act, 1998 (Act No 117 of 1998);

**“municipal manager”** means the person appointed as Accounting Officer of Ba-Phalaborwa Municipality in terms of section 54A of the Municipal Systems Act, 2000 (Act No. 32 of 2000) as amended and includes any person acting in that position or to whom authority has been delegated;

**“municipal planning tribunal”** means the Mopani District Municipal Planning Tribunal established in terms of section 32 of the Act as resolved in terms of Ba-Phalaborwa Municipality Council Resolution No: 284/2014 dated 31 July 2014

**“municipality”** means Ba-Phalaborwa Local Municipality or its successor in title as envisaged in section 155(1) of the Constitution, established in terms of the Local Government Municipal Structures Act, 1998 (Act 117 of 1998) and for the purposes of this By-Law includes an employee or official acting in terms of a delegation issued under section 59 of the Municipal Systems Act, 2000 (Act No. 32 of 2000) as amended;

**“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 to a municipal manager or delegated official;

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

**“presiding officer”** means the person appointed in terms of this By-Law to preside over appeal procedures;

**“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 Limpopo in terms section 103 of the Constitution;

**“registrar”** means the person appointed in terms of this By-Law to administer all administrative affairs of the district tribunal authority;

**“regulations”** means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015;

**“security”** means the cost associated with the appeal process;

**“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;

**“site development plan”** means a plan which reflects full details of the intended development, including the relative location of existing buildings and structures, the location of engineering services, access to the land, parking, existing developments and features that will/must be retained, areas for landscaping, and any other required information or details as may be determined by a municipality and as may be defined in a Town-planning Scheme or Land Use Scheme;

**“spatial development framework”** means Ba-Phalaborwa Municipal Spatial Development Framework, referred to in Chapter 4 of the Act and read with sections 23 to 35 of the Municipal Systems Act, 2000 (Act 32 of 2000) and this By-law;

**“subdivision”** means the division of a piece of land into two or more portions which provisions shall apply *mutatis mutandis* to a division of farm land or a portion of farm land read with the Division of Land Ordinance, 20 of 1986;;

**“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, including the Provincial legislation;

**“township register”** means an approved subdivision register of a township in terms of the Deeds Registries Act, 1939 (Act No 47 of 1939);

**“traditional communities”** means communities recognised in terms of section 3 of the Limpopo Traditional Leadership and Governance Act, 2003 (Act 41 of 2003);

## 2. Application of By-Law

(1) This By-law —

- (a) to applies to all land within the geographical area of the Municipality, including land owned by the State; and
- (b) binds every owner and their successor-in-title and every user of land, including the State.

**3. Conflict of laws**

- (1) 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.
- (2) Where –
  - (a) a provision of a land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail; and
  - (b) a provision of this By-law is in conflict with the provision of the Act or any provincial legislation this By-law shall prevail in so far as it relates to Municipal Planning.
- (3) Where there is a conflict between this By-law and —
  - (a) another By-law, this By-law prevails over the affected provision of the other By-law in respect of any municipal planning matter;
  - (b) another law, this By-law prevails over the affected provision of the other law in respect of any municipal planning matter not provided for in section 155(7) of the Constitution.

**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, 2000 (Act No 32 of 2000) as amended.
- (2) In the preparation and drafting of a Municipal Spatial Development Framework the Spatial Development Framework shall contain the essential elements of the content of both the Act and Municipal Systems Act, 2000 (Act 32 of 2000) or provincial legislation and the Municipality may for purposes of reaching its Constitutional objectives include any matter which it may deem necessary for municipal planning;
- (3) A Municipal Spatial Development Framework does not confer or take away land use rights but guides and informs decisions to be made by the Municipality relating to land development.
- (4) 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) A Municipal Spatial Development Framework must provide for the matters contemplated in section 21 of the Act, section 26 of the Municipal Systems Act, 2000 (Act No 32 of 2000) as amended and Provincial legislation, if any, and the Municipality may for purposes of reaching its constitutional objectives include any matter which it may deem necessary for Municipal planning.
- (2) Over and above the matters required in terms of subsection (1), the Municipality may determine any further plans, policies and instruments by virtue of which the Municipal Spatial Development Framework must be applied, interpreted and implemented.
- (3) A Municipal Spatial Development Framework must make provision for transitional arrangements with regard to the manner in which the Municipal Spatial Development Framework is to be implemented by the Municipality.

**6. Intention to prepare, amend or review Municipal Spatial Development Framework**

A Municipality which intends to prepare, amend or review its Municipal Spatial Development Framework:

- (1) may convene an Intergovernmental Steering Committee and a Project Committee in accordance with section 7 of this By-Law;
- (2) must publish a notice in the *Provincial Gazette* and a
- (3) in English and any other official language most spoken in the area concerned, 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, 2000 (Act No 32 of 2000) as amended;
- (4) must inform the Member of the Executive Council (MEC) in writing of:
  - (a) its intention to prepare, amend or review the Municipal Spatial Development Framework;
  - (b) the process that will be followed in the drafting or amendment of the Municipal Spatial Development Framework including the process for public participation; and
- (5) 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(1) is to :
  - (a) prepare, amend or review the Municipal Spatial Development Framework for



- adoption by the Municipal Council;
  - (b) provide technical knowledge and expertise;
  - (c) monitor progress and ensure that the Draft 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, 2000 (Act No 32 of 2000) as amended.
  - (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 consists of:
- (a) the Municipal Manager;
  - (b) Municipal employees from at least the following Municipal departments:
    - (i) the Integrated Development Planning office;
    - (ii) the Planning department;
    - (iii) the Engineering department;
    - (iv) the Local Economic Development department; and
    - (v) the Human Settlement department.
    - (vi) and any other relevant department.

## **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 Municipal 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 Municipal Council, together with the report referred to in subsection (5), to approve the publication of a notice referred to in section 9(4) 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 9 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 Municipal 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 section 9, 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 Municipal Council.
- (7) If the final Municipal Spatial Development Framework or final amendment or review of the Municipal Spatial Development Framework, as contemplated in section 6, is materially different to what was published in terms of section 9(4), the Municipality must follow a further consultation and public participation process before it is adopted by the Municipal Council.
- (8) The Municipal Council must adopt the final Municipal Spatial Development Framework or final amendment or review of the Municipal Spatial Development Framework, with or without amendments, and must within fourteen (14) calendar days of its decision give notice of its adoption in the media and the Provincial Gazette.
- (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 Municipal Council.

## 9. Public participation

- (1) Public participation undertaken by the Municipality must contain and comply with all the essential elements of any notices to be placed in terms of the Act or the Municipal Systems Act, 2000 (Act No 32 of 2000) as amended.
- (2) In addition to the publication of notices in the *Provincial Gazette* and newspapers as required in terms of this Chapter, the Municipality may use any other method of communication it may deem appropriate
- (3) The Municipality may for purposes of public engagement on the content of the Draft Municipal Spatial Development Framework arrange:
  - (a) specific consultations with professional bodies, ward communities or other groups; and
  - (b) public meetings.
- (4) The notice contemplated in section 9(2) must specifically state that any person or body wishing to provide comments shall-
  - (a) do so within a period of sixty (60) calendar days from the first day of publication of the notice;
  - (b) provide written comments; and
  - (c) provide their contact details as specified in the definition of contact details.

## 10. Local Spatial Development Framework

- (1) The Municipality may adopt a Local Spatial Development Framework for a specific municipal geographical 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.

## 11. Compilation, amendment or review of Local Spatial Development Framework

- (1) If the Municipality prepares, amends or reviews a Local Spatial Development Framework, it must draft and approve a process plan, including public participation processes to be followed for the compilation, amendment, review or adoption of a

Local Spatial Development Framework.

- (2) The Municipality must, within twenty one (21) calendar days of adopting a Local Spatial Development Framework or an amendment of Local Spatial Development Framework, publish a notice of the decision in the media and the Provincial Gazette.

**12. Effect of Local Spatial Development Framework**

- (1) A Local Spatial Development Framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in section 11(2).
- (2) A Local Spatial Development Framework guides and informs decisions made by the Municipality relating to land development.

**13. 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 copy of the Municipal or Local Spatial Development Framework the Municipality must provide on payment by such body or person of the fee as determined by the tariffs, a copy to them of the approved Municipal Spatial Development Framework or any component thereof.

**14. Deviation from Municipal Spatial Development Framework**

- (1) For purposes of section 22(2) of the Act, site specific circumstances include –
  - (a) a deviation that does not materially change the Municipal Spatial Development Framework;
- (2) If the effect of an approval of an application will be a material change of the Municipal Spatial Development Framework, the Municipality may amend the Municipal Spatial Development Framework in terms of the provisions of this Chapter, prior to taking a decision which constitutes a deviation from the Municipal Spatial Development Framework.

### CHAPTER 3 LAND USE SCHEME

#### 15. Applicability of Act

Sections 24 to 30 of the Act apply to any Land Use Scheme developed, prepared, adopted and amended by the Municipality.

#### 16. Purpose of land use scheme

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

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

#### 17. General matters pertaining to Land Use Scheme

- (1) In order to comply with section 24(1) of the Act, the Municipality must -
  - (a) develop a Draft Land Use Scheme as contemplated in section 18 of this By-Law;
  - (b) obtain Municipal Council approval for publication of the Draft Land Use Scheme as contemplated in section 20 of this By-Law;
  - (c) embark on the necessary public participation process as contemplated in section 21 of this By-Law; incorporate relevant comments received during the public participation process as contemplated in section 21 of this By-Law;
  - (d) prepare the Land Use Scheme as contemplated in section 23 of this By-Law;
  - (e) submit the Land Use Scheme to the Municipal Council for approval and adoption as contemplated in section 24 of this By-Law;
  - (f) publish a notice of the adoption and approval of the Land Use Scheme in the Provincial Gazette as contemplated in section 25 of this By-Law; and
  - (g) submit the Land Use Scheme to the Member of the Executive Council as contemplated in section 26 of this By-Law.
- (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 Integrated Development Plan in terms of the Municipal Systems Act, 2000 (Act No 32 of 2000) as amended.
  - (b) the Spatial Development Framework as contemplated in Chapter 4 of the Act and Chapter 2 of this By-Law, and
  - (c) Provincial legislation.

**18. Development of Draft Land Use Scheme**

- (1) Before the Municipality commences with the development of a Draft Land Use Scheme, the Municipal Council must resolve to develop and prepare a Land Use Scheme, provided that in its resolution the Municipal Council must:
  - (a) adopt a process for drafting the Land Use Scheme which complies with the Act, Provincial legislation, this Chapter and any other applicable legislation;
  - (b) confirm over and above that which is contained in the applicable legislation, what public participation process will 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 Municipal 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.
- (3) The Municipality may convene an Interdepartmental Steering Committee in accordance with section 19.

**19. Institutional Framework for preparation, amendment or review of the Land Use Scheme**

The purpose of the Interdepartmental Steering Committee contemplated in section 18(3) is to co-ordinate the applicable contributions into the Land Use Scheme and to-

- (a) provide technical knowledge and expertise
- (b) provide input on outstanding information that is required to draft the Municipal Land Use Scheme or an amendment or review thereof.
- (c) communicate any current or planned projects that have an impact on the Municipal area;
- (d) provide written comment to the department responsible for development planning at each of various phases of the process.
- (e) identify discrepancies in the Draft Land Use Scheme prior to adoption thereof by the Municipal Council.

**20. Municipal Council approval for publication of Draft Land Use Scheme**

- (1) Upon completion of the Draft Land Use Scheme, the department responsible for development planning in the Municipality must submit it to the Municipal Council for approval as the Draft Land Use Scheme.
- (2) The submission of the Draft Land Use Scheme to the Municipal Council must be accompanied by a written report from the department responsible for development planning in the Municipality 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 21 of this By-Law;
  - (d) indicate the National departments that were engaged in the drafting of the Draft Land Use Scheme;
  - (e) indicate how the Draft Land Use Scheme complies with the requirements of relevant National and Provincial legislation, and relevant mechanism controlling and managing land use rights by the Municipal Council;
  - (f) recommend the approval of the Draft Land Use Scheme for public participation in terms of the relevant legislation and this By-law.
- (3) The Municipal Council must approve the Draft Land Use Scheme and authorise the public participation thereof in terms of this By-Law and the relevant legislation referred to in section 15.

## **21. Public participation**

- (1) The public participation process must contain and comply with all the essential elements of any notices to be placed in terms of this By-Law and in the event of an amendment of the Land Use Scheme, the matters contemplated in section 28 of the Act.
- (2) Without detracting from the provisions of subsection (1) above the Municipality must -
- (a) publish a notice in the Provincial Gazette once a week for two consecutive weeks; and
  - (b) publish a notice in two local newspapers that is circulated in the Municipal area in English and at least one other official language mostly spoken in the area concerned, once a week for two consecutive weeks; and
  - (c) use any other method of communication it may deem appropriate and the notice contemplated in subparagraph (b) must specifically state that any person or body wishing to provide comments and or objections shall:
    - (i) do so within a period of sixty (60) calendar days from the first day of publication of the notice; and
    - (ii) provide written comments; and
    - (iii) provide their contact details as specified in the definition of contact details.
- (3) The Municipality may for purposes of public engagement arrange -
- (a) specific consultations with professional bodies, ward communities or other groups; and
  - (b) public meetings.
- (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 as contemplated in section 20.

## **22. Incorporation of relevant comments**

- (1) After the public participation process outlined in section 21 the department responsible for development planning in the Municipality 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 thirty (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 Municipal Council, request further information or elaboration on the submissions made from any person or body.
- (2) The department responsible for development planning in the Municipality 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 20.

**23. Preparation of Land Use Scheme**

- (1) The department responsible for development planning in the Municipality must, where required and based on the submissions made during public participation, make final amendments to the Draft Land Use Scheme, provided that; if such amendments are in the opinion of the Municipality materially different to what was published in terms of section 21(2), the Municipality must follow a further consultation and public participation process in terms of section 21 of this By-law, before the Land Use Scheme is adopted by the Council.

**24. Submission of Land Use Scheme to Municipal Council for approval and adoption**

- (1) The department responsible for development planning in the Municipality must submit the proposed Land Use Scheme and all relevant supporting documentation to the Municipal Council with a recommendation for adoption.
- (2) The Municipal Council must consider and adopt the Land Use Scheme with or without amendments.

**25. Publication of notice of adoption and approval of Land Use Scheme**

- (1) The Council must, within sixty (60) calendar days of its decision referred to in section 24, give notice of its decision to all persons or bodies who gave submissions on the Land Use Scheme, and publish such notice in the media and the Provincial Gazette.
- (2) The date of publication of the notice referred to in subsection (1), in the Provincial Gazette, is the date of coming into operation of the land use scheme unless the notice indicates a different date of coming into operation.



**26. Submission to Member of Executive Council**

After the Land Use Scheme is published in terms of section 25 the Municipality must submit the approved Land Use Scheme to the Member of the Executive Council for cognisance

**27. Records**

- 1) The Municipality may in hard copy and an electronic media and or data base keep record of the land use rights in relation to each erf or portion of land and which information shall be regarded as part of its Land Use Scheme.
- 2) The Municipality must keep, maintain and make accessible to the public, including on the Municipality's website, the approved Land Use Scheme and or any component thereof applicable within the Municipal area of the Municipality.
- 3) Should 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 to them of the approved Land Use Scheme or any component thereof, provided that if the Municipality is of the opinion 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.

**28. 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 prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved Land Use Scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;
  - (c) provisions for public participation that may be required for purposes of any consent, permission, departure or relaxation in terms of an approved Land Use Scheme;
  - (d) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;
  - (e) servitude for Municipal services and access arrangements for all properties;
  - (f) provisions applicable to all properties relating to storm water;
  - (g) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;
  - (h) zoning maps as prescribed in schedule (1) 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; and
  - (i) transitional arrangements with regard to the manner in which the

Land Use Scheme is to be implemented.

- (2) The Land Use Scheme may:
  - (a) determine the components of the Land Use Scheme for purposes of it being applied, interpreted and implemented; and
  - (b) include any matter which it deems necessary for Municipal Planning in terms of the constitutional powers, functions and duties of a Municipality; and

## **29. 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 Municipal Council and may contain the following but is not limited to:

- (a) Date of application
- (b) Name and contact details of applicant
- (c) Type of Application
- (d) Township/Farm name
- (e) Erf or farm number
- (f) Portion / Remainder
- (g) Property Description
- (h) Existing zoning and proposed zoning
- (i) Square Metres granted
- (j) Density
- (k) FAR
- (l) Height (storeys/meters)
- (m) Coverage
- (n) Building Line
- (o) Parking requirements
- (p) Amendment Scheme no
- (q) Annexure Number
- (r) Item No
- (s) Item Date
- (t) Decision (Approved/Not Approved)
- (u) Decision Date

## **30. 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 in the opinion of the Municipality 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 15 to 29 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 in the opinion of the Municipality is dealt with as a land development application.

**CHAPTER 4**  
**INSTITUTIONAL STRUCTURE FOR LAND USE MANAGEMENT DECISIONS**

**Part A: Division of Functions**

**31. Division of functions between District Municipal Planning Tribunal and Land Development Officer**

- (1) For purposes of section 35(3) of the Act, the following Categories of applications as contemplated in section 49 must be considered and determined -
  - (a) by the District Municipal Planning Tribunal:
    - (i) All Category 1 and 3(a) applications; and
    - (ii) all opposed Category 2, 3(b) and 4 applications;
  - (b) by the Land Development Officer:
    - (i) All Category 2, 3(b) and 4 applications that are not opposed;
- (2) No appeals for Category 4 applications shall be entertained.
- (3) For the purposes of subsection (1), an opposed application means an application on which negative comments or objections were received after the public participation process from persons, internal Municipal departments, ward councillors, service providers and organs of state.

**Part B: Establishment of District Municipal Planning Tribunal**

**32. Establishment of District Municipal Planning Tribunal**

- (1) The establishment of the Mopani District Municipal Planning Tribunal shall be done in terms of Section 34 and 35 of the Act.
- (2) Mopani District Municipality shall provide office accommodation for the District Municipal Planning Tribunal

**33. Agreement to establish District Municipal Planning Tribunal**

- (1) A memorandum of agreement to establish a district municipal planning g tribunal has been concluded between Mopani District Municipality and Ba-Phalaborwa municipality in terms of respective council resolutions.
- (2) The Municipality must, within thirty (30) calendar days after signing the agreement, publish the agreement as contemplated in section 34(3) of the Act.

**34. Status of decision of District Municipal Planning Tribunal**

A decision of Mopani District Municipal Planning Tribunal is binding on both the applicant and Ba-Phalaborwa Local Municipality.

**35. Composition of District Municipal Planning Tribunal**

- (1) The Mopani District Municipal Planning Tribunal consists of Seven (07) members made up as follows

- (a) Five (5) members who are experts in the following fields; spatial planning, legal, GIS, environment, engineering, development planning and other related fields thereto.
  - (b) The members referred to in 35 (1) (a) above must not be in the employ of Ba-Phalaborwa or Mopani District Municipalities
  - (c) The appointment of members referred to in section 35 (1) (a) must be through Mopani District Municipal Council resolution with the concurrence of Ba-Phalaborwa Municipal Council resolution.
  - (d) Two (2) persons in the full-time service of each of the Ba-Phalaborwa Municipality and Mopani District Municipality
  - (e) The two persons referred to in paragraph 35 (1) (d) must be delegated through council resolutions of their respective municipalities
- (2) The officials referred to in subsection (1) (a) must have at least five years' experience in their fields of expertise.
- (3) The persons referred to in subsection (1)(b) must be–
- (a) spatial planners or town and regional planners with at least five years' practical experience in the field of spatial planning or town and regional planning

### 36. Nomination procedure

- (1) The Mopani District Municipality shall -
- (a) invite and call for nominations to appoint members of the Mopani District Municipal Planning Tribunal as contemplated in Part B of Chapter 2 of the Regulations ; and
  - (b) invite and call for nominations for the next term of office shall be done ninety (90) days before the expiry of the term of office of incumbent members serving on the Mopani District Municipal Planning Tribunal.
- (2) The invitation to the organs of state and non-governmental organisations contemplated in regulation 3(2)(a) of the Regulations must be addressed to the organs of state and non-governmental organisations and must be in the form contemplated in Schedule (1) together with any other information deemed necessary by the Municipality.
- (3) The call for nominations to persons in their individual capacity contemplated in regulation 3(2)(b) of the Regulations must be in the form contemplated in Schedule (2) and –
- (a) must be published in one local newspaper that is circulated in the Municipal area in English and any other language most commonly spoken in the area concerned;
  - (b) may be submitted to the various professional bodies which registers persons referred to in section 35(1) 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

**37. Submission of nomination**

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

**38. Initial screening of nomination by Mopani District Municipality**

- (1) After the expiry date for nominations the Mopani District Municipality together with Ba-Phalaborwa Municipality must establish a screening committee to screen all of the nominations received by it to determine whether the nominations comply with the provisions of section 35.
- (2) The nominations that are incomplete or do not comply with the provisions of section 35 must be rejected by the Mopani District Municipal Screening Committee.
- (3) Every nomination that is complete and that complies with the provisions of section 35 must be subjected to verification by the Mopani District Municipal Screening Committee
- (4) If, after the verification of the information by the Mopani District Municipal Screening Committee, the nominee is ineligible for appointment due to the fact that he or she –
  - i. was not duly nominated;
  - ii. is disqualified from appointment as contemplated in section 38 of the Act;
  - iii. does not possess the knowledge or experience as required in terms of section 35(2) and (3); or
  - iv. is not registered with the professional councils or voluntary bodies contemplated in section 35(1), if applicable, the nomination must be rejected and may not be considered by the evaluation panel contemplated in section 39.
- (5) Every nomination that has been verified by the District Municipality and the nominee found to be eligible for appointment to the District Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in section 39.
- (6) The screening and verification process contained in this section must be completed within thirty (30) calendar days from the expiry date for nominations.

**39. Evaluation panel**

- (1) The evaluation panel consists of at least five officials appointed by the Mopani District Municipal Manager.
- (2) The evaluation panel must evaluate all nominations within thirty (30) calendar days of receipt of the verified nominations and must submit a report with their recommendations to the Mopani District Municipal Council for consideration
- (3) Once Mopani District Municipal Council approves the recommended candidates concurrency must be sort from Ba-Phalaborwa Municipality Council

**40. Appointment of members to Mopani District Municipal Planning Tribunal by Mopani District Municipal Council**

- (1) Upon receipt of the report, the Mopani District Municipal Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Mopani District Municipal Planning Tribunal.
- (2) After appointment of the members to the Mopani District Municipal Planning Tribunal, the Mopani District Municipal Council must designate a Chairperson and a deputy Chairperson from the members so appointed.
- (3) The Mopani District Municipal Manager must, in writing, notify the members of their appointment to the Mopani District Municipal Planning Tribunal and, in addition, to the two members who are designated as Chairperson and deputy Chairperson, indicates that they have been appointed as such.
  - b. The District Municipal Manager must, when he or she publishes the notice of the commencement date of the operations of the first Mopani District Municipal Planning Tribunal contemplated in section 45, publishes the names of the members of the Mopani District Municipal Planning Tribunal and their term of office in the same notice.
  - c. The remuneration or compensation of the Mopani District Municipal Planning Tribunal shall be determined by the district municipal tariffs structure for similar committees.

**41. Term of office and conditions of service of members of Mopani District Municipal Planning Tribunal**

- (1) A member of the Mopani District Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of two years, which is renewable once for a further period of five (5) years and in line with section 37 (1) of the Act
  - i. The office of a member becomes vacant if that member -
    - (i) is absent from two consecutive meetings of the Mopani District Municipal Planning Tribunal without the approval of leave by the Chairperson of the Mopani District Municipal Planning Tribunal;
    - (ii) tenders his or her resignation in writing to the Chairperson of the Mopani District Municipal Planning Tribunal;

- (iii) is removed from the Mopani District Municipal Planning Tribunal under subsection (2); or
  - (iv) dies.
- (2) The Mopani District Municipal Council may remove a member of the Mopani District 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.
- (3) An official of a Municipality contemplated in section 35(1)(a) who serves on the Mopani District Municipal Planning Tribunal
  - (a) may only serve as member of the Mopani District 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 Mopani District 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 Mopani District Municipal Planning Tribunal.
- (4) A person appointed by a Municipality in terms of section 35(1)(b) to (g) to the Mopani District 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 Mopani District Municipal Planning Tribunal;
  - (c) performs the specific tasks allocated by the Chairperson of the Mopani District Municipal Planning Tribunal to him or her for a decision hearing of the Mopani District Municipal Planning Tribunal ;
  - (d) sits at such meetings of the Mopani District Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Mopani District 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 Mopani District Municipal Planning Tribunal that he or she sits on 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, performance bonus, medical scheme contribution by Municipality, pension, motor vehicle or any



other benefit which a municipal employee is entitled to.

- (5) All members of the Mopani District Municipal Planning Tribunal must sign the Code of Conduct contained in Schedule 4 before taking up a seat on the Mopani District Municipal Planning Tribunal.
- (6) All members serving on the Mopani District Municipal Planning Tribunal must adhere to ethics adopted and applied by the District Municipality and shall conduct themselves in a manner that will not bring the name of the Mopani District Municipality into disrepute.
- (7) The members of the Mopani District Municipal Planning Tribunal in the execution of their duties shall comply with the provisions of the Act, Provincial legislation, these By-Law and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

#### **42. Vacancy**

- (1) A vacancy on the Mopani District Municipal Planning Tribunal must be filled by the Mopani District Municipal Council in terms of section 40.
- (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.

#### **43. Proceedings of Mopani District Municipal Planning Tribunal**

- (1) The Mopani District Municipal Planning Tribunal must operate in accordance with the operational procedures determined by the District Municipality.
- (2) A quorum for a meeting of the Mopani District Municipal Planning Tribunal or its committees is a majority (50% plus 1) of the members appointed for that decision meeting.
- (3) Decisions of the Mopani District Municipal Planning Tribunal are taken by resolution of a majority of all the members present at a meeting of Mopani District Municipal Planning Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Mopani District Municipal Planning Tribunal.
- (4) Meetings of the Mopani District Municipal Planning Tribunal must be held at the times and places determined by the Chairperson of the Mopani District Municipal Planning Tribunal in accordance with the operational procedures of the Mopani District Municipal Planning Tribunal and meetings shall be held once in two months, if there are applications to consider.
- (5) The Chairperson may arrange multiple District Municipal Planning Tribunal meetings on the same day constituted from different members of the District Municipal Planning Tribunal and must designate a presiding officer for each of the meetings.
- (6) The costs resulting from the meeting of the District Planning Tribunal shall be set out as follows:
  - (a) Expenditure in connection with the administration and functioning of the

District Municipal Planning Tribunal must be settled from moneys appropriated by the Ba-Phalaborwa Local Municipality.

- (b) The costs associated with the remuneration and subsistence and travelling allowance of the members of the District Municipal Planning Tribunal shall be borne by Mopani District Municipality.

#### **44. Tribunal of record**

- (1) The Mopani District Municipal Planning Tribunal is a Tribunal of record and must record all proceedings, but is not obliged to provide committee discussions to any member of the public or any person or body.
- (2) The Mopani District Municipality and Ba-Phalaborwa Municipality must make the records of the Mopani District Municipal Planning Tribunal available to public upon payment of a prescribed fee determined from time to time by the municipal tariffs policy.

#### **45. Commencement date of operations of Mopani District Municipal Planning Tribunal**

- (1) The Mopani District Municipal Manager must within thirty (30) calendar days of the first appointment of members to the District Municipal Planning Tribunal -
  - (a) obtain written confirmation from the Mopani District Municipal Council that it is satisfied that the Mopani District 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 District Municipal Planning Tribunal will commence with its operation together with the information contemplated in section 40(4).
- (2) The Mopani District Municipal Planning Tribunal may only commence its operations after publication of the notice contemplated in subsection (1).

#### **Part C: Decisions of Mopani District Municipal Planning Tribunal**

#### **46. General criteria for consideration and determination of application by Mopani District Municipal Planning Tribunal**

- (1) When the Mopani District Municipal Planning Tribunal considers an application it must have regard to the following:
  - (a) the application submitted in terms of this By-Law;
  - (b) the procedure followed in processing the application;
  - (c) the desirability of the proposed utilisation of land and any guidelines issued by the member of the Executive Council (MEC) regarding proposed land uses;
  - (d) the comments in response to the notice of the application and the comments received from organs of state and internal departments;
  - (e) the response by the applicant to the comments referred to in paragraph (d);
  - (f) investigations carried out in terms of other laws which are relevant to the consideration of the application;

- (g) a written submission by an applicant, in respect of the following applications:
    - (i) a rezoning;
    - (ii) a subdivision of more than twenty (20) cadastral units;
    - (iii) a removal, suspension or amendment of a restrictive condition, if it relates to a change of land use.
    - (iv) an amendment, deletion or additional conditions in respect of an existing approval, listed in this paragraph;
    - (v) an approval of an overlay zone as provided in the Land Use Scheme;
    - (vi) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
    - (vii) a determination of a zoning as contemplated in section 169;
    - (viii) a closure of public space or part thereof;
  - (h) the Integrated Development Plan and Municipal Spatial Development Framework;
- (2) A Municipality's Land Development Officer may approve a Site Development Plan submitted to the Municipality for consideration in terms of applicable development parameters or conditions of approval as contemplated in subsection (1) above, if the Site Development Plan—
- (a) is consistent with the development rules of the zoning;
  - (b) is consistent with the development rules of the overlay zone;
  - (c) complies with the conditions of approval; and
  - (d) Complies with this By-Law.
- (3) When a Site Development Plan is required in terms of development parameters or conditions of approval—
- (a) the Municipality may not approve a building plan if the Site Development Plan has not been approved; and
  - (b) the Municipality may not approve a building plan that is inconsistent with the approved Site Development Plan.

#### **47. Conditions of approval**

- (1) When the Mopani District Municipal Planning Tribunal approves an application subject to conditions, the conditions must be reasonable conditions and must arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with subsection (1) may include conditions relating to—
  - (a) the provision of engineering services and infrastructure;
  - (b) the cession of land or the payment of money;
  - (c) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
  - (d) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by

- the Municipality;
  - (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 a Home 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, 1937 (Act No 47 of 1937) 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) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-Law;
  - (u) the setting of dates by which particular conditions must be met;
  - (v) requirements relating to engineering services as contemplated in Chapter 7;
  - (w) requirements for an occasional use that must specifically include –
    - (i) parking and the number of ablution facilities required;
    - (ii) maximum duration or occurrence of the occasional use; and
    - (iii) parameters relating to a consent use in terms of the Land Use Scheme;
- (3) If a Mopani District 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 District 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 Mopani District 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 Mopani District 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 D: Administrative Arrangements**

##### **48. Administrator for Mopani District Municipal Planning Tribunal**

- (1) The District Municipal Manager must designate an employee as the Administrator for the District Municipal Planning Tribunal.
- (2) The person referred to in subsection (1) must—
- (a) liaise with the relevant Mopani District Municipal Planning Tribunal members and the parties in relation to any application or other proceedings filed with the Mopani District Municipal Planning Tribunal;
  - (b) maintain a diary of hearings of the Mopani District Municipal Planning Tribunal;
  - (c) allocate meeting dates and application numbers to applications;
  - (d) arrange the attendance of meetings by members of the Mopani District Municipal Planning Tribunal;
  - (e) arrange venues for Mopani District Municipal Planning Tribunal meetings;
  - (f) administer the proceedings of the District Municipal Planning Tribunal;
  - (g) perform the administrative functions in connection with the proceedings of the Mopani District Municipal Planning Tribunal;

- (h) ensure the efficient administration of the proceedings of the Mopani District Municipal Planning Tribunal, in accordance with the directions of the chairperson of the District Municipal Planning Tribunal;
- (i) arrange the affairs of the Mopani District Municipal Planning Tribunal so as to ensure that time is available to liaise with other authorities regarding the alignment of integrated applications and authorisations;
- (j) notify parties of orders and directives given by the Mopani District Municipal Planning Tribunal;
- (k) keep a record of all applications submitted to the Mopani District Municipal Planning Tribunal and the outcome of each, including—
  - (i) decisions of the Mopani District Municipal Planning Tribunal;
  - (ii) on-site inspections and any matter recorded as a result thereof;
  - (iii) reasons for decisions; and
  - (iv) proceedings of the Mopani District Municipal Planning Tribunal; and
- (l) keep records by any means as the Mopani District Municipal Planning Tribunal may deem expedient.

## CHAPTER 5 DEVELOPMENT MANAGEMENT

### Part A: Categories of Applications

#### 49. Categories of Land Use and Land Development applications

The Categories of Land Development and Land Use Management for the Municipality, as contemplated in section 35(3) of the Act, are as follows -

- Category 1: Land Development Applications;
- Category 2: Land Use Applications;
- Category 3: Traditional Use Applications; and
- Category 4: Temporary Use Applications.

No appeals for Category 4 applications shall be entertained

#### (1) Land Development applications are applications for:

##### CATEGORY 1

- (a) the establishment of a township or the extension of the boundaries of a township;
- (b) the amendment of an existing scheme or land use scheme by the rezoning of land;
- (c) subject to subsection (2)(f), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
- (d) the amendment or cancellation in whole or in part of a General Plan of a township;
- (e) the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
- (f) permanent closure of any public place;
- (g) all applications for the restriction of access to a public road in terms of the Rationalization of Local Government Affairs Act, 1998 (Act No. 10 of 1998);
- (h) 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;
- (i) 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 establishment of a township or any other legislation;
- (j) any consent or approval provided for in a Provincial law.

#### (2) Land Use applications are applications for:

##### CATEGORY 2

- (a) the subdivision of any land where such subdivision is expressly provided for in a Land Use Scheme;
- (b) the consolidation of any land;
- (c) the simultaneous subdivision, under circumstances contemplated in paragraph (a) and consolidation of land;
- (d) the consent use or special consent use provided for in terms of an existing

- scheme or Land Use Scheme i.e. Guest House, Place of Public Worship, Place of Instruction, Overnight Accommodation, Service Industry, Place of Amusement, Telecommunication Mast, etc.
- (e) the consent of the Municipality for any land use purpose or departure or deviation in terms of a Land Use Scheme or existing scheme which does not constitute a land development application;
  - (f) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a Land Use Scheme in operation.
- (3) Traditional use applications relate to communal land and are applications for:

### **CATEGORY 3**

- (a) the amendment of the use of land in instances where such amendment will have a high impact development on the community; and
  - (b) any other amendment of the traditional use of communal land i.e. Spaza Shop, Crèche, Cultural School for Boys, any other application that is related to cultural activities, etc;
- (4) Temporary use applications are applications that do not result in an amendment of the Land Use Scheme and are:

### **CATEGORY 4**

- (a) prospecting rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
  - (b) any other application for temporary use submitted in accordance with the By-Law of Ba-Phalaborwa Municipality.
- (5) The division of functions as contemplated in section 35(3) of the Act between a Land Development Officer and a Mopani District Municipal Planning Tribunal is set out in section 31.

## **50. Land development application requirements**

- (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 in terms of subsection (3).
- (2) No person may commence with, carry on or cause the commencement with or carrying on of a land use activity which is permitted in the Land Use Scheme but not exercised by the owner of the land.
- (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.



**Part B: Establishment of Township or Extension of Township Boundaries****51. Application for Establishment of Township or Extension of Township Boundaries**

- (1) An applicant who wishes to establish a township on land or for the extension of the boundaries of an approved township must apply to the Municipality for the establishment of a township or for the extension of the boundaries of an approved township in the manner provided for in Chapter 6.
- (2) Ba-Phalaborwa Municipality must, in approving an application for township establishment, set out:
  - (a) the conditions of establishment;
  - (b) the statement of conditions shall be known as conditions of establishment for the township;
  - (c) the statement of conditions must, in the opinion of the Municipality, substantially be in accordance with this By-Law.
- (3) The statement of conditions must, read with directives that may be issued by the Registrar of Deeds, containing the following:
  - (a) specific conditions that must be complied with prior to the opening of a township register with the Registrar of Deeds;
  - (b) the conditions of establishment relating to the township that must remain applicable to the township;
  - (c) conditions of title to be incorporated into the title deeds of the erven to be created for purposes of the township;
  - (d) third party conditions as required by the Registrar of Deeds;
  - (e) the conditions to be incorporated into the Land Use Scheme by means of an amendment scheme.
  - (f) the condition that must apply if a non-profit or Section 21 Company is to be established for purposes of maintaining or transfer of erven within the township;
  - (g) any other conditions and or obligation on the township owner, which in the opinion of the Municipality deemed necessary for the proper establishment, execution and implementation of the township.
- (4) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of subsection (3) or add any further condition, provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers hereof and must require the applicant to submit an amended or new application and in the sole discretion of the Municipality to re-advertise the application in accordance with section 86.
- (5) After the applicant has been notified that his or her application has been approved, the Municipality or at the applicant's request may, after consultation with the applicant amend the layout of the township approved as part of the township establishment; Provided that if the amendment is in the opinion of the Municipality so material as to constitute a new application, the Municipality may not exercise its powers in terms hereof and require the applicant to submit an amended or new application in the opinion of the Municipality and re-advertise the application in the sole discretion of the Municipality in accordance with

section 86.

- (6) Without detracting from the provisions of subsection (4) and (5) the Municipality may require the applicant of his or her own accord, amend both the conditions and the layout plan of the township establishment application as contemplated therein.

**52. Division or phasing of township**

- (1) An applicant who has been notified in terms of section 51(4) and (5) that his or her application has been approved may, within a period of eight (8) months from the date of the notice, or such further period as the Municipality may allow, apply to the Municipality for the division of the township into two or more separate townships.
- (2) On receipt of an application in terms of subsection (1) Ba-Phalaborwa Municipality must consider the application and may for purposes of the consideration 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 Ba-Phalaborwa Municipality approves an application it may impose any condition it may deem expedient and must notify the applicant in writing thereof and of any conditions imposed.
- (4) The applicant shall, within a period of three (3) months from the date of the notice contemplated in subsection (3), submit to Ba-Phalaborwa Municipality such plans, diagrams or other documents and furnish such information as may be required in respect of each separate township.

**53. Lodging of layout plan for approval with the Surveyor-General.**

- (1) An applicant who has been notified in terms of section 51(4) and (5) that his or her application has been approved, shall, within a period of twelve (12) months from the date of such notice, or such further period as the Municipality may allow, lodge for approval with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may require, and if the applicant fails to do so the application shall lapse.
- (2) For purposes of subsection (1), Ba-Phalaborwa Municipality must provide to the applicant a final schedule as contemplated in section 51(2) and of the conditions of establishment together with a stamped approved layout plan, contemplated in section 53(1)
- (3) Ba-Phalaborwa Municipality may for purposes of lodging the documents contemplated in subsection (1) determine street names and numbers on the layout plan.

**54. Compliance with pre-proclamation conditions**

- (1) The applicant shall provide proof to the satisfaction of Ba-Phalaborwa Municipality within a period of twelve (12) months from date of approval of the General Plan by the Surveyor General that all conditions contained in the approval of a township establishment application have been complied with.
- (2) Ba-Phalaborwa 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.

**55. Opening of Township Register**

- (1) The applicant shall lodge with the Registrar of Deeds the plans and diagrams contemplated in section 53 as approved by the Surveyor-General together with the relevant title deeds for endorsement or registration, as the case may be.
- (2) For purposes of subsection (1) the Registrar shall not accept such documents for endorsement or registration until such time as Ba-Phalaborwa Municipality has certified that the applicant has complied with such conditions as Ba-Phalaborwa Municipality may require to be fulfilled in terms of section 54
- (3) The plans, diagrams and title deeds contemplated in subsection (1) shall be lodged within a period of twelve (12) months from the date of the approval of such plans and diagrams, or such further period as Ba-Phalaborwa Municipality may allow in terms of section 54(2)
- (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 shall notify the Municipality forthwith of such endorsement or registration, and thereafter the Registrar shall not register any further transactions in respect of any land situated in the township until such time as the township is declared an approved township in terms of section 56, provided if the applicant wishes to withdraw the application, he/she shall do so by means of an appropriate application to be prescribed by the Municipality.

**56. Proclamation of approved township.**

After the provisions of sections 53, 54 and 55 have been complied with to the satisfaction of the Municipality that the township is in its area of jurisdiction, the applicant, if authorized in writing by the Municipality, shall, by notice in the *Provincial Gazette*, declare the township an approved township and it shall, in an Annexure to such notice, set out the conditions on which the township is declared an approved township.

**Part C: Rezoning of land****57. 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 Chapter 6.
- (2) If the following requirements are not met, a rezoning approval may lapse after a period of twelve (12) months, from the date of approval, or a further period as may be determined by the Municipality:
  - (a) the zoning is not utilised in accordance with the approval thereof; or
  - (b) if the land use right as approved is not implemented and exercised.
- (3) The Municipality may grant extension to the periods contemplated in subsection (2),

which period together with any extensions that the Municipality grants, may not exceed ten (10) years.

- (4) If a rezoning approval lapses prior to proclamation, 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, a zoning of "Undetermined", be applicable.
- (5) If the provisions of subsection 2 is not adhered to and the rezoning has been proclaimed Ba-Phalaborwa Municipality shall have the sole right to de-proclaim the land use right which was approved, at the cost of the applicant and the applicant will have no claim against Ba-Phalaborwa Municipality for any costs incurred as a result of the rezoning application.
- (6) If land is to be used for a Quarry, an application for rezoning should be submitted for consideration.

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

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

- (1) The Municipality may, of its own accord or on application, publish a notice once on any working day in English and in at least one official language mostly spoken in the area, in a newspaper with a general circulation in the area concerned, of its intention to amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.
- (2) 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 Chapter 6.
- (3) In addition to the procedures set out in Chapter 6, the applicant must:
  - (a) submit a certified copy of the title deed to Ba-Phalaborwa Municipality ;
  - (b) submit the bondholder's consent to the Municipality, where applicable.
- (4) The applicant shall attend to the serving of a notice of the application contemplated in the subsection (2) 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; and
  - (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.
- (5) The applicant shall submit a sworn affidavit to proof that the application was served on institutions/persons contemplated in subsection (4)
- (6) When Ba-Phalaborwa Municipality considers the application contemplated in terms of

section 58, the Municipality must have regard to the following:

- (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;
  - (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
  - (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed;
  - (d) the social benefit of the restrictive condition remaining in place in its existing form;
  - (e) the social benefit of the removal or amendment of the restrictive condition; and
  - (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.
- (7) After approval of the application for amendment suspension or removal of restrictive condition by the Municipality, the Municipality shall publish a notice in the Provincial Gazette to confirm the amendment, suspension or removal of restrictive condition.

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

- (1) The applicant shall, at own cost submit the following documents to the Registrar of Deeds, for endorsement of the relevant registers and title deed accordingly:
- (a) the original title deed;
  - (b) the original letter of approval of the Municipality; and
  - (c) a copy of the notice as published in the Provincial Gazette as contemplated in section 58 (7).
- (2) The Registrar of Deeds must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette*, as contemplated in section 58(7), 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. The Registrar of Deeds must notify the Municipality in question of such endorsement.

**Part E: Subdivision and Consolidation**

**60. Application for subdivision**

- (1) No person may subdivide land without the approval of Ba-Phalaborwa Municipality, unless the subdivision is exempted under section 63.
- (2) An applicant who wishes to subdivide land must apply to the Municipality for the subdivision of land in the manner provided for in Chapter 6.
- (3) No application for subdivision involving a change of zoning may be considered by Ba-Phalaborwa Municipality, unless the land concerned is zoned for such subdivision.
- (4) Ba-Phalaborwa Municipality must impose appropriate conditions relating to engineering services for an approval of a subdivision.

- (5) If Ba-Phalaborwa Municipality approves a subdivision, the applicant must submit the approved subdivision sketch plan or layout plan to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of:
- (a) Ba-Phalaborwa Municipality's decision to approve the subdivision;
  - (b) the conditions of approval and
  - (c) the approved subdivision plan.
- (6) If Ba-Phalaborwa Municipality approves an application for a subdivision, the applicant must within a period of twelve (12) months or the shorter period as Ba-Phalaborwa Municipality may determine, from the date of approval of the subdivision, comply with the following requirements:
- (a) the approval by the Surveyor-General of the General Plan or diagram contemplated in subsection (5);
  - (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (4) or other applicable legislation;
  - (c) submit proof to the satisfaction of Ba-Phalaborwa Municipality that all relevant conditions contemplated in subsection (5) for the approved subdivision in respect of the area shown on the General Plan or diagram, have been complied with prior to compliance with paragraph (d)
  - (d) registration of the subdivision in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937) of the land unit shown on the diagram or of at least one new land unit shown on the General Plan.
- (7) A confirmation from Ba-Phalaborwa Municipality in terms of subsection (6)(c) 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. Lapsing of subdivision and extension of validity periods**

- (1) An approved subdivision or a portion thereof lapses if the applicant does not comply with section 60(6), unless if the applicant has applied for a further extension of time as contemplated subsection (2).
- (2) An applicant may apply for an extension of the period to comply with section 60(6).
- (3) An extension contemplated in subsection (2) may be granted for a period not exceeding five (5) years and if after the expiry of the extended period the requirements of section 60(6) has not been complied with, the subdivision lapses and subsection (6) applies.
- (4) Ba-Phalaborwa Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed ten (10) years.
- (5) If an approval of a subdivision or part thereof lapses under subsection (1):
- (a) Ba-Phalaborwa Municipality must:
    - (i) amend where applicable, all registers and maps 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.

**62. 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, 1937 (Act No 47 of 1937).
- (2) When Ba-Phalaborwa Municipality approves an application in terms of subsection (1), any public place that is no longer required by virtue of the approval must be closed.
- (3) Ba-Phalaborwa 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 section 60(6) applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of subsection (1).

**63. Exemption of Ba-Phalaborwa Municipal approval for subdivision and or consolidation applications**

- (1) The subdivision and or consolidation of land in the following circumstances do not require the approval of the Municipality:
  - (a) if the subdivision and or consolidation arises from the implementation of a court ruling;
  - (b) if the subdivision and or consolidation arises from an expropriation;
  - (c) 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) 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;
    - (iii) the imposition of height restrictions;
  - (e) 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) the subdivision and or consolidation of a closed public place with an abutting erf; and

- (g) the granting of a right of habitation or usufruct.
- (2) Ba-Phalaborwa Municipality must, in each case, certify in writing that the subdivision and or consolidation have been exempted from the provisions of this Chapter.
- (3) Ba-Phalaborwa Municipality must indicate on the plan of subdivision and or consolidation that the subdivision and or consolidation has been exempted from the provisions of section 60.

#### **64. Services arising from subdivision**

- (1) Subsequent to the granting of an application for subdivision in terms of this By-Law the owner of any land unit originating from the subdivision must:
  - (a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:
    - (i) gas mains;
    - (ii) electricity cables;
    - (iii) telephone cables;
    - (iv) television cables;
    - (v) other electronic infrastructure;
    - (vi) main and other water pipes;
    - (vii) foul sewers;
    - (viii) storm water pipes; and
    - (ix) ditches and channels;
    - (x) and any other services that Ba-Phalaborwa Municipality may deem necessary.
  - (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 Ba-Phalaborwa Municipality:
    - (i) surface installations such as mini-substations;
    - (ii) meter kiosks; and
    - (iii) service pillars;
    - (iv) and any other services that the Municipality may deem necessary.
  - (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.

#### **65. Consolidation of land units**

- (1) No person may consolidate land without the approval of the Municipality, unless the



consolidation is exempted under section 63.

- (2) An applicant who wishes to consolidate land must apply to the Municipality for the consolidation of land in the manner provided for in Chapter 6.
- (3) No application for consolidation involving a change of zoning may be considered by Ba-Phalaborwa Municipality, unless the land concerned is zoned for such consolidation, if applicable.
- (4) Ba-Phalaborwa Municipality must impose appropriate conditions relating to engineering services for an approval of a consolidation, if applicable.
- (5) If Ba-Phalaborwa Municipality approves a consolidation, the applicant must submit the approved consolidation sketch plan or layout plan to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of:
  - (a) the decision to approve the consolidation;
  - (b) the conditions of approval and
  - (c) the approved consolidation plan.
- (6) If Ba-Phalaborwa Municipality approves an application for a consolidation, the applicant must within a period of 12 months or the shorter period as Ba-Phalaborwa Municipality may determine, from the date of approval of the consolidation, comply with the following requirements:
  - (a) the approval by the Surveyor-General of the General Plan or diagram contemplated in subsection (5);
  - (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (4) or other applicable legislation, if applicable.
  - (c) submit proof to the satisfaction of Ba-Phalaborwa Municipality that all relevant conditions contemplated in subsection (5) for the approve consolidation in respect of the area shown on the General Plan or diagram, have been complied with prior to compliance with paragraph (d).
  - (d) registration of the consolidation in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937) of the land unit shown on the diagram.
- (7) A confirmation from Ba-Phalaborwa Municipality in terms of subsection (6)(c) 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 consolidation.

#### **66. Lapsing of consolidation and extension of validity periods**

- 1) An approved consolidation lapses if the applicant does not comply with section 64(6), unless if the applicant has applied for a further extension of time as contemplated subsection (2).
- 2) An applicant may apply for an extension of the period to comply with section 64(2);
- 3) An extension contemplated in subsection (2) may be granted for a period not exceeding five (5) years and if after the expiry of the extended period the requirements of section

64(6) has not been complied with, the consolidation lapses and subsection (6) applies.

- 4) Ba-Phalaborwa Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed ten (10) years.
- 5) If an approval of a consolidation or part thereof lapses under subsection (1):
  - (a) Ba-Phalaborwa Municipality must:
    - (i) amend where applicable, all registers and maps 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 consolidation has lapsed.

#### **Part F: Permanent Closure of Public Places**

##### **67. Closure of public places**

- (1) Ba-Phalaborwa Municipality may on its own initiative or on application close a public place or any portion thereof in accordance with the procedures in Chapter 6.
- (2) An applicant who wishes to have a public place closed or a portion of a public place closed must apply to the Municipality for the closure of the public place or portion thereof in the manner provided for in Chapter 6.
- (3) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered as a result of the wrong doing on the part of the Municipality as a result of the closure of a public place, the Municipal Manager must ensure that:
  - (a) proof of negligence on the part of the Municipality which resulted in the loss or damage is provided; and
  - (b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of Ba-Phalaborwa Municipality.
- (4) The Municipality may pay a claim if:
  - (a) the circumstances of loss or damage reveal that the Municipality acted negligently;
  - (b) the circumstances of the loss are not inconsistent with this By-Law;
  - (c) the claimant has proved his or her loss or damage;
  - (d) the claimant has provided the proof of a fair and reasonable quantum;
  - (e) no claim has been made and paid by personal insurance covering the same loss; and
  - (f) any other relevant additional information as requested by Ba-Phalaborwa Municipal Manager has been received.
- (5) The ownership of the land comprised in any public place or portion thereof that is closed in terms of this section continues to vest in Ba-Phalaborwa Municipality unless it determines otherwise.

- (6) 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 the opinion of the Municipal Manager, in a state of danger to the public;
  - (d) by reason of any emergency or public event which, in the opinion of the Municipal Manager, requires special measures for the control of traffic or special provision for the accommodation of crowds, or
  - (e) for any other reason which, in the opinion of the Municipal Manager, renders the temporary closing of the public place necessary or desirable.
- (7) Ba-Phalaborwa 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 closure of the public place.

#### **Part G: Consent Use**

##### **68. Application for consent use**

- (1) An applicant may apply to Ba-Phalaborwa Municipality for a consent use provided for in the Land Use Scheme in the manner provided for in Chapter 6.
- (2) Where the development parameters for the consent use that is being applied for are not defined in an applicable Land Use Scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval;
- (3) A consent use may be granted permanently or for a specified period of time;
- (4) A consent use granted for a specified period of time contemplated in subsection (3) must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.
- (5) A consent use contemplated in subsection (1) lapses after a period of twelve (12) months from date of approval, or the shorter period as Ba-Phalaborwa Municipality may determine if the applicant does not comply with the following conditions:
  - (i) the approval of a building plan envisaged for the utilisation of the approved consent use, if applicable and
  - (ii) commencement with the construction of the building in accordance with subparagraph(i), if applicable
- (6) Ba-Phalaborwa Municipality may grant extensions to the period contemplated in subsection (5), which period together with any extensions that the Municipality grants, may not exceed ten (10) years.

**Part H: Traditional Use****69. Application for Traditional Use**

- (1) An applicant who wishes to amend the use of communal land and if such an amendment will have a high impact on the community and will result in the development of land, must apply to Ba-Phalaborwa Municipality for the amendment of the land use in the manner provided for in Chapter 6.
- (2) The applicant who wishes to make a land development application on land held by the Traditional Council shall approach the relevant Traditional Council to apply for land to be developed by completing an appropriate form.
- (3) The applicant stated in subsection (2) must indicate the description of the property, location, extent, purpose of the intended use.
- (4) The Traditional Council shall upon receipt of the application contemplated in subsection 2, submit the application to Ba-Phalaborwa Municipality for comments before the applicant can be notified of the outcome of the land application, whether it is supported or not. The Municipality shall amongst others determine the extent of the land to be allocated.
- (5) Must within fourteen (14) calendar days of receipt of the land application mentioned in the subsection (2) recommend to the Traditional Council whether to continue or not with the allocation of the land as applied for by the applicant.
- (6) The applicant shall having been informed by the Traditional Council of the outcome submit a land development application to the Municipality in accordance with the provisions of Chapter 6.
- (7) Any person who causes any development of land on land held by a Traditional Council i.e. subdivision, consent use etc., without obtaining prior permission for such development from the Traditional Authority, in terms of subsection (2) shall be guilty of an offense and liable upon conviction of R10 000.00 or imprisonment for a period as determined by a Court of Law or to both a fine and such imprisonment;

**Part I: Temporary Use****70. Application for temporary use**

- (1) An applicant may apply to the Municipality-
  - (a) for a departure from the development parameters of a zoning; or
  - (b) 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 for a period to be determined by Ba-Phalaborwa Municipality in accordance with the period applied for by the applicant, in the manner provided for in Chapter 6.
- (2) A departure contemplated in subsection (1)(a) will automatically lapse if not utilised.
- (3) Ba-Phalaborwa Municipality may grant extension of time upon request by the applicant.

- (4) A temporary departure contemplated in subsection (1)(b) may not include the improvement of land that is not temporary in nature and which has the effect that the land cannot, without further construction or demolition, revert back to its previous lawful use upon the expiry of the period contemplated in subsection (1)(b).
- (5) A temporary departure or use is regarded as the occasional use of land for the purpose of a Circus, Place of Public Worship, Place of Instruction, Fresh Produce and Craft Markets, Sand Mining, Festivals, etc.

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

#### **71. 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/General Plan vests in Ba-Phalaborwa Municipality upon registration of the subdivision or township or a part thereof.
- (2) Ba-Phalaborwa Municipality may in terms of conditions imposed determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision or General Plan, be transferred to Ba-Phalaborwa Municipality upon registration of the subdivision or township or a part thereof.

#### **72. 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/Erven and/or units in a land development area, may be alienated or transferred into the name of a purchaser nor shall a Certificate of Registered Title 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 Ba-Phalaborwa 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 Ba-Phalaborwa 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 Ba-Phalaborwa Municipality for the compliance thereof within three (3) months of having certified to the Registrar in terms of this section that registration may take place; and
  - (e) that Ba-Phalaborwa Municipality is in a position to consider a final building plan; and
  - (f) that all the properties have either been transferred or shall be transferred simultaneously with the first transfer or registration of a newly created property or

sectional title scheme.

**73. First transfer**

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

- (a) the Municipality or to
- (b) a non-profit company or Section 21 Company.

by virtue of a condition set out in the conditions to the approval of a land development application contemplated in section 51, the land shall be so transferred at the expense of the applicant, within a period of six (6) months from the date of the land use rights coming into operation in terms of section 56, or within such further period as Ba-Phalaborwa 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.

**74. Certification by Ba-Phalaborwa Municipality**

- (1) A person may not apply to the Registrar of Deeds to register the transfer of a land unit, unless it has issued a certificate in terms of this section.
- (2) Ba-Phalaborwa 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 it 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 contravention penalty 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; and
  - (e) proof that the conditions of approval that must be complied with before the transfer of erven have been complied with.

**75. National and Provincial interest**

- (1) In terms of section 52 of the Act an applicant shall refer any application which affects National or Provincial interest respectively to the Minister and the Member of the Executive Council for comments, which comments are to be provided within twenty one (21) calendar days as prescribed in subsection 52(5) of the Act.
- (2) Where any application in terms of this By-Law, which in the opinion of the Municipal Manager affects National or Provincial interest as defined in section 52 of the Act, is submitted, such application must be referred to the Minister or the Member of the Executive Council respectively and the provisions of subsections 52(5) to 52(7) of the Act, apply with the necessary changes.
- (3) The District 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 in their opinion affects National or Provincial interest and the provisions of

subsections 52(5) to 52(7) of the Act apply with the necessary changes.

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

## CHAPTER 6 GENERAL APPLICATION PROCEDURES

### 76. Applicability of Chapter

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

### 77. Procedures for making application

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.

### 78. Information required

- (1) An application must be accompanied by the following documents:
  - (a) an appropriate 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 if the owner of the land is a Company, Closed Corporation, Trust, Body Corporate or Home Owners' Association, proof that the person is authorised to act on behalf of the Company, Closed Corporation, Trust, Body Corporate or a Home Owners' Association
  - (c) the relevant bondholder's consent, if required by the Municipality;
  - (d) a written motivation for the application based on the criteria for consideration of the application
  - (e) a copy of the Surveyor-General's diagram of the subject property or if it does not exist, an extract from relevant General Plan(20 COPIES);
  - (f) a locality plan and Site Development Plan, when required, or a plan showing the proposal in its cadastral context(20 COPIES);
  - (g) in the case of an application for the subdivision of land, copies of the subdivision plan showing inter alia the following(20 COPIES):
    - (i) the location of the proposed land units;
    - (ii) the proposed zonings in respect of the proposed land units;
    - (iii) 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) the street furniture;
    - (ix) the light, electrical and telephone poles;
    - (x) the electrical transformers and mini substations;
    - (xi) the storm water channels and catch pits;
    - (xii) the sewerage lines and connection points;
    - (xiii) any significant natural features;
    - (xiv) the scale and all distances and areas (m<sup>2</sup>).
  - (h) any other plans, diagrams, documents or information that the Municipality may require;
  - (i) the proof of payment of application fees;
  - (j) a full copy of the title deeds indicating all existing title conditions in current and



- historic title deeds (or in case of traditional land a traditional land resolution);
- (k) 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;
- (l) in the case of a Category 3: Traditional Use application referred to in section 69, community approval granted as a result of a community participation process conducted in terms of Customary Law.

- (2) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

#### **79. Application fees**

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

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

#### **80. Grounds for refusing to accept application**

The Municipality may refuse to accept an application if:

- (1) there is no proof of payment of fees;
- (2) 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 78.

#### **81. Receipt of application and request for further documents**

The Municipality must:

- (1) record the receipt of an application in writing or by affixing a stamp on the application on the day of receipt;
- (2) notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require within thirty (30) calendar 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
- (3) if the application is complete, notify the applicant in writing that the application is complete within fourteen (14) calendar days of receipt of the application.

#### **82. Additional information**

- (1) The applicant must provide the Municipality with the information or documentation required for the completion of the application within thirty (30) calendar days of the request thereof 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) The applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in subsection (3) to refuse to consider the application.
- (5) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (3), the applicant must make a new application and pay the applicable application fees.

**83. Confirmation of complete application**

- (1) The Municipality must notify the applicant in writing that the application is complete within fourteen (14) calendar 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 82 applies to the further submission of information that may be required.

**84. 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.

**85. Notice of applications in terms of integrated procedures**

- (1) The Municipality may, on prior written request with motivations 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 thirty (30) calendar 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 86 ; 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.

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.

#### **86. Notification of application in media**

- (1) The Municipality may require the applicant to cause notice to be given in the media, in accordance with this By-Law, of the following applications, at the sole discretion of the Municipality:
- (a) an application of establishment of a township or extension of township boundaries;
  - (b) an application for a rezoning or amendment of an existing scheme or Land Use Scheme, by an applicant or a rezoning on the initiative of the Municipality;
  - (c) the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of land;
  - (d) the removal, amendment or suspension of the restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a Land Use Scheme in operation;
  - (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) any application for consent use or special consent use provided for in terms of an existing scheme or Land Use Scheme i.e. Guest House, Place of Public Worship, Place of Instruction, Overnight Accommodation, Service Industry, Place of Amusement, Telecommunication Mast, etc.;
  - (g) the consent of the Municipality for any land use purpose or departure or deviation in terms of a Land Use Scheme or existing scheme which does not constitute a land development application;
  - (h) any consent or approval provided for in a Provincial law;
  - (i) the subdivision of land larger than five hectares (BEFORE subdivision) inside the outer limit of urban expansion as reflected in its Municipal Spatial Development Framework;
  - (j) the subdivision of land larger than one hectare (BEFORE subdivision) outside the outer limit of urban expansion as reflected in its Municipal Spatial Development Framework provided that is not going to be utilised for agricultural purposes;
  - (k) Traditional land use applications relating to communal land as contemplated in section 49(3), if required by the Municipality,
  - (l) 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;
  - (m) 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;
  - (n) the closure of any public place;
  - (o) 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 once on any working day by—
- (a) publishing a notice in English and in at least one official language mostly spoken in the area in a newspaper with a general circulation in the area concerned

- (b) posting a copy of the notice of application, for at least the duration of the notice period, i.e. the objection period, on the land concerned and on any other notice board as may be determined by the Municipality
- (c) the objection period of thirty (30) calendar days shall apply to the notice referred to subsection (a) and (b)
- (d) the notice contemplated in subsection (b) shall be in accordance in section 89(1)(a).

#### **87. Serving of notices**

- (1) Notice of an application contemplated in section 86(1) and (2) must be served
  - (a) in accordance with section 115 of the Municipal Systems Act; 2000 (Act No. 32 of 2000) as amended
  - (b) in English and at least one official language mostly spoken in the area concerned as determined by the Municipality, and
  - (c) on each person whose rights or legitimate expectations will 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 the applicant to attend to the serving of a notice of an application contemplated in subsection (1)
- (4) 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. The applicant shall submit a sworn affidavit as proof that the notice was served as contemplated in subsection (3)
- (5) 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.

#### **88. Content of notice**

- (1) When notice of an application must be given in terms of section 86 or served in terms of section 87, 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 thereof 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 thirty (30) calendar 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.

#### **89. Additional methods of public notice**

- (1) If the Municipality considers notice in accordance with sections 86 or 87 to be ineffective or 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, of which subsection 1(a) is compulsory:
  - (a) to display a notice contemplated in section 86(2) of a size of at least 30 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 thirty (30) calendar days during the period that the public may comment on the application i.e. the objection period;
    - (ii) the applicant must, within twenty one (21) calendar days from the last day of display of the notice, remove the notice from the property and submit the following 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 period of thirty (30) calendar days 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 adhered to or given as required.

**90. Requirements for petitions**

- (1) All petitions must clearly state:
  - (a) the contact details of the authorised representative of the signatories of the petition;
  - (b) the full name and physical address of each signatory; and
  - (c) the objection and reasons for the objection.
- (2) Notice to the person contemplated in subsection (1)(a), constitutes notice to all the signatories to the petition.

**91. Requirements for objections, comments or representations**

- (1) A person may, in response to a notice received in terms of sections 86, 87 or 89, object, comment or make representations in accordance with this section.
- (2) Any objection, comment or representation received as a result of a public notice process must be in writing and addressed to the person mentioned in the notice within the time period stated in the notice and in the manner set out in this section.
- (3) The objection must state the following:
  - (a) the name of the person or body concerned;
  - (b) the address or contact details at which the person or body concerned will accept notice or service of documents;
  - (c) the interest of the body or person in the application;
  - (d) the reason for the objection, comment or representation.
- (4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to:
  - (a) indicate the facts and circumstances which explains the objection, comment or representation;
  - (b) demonstrate the undesirable effect which the application will have on the area;
  - (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.
- (5) The Municipality may refuse to accept an objection, comment or representation received after the closing date.

**92. 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-Law 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.
- (3) In the event the land has no lawful zoning allocated, the Municipality may allocate a zoning of "UNDETERMINED" as contemplated in Section 168 , sub section (3)

**93. Further public notice**

- (1) The Municipality may require that a new notice of an application be given if more than eighteen (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.

**94. Cost of notice**

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

**95. Applicant's right to reply**

- (1) Copies of all objections, comments or representations lodged with a Municipality must be provided to the applicant within fourteen (14) calendar 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 thirty (30) calendar days from the date of the provision of the objections, comments or representations, submit written reply 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 thirty (30) calendar day period referred to in subsection (2), apply to the Municipality for an extension of the period with a further period of fourteen (14) calendar days to lodge a written reply.
- (4) If the applicant does not submit comments within the period of thirty (30) calendar days or within an additional period of fourteen (14) calendar 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 is required by the District Municipal Planning Tribunal, the information must be supplied within thirty (30) calendar days to a maximum period of sixty (60) calendar days as required by the Tribunal.
- (6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), and section 82(2) to (5) with the necessary changes, applies.

**96. Written assessment of application**

- (1) An employee authorised by the Municipality must in writing assess an application 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.

**97. Decision-making period for opposed applications**

- (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 District Municipal Planning Tribunal must decide on the application within one hundred and twenty (120) calendar 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 District Municipal Planning Tribunal must decide on the application within one hundred and twenty (120) calendar days of the closing date for the submission of comments, objections or representations.

**98. Failure to act within time period**

If no decision is made by the District Municipal Planning Tribunal within the period required in terms of the Act, it is considered undue delay for purposes of these By-Law and the applicant or interested person may report the non-performance of the District Municipal Planning Tribunal or Land Development Officer to the Municipal Manager, who must report it to the Municipal Council and Mayor.

**99. 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 contemplated in section 96.
- (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 within normal working hours or otherwise arranged and prior notice of at least forty eight (48) hours must be given to the owner or occupier of the land or building.

#### **100. Determination of application**

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

#### **101. Notification of decision**

- (1) The Municipality must, within twenty one (21) calendar days of the decision of the District Municipal Planning Tribunal or authorised official, in writing notify the applicant and any person whose rights are affected by 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.

#### **102. 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.

#### **103. Errors and omissions**

- (1) The Municipality may at any time correct an error in the wording of the decision of the District Municipal Planning Tribunal provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition, provided that the correction if so material be rectified in a subsequent sitting of the Tribunal.

- (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 it does not have material adverse impact or unreasonably prejudice to any party.

**104. 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 or applicant
  - (a) informing the owner or applicant of the alleged breach of the condition;
  - (b) instructing the owner or applicant to rectify the breach within sixty (60) calendar days, failing where after a termination notice of fourteen (14) calendar days will be served on the owner or applicant;
  - (c) allowing the owner or applicant to make representations on the notice within a specified time period.

**105. Procedure to withdraw an approval granted in terms of consent use and temporary departure**

- (1) The Municipality may withdraw an approval granted:
  - (a) after consideration of the representations made in terms of section 104(2)(c); and
  - (b) if the Municipality is of the opinion that the condition is still being breached and not being complied with at the end of the period specified in terms of section 104(2)(b).
- (2) If the Municipality withdraws the approval, the Municipality must notify the owner or applicant of the withdrawal of the approval and instruct the owner or applicant to cease the activity immediately.
- (3) The approval is withdrawn from date of notification of the owner.

**106. Exemptions to facilitate expedited procedures**

- (1) 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 85;
    - (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

## CHAPTER 7 ENGINEERING SERVICES AND DEVELOPMENT CHARGES

### Part A: Provision and Installation of Engineering Services

#### 107. 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 109 provides otherwise.

#### 108. Installation of engineering services

- (1) The applicant shall provide and install the internal engineering services in accordance with the conditions of establishment and to the satisfaction of the Municipality, and for that purpose the applicant shall lodge with the Municipality such reports, diagrams and specifications as the Municipality may require.
- (2) The Municipality shall have regard to such standards as the Minister/MEC may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act.
- (3) If an engineering service within the boundaries of the land development area is intended to serve any other area within the municipal area, such engineering service and the costs of provision thereof must be treated as an internal engineering service to the extent that it serves the land development and as an external engineering service to the extent that it serves any other development.

#### 109. 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 or external engineering services.
  - (b) make provision for the delivery of guarantee/s equal to the estimated cost of the envisaged engineering services to be installed by applicant;
  - (c) be clear when the applicant and the Municipality are to commence construction of internal engineering services and external engineering services, at which rate construction of such services is to proceed and when such services must be completed;
  - (d) provide for the inspection and handing over of internal engineering services to the Municipality, if so required;

- (e) determine the date on which all risk and ownership in respect of such services shall pass to the Municipality;
  - (f) 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
  - (g) provide for the following responsibilities after the internal services have been handed over to the Municipality:
    - (i) when normal maintenance by the relevant authority 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 if the applicant fails to rectify any defects within a reasonable period after having been requested to do so;
  - (h) 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;
  - (i) determine whether additional bulk services are to be provided by the Municipality and, if so, such services must be identified;
  - (j) 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;
  - (k) 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 –
    - a water-borne sewerage pipe terminating at a sewer connection;
    - a water-pipe terminating at a water meter; and
    - an electricity house connection cable terminating on the relevant erf; and
  - (l) 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.

#### **110. Abandonment or lapsing of land development application**

- (1) 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 109 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 Municipal Council with regard to the provision and installation of any engineering services of whatsoever nature.
- (2) in the event where guarantee/s in respect of internal engineering services were issued in favour of the Municipality, the Municipality shall complete the installation of the outstanding services by redeeming and utilising the proceeds from the guarantee/s.

#### **111. Internal and external engineering services**

- (1) Every development area and land development application in terms of this By-law or any other law shall be provided with such engineering services as the Municipality may deem necessary for the proper development of the subject properties.
- (2) Classification of engineering services  
Every engineering service to be provided for a land development area may;
  - (a) be classified by agreement between the applicant and the Municipality to which application has been made; or
  - (b) as may be directed by the Municipality; as an internal or external engineering service or private engineering service as the case may be, in accordance with such guidelines as the Municipality may determine.
- (3) Responsibility for installation and provision of engineering services.
  - (a) The owner shall be responsible for the installation and provision of internal engineering services; and
  - (b) the Municipality shall be responsible for the installation and provision of external engineering services or as provided for in the agreement in terms of subsection (2); and
  - (c) the provisions of the land use scheme with regard to engineering services shall apply to all development.
- (3) Engineering services as contemplated in subsection (2):
  - (a) shall be installed and provided to the satisfaction of the Municipality, and for that purpose the applicant shall lodge with the Municipality such reports, diagrams and specifications as the Municipality may require;

- (b) shall require that the Municipality for the purposes of subsection (1), have regard to such standards as the Minister may determine for streets and storm water drainage, water, electricity and sewage disposal services in terms of the Act; and
- (c) Where a land development application has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreements shall lapse and the applicant having installed any engineering services based on the above agreement shall have no claim against the Municipal Council with regard to the installation or construction of any engineering services of whatsoever nature.

#### **Part B: Development charges**

##### **112. Payment of development charges**

- (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 the amendment scheme; and
  - (b) open spaces or parks where the commencement of the amendment scheme will bring about a higher residential density.
- (2) If a land development application is approved by the District Municipal Planning Tribunal subject to, amongst others, the payment of a development charge or an amendment scheme comes into operation, the applicant or owner of the land to which the scheme relates, must, subject to section 113, pay the development charge to the Municipality.
- (3) An applicant or owner who is required to pay a development charges in terms of this By-Law shall pay such development charges to the Municipality before:
  - (a) a written statement contemplated in section 118 of the Municipal System Act, 2000 (Act No. 32 of 2000) as amended 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 commencement of the amendment scheme, 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 commencement of the amendment scheme, would have been in conflict with the land use scheme in operation.

##### **113. Offset of development charges**

- (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 109.

#### **114. Payment of development charges in instalments**

- (1) The Municipality may -
  - (a) in the circumstances contemplated in subsection (b) or (c), allow payment of the development charge contemplated in section 112 in instalments over a period not exceeding three (3) months;
  - (b) in any case, allow payment of the development charge contemplated in section 112 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 subsection (a) or (b), impose any condition, including a condition for the payment of interest.

#### **115. Refund of development charges**

No development charges paid to the Municipality in terms of section 112 or any portion thereof shall be refunded to an applicant or owner: Provided that where the owner paid the applicable charges prior to the land use rights coming into operation and the application is abandoned in terms of section 110 the Municipality may, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

#### **116. 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.

- (3) Each Municipality shall open an account specifically for the services infrastructure as stipulated on subsection (1) and (2)



## CHAPTER 8 APPEAL PROCEDURES

### Part A: Management of an Appeal Authority

#### 117. Establishment and composition of Appeal Authority

- (1) The Municipal Planning Appeal Tribunal is established in the same manner as the Municipal Planning Tribunal
- (2) The Municipal Planning Appeal Tribunal is composed of-
  - (a) The presiding officer who must be a legal expert
  - (b) A spatial planner with at least five years' experience
  - (c) Either one of the experts in engineering, environmental management, economics or related fields thereto
  - (d) The presiding officer of the Appeal Authority is responsible for managing the judicial functions of that Appeal Authority.

#### 118. Bias and disclosure of interest

- (1) No Presiding Officer or member of an Appeal Authority may sit at the hearing of an appeal against a decision of a District Municipal Planning Tribunal if he or she was a member of that District Municipal Planning Tribunal when the decision was made or if he or she was the official contemplated in section 35(2) of the Act and he or she made the decision that is the subject of the appeal.
- (2) A Presiding Officer or member of an Appeal Authority who has or appears to have a conflict of interest as defined in subsection (5) and (6) must recuse himself or herself from the appeal hearing.
- (3) A party may in writing to the Appeal Authority request the recusal of the Presiding Officer or member of that Appeal Authority on the grounds of conflict of interest and the Presiding Officer must decide on the request and inform the party of the decision in writing.
- (4) A decision by a Presiding Officer or member to recuse himself or herself or a decision by the Appeal Authority to recuse a Presiding Officer or member, must be communicated to the parties concerned by the Registrar.
- (5) For the purpose of this Chapter "conflict of interest" means any factor that may impair or 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.
- (6) A conflict of interest arises where an appeal assigned to an Appeal Authority involves any of the following:
  - (a) A person with whom the Presiding Officer or member has a personal, familiar or professional relationship;
  - (b) a matter in which the Presiding Officer or member has previously served in another capacity, including as an adviser, counsel, expert or witness; or

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

#### **119. Registrar of Appeal Authority**

- (1) The Municipal Manager of the District Municipality may be appointed as the Registrar of the Appeal Authority in consultation with all the Local Municipalities.
- (2) Notwithstanding the provisions of subsection(1), a District 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 District 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.
- (5) The Chairpersons of the Local Economic Development Cluster of all Local Municipalities' must in collaboration with the Chairperson of the Local Economic Development Cluster of Mopani District Municipality, generate a report to the District Municipality Council in respect of the appointment of the District Municipal Manager as the Registrar of the Appeal Authority.

#### **120. 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 cash flow management and the finalisation of any matter before the Appeal Authority;
  - (d) transmit all documents and make all notifications required by the procedures laid down in the Provincial Spatial Planning and Land Use Management legislation;
  - (e) the establishment of a master registry file for each case which must record
    - (i) the reference number of each appeal;
    - (ii) the names of the parties;
    - (iii) all actions taken in connection with the preparation of the appeal for hearing;

- (iv) the dates on which any document or notification forming part of the procedure is received in or dispatched from his or her office;
  - (v) the date of the hearing of the appeal;
  - (vi) the decision of the Appeal Authority;
  - (vii) whether the decision was unanimous or by majority vote; and
  - (viii) any other relevant information.
- (3) The Presiding Officer of the Appeal Authority may give the Registrar directions regarding the exercise of his or her powers under this Chapter.
- (4) The Registrar must give written notice to the Presiding Officer of all direct or indirect pecuniary interest that he or she has or acquires in any business or legal person carrying on a business.

#### **Part B: Appeal Process**

##### **121. Commencing of appeal**

An appellant must commence an appeal by delivering a Notice of Appeal specified in Annexure A to the Registrar of the relevant Appeal Authority within twenty one (21) calendar days as contemplated in section 51 of the Act.

##### **122. Notice of appeal**

- (1) 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;
  - (e) any issues that the appellant wants the Appeal Authority to consider in making its decision; and
  - (f) a motivation of an award for costs.
- (2) An appellant may, within seven (7) calendar days from receipt of a notice to oppose an appeal amend the Notice of Appeal and must submit a copy of the amended notice to the appeal authority and to every respondent.

##### **123. Notice to oppose an appeal**

- (1) A notice to oppose an appeal must clearly indicate:
  - (a) whether the whole or only part of the appeal is opposed and if only a part, which part;
  - (b) whether any conditions of approval of an application are opposed and which conditions;
  - (c) whether the relief sought by the appellant is opposed; and
  - (d) the grounds for opposing the appeal including any finding of fact or conclusions of law in dispute;
  - (e) a clear statement of relief sought on appeal.

**124. 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 specified in Annexure A;
  - (b) it is submitted within the required time limit; and,
  - (c) the appeal authority has jurisdiction over the appeal.
- (2) If a Notice of Appeal does not comply with the form specified in Annexure A, 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 fourteen (14) calendar days.
- (3) If the Notice of Appeal is not provided and returned to the Appeal Authority with the requested information within the fourteen (14) calendar days, 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.

**Part C: Parties to an Appeal****125. Parties to appeal**

- (1) The parties to an appeal before an Appeal Authority are:
  - (a) the appellant who has lodged the appeal with the Appeal Authority;
  - (b) the official authorised by the Municipality as contemplated in section 35(2) of the Act who made the decision;
  - (c) if the Minister or MEC intervenes in the proceeding under section 126, the Minister or the MEC, as the case may be; and
  - (d) any other 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.

**126. Intervention by Minister or MEC**

- (1) The Minister or the MEC may, on behalf of the National or Provincial sphere of Government, intervene in a proceeding before the Appeal Authority and must request to the Appeal Authority in writing to be added as a party to the appeal.

- (2) The Appeal Authority may after due consideration of the request contemplated in subsection (1), in its own discretion, make the Minister or the MEC a party to the appeal.
- (3) Where the Minister or the MEC intervenes under subsection (1) in an appeal proceeding, the Minister or the MEC may authorise the payment to a party to the proceeding by the department concerned of such costs as he or she considers were reasonably incurred by that party in relation to the proceeding as a result of that intervention.

#### **127. Intervention by interested person**

- (1) Where an appeal has been lodged by an appellant to the Appeal Authority, an interested person referred to in section 45(2) of the Act may, at any time during the proceedings, petition the Appeal Authority in writing on the form referred to in Annexure B to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the District Municipal Planning Tribunal or official referred to in section 34(2) of the Act and might therefore be affected by the judgement of the Appeal Authority.
- (2) The petitioner must within twenty one (21) calendar days from the date of approval by an authorised official submit in writing a sworn affidavit together with the petition to be granted intervener status stating that he or she
  - (a) does not collude with any of the appellants; and
  - (b) is willing to deal with or act in regard to the appeal as the Appeal Authority may direct.
- (3) The Registrar must determine whether the requirements of this section have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.
- (4) The Presiding Officer of the Appeal Authority must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the Registrar.
- (5) The Presiding Officer may, in his or her discretion or on request of one of the parties to the appeal, require security for that party's costs of appeal from the petitioner, in the form and manner determined by him or her, by delivering a notice setting forth the grounds on which the security is claimed and the amount demanded.
- (6) If one of the parties request security for costs and only the amount of security is contested, the registrar must determine the amount to be given and his or her decision is final.
- (7) If the person from whom security is demanded contests his or her liability to give security or if he or she fails or refuses to furnish security in the amount demanded or the amount fixed by the Registrar within ten (10) calendar days of the demand or the Registrar's decision, the other party may apply to the Appeal Authority for an order that such security be given and that the proceedings be stayed until such order is complied with.

- (8) The Appeal Authority may, if security is not given within the time determined in the order, dismiss any petition for intervener status.

#### **Part D: Jurisdiction of Appeal Authority**

##### **128. Jurisdiction of Appeal Authority**

- (1) 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.

##### **129. Appeal hearing by Appeal Authority**

- (1) An appeal may be heard by an Appeal Authority by means of -
- (a) an oral hearing; or
  - (b) a written hearing.

##### **130. Written hearing by Appeal Authority**

A written hearing may be held if it appears to the Appeal Authority that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.

##### **131. Oral hearing by Appeal Authority**

- (1) An oral hearing may be held –
- (a) if it appears to the Appeal Authority that the issues for 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.
- (2) If appropriate in the circumstances, the oral hearing may be held by electronic means.

##### **132. Representation before Appeal Authority**

At the hearing of an appeal before an Appeal Authority, a party to the proceeding may appear in person or may be represented by another person if authorised accordingly by such party.

##### **133. Opportunity to make submissions concerning evidence**

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

#### **Part E: Hearings of Appeal Authority**

**134. Notification of date, time and place of hearing**

- (1) The Appeal Authority must notify the parties of the date, time and place of a hearing at least fourteen (14) calendar days before the hearing commences.
- (2) The Appeal Authority will provide notification of the hearing to the appellant at the appellant's address for delivery.

**135. Hearing date**

A hearing will commence within thirty (30) calendar 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 than thirty (30) calendar days.

**136. Adjournment**

- (1) If a party requests an adjournment of not less than five (5) calendar days prior to the hearing, the party must obtain the written consent of the other party and the Presiding Officer of the Appeal Authority.
- (2) The party requesting an adjournment must deliver to the Appeal Authority a completed form including reasons for the request.
- (3) The Appeal Authority will notify the parties in writing of the decision of the Presiding Officer of the Appeal Authority.
- (4) If the Presiding Officer of the Appeal Authority or the other party does not consent to the request for an adjournment, the hearing will not be adjourned.
- (5) If a party requests an adjournment within one day prior to the hearing, the request must be made to the Appeal Authority at the hearing and may be made notwithstanding that a prior request was not consented to.

**137. Urgency and condoned applications**

- (1) The Registrar may –
  - (a) on application of any party to an appeal, direct that the matter is one of urgency, and determine such procedures, including time limits, as he or she may consider desirable to fairly and efficiently resolve the matter;
  - (b) on good cause shown, condone any failure by any party to an appeal to comply with this Part or any directions given in terms hereof, if he or she is of the opinion that such failure has not unduly prejudiced any other person;
- (2) Every application condoned in terms of this Part must be –
  - (a) served on the Registrar;
  - (b) accompanied by a memorandum setting forth the reasons for the failure concerned; and
  - (c) determined by the Presiding Officer in such manner as he or she considers proper.

- (3) Where a failure is condoned in terms of subsection (1)(b), the applicant must comply with the directives of the Registrar in consultation with the Presiding Officer when condoning such applications.

#### **138. Withdrawal of appeal**

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

### **Part F: Oral Hearing Procedure**

#### **139. Location of oral hearing**

An oral hearing must be held in a location within the area of jurisdiction of the Municipality where the land affected by the decision is located, but may not be held in the office of the District Municipal Planning Tribunal or the Land Development Officer authorised in terms of section 35(2) of the Act whose decision is under appeal.

#### **140. Presentation of each party's case**

- (1) Each party has the right to present evidence and make arguments in support of that party's case.
- (2) The appellant will have the opportunity to present evidence and make arguments first, followed by the District Municipal Planning Tribunal or the Land Development Officer

#### **141. Witnesses**

- (1) Each party may call witnesses to give evidence before the panel.
- (2) A witness may not be present at the hearing before giving evidence unless the witness is:
  - (a) an expert witness in the proceedings;
  - (b) a party to the appeal; or
  - (c) a representative of a party to the appeal.

#### **142. Proceeding in absence of party**

- (1) If a party does not appear at an oral hearing, the Appeal Authority may proceed in the absence of the party if the party was notified of the hearing.
- (2) Prior to proceeding, the Appeal Authority must first determine whether the absent party received notification of the date, time and place of the hearing.
- (3) If the notice requirement was not met, the hearing cannot proceed and the Presiding Officer of the Appeal Authority must reschedule the hearing.

#### **143. Recording**

Hearings of the Appeal Authority must be recorded and such recordings must be kept for a



period of at least five (5) years

#### **144. Oaths**

All parties in an appeal hearing are required to give evidence under oath or affirmation.

#### **145. Additional documentation**

- (1) Any party wishing to provide the Appeal Authority with additional documentation not included in the appeal record should provide it to the Appeal Authority at least three working days before the hearing date.
- (2) The Registrar must distribute the documentation to the other party and the members of the Appeal Authority.
- (3) If the party is unable to provide the additional documentation to the Appeal Authority at least three working days prior to the hearing, the party may provide it to the Appeal Authority at the hearing.
- (4) The party must bring copies of the additional documentation as prescribed in the relevant section of this By-Law for the members of the Appeal Authority and the other party.
- (5) If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the Appeal Authority. The Presiding Officer will make a determination regarding the additional costs pertaining to such postponement.

### **Part G: Written Hearing Procedure**

#### **146. Commencement of written hearing**

The written hearing process commences with the issuance of a letter from the Appeal Authority to the parties establishing a submissions schedule.

#### **147. Presentation of each party's case in written hearing**

- (1) Each party must be provided an opportunity to provide written submissions to support their case.
- (2) The appellant will be given seven (7) calendar days to provide a written submission.
- (3) Upon receipt of the appellant's submission within the timelines, the Appeal Authority must forward the appellant's submission to the District Municipal Planning Tribunal or the Land Development Officer.
- (4) The District Municipal Planning Tribunal or the Land Development Officer has seven (7) calendar days in which to provide a submission in response.
- (5) If no submission is received by a party in the time established in the submissions

schedule, it will be deemed that the party declined the opportunity to provide a submission.

**148. Extension of time**

- (1) If a party wishes to request an extension of the time established to provide a written submission, this request must be in writing to the Appeal Authority within two (2) working days of the date on which the submission is due.
- (2) Any request for an extension must be accompanied by the reasons for the request.
- (3) Following receipt of a request for an extension of time, the Appeal Authority will issue a decision in writing to the parties.

**149. Adjudication of written submissions**

- (1) Following receipt of any written submissions from the parties, the Registrar must forward the appeal record, which includes the written submissions, to the Appeal Authority for adjudication.
- (2) If no written submissions are received from the parties, the Registrar will forward the existing appeal record to the Appeal Authority for adjudication.
- (3) Any submission received after the date it was due but before the Appeal Authority for adjudication has rendered its decision, will be forwarded to the Presiding Officer of the Appeal Authority to decide whether or not to accept the late submission.
- (4) The Appeal Authority must issue a decision in writing to the parties and, if the submission is accepted, the other party will be given seven (7) calendar days to provide a written submission in response.

**Part H: Decision of Appeal Authority**

**150. Further information or advice**

After hearing all parties on the day of the hearing, the Appeal Authority –

- (1) may in considering its decision request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;
- (2) 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 subsection (3);
- (3) must within twenty one (21) calendar days after the last day of the hearing, issue its decision in writing on the appeal together with the reasons thereof.

**151. Decision of Appeal Authority**

- (1) The Appeal Authority may confirm, vary or revoke the decision of the District

Municipal Planning Tribunal or Land Development Officer and may include an award of costs.

- (2) The Presiding Officer must sign the decision of the Appeal Authority and any order made by it.

#### **152. Notification of decision**

- (1) The registrar must notify the parties of the decision of the Appeal Authority in terms of Regulation 26, together with the reasons therefore within twenty one (21) calendar days after the Appeal Authority handed down its decision.
- (2) Where an Appeal Authority upholds a decision on a development application, the Municipal Manager or his/her delegate must, within twenty one (21) calendar days of the decision, inform all the affected parties of the decision.
- (3) The party's affected shall within thirty (30) calendar days inform the Municipality if intending to approach any Court of Law regarding the decision.
- (4) Should the Municipality not receive any notice contemplated in subsection 3, the matter shall be considered as final.

#### **153. Directives to Municipality**

The Appeal Authority must, in its decision, give directives to the Municipality concerned as to how such a decision must be implemented and which of the provisions of the Act and the Regulations have to be complied with by the Municipality as far as implementation of the decision is concerned

### **Part I: General**

#### **154. Expenditure**

- (1) Expenditure in connection with the administration and functioning of the Appeal Authority must be settled from moneys appropriated by the affected local Municipality.
- (2) The costs associated with the remuneration and logistics of the members of the Appeal Authority shall be borne by the District Municipality.
- (3) Remuneration of the Municipal Planning Appeal Tribunal shall be based on Mopani District Municipality tariffs structure

## CHAPTER 9 COMPLIANCE AND ENFORCEMENT

### 155. Enforcement

- (1) The Municipality must adhere to and enforce compliance with—
- (a) the provisions of this By-Law;
  - (b) the provisions of a Land Use Scheme;
  - (c) previous planning legislation or any other condition that might arise from the land development application;
  - (d) the title deed conditions

### 156. Offences and penalties

- (1) Any person who—
- (a) contravenes or fails to comply with section 156;
  - (b) fails to comply with a compliance notice issued in terms of section 157;
  - (c) utilises land in a manner other than prescribed by the Land Use Scheme of the Municipality;
  - (d) upon registration of the first land unit arising from a township establishment or subdivision, fails to transfer all common property, including private roads and private places originating from a township establishment or subdivision to the Home Owners' Association or Section 21 Company;
  - (e) supply false, incorrect, or misleading or not believing them to be correct particulars, information or answers in an application or in an appeal to a decision on a land development application;
  - (f) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
  - (g) hinders or interferes an authorised employee in the exercise of any power or the performance of any duty of that employee, is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding a period of twenty (20) years or to both a fine and such imprisonment.
- (2) An owner who permits land to be used in a manner set out in subsection (1)(c) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of the Land Use Scheme of the Municipality, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding twenty (20) years or to both a fine and such imprisonment.
- (3) A person convicted of an offence under this By-Law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

- (4) Any person who causes any development of land on land held by a Traditional Council i.e. subdivision, consent use etc., without obtaining prior permission for such development from the Traditional Authority, in terms of section (69) shall be guilty of an offense and liable upon conviction of a fine or imprisonment for a period as determined by a Court of Law or to both a fine and such imprisonment.
- (5) A Municipality must adopt fines and contravention penalties to be imposed in the enforcement of this By-Law.

#### **157. Service of compliance notice**

- (1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person or owner is guilty of an offence contemplated in terms of section 156.
- (2) A compliance notice must direct the occupier and owner to cease the unlawful land use or construction activity or both, forthwith or within the time period determined by the Municipality and may include an instruction to—
  - (a) demolish unauthorised building work and rehabilitate the land or restore the building, as the case may be, to its original form within thirty (30) calendar days or such other time period determined by the Municipal Manager; or
  - (b) submit an application in terms of this By-Law within thirty (30) calendar days of the service of the compliance notice and pay the contravention penalty.
- (3) A person who has received a compliance notice with an instruction contemplated in subsection (2)(a) may not submit an application in terms of subsection (2)(b).
- (4) An instruction to submit an application in terms of subsection (2)(b) must not be construed as an indication that the application will be approved.
- (5) In the event that the application submitted in terms of subsection (2)(b) is refused, the owner must demolish the unauthorised work within the time period as prescribed by the Municipality.
- (6) A person who received a compliance notice in terms of this section may lodge representations to the Municipality within thirty (30) calendar days of receipt of the compliance notice.

#### **158. Content of compliance notices**

- (1) A compliance notice must—
  - (a) identify the person to whom it is addressed;
  - (b) describe the activity concerned and the land on which it is being carried out;
  - (c) state that the activity is illegal and inform the person of the particular offence contemplated in section 156 which that person allegedly has committed or is committing through the carrying on of that activity;
  - (d) the steps that the person must take and the period within which those

- steps must be taken;
- (e) anything which the person may not do, and the period during which the person may not do it;
  - (f) provide for an opportunity for a person to lodge representations contemplated in terms of section 157 with the contact person stated in the notice;
  - (g) issue a warning to the effect that—
    - (i) the person could be prosecuted for and convicted of an offence contemplated in section 156;
    - (ii) on conviction of an offence, the person will be liable for the penalties as provided for;
    - (iii) the person could be required by an order of court to demolish, remove or alter any building, structure or work illegally erected or constructed or to rehabilitate the land concerned or to cease the activity;
    - (iv) in the case of a contravention relating to a consent use or temporary departure, the approval could be withdrawn;
    - (v) in the case of an application for authorisation of the activity or development parameter, that a contravention penalty including any costs incurred by the Municipality, will be imposed;

- (2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Municipality has agreed to suspend the operation of the compliance notice in terms of section 159(2).

**159. Objections to compliance notice**

- (1) Any person or owner who receives a compliance notice in terms of section 157 may object to the notice by making written representations to the Municipal Manager within thirty (30) calendar days of receipt of the notice.
- (2) Subject to the consideration of any objections or representations made in terms of subsection (1) and any other relevant information, the Municipal Manager—
  - (a) may suspend, confirm, vary or cancel a notice or any part of the notice; and
  - (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.

**160. Failure to comply with compliance notice**

- (1) If a person fails to comply with a compliance notice the Municipality may—
  - (a) lay a criminal charge against the person;
  - (b) apply to the High Court for an order restraining that person from continuing the illegal activity, to demolish, remove or alter any building, structure or work illegally erected or constructed without the payment of compensation or to rehabilitate the land concerned and to request the High Court to make a ruling regarding legal costs to be recovered from the applicant, or
  - (c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and then act in terms of section 157.

**161. Urgent matters**

- (1) In cases where an activity must be stopped urgently, the Municipality may dispense with the procedures set out above and issue a compliance notice calling upon the person or owner to cease immediately.
- (2) If the person or owner fails to cease the activity immediately, the Municipality may apply to the High Court for an urgent interdict or any other relief necessary.
- (3) The costs resulting from subsection (2) will be claimed by the Municipality from the person or owner.

**162. Subsequent application for authorisation of activity**

- (1) If instructed to rectify or cease an unlawful land use or building activity, a person may make an application to the Municipality for any land development contemplated in Chapter 5, unless the person is instructed under section 157(2)(a) to demolish the building work.
- (2) The applicant must, within thirty (30) calendar days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality.

**163. Power of entry for enforcement purposes**

- (1) An authorised employee may, with the permission of the occupier or owner of land, at any reasonable time, and without a warrant, and without previous notice, enter upon land or enter a building or premises for the purpose of ensuring compliance with this By-Law.
- (2) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of this By-Law.
- (3) An authorised employee may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

**164. Power and functions of authorised employee**

- (1) In ascertaining compliance with this By-Law as contemplated in section 157, an authorised employee may exercise all the powers and must perform all the functions granted to him or her under section 32 of the Act.
- (2) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

**165. Warrant of entry for enforcement purposes**

- (1) A Magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or building or premises if the—

- (a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
  - (b) purpose of the inspection would be frustrated by the prior knowledge thereof.
- (2) A warrant referred to in subsection (1) may be issued by a Judge of a High Court or by a Magistrate who has jurisdiction in the area where the land in question is situated, and may only be issued if it appears to the Judge or Magistrate from information on oath that there are reasonable grounds for believing that—
  - (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
  - (b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;
  - (c) there are reasonable grounds for suspecting that a contravention contemplated in section 157 has occurred and an inspection of the premises is likely to yield information pertaining to that contravention; or
  - (d) the inspection is reasonably necessary for the purposes of this By-Law.
- (3) A warrant must specify which of the acts mentioned in section 163 may be performed under the warrant by the person to whom it is issued and authorises the Municipality to enter upon the land or to enter the building or premises and to perform any of the acts referred to in section 163 as specified in the warrant on one occasion only, and that entry must occur—
  - (a) within one month of the date on which the warrant was issued; and
  - (b) at a reasonable hour, except where the warrant was issued on grounds of urgency.

#### **166. Regard to decency and order**

- (1) The entry of land, a building or structure under this Chapter must be conducted with strict regard to decency and order, which must include regard to—
  - (a) a person's right to respect for and protection of his or her dignity;
  - (b) the right to freedom and security of the person; and
  - (c) the right to a person's personal privacy.

#### **167. Court order**

- (1) Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in section 155, the Municipality may apply to the High Court for an order compelling that person to—
  - (a) demolish, remove or alter any building, structure or work illegally erected or constructed;
  - (b) rehabilitate the land concerned;
  - (c) compelling that person to cease with the unlawful activity; or
  - (d) any other appropriate order.



## CHAPTER 10 TRANSITIONAL PROVISIONS

### 168. 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 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 in the opinion of the Municipality for a continuous period of fifteen (15) months, lapse at the expiry of that period;
  - (b) lapse at the expiry of a period of fifteen (15) years calculated from the date contemplated in subsection (2), in which case no compensation shall be payable;
  - (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 fifteen (15) years from that date be deemed to comply with that provision.
  - (d) where a period of fifteen (15) years has, in terms of subsection (3), commenced to run from a particular date in the opinion of the Municipality in respect of any land or building, no regard shall, for the purposes of those subsections, be given to an approved scheme which comes into operation after that date.
  - (e) within one (1) 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

- (ii) the Municipality in writing that he is prepared to forfeit that right; 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 (3)(b), 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 ninety nine 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.

#### **169. Determination of zoning**

- (1) Notwithstanding the provisions of section 168(2) and (3), the owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in section 26(3) of the Act
- (2) When the Municipality considers an application in terms of subsection(1) it must have regard to the following:
  - (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-Law if it can be determined;
  - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
  - (c) any departure or consent use that may be required in conjunction with that zoning;
  - (d) in the case of land that was vacant immediately before the commencement of this By-Law, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the Municipality; and
  - (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-Law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If the lawful zoning of land contemplated in subsection (1) cannot be determined, the Municipality must determine a zoning and give notice of its intention to do so.
- (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**

**170. 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, 2000 (Act No. 32 of 2000) as amended.

**171. Short title and commencement**

This By-Law is called The Spatial Planning and Land Use Management By-Law of Ba-Phalaborwa Local Municipality, 2016 and come into operation on a date fixed by the Mayor of the municipality by proclamation in the *Provincial Gazette*.

**SCHEDULE 1****INVITATION TO NOMINATE A PERSON TO BE APPOINTED AS A MEMBER TO THE MOPANI DISTRICT MUNICIPAL PLANNING TRIBUNAL**

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the Mopani District 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 Mopani District Municipal Planning Tribunal for its first term of office.

The period of office of members will be Two years calculated from the date of appointment of such members by the Mopani District Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (f) 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, 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

\_\_\_\_\_ 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 the Mopani District 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 Mopani District 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 Mopani District Municipal Planning Tribunal and I authorise the Mopani District 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 Mopani District Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

**CLOSING 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  
MOPANI DISTRICT MUNICIPAL PLANNING TRIBUNAL****CLOSING DATE:**

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

The period of office of members will be Two years calculated from the date of appointment of such members by the Mopani District Municipality.

Nominees must be persons registered with the professional bodies contemplated in section 33(1)(b) – (f) 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 Mopani District 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**

**Mopani District Municipality**  
**P/bag x9687**  
**GIYANI**  
**0826**

**For Attention: The Municipal Manager**  
**For Enquiries: Tsebe MS**

**Tel 015 8116300**

\* I, .....(full names of nominee),  
ID No (of nominee) .....,

hereby declare that –

- (a) I am available to serve on the Mopani District Municipal Planning Tribunal and I am willing to serve as chairperson or deputy chairperson should the District 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 Mopani District 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 Mopani District Municipal Planning Tribunal and I authorise the Mopani District 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 Mopani District Municipal Planning Tribunal.

No nominations submitted after the closing date will be considered.

\_\_\_\_\_

Signature of Nominee

\_\_\_\_\_

Full Names of Nominee

**SCHEDULE 3**  
**DISCLOSURE OF INTERESTS FORM**

I, the undersigned,

Full names:

Identity Number:

Residing at:

_____
_____
_____
_____
_____

do hereby declare that -

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

CONFLICTING INTERESTS	

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

1. NON-EXECUTIVE DIRECTORSHIP	
Name of Company	Period

2. REMUNERATION WORK, CONSULTANCY & RETAINERSHIPS			
Name of Company	Type of Business	Rand amount per month	Period
1.			
2.			
3.			



4.			
5.			

3. CRIMINAL RECORD	
1.	
2.	

- (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-Law, 2016 enacted by the Mopani District 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-Law, 2016 enacted by the Mopani District Municipality.

**Signature of Nominee:** \_\_\_\_\_

**Full Names:** \_\_\_\_\_

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

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

\_\_\_\_\_  
**COMMISSIONER OF OATHS**

FULL NAMES: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**SCHEDULE 4**  
**CODE OF CONDUCT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

I, the undersigned,

Full names: \_\_\_\_\_

Identity Number: \_\_\_\_\_

Residing at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**General conduct**

1. A member of the Mopani District 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 Mopani District Municipal Planning Tribunal may not—
  - (a) use the position or privileges of a member of the Mopani District Municipal Planning Tribunal or confidential information obtained as a member of the Mopani District 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 Mopani District 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 Mopani District 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 Mopani District 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 Mopani District Municipal Planning Tribunal by improper means.

**Signature of Nominee:** \_\_\_\_\_

**Full Names:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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