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JULIE 2015

No. 2503

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH

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IMPORTANT

Information

from Government Printing Works

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4.	Multi line fields should not have additional hard returns at the end of lines or the field itself.	This causes unwanted line breaks in the final output, e.g. <ul style="list-style-type: none"> Do not type as: 43 Bloubokrand Street Putsonderwater 1923 Text should be entered as: 43 Bloubokrand Street, Putsonderwater, 1923
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No.	Rule Description	Explanation/example
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LOCAL AUTHORITY NOTICE

NOTICE 79 OF 2015

MBOMBELA BY-LAW ON SPATIAL PLANNING AND LAND USE MANAGEMENT

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CHAPTER 1 DEFINITIONS, APPLICABILITY AND CONFLICT OF LAWS

1 Definitions

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

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

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

“**approval**” means written approval;

“**approved township**” means a township declared an approved township in terms of section 61 of this By-law;

“**By-Law**” mean the Mbombela Spatial Planning and Land Use Management Bylaw promulgated in terms of Section 12 and 13 read with Section 21 of the Municipal Systems Act, Act 32 of 2000;

“**communal land**” means land under the jurisdiction of a traditional council determined in terms of section 6 of the Mpumalanga Traditional Leadership and Governance Act, 2005 (Act No. 3 of 2005) and which was at any time vested in -

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

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

“**consolidation**” means the joining of two or more pieces of land into a single entity;

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

“**Council**” means the municipal council of MLM;

“**diagram**” means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997);

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

“**development charge**” means an once off amount which has to be paid by a developer to cover the cost that the Municipality incurred or has to incur to upgrade existing service infrastructure and/or to provide new infrastructure in order to create the necessary capacity and standard of service required to accommodate a development. A development charge is levied in terms of this by-law;

“**file**” means the lodgement of a document with the AA of MLM;

“**land**” means -

- (a) any erf, agricultural holding or farm portion, and includes any improvements or building on the land and any real right in land, and
- (b) the area of communal land to which a household holds an informal right recognized in terms of the customary law applicable in the area where the land to which such right is held is situated and which right is held with the consent of, and adversely to, the registered owner of the land;

“**land development area**” means an erf or land which is delineated in a land development application and “land area” has a similar meaning;

“**Land development officer**” means the authorised official defined in regulation 1 of the Regulations;

“**land use scheme**” means the land use scheme adopted and approved in terms of Chapter 3 of this By-law includes any existing scheme until such time as the existing scheme is replaced by the adopted and approved land use scheme;

“**Local Spatial Development Framework**” (**LSDF**) means a component of a SDF for a specific geographical area or part of a specific geographical area and includes a precinct plan;

“**Member of the Executive Council**” means the Member of the Executive Council responsible for local government in the Province;

“**municipality**” (**MLM**) Mbombela Local Municipality as defined in terms of the Municipal Systems Act, Act 32 of 2000 and as defined in the Act;

“**Municipal Manager**” means the person appointed in terms of section 54A of the Municipal Systems Act and includes any person acting in that position or to whom authority has been delegated;

“**Municipal Planning Tribunal**” means the Mbombela Planning Tribunal established in terms of section 32;

“**objector**” means a person who lodged an objection with MLM to a draft municipal spatial development framework, draft land use scheme or a land development and land use application;

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

“**previous planning legislation**” means any planning legislation that is repealed by the Act or the provincial legislation;

“**Professional Planner**” means persons registered as a professional with the South African Council for the Planning Profession in terms of the Planning Profession Act, 36 of 2002;

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

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

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

“**Registrar**” means the person appointed in terms of Section 114 of the by-law;

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

“**spatial development framework**” (**SDF**) means the Mbombela Local Municipality Spatial Development Framework as established and adopted in terms of Section 20 and 21 read with Section 12, 13, 23 and 35 of the Municipal Systems Act, Act 32 of 2000;

“**subdivision**” means the division of a piece of land into two or more portions;

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

“**township**” means any land laid out or divided into or developed as sites for residential, business or industrial purposes or similar purposes where such sites are arranged in such a manner as to be intersected or connected by or abut on any street, and a site or street shall for the purposes of this definition include a right of way or any site or street which has not been surveyed or which is only notational in character;

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

“**traditional communities**” means communities recognised in terms of section 3 of the Mpumalanga Traditional Leadership and Governance Act, 2005.

2 Application of By-law

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

3 Conflict of laws

- (1) This By-law is subject to the relevant provisions of the Act and the provincial legislation.
- (2) When considering an apparent conflict between this By-law and another law, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.
- (3) Where a provision of this By-law is in conflict with a provision of the Act or provincial legislation, MLM must institute the conflict resolution measures provided for in the Act or in provincial legislation, or in the absence of such measures, the measures provided for in the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005); to resolve the conflict and until such time as the conflict is resolved, the provisions of this By-law shall prevail.
- (4) Where a provision of the land use scheme is in conflict with the provisions of this By-law, the provisions of this By-law shall prevail.
- (5) Where there is a conflict between this By-law and another By-law of MLM, this By-Law prevails over the affected provision of the other By-law in respect of any municipal planning matter.

CHAPTER 2

MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK

4 Municipal spatial development framework

- (1) A municipal spatial development framework does not confer or take away land use rights but guides and informs decisions to be made by MLM relating to land development.
- (2) 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) In addition to matters contemplated in section 21 of the Act, section 26 of the Municipal Systems Act and provincial legislation, MLM may for purposes of reaching its constitutional objectives include any matter which it may deem necessary for municipal planning in the SDF.

- (2) Over and above the matters required in terms of subsection (1), MLM 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 contain transitional arrangements with regard to the manner in which the municipal spatial development framework is to be implemented by MLM.

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 -

- (a) may convene a project steering committee in accordance with section 7;
- (b) must publish a notice in two of the official languages as determined by the Municipality of its intention to prepare, amend or review the municipal spatial development framework and the process to be followed in accordance with section 28(3) of the Municipal Systems Act in a local newspaper;
- (c) must inform the Member of the Executive Council in writing of-
 - (i) its intention to prepare, amend or review the municipal spatial development framework;
 - (ii) the process that will be followed in the drafting or amendment of the municipal spatial development framework including the process for public participation; and
- (e) 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) MLM may, before commencement of the preparation, amendment or review of the municipal spatial development framework, in writing, invite nominations for representatives to serve on the project 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.
- (2) The purpose of the project committee contemplated in section 3(a) is to –
 - (a) prepare, amend or review the municipal spatial development framework for adoption by the Council;
 - (b) provide technical knowledge and expertise;
 - (c) monitor progress and ensure that the drafting municipal spatial development framework or amendment of the municipal spatial development framework is progressing according to the approved process plan;
 - (d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;
 - (e) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and organs of state as contemplated in section 24(1) of the Municipal Systems Act;
 - (f) facilitate the integration of other sector plans into the municipal spatial development framework;
 - (g) oversee the incorporation of amendments to the draft municipal spatial development framework or draft amendment or review of the municipal spatial development framework to address comments obtained during the process of drafting thereof.
- (3) The project committee must consist of –
 - (a) the Municipal Manager;
 - (b) municipal employees from at least the following municipal departments/sections;
 - (i) Integrated Development Planning;
 - (ii) City Planning and Development;
 - (iii) Infrastructure Development;
 - (iv) Water and Sanitation;
 - (v) Environmental services; and
 - (vi) Legal Services.

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 Council for adoption together with a first draft of the municipal spatial development framework or first draft amendment or review of the municipal spatial development framework.
- (2) On approval a notice must be published in terms of Section 23 of the Act read with section 21, 21A and 21B of the Municipal Systems Act 32 of 2000 that the draft municipal spatial development framework or an amendment or review thereof is available for public comment.
- (3) A written report as contemplated in subsection (1) must at least —

- (a) indicate the rationale in the approach to the drafting, amending or revision of the municipal spatial development framework;
 - (b) summarise the process of drafting, amending or revision the municipal spatial development framework;
 - (c) indicate the consultation process to be followed with reference to section 9 of this By-law;
 - (e) indicate the departments that were engaged in the drafting of the municipal spatial development framework;
 - (f) indicate the alignment with the national and provincial spatial development frameworks;
 - (g) indicate all sector plans that may have an impact on the municipal spatial development framework;
 - (h) indicate how the municipal spatial development framework complies with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Council; and
 - (i) recommend the adoption of the municipal spatial development framework for public participation as the draft municipal spatial development framework for MLM, in terms of the relevant legislation and this By-law.
- (4) After consideration of the comments and representations, as a result of the publication contemplated in subsection (2), the project committee must compile a final municipal spatial development framework or final amendment or review of the municipal spatial development framework and must submit it to the Council for adoption.
 - (5) If the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, as contemplated in subsection (6), is materially different to what was published in terms of subsection (2), MLM must follow a further consultation and public participation process before it is adopted by the Council.
 - (6) The Council must adopt the final municipal spatial development framework or final amendment or review of the municipal spatial development framework, with or without amendments, and must within 21 days of its decision –
 - (a) give notice of its adoption in the local media and the *Provincial Gazette*; and
 - (b) submit a copy of the municipal spatial development framework to the Member of the Executive Council.
 - (7) The municipal spatial development framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in subsection 6.

9 Public participation

- (1) Public participation undertaken by MLM must contain and comply with all the essential elements of any notices to be placed in terms of the Act read with the Municipal Systems Act.
- (2) In addition to the publication of notices in the *Provincial Gazette* and newspaper as required in terms of this Chapter, MLM may use any other method of communication it may deem appropriate
- (3) MLM 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.

10 Local spatial development framework

- (1) MLM may adopt a local spatial development framework for a specific geographical area of MLM.
- (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

The procedure as stipulated in the Municipal Systems Act 32 of 2000 applies *mutatis mutandis*.

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 8(6).
- (2) A local spatial development framework guides and informs decisions made by MLM relating to land development, but it does not confer or take away rights.

13 Record of and access to municipal spatial development framework

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

14 Deviation from municipal spatial development framework

- (1) For purposes of section 22(2) of the Act, site specific circumstances include –
 - (a) a departure that does not materially change the municipal spatial development framework; and
 - (b) a unique circumstance pertaining to a discovery of national importance.
- (2) If the effect of an approval of an application will be a material change of the municipal spatial development framework, MLM may amend the municipal spatial development framework in terms of the provisions of this Chapter, prior to the Municipal Planning Tribunal taking a decision which would constitute a deviation from the municipal spatial development framework.

CHAPTER 3**LAND USE SCHEME (SECTION 24 TO 30 OF THE ACT)****15 Purpose of land use scheme**

In addition to the purposes of a land use scheme stipulated in section 25(1) of the Act, MLM 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; and
- (e) a healthy environment that is not harmful to a person's health.

16 General matters pertaining to land use scheme

- (1) MLM may, on its own initiative or on application, create an overlay zone for land.
- (2) For the purposes of this section, an overlay zone for land superimposes additional regulations or specific development criteria within specific mapped districts.
- (3) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (4) Any condition of approval of a land use application in terms of this bylaw or a land use scheme is deemed to be a regulation in terms of the land use scheme.

17 Development of draft land use scheme

The Municipality must develop the draft land use scheme in accordance with the provisions of the Act, provincial legislation and this Chapter.

18 Council approval for publication of draft land use scheme

- (1) Upon completion of the draft land use scheme, the department responsible for spatial planning and land use management or development planning in MLM must submit it to the Council for approval as the draft land use scheme.
- (2) If the Council is satisfied with the report and the draft land use scheme, it must approve the draft land use scheme and authorise the public participation thereof in terms of this By-law and the Act.

19 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 MLM must -
 - (a) publish a notice in the *Provincial Gazette* once a week for two consecutive weeks; and
 - (b) publish a notice in a local newspaper that is circulated in the municipal area of MLM in two languages as determined by MLM, 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 60 days from the first day of publication of the notice;
 - (ii) provide written comments; and
 - (iii) provide their contact details as specified in the definition of contact details.
- (3) MLM may for purposes of public engagement arrange -
 - (a) specific consultations with professional bodies, ward communities or other groups; and
 - (b) public meetings.
- (4) MLM 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 18.

20 Preparation of land use scheme

The department responsible for spatial development and land use management or development planning in MLM must, review and consider all submissions made during public participation, make final amendments to the draft land use scheme, provided that; if such amendments are in the opinion of MLM materially different to what was published in terms of section 19(2), MLM must follow a further consultation and public participation process in terms of section 19(2) of this By-law, before the land use scheme is adopted by the Council.

21 Submission of land use scheme to Council for approval and adoption

- (1) The department responsible for spatial development and land use management or development planning in MLM must -
 - (a) within 60 days from the closing date for objections contemplated in section 19(2)(c)(i); or
 - (b) if a further consultation and public participation process is followed as contemplated in section 20, within 60 days from the closing date of such further objections permitted in terms of section 20 read with section 19(2)(c)(i), submit the proposed land use scheme and all relevant supporting documentation to the Council with a recommendation for adoption.
- (2) The Council must consider and adopt the land use scheme with or without amendments.

22 Publication of notice of adoption and approval of land use scheme

- (1) The Council must, within 60 days of its decision referred to in section 21, 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.

23 Submission to Member of Executive Council

After the land use scheme is published in terms of section 22 MLM must submit the approved land use scheme to the Member of the Executive Council for cognisance.

24 Records

- (1) MLM must in hard copy or electronic media and or data base keep record in the land use scheme register referred to in section 26 of the land use rights in relation to each erf or portion of land and which information is regarded as part of its land use scheme.
- (2) MLM must keep, maintain and make accessible to the public, including on MLM's website, the approved land use scheme and or any component thereof applicable within the municipal area of MLM.
- (3) Should anybody or person request a copy of the approved land use scheme, MLM must provide on payment by such body or person of the approved fee, a copy to them of the approved land use scheme or any component thereof. Provided that if MLM 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.

25 Contents of land use scheme

- (1) The contents of a land use scheme developed and prepared by MLM must include all the essential elements contemplated in Chapter 5 of the Act and provincial legislation and must in addition contain –
 - (a) a zoning for all properties within MLM;
 - (b) land use regulations including specific conditions, limitations, provisions or prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved land use scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;
 - (c) provisions for public participation that may be required for purposes of any consent, permission or relaxation in terms of an approved land use scheme;
 - (d) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of MLM;
 - (e) servitudes for municipal services and access arrangements for all properties;
 - (f) provisions applicable to all properties relating to storm water;
 - (g) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;
 - (h) zoning maps that depicts the zoning of every property in 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.

26 Land use scheme register

MLM must keep and maintain a land use scheme register in a hard copy or electronic format as approved by the 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) Application Number;
- (f) Erf or farm number;
- (g) Portion / Remainder;
- (h) Property Description;
- (i) Existing Zoning;
- (j) Zoning applied for (if applicable);
- (k) Square Metres Granted;
- (l) Density;
- (m) FAR;
- (n) Height (storeys/meters);
- (o) Coverage;
- (p) Street Building Line;
- (q) Side and Back Building Lines;
- (r) Parking Requirements;
- (s) Amendment Scheme Number;
- (t) Loading Zones required;
- (u) Annexure Number;
- (v) Item Date;
- (w) Decision (Approved/Not Approved);
- (x) Decision Date;
- (y) Proclamation Date.

27 Replacement and consolidation of amendment scheme

- (1) MLM 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 MLM 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, MLM only do so after consultation with the owner(s);
- (b) after MLM 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 MLM for certain areas where land use rights are governed through a process, other than a land use scheme; MLM 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 16 to 26 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 MLM is dealt with as a land development application.

CHAPTER 4 INSTITUTIONAL STRUCTURE FOR LAND USE MANAGEMENT DECISIONS

Part A: Division of Functions

28 Division of functions between Municipal Planning Tribunal and Land Development Officer

- (1) For purposes of section 35(3) of the Act, the following categories of applications are determined -
- (a) Category 1 applications;
- (i) all applications inconsistent with the provisions of the SDF have to be considered by the Municipal Planning Tribunal;
- (ii) all opposed applications;
- (b) Category 2 applications:
- (i) All unopposed applications consistent with the provision of the SDF may be considered by the Land Development Officer.
- (2) For the purposes of subsection (1), an opposed application means an application on which negative comments or valid objections were received after the public participation process.
- (3) The land development officer may refer any Category 2 application to the Municipal Planning Tribunal for consideration.

Part B: Establishment of Municipal Planning Tribunal

29 Composition of Municipal Planning Tribunal for local municipal area

- (1) The Municipal Planning Tribunal consists of at least 8 members made up as follows;
- (a) six officials in the full-time service of MLM in terms of the provisions of section 36(1)(a) of the act;
- (b) two persons who are not municipal officials in terms of section 36(1)(b) of the act;
- (2) The officials referred to in subsection (1)(a) must have at least five years' experience in the field in which they are performing their services.
- (3) The persons referred to in subsection (1)(b) must -
- (a) demonstrate knowledge of spatial planning, land use management and land development of the law related thereto;
- (b) have at least five years' practical experience in the field in which they are performing their services;
- (c) demonstrate leadership in his or her profession or vocation or in community organisations.

30 Nomination procedure

- (1) MLM must -
- (a) in the case of the first appointment of members to the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of Chapter 2 of the Regulations as soon as possible after the approval of the Regulations by the Minister; and
- (b) in the case of the subsequent appointment of members to the Municipal Planning Tribunal, 90 days before the expiry of the term of office of the members serving on the Municipal Planning Tribunal, invite and call for nominations as contemplated in Part B of the Regulations.

31 Submission of nomination

- (1) The nomination must be in writing and be addressed to the Municipal Manager.
- (2) The nomination must consist of -
- (a) the completed declaration contained in the form contemplated in Schedule 2 of the Regulations and all pertinent information must be provided within the space provided on the form;
- (b) the completed declaration of interest form contemplated in Schedule 1 of this by-law;

- (c) the motivation by the nominator contemplated in subsection (3)(a); and
 - (d) the summarised curriculum vitae of the nominee contemplated in subsection (3)(b).
- (3) In addition to the requirements for the call for nominations contemplated in regulation 3(6) of the Regulations, the nomination must request –
- (a) a motivation by the nominator for the appointment of the nominee to the Municipal Planning Tribunal which motivation must not be less than 50 words or more than 250 words; and
 - (b) a summarised curriculum vitae of the nominee not exceeding two A4 pages.

32 Initial screening of nomination by Municipality

- (1) After the expiry date for nominations MLM must screen all of the nominations received by it to determine whether the nominations comply with the provisions of section 31.
- (2) The nominations that are incomplete or do not comply with the provisions of section 31 must be rejected by MLM.
- (3) Every nomination that is complete and that complies with the provisions of section 31 must be subjected to verification by MLM.
- (4) If, after the verification of the information by MLM, the nominee is ineligible for appointment due to the fact that he or she –
 - (a) was not duly nominated;
 - (b) is disqualified from appointment as contemplated in section 38 of the Act;
 - (c) does not possess the knowledge or experience as required in terms of section 29(3); the nomination must be rejected and may not be considered by the evaluation panel contemplated in section 33.
- (5) Every nomination that has been verified by MLM and the nominee found to be eligible for appointment to the Municipal Planning Tribunal, must be considered by the evaluation panel contemplated in section 33.
- (6) The screening and verification process contained in this section must be completed within 30 days from the closing date for nominations.

33 Evaluation panel

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

34 Appointment of members to Municipal Planning Tribunal by Council

- (1) Upon receipt of the report, the Council must consider the recommendations made by the evaluation panel and thereafter appoint the members to the Municipal Planning Tribunal.
- (2) After appointment of the members to the Municipal Planning Tribunal, the Council must designate a chairperson and a deputy chairperson from the members so appointed.
- (3) The Municipal Manager must, in writing, notify the members of their appointment to the Municipal Planning Tribunal and, in addition, to the two members who are designated as chairperson and deputy chairperson, indicate that they have been appointed as such.

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

- (1) A member of the Municipal Planning Tribunal appointed in terms of this Chapter is appointed for a term of five years, which is renewable once for a further period of five years.
- (2) The office of a member becomes vacant if that member –
 - (a) is absent from two consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;
 - (b) tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal;
 - (c) is removed from the Municipal Planning Tribunal under subsection (3); or
 - (d) dies.
- (3) The Council may remove a member of the Municipal Planning Tribunal if –
 - (a) sufficient reasons exist for his or her removal;
 - (b) a member contravenes the code of conduct contemplated in Schedule 2;
 - (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Act after giving the member an opportunity to be heard.
- (4) An official of a municipality contemplated in section 29(1)(a) who serves on the Municipal Planning Tribunal;
 - (a) may only serve as member of the Municipal Planning Tribunal for as long as he or she is in the full-time employ of MLM;
 - (b) is bound by the conditions of service determined in his or her contract of employment and is not

- entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
- (c) who is found guilty of misconduct under the collective agreement applicable to employees of MLM shall immediately be disqualified from serving on the Municipal Planning Tribunal.
- (5) A person appointed by a municipality in terms of section 29(1)(b) to the Municipal Planning Tribunal -
- (a) is not an employee on the staff establishment of that municipality;
 - (b) if that person is an employee of an organ of state as contemplated in regulation 3(2)(a) of the Regulations, is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
 - (c) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal;
 - (d) sits at such meetings of the Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
 - (e) in the case of a person referred to in regulation 3(2)(b) of the Regulations is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on determined annually by MLM 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.
- (6) All members of the Municipal Planning Tribunal must sign the Code of Conduct contained in Schedule 2 before taking up a seat on the Municipal Planning Tribunal.
- (7) All members serving on the Municipal Planning Tribunal must adhere to ethics adopted and applied by MLM and must conduct themselves in a manner that will not bring the name of MLM into disrepute.
- (8) The members of the Municipal Planning Tribunal, in the execution of their duties, must comply with the provisions of the Act, provincial legislation, this By-law and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

36 Vacancy

- (1) A vacancy on the Municipal Planning Tribunal must be filled by the Council in terms of section 30(1)(a).
- (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.

37 Proceedings of Municipal Planning Tribunal for municipal area

- (1) The Municipal Planning Tribunal must operate in accordance with the operational procedures determined by MLM.
- (2) A quorum for a meeting of the Municipal Planning Tribunal or its committees is a majority of the members appointed for that decision meeting and present at that decision meeting.
- (3) Decisions of the Municipal Planning Tribunal are taken by resolution of a majority of all the members present at a meeting of Municipal Planning Tribunal, and in the event of an equality of votes on any matter, the person presiding at the meeting in question will have a deciding vote in addition to his or her deliberative vote as a member of the Municipal Planning Tribunal.
- (4) Meetings of the Municipal Planning Tribunal must be held at the times and places determined by the chairperson of the Municipal Planning Tribunal in accordance with the operational procedures of the Municipal Planning Tribunal but meetings must be held at least once per month, if there are applications to consider.
- (5) The chairperson may arrange multiple Municipal Planning Tribunal meetings on the same day constituted from different members of the Municipal Planning Tribunal and must designate a presiding officer for each of the meetings.

38 Tribunal of record

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

Part C: Decisions of MPT or LDO

39 General criteria for consideration and determination of application by MPT or LDO

- (1) When the MPT or LDO 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;
 - (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 assessment by a professional planner as defined in section 1 of the Planning Profession Act, 2002, in respect of land development applications to be considered and determined by the Municipal Planning Tribunal;
 - (h) the integrated development plan and municipal spatial development framework;
 - (i) the applicable local spatial development frameworks adopted by MLM;
 - (j) the applicable structure plans;
 - (k) the applicable policies of MLM that guide decision-making;
 - (n) the policies, principles, planning and development norms and criteria set by national and provincial government;
 - (o) the matters referred to in section 42 of the Act;
 - (p) the relevant provisions of the land use scheme.
- (2) The written assessment of a professional planner contemplated in subsection (1)(g) must include such registered planner's evaluation of the proposal confirming that the application complies with the procedures required by this By-law, the spatial development framework, the land use scheme; applicable policies and guidelines; or if the application does not comply, state to what extent the application does not comply.
- (3) The following considerations are relevant to the assessment under subsection (1)(c) of whether the proposed land use would be desirable—
- (a) economic impact;
 - (b) social impact;
 - (c) scale of the capital investment;
 - (d) compatibility with surrounding uses;
 - (e) impact on the external engineering services;
 - (f) impact on safety, health and wellbeing of the surrounding community;
 - (g) impact on the biophysical environment;
 - (h) traffic impacts, parking, access and other transport related considerations; and
 - (i) whether the imposition of conditions can mitigate an adverse impact of the proposed land use.

40 Conditions of approval

- (1) When the MPT or LDO 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 and the payment of development charges;
 - (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 MLM for the purpose of a public open space or road as determined in accordance with a policy adopted by MLM;
 - (e) settlement restructuring;
 - (f) agricultural or heritage resource conservation;
 - (g) biodiversity conservation and management;
 - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (i) energy efficiency;
 - (j) requirements aimed at addressing climate change;
 - (k) the establishment of an owners' association in respect of the approval of an application;
 - (l) the provision of land needed by other organs of state;
 - (m) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in MLM or the registration of public places in the name of MLM, and the transfer of ownership to MLM 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;
 - (s) the delimitation of development parameters or land uses that are set for a particular zoning;
 - (t) the setting of validity periods, if MLM determined a shorter validity period as contemplated in this By-law;

- (u) the setting of dates by which particular conditions must be met;
- (v) the circumstances under which certain land uses will lapse;
- (w) requirements relating to engineering services as contemplated in Chapter 7;
- (x) 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 MPT or LDO imposes a condition contemplated in subsection (2)(a), an engineering services agreement must be concluded between MLM and the owner of the land concerned before the construction of infrastructure commences on the land.
- (4) A condition contemplated in subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by MLM in accordance with norms and standards, as may be prescribed.
- (5) Municipal public expenditure contemplated in subsection (4) 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 MLM 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 MPT or LDO may 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 MPT or LDO 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 MPT or LDO may, on its, his 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

41 Administrator for MPT

- (1) The MM must designate an employee as the administrator for the MPT.
- (2) The person referred to in subsection (1) must—
 - (a) liaise with the relevant MPT members and the parties in relation to any application or other proceedings filed with MLM;
 - (b) maintain a diary of hearings of the MPT;
 - (c) allocate meeting dates and application numbers to applications;
 - (d) arrange the attendance of meetings by members of the MPT;
 - (e) arrange venues for MPT meetings;
 - (f) administer the proceedings of the MPT;
 - (g) perform the administrative functions in connection with the proceedings of the MPT;
 - (h) ensure the efficient administration of the proceedings of the MPT, in accordance with the directions of the chairperson of the MPT;
 - (i) arrange the affairs of the MPT 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 MPT;
 - (k) keep a record of all applications submitted to the MPT and the outcome of each, including—
 - (i) decisions of the MPT;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the MPT; and
 - (l) keep records by any means as the MPT may deem expedient.

**CHAPTER 5
DEVELOPMENT MANAGEMENT
Part A: Categories of Applications**

42 Categories of land use and land development applications

The categories of land development and land use management for MLM, as contemplated in section 35(3) of the Act, are as determined in section 28.

43 Application for land development required

- (1) No person may commence with, carry on or cause the commencement with or carrying on of land development without the approval of MLM first obtained in terms of the bylaw.
- (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 without the consent of the registered owner.
- (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 MLM in terms of this Chapter, except where otherwise indicated in this Chapter.

Part B: Establishment of Township or Extension of Boundaries of Township

44 Application for establishment of township

- (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 MLM 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) MLM must, in approving an application for township establishment, set out:
 - (a) the conditions of approval in a statement of conditions;
 - (b) the statement of conditions shall be known as conditions of establishment for the township; and
 - (c) the statement of conditions must, in the opinion of MLM, substantially be in accordance with this By-law.
- (3) The statement of conditions must, read with directives that may be issued to the Registrar of Deeds, contain the following:
 - (a) Specify those conditions that must be complied with prior to the opening of a township register for the township 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) if a non-profit company is to be established for purposes of maintaining or transfer of erven within the township to them the conditions that must apply;
 - (g) any other conditions and or obligation on the township owner, which in the opinion of MLM 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, MLM or at the applicant's request may, after consultation with the applicant, amend or delete any condition imposed in terms of subsection (2)(a) or add any further condition, provided that if the amendment is in the opinion of MLM so material as to constitute a new application, MLM may not exercise its powers in terms hereof and must require the applicant to submit an amended or new application and in the sole discretion of MLM to re-advertise the application in accordance with section 77.
- (5) After the applicant has been notified that his or her application has been approved, MLM or at the applicant's request may, after consultation with the applicant and the Surveyor General, amend the layout of the township approved as part of the township establishment: Provided that if the amendment is in the opinion of MLM so material as to constitute a new application, MLM may not exercise its powers in terms hereof and require the applicant to submit an amended or new application in the opinion of MLM and re-advertise the application in the sole discretion of MLM in accordance with section 77.
- (6) Without detracting from the provisions of subsection (5) and (6) MLM may require the applicant or the applicant of his own accord, amend both the conditions and the layout plan of the township establishment application as contemplated therein.
- (7) An application for establishment of a township shall be required in instances where;
 - (a) a farm portion or an agricultural holding is subdivided, where the intention of the subdivision is to change the primary land use from agriculture to any other purpose such as a residential estate, except where the subdivision is into not more than 5 portions, at least 1 Hectare in extent unless the subdivision is cause by physical barriers such as roads or railway lines;
 - (b) additional land use rights are applied for;
 - (c) proposed land use rights does not constitute a single land use as defined in the Scheme;
 - (d) single ownership is not foreseen including the establishment of share block or sectional title ownership and the sub-letting of a building not as a single entity.

45

- (1) An applicant who has been notified in terms of section 96 that his application has been approved may, within a period of eight months from the date of the notice, or such further period as MLM may allow, apply to MLM for the division of the township into two or more separate townships.
- (2) On receipt of an application in terms of subsection (1) MLM 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 MLM approves an application it may impose any condition it may deem expedient and must notify the application in writing thereof and of any conditions imposed.
- (4) The applicant must, within a period of 3 months from the date of the notice contemplated in subsection (3) or any other further extension of time allowed by the Municipality, submit to MLM such plans, diagrams or other documents and furnish such information as may be required in respect of each separate township.
- (5) On receipt of the documents or information contemplated in subsection (4) MLM must notify the Surveyor-General, and the Registrar of Deeds in writing of the approval of the application and such notice must be accompanied by a copy of the plan of each separate township.

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

- (1) An applicant who has been notified in terms of section 96 that his or her application has been approved, shall, within a period of 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), MLM must provide to the applicant a final schedule as contemplated in section 44(2) and (3) of the conditions of establishment together with a stamped and approved layout plan.
- (3) MLM must for purposes of lodging the documents contemplated in subsection (1) determine street names and numbers on the layout plan.
- (4) Where the applicant fails, within a reasonable time as may be determined by MLM after he or she has lodged the plans, diagrams or other documents contemplated in subsection (1), to comply with any requirement the Surveyor-General may lawfully determine, the Surveyor-General must notify MLM that he or she is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, and thereupon the application lapses.
- (5) After an applicant has been notified that his or her application has been approved, MLM may:
 - (a) where the documents contemplated in subsection (1) have not yet been lodged with the Surveyor General;
 - (b) where the documents contemplated in subsection (1) have been lodged with the Surveyor General, after consultation with the Surveyor General,consent to the amendment of such documents, unless the amendment is, in its opinion, so material as to constitute a new application for the establishment of a township.

47 Compliance with pre-proclamation conditions

- (1) The applicant must provide proof to the satisfaction of MLM within the timeframes as prescribed in terms of this By-law, that all conditions contained in the schedule to the approval of a township establishment application have been complied with.
- (2) MLM must certify that all the conditions that have to be complied with by the applicant or owner as contemplated in section 44(2) and (3) have been complied with including the provision of guarantees and payment of monies that may be required.
- (3) MLM must at the same time notify the Registrar of Deeds and Surveyor General of the certification by MLM in terms of subsection (2).
- (4) MLM 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.

48 Opening of Township Register

- (1) The applicant must lodge with the Registrar of Deeds the plans and diagrams contemplated in section 46 as approved by the Surveyor-General together with the relative title deeds for endorsement or registration, as the case may be.
- (2) For purposes of subsection (1) the Registrar of Deeds shall not accept such documents for endorsement or registration until such time as MLM has certified that the applicant has complied with such conditions as MLM may require to be fulfilled in terms of section 44(3).

- (3) The plans, diagrams and title deeds contemplated in subsection (1) shall be lodged within a period of 12 months from the date of the approval of such plans and diagrams, or such further period as MLM may allow.
- (4) If the applicant fails to comply with the provisions of subsections (1), (2) and (3), the application lapses.
- (5) Having endorsed or registered the title deeds contemplated in subsection (1), the Registrar of Deeds must notify MLM forthwith of such endorsement or registration, and thereafter the Registrar of Deeds 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 49.

49 Proclamation of approved township.

After the provisions of sections 45, 46, 47 and 48 have been complied with and MLM is satisfied that the township is in its area of jurisdiction, the applicant, if authorised in writing by MLM, shall at his cost, 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

50 Application for amendment of a land use scheme by rezoning of land or incorporation of land use into the town planning scheme

- (1) An applicant, who wishes to rezone land or incorporate a land use in the town planning scheme in terms of section 18 of the Regulations, must apply to MLM for the rezoning of the land or incorporation of the land use in the town planning scheme in the manner provided for in Chapter 6.
- (2) An approval may lapse as determined by MLM if -
 - (a) the conditions of approval have not been met;
 - (b) the development charges referred to in Chapter 7 have not been paid or paid in the agreed instalments;
- (3) MLM may grant extensions to the periods contemplated in subsection (2) and the granting of extensions may not be unreasonable withheld.
- (4) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, MLM must determine a zoning as contemplated in section 161.

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

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

- (1) MLM may, of its own accord or on application by notice in the *Provincial Gazette* 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 MLM 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 owner must—
 - (a) submit a certified copy of the title deed of the properties concerned; and
 - (b) submit the bondholder's consent to the application, where applicable.
- (4) The applicant must cause a notice of its intention to consider an application under subsection (1) to be served on;
 - (a) all organs of state that may have an interest in the title deed restriction;
 - (b) every holder of a bond encumbering the land;
 - (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
 - (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.
- (5) When MLM considers the removal, suspension or amendment of a restrictive condition, MLM 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.

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

- (1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in section 51(1), submit the following to the Registrar of Deeds:
 - (a) a copy of the original title deed;
 - (b) a copy of the original letter of approval; and
 - (c) a copy of the notification of the approval.
- (2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette*, as contemplated in section 51(1), make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

Part E: Amendment or Cancellation in Whole or in Part of a General Plan of a Township

53 Notification of Surveyor General

- (1) After the MPT or LDO has approved or refused an application for the alteration, amendment or cancellation of a general plan, MLM must forthwith notify the Surveyor-General in writing of the decision and, where the application has been approved, state any conditions imposed.
- (2) An applicant who has been notified that his or her application has been approved must, within a period of 12 months from the date of the notice, or any other extension of time allowed by the Municipality, lodge with the Surveyor-General such plans, diagrams or other documents as the Surveyor-General may deem necessary to effect the alteration, amendment or cancellation of the general plan, and if he or she fails to do so the application lapses.
- (3) Where the applicant fails, within a reasonable time after he or she has lodged the plans, diagrams or other documents contemplated in subsection (2), to comply with any requirement the Surveyor-General may lawfully lay down, the Surveyor-General must notify MLM accordingly, and where MLM is satisfied, after hearing the applicant, that the applicant has failed to comply with any such requirement without sound reason, MLM must notify the applicant, and thereupon the application lapses.
- (4) After the Surveyor-General has, in terms of section 30(2) of the Land Survey Act, 1927, altered or amended the general plan or has totally or partially cancelled it, he or she must notify MLM.
- (5) On receipt of the notice contemplated in subsection (4) MLM must publish a notice in the *Provincial Gazette* declaring that the general plan has been altered, amended or totally or partially cancelled and MLM must, in a schedule to the latter notice, set out the conditions imposed or the amendment or deletion of any condition, where applicable.
- (6) MLM must provide the Registrar of Deeds with a copy of the notice in the *Provincial Gazette* and schedule thereto contemplated in subsection (5).

54 Effect of amendment or cancellation of general plan

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

- (a) the township or part thereof ceases to exist as a township; and
- (b) the ownership of any public place or street re-vests in the township owner.

Part F: Subdivision and Consolidation

55 Application for subdivision

- (1) No person may subdivide land without the approval of MLM, unless the subdivision is exempted under section 59.
- (2) An applicant who wishes to subdivide land must apply to MLM for the subdivision of land in the manner provided for in Chapter 6 excluding sections 80 to 90.
- (3) No application for subdivision involving a change of zoning may be considered by MLM, if the erf concerned is smaller than the minimum permitted erf size or exceeds permissible density.
- (4) MLM must impose appropriate conditions relating to engineering services for an approval of a subdivision.
- (5) If a Municipality approves a subdivision, the applicant must submit a general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (a) MLM's decision to approve the subdivision;
 - (b) the conditions of approval contemplated in subsection (3) and section 40; and
 - (c) the approved subdivision plan.
- (6) If MLM approves an application for a subdivision, the applicant must within a period determined by MLM

comply with the following requirements:

- (a) the approval by the Surveyor-General of the general plan or diagram contemplated in subsection (4);
 - (b) completion of the installation of engineering services in accordance with the conditions contemplated in subsection (3) or other applicable legislation;
 - (c) proof to the satisfaction of MLM that all relevant conditions contemplated in section 40 for the approved subdivision in respect of the area shown on the general plan or diagram and that must be complied with before compliance with paragraph (d) have been met; and
 - (d) registration of the transfer of ownership in terms of the Deeds Registries Act 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 MLM 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.

56 Confirmation of subdivision

- (1) Upon compliance with section 55(6), the subdivision or part thereof is confirmed and cannot lapse.
- (2) Upon confirmation of a subdivision or part thereof under section 55(6), the zonings indicated on the approved subdivision plan as confirmed cannot lapse.
- (3) MLM must in writing confirm to the applicant or to any other person at his or her written request that a subdivision or a part of a subdivision is confirmed, if the applicant has to the satisfaction of MLM submitted proof of compliance with the requirements of section 55(6) for the subdivision or part thereof.
- (4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in section 55(6) or MLM approved the construction prior to the subdivision being confirmed.

57 Lapsing of subdivision and extension of validity periods

- (1) An approved subdivision or a portion thereof lapses if the applicant does not comply with subsection 55(6).
- (2) An applicant may apply for an extension of the period to comply with subsection 55(6) or must comply with subsection (4).
- (3) An extension contemplated in subsection (2) may not be unreasonably withheld by MLM and may be granted for a further period determined by MLM and if after the expiry of the extended period the requirements of subsection 55(6) has not been complied with, the subdivision may lapse if so determined by MLM and subsection (5) applies.
- (4) If only a portion of the general plan, contemplated in subsection 55(6)(a) complies with subsection 55(6)(b) and (c), the general plan must be withdrawn and a new general plan must be submitted to the Surveyor-General.
- (5) If an approval of a subdivision or part thereof lapses under subsection (1) —
 - (a) MLM must—
 - (i) amend the zoning map and, where applicable, the register accordingly; and
 - (ii) notify the Surveyor-General accordingly; and
 - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

58 Amendment or cancellation of subdivision plan

- (1) MLM may approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.
- (2) When MLM 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) MLM 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 55(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).

59 Exemption of subdivisions and consolidations

- (1) The subdivision or consolidation of land in the following circumstances does not require the approval of MLM:
 - (a) if the subdivision or consolidation arises from the implementation of a court ruling;

- (b) if the subdivision 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 consolidation of a closed public place with an abutting erf;
 - (g) the granting of a right of habitation or usufruct; and,
 - (h) subdivision or consolidation of land for Government purposes.
- (2) MLM must, in each case, certify in writing that the subdivision has been exempted from the provisions of this Chapter.
- (3) MLM must indicate on the plan of subdivision that the subdivision has been exempted from the provisions of sections 55 to 58.

60 Services arising from subdivision

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

- (a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:
 - (i) gas mains;
 - (ii) electricity cables;
 - (iii) telephone cables;
 - (iv) television cables;
 - (v) other electronic infrastructure;
 - (vi) main and other water pipes;
 - (vii) foul sewers;
 - (viii) storm water pipes; and
 - (ix) ditches and channels;
- (b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by MLM:
 - (i) surface installations such as mini-substations;
 - (ii) meter kiosks; and
 - (iii) service pillars;
- (c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs (a) and (b); and
- (d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by MLM.

61 Consolidation of land units

- (1) No person may consolidate land without the approval of MLM, unless the consolidation is exempted under section 59.
- (2) An applicant who wishes to consolidate land must apply to MLM for the consolidation of land units in the manner provided for in Chapter 6 excluding sections 80 to 90.
- (2) A copy of the approval must accompany the diagram which is submitted to the Surveyor-General's office.
- (3) If MLM approves a consolidation, the applicant must submit a diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - (a) the decision to approve the subdivision;
 - (b) the conditions of approval contemplated in section 40; and
 - (c) the approved consolidation plan.
- (4) If MLM approves a consolidation, MLM must amend the zoning map and, where applicable, the register accordingly.

62 Lapsing of consolidation and extension of validity periods

- (1) MLM may, if a consolidation of land units is approved but no consequent registration by the Registrar of Deeds takes place within 12 months, determine that the consolidation approval lapses.

- (2) An applicant may apply for an extension of the period to comply with subsection (1) and the granting of an extension may not be unreasonably withheld.
- (3) An extension contemplated in subsection (2) may be granted for a further period determined by MLM and if after the expiry of the extended period the requirements of subsection (1) have not been complied with, the consolidation may lapse as determined by MLM and subsection (4) applies.
- (4) If an approval of a consolidation lapses under subsection (1) MLM must—
 - (a) amend the zoning map and, where applicable, the register accordingly; and
 - (b) notify the Surveyor-General accordingly; and
 - (c) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the consolidation has lapsed.

Part G: Permanent Closure of Public Place

63 Closure of public place

- (1) MLM may on 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 MLM 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 MLM for loss or damage that he or she has allegedly suffered as a result of the wrong doing on the part of MLM as a result of the closure of a public place, an employee duly authorised by MLM must—
 - (a) require proof of negligence on the part of MLM which resulted in the loss or damage; 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 MLM.
- (4) MLM may pay a claim if—
 - (a) the circumstances of loss or damage reveal that MLM acted negligently;
 - (b) the circumstances of the loss are not consistent 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 the authorised employee 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 MLM unless MLM 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 dangerous 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) MLM 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 H: Consent Use

64 Application for consent use

- (1) An applicant may apply to MLM for a consent use provided for in the land use scheme in the manner provided for in the land use scheme.
- (2) Where the development parameters for the consent use that is being applied for are not defined in an applicable land use scheme, MLM 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 in terms of conditions of approval.
- (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) may lapse after a period determined by MLM if -
 - (a) the consent use is not utilised in accordance with the approval thereof; or
 - (b) the following requirements are not met:
 - (i) the approval by MLM of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).
 - (6) MLM may grant extensions to the period contemplated in subsection (5) and the granting of an extension may not be unreasonably withheld by MLM.

Part I: Traditional Use

65 Application for traditional use

- (1) An applicant who wishes to amend the use of communal land located in the area of a traditional council must apply to MLM for the amendment of the land use in the manner provided for in Chapter 6.
- (2) Traditional use applications relate to communal land and are applications for:
 - (a) the amendment of the use of land in instances where such amendment will have a high impact on the community; and
 - (b) any other amendment of the use of land determined by the Council by resolution.
- (3) For the purpose of this section, "high impact" means a land use that has the potential to impact negatively on the health of the community.

Part J: Temporary Use

66 Application for temporary use

- (1) Temporary use applications are applications that do not result in an amendment of the land use scheme and are:
 - (a) prospecting rights granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);
- (2) An applicant may apply to MLM-
 - (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 not exceeding 5 years or such shorter period as may be determined by MLM, in the manner provided for in Chapter 6.
- (3) A departure contemplated in subsection (1)(a) may lapse after the period determined by MLM if, the departure is not utilised in accordance with the approval thereof.
- (3) MLM may grant extensions to the period contemplated in subsection (2), and the granting of the extension may not be unreasonably withheld.

Part K: General Matters

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

- (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vest in MLM upon confirmation of the subdivision or a part thereof.
- (2) MLM may in terms of conditions imposed in terms of section 40 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to MLM upon confirmation of the subdivision or a part thereof.

68 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 MLM, 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 MLM certifying to the Registrar of Deeds in terms of section 70 that, over and above the requirements in terms of that section, the following have been complied with:
 - (a) All engineering services have been designed and constructed to the satisfaction of MLM, including guarantees for services having been provided to the satisfaction of MLM as may be required; and
 - (b) all engineering services and development charges have been paid or an agreement has been entered into to pay the development charges in monthly instalments; and
 - (c) all engineering services have been or will be protected to the satisfaction of MLM 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 MLM for the compliance thereof within 3 months of having certified to the Registrar of Deeds in terms of this section that registration may take place; and
 - (e) that MLM is in a position to consider a final building plan; and
 - (f) that all the properties in terms of section 69 have either been transferred or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.

69 First transfer

- (1) Where an owner of land to which a land development application relates is required to transfer land to:
 - (a) MLM; or
 - (b) a non-profit company,
 by virtue of a condition set out in the conditions to the approval of a land development application contemplated in section 40, the land shall be so transferred at the expense of the applicant, within a period of 6 months from the date of the land use rights coming into operation in terms of section 40, or within such further period as MLM 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.

70 Certification by Municipality

- (1) A person intending to obtain the registration of transfer of any land unit within MLM must provide MLM with proof to the satisfaction of MLM —
 - (a) 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, unless the new owner has concluded a written agreement with MLM regulating the rectification of the contravention; and
 - (e) proof that the conditions of approval that must be complied with before the transfer of erven have been complied with.
 - (f) if the land unit arises out of an approved land development area, that all the further requirements contemplated in section 68(2) have been met.
- (2) If MLM is satisfied that the requirements of subsection (1) have been met, MLM must issue a certificate authorising the transfer and if the land unit arises out of an approved land development area, MLM must issue a certificate for each land unit.
- (3) No person may apply to the Registrar of Deeds for, and the Registrar of Deeds may not register, the transfer of a land unit without the certificate contemplated in subsection (2).
- (4) If a certificate contemplated in subsection (2) is issued in error,
 - (a) the new owner must still comply with all outstanding requirements contemplated in subsection (1), regardless of whether another person also has the duty to do so; and
 - (b) the City is exempt from liability for any damage which may be caused as a result.

CHAPTER 6 GENERAL APPLICATION PROCEDURES

71 Applicability of Chapter

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

72 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.

73 Information required

- (1) An application must be accompanied by the following documents:
 - (a) an approved application form, completed and signed by the applicant;
 - (b) if the applicant is not the owner of the land, a power of attorney signed by the owner authorising the applicant to make the application on behalf of the owner and if the owner is married in community of property a power of attorney signed by both spouses;
 - (c) 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;
- (d) the relevant bondholder's consent;
 - (e) a written motivation for the application based on the criteria for consideration of the application;
 - (f) a copy of the Surveyor-General's diagram of the subject property or if it does not exist, an extract from relevant general plan;
 - (g) a locality plan and site development plan, when required, or a plan showing the proposal in its cadastral context;
 - (h) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
 - (i) the location of the proposed land units;
 - (ii) all existing structures on the property and abutting properties;
 - (iii) the public places and the land needed for public purposes;
 - (iv) the existing access points;
 - (v) all servitudes;
 - (vi) contours with at least a one meter interval or such other interval as may be approved by MLM;
 - (vii) the street furniture;
 - (viii) the light, electrical and telephone poles;
 - (ix) the electrical transformers and mini substations;
 - (x) the storm water channels and catch pits;
 - (xi) the sewerage lines and connection points;
 - (xii) any significant natural features; and
 - (xiii) the scale and all distances and areas;
 - (i) any other plans, diagrams, documents or information that MLM may require;
 - (j) proof of payment of application fees;
 - (k) proof that there is an existing connection to the municipal sewerage system, if applicable;
 - (l) a full copy of the title deeds indicating all existing title conditions in current and historic title deeds, if applicable, or proof of beneficial ownership in the case of applications on communal land; and
 - (m) if required by MLM, a certificate of a conveyancer indicating that no restrictive condition in respect of the application is contained in such title deeds; and
 - (n) in the case of a traditional use application referred to in section 65, community approval granted as a result of a community participation process conducted in terms of Customary Law.
- (2) MLM may make guidelines relating to the submission of additional information and procedural requirements.

74 Application fees

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

75 Grounds for refusing to accept application

MLM may refuse to accept an application if—

- (a) MLM has already decided on the application;
- (b) there is no proof of payment of fees;
- (c) the application is not in the form required by MLM or does not contain the documents required for the submission of an application as set out in section 73.

76 Receipt of application and request for further documents

MLM must—

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

77 Additional information

- (1) The applicant must provide MLM with the information or documentation required for the completion of the application within 30 days of the request therefor or within the further period agreed to between the applicant and MLM.
- (2) MLM may refuse to accept the application if the applicant fails to provide the information within the

timeframes contemplated in subsection (1).

- (3) MLM must notify the applicant in writing of the refusal to accept the application and must close the application.
- (4) An applicant has no right of appeal to the AA or to a refund of the application fee in respect of a decision contemplated in subsection (3) to refuse to accept the application.
- (5) If an applicant wishes to continue with an application that MLM refused to accept under subsection (3), the applicant must make a new application and pay the applicable application fees.

78 Confirmation of complete application

- (1) MLM must notify the applicant in writing that the application is complete within 21 days of receipt of the additional plans, documents or information required by it or if further information is required as a result of the furnishing of the additional information.
- (2) If further information is required, section 77 applies to the further submission of information that may be required.

79 Withdrawal of application

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

80 Notice of applications in terms of integrated procedures

- (1) MLM may, on prior written request and motivation by an applicant, determine that—
 - (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this by-law; or
 - (b) notice of an application made in terms of this by-law may be published in accordance with the requirements for public notice applicable to a related application in terms 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 MLM and the relevant organs of state to facilitate the simultaneous publication of notices.
- (3) The applicant must, within 30 days of being notified that the application is complete, cause public notice of the application to be given in terms of section 81, unless it has been determined by MLM 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 applicant must provide proof that the notice has been published as required.

81 Notification of application

- (1) The applicant must give notice, in accordance with this By-law, of the following applications:
 - (a) an application for a rezoning or a rezoning on the initiative of MLM;
 - (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in its municipal spatial development framework;
 - (d) an application for establishment of township
 - (e) the closure of a public place;
 - (f) an application in respect of a restrictive condition;
 - (g) other applications that will materially affect the public interest or the interests of the community if approved, as determined by MLM.
- (2) Notice of the application must be given by simultaneously—
 - (a) publishing a notice of the application in a local newspaper with a general circulation in the area concerned; and
 - (b) displaying the notice at a size of at least 60 cm by 42 cm (A2 size) on the frontage of the erf concerned or at any other publicly conspicuous and easily accessible place on the erf, provided that—
 - (i) the notice must be displayed for a minimum of 21 days, starting on the day the notice appear in the newspaper in terms of subsection 2(a);
 - (ii) the applicant must, within 21 days from the last day of display of the notice, submit to MLM—
 - (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.
 - (c) serving a notice on each owner of an abutting property, including a property separated from the property concerned by a road, prior to the date of the notice in newspaper and on the property in term of (2)(a) and (b) above;
 - (d) forward a copy of the notice together with the relevant application to every service provider and organ of

- state as identified by MLM that has an interest in the application.
- (3) The applicant must provide proof to the municipality that notices has been given as required.
 - (4) Where MLM requires an applicant to display a public notice as contemplated in paragraph 2(b), MLM must conduct an on-site inspection to verify whether the applicant has complied with the requirement to display that public notice.

81A Notice to organs of state and service providers

- (1) An organ of state or service provider which is given notice of an application in terms of section 81(2)(d) and invited to comment must do so within 60 days of —
 - (a) notification; or
 - (b) receiving requested additional information, subject to section 77(1), reasonably necessary to finalise its comment, provided that the organ of state or service provider has made such written request within 14 days of notification.
- (2) An organ of state which fails to comment within the period contemplated in subsection (4) will be regarded as having no comment.
- (3) An organ of state may be given notice by means of email addressed to the Head of Department of that organ of state.

81B Internal Circulation

MLM may forward an application simultaneously to every department of MLM which may have a direct interest in the application and such department must submit comment within 21 days of—

- (a) the receipt of the request; or
- (b) receiving requested additional information, subject to section 77(1), reasonably necessary to finalise its comment, provided that the department has made such written request within 14 days of notification; failing which it will be regarded as the department having no comment.

82 Serving of notices

- (1) Notice of an application contemplated in section 81(1) and subsection (2) must be served—
 - (a) in accordance with section 115 of the Municipal Systems Act;
 - (b) in at least two of the official language as determined by MLM;
- (2) When MLM intends to consider a determination of a zoning, the applicant must give notice as contemplated in section 81.
- (3) MLM may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law.
- (4) MLM may require notice of its intention to consider all other applications not listed in section 81(1) to be given in terms of section 84.
- (5) The applicant must provide proof that the notice has been served as required.
- (6) The date of notification in respect of a notice served in terms of section 81(b) and (c) shall be—
 - (a) the date of registration of the notice when it has been served by certified or registered post; and
 - (b) the date of delivery to that person when it has been delivered to that person personally;
 - (c) the date on which it has been left with a person apparently over the age of sixteen years, at that person's place of residence or business in the Republic; or
 - (d) the date that the notice is conspicuously placed on the property it relates to.

83 Content of notice

When notice of an application must be given in terms of section 81 or served in terms of section 82 the notice must contain the following information:

- (a) the name, physical address and contact details of the applicant;
- (b) identify the land or land unit to which the application relates by giving the property description (erf number) and the physical address (street name and number);
- (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 or objections together with the reasons therefor in respect of the application;
- (g) state in which manner comments or objections may be submitted;
- (h) state the date by when the comments or objections must be submitted which may not be less than 30 days from the date on which the notice was given;
- (i) state that any person who cannot write may during office hours attend at an address stated in the notice where a named staff member of MLM will assist that person to transcribe that person's objections or comments.

84 Additional methods of public notice

- (1) If MLM considers notice in accordance with sections 81 or 82 to be ineffective or MLM decides to give notice of any application in terms of this By-law, MLM may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:
 - (a) to convene a meeting for the purpose of informing the affected members of the public of the application;
 - (b) to broadcast information regarding the application on a local radio station in a specified language;
 - (c) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
 - (d) to publish the application on MLM's website for the duration of the period that the public may comment on the application; or
 - (e) to obtain letters of consent or objection to the application.
- (2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

85 Requirements for petitions

- (1) All petitions must, in addition to the provisions of section 86(4), 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.

86 Requirements for objections or comments

- (1) A person may, in response to a notice received in terms of sections 81, 82 or 84, object or comment 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 municipal employee 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) MLM shall not accept any objection, comment or representation received after the closing date or if the objection does not comply with 3(a) to (c) and 4(a) to (c).

87 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 where applicable; or
 - (c) at the request of MLM.
- (2) If an amendment to an application is material, MLM 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.

88 Further public notice

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

89 Cost of notice

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

90 Applicant's right to reply

- (1) Copies of all objections or comments lodged with a Municipality must be provided to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section.
- (2) The applicant may, within a period of 30 days from the date of the provision of the objections or comments, submit written reply thereto with MLM and must serve a copy thereof on all the parties that have submitted objections or comments.
- (3) The applicant may before the expiry of the 30 day period referred to in subsection (2), apply to MLM for an extension of the period with a further period of 14 days to lodge a written reply.
- (4) If the applicant does not submit comments within the period of 30 days or within an additional period 14 of days if applied for, the applicant is considered to have no comment.
- (5) If as a result of the objections or comments lodged with a Municipality, additional information regarding the application are required by MLM, the information must be supplied within the further period as may be agreed upon between the applicant and MLM.
- (6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), section 77(2) to (5) with the necessary changes, applies.

91 Written assessment of application

- (1) An employee authorised by MLM must in writing assess an application in accordance with section 39 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.

92 Decision-making period

When the power to take a decision is delegated to the LDO or MPT, subject to the provisions in section 28(3) and no integrated process in terms of another law is being followed, the LDO or the MPT must decide on the application within 120 days of the closing date for the submission of comments or objections.

93 Failure to act within time period

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

94 Powers to conduct routine inspections

- (1) An employee authorised by MLM 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 91.
- (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 MLM to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

95 Determination of application

MLM may in respect of any application submitted in terms of this Chapter -

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

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

96 Notification of decision

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

97 Duties of applicant or agent of applicant

- (1) The applicant or agent of applicant must ensure that:
 - (a) all information furnished to MLM is accurate.
 - (b) no misrepresentations are made.
- (2) The provision of inaccurate, false or misleading information is an offence.

98 Errors and omissions

- (1) MLM may at any time, with the written consent of the applicant or, if applicable, any party to the application, correct an error or omission in the wording of its decision.
- (2) MLM may, of its own accord or on application by an applicant or interested party, upon good cause being shown, condone an error in the procedure provided that such condonation does not have material adverse impact on or unreasonably prejudice any party.

99 Withdrawal of approval

- (1) MLM 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, MLM must serve a notice on the owner—
 - (a) informing the owner of the alleged breach of the condition;
 - (b) instructing the owner to rectify the breach within a specified time period;
 - (c) allowing the owner to make representations on the notice within a specified time period.

100 Procedure to withdraw an approval

- (1) MLM may withdraw an approval granted—
 - (a) after consideration of the representations made in terms of section 99(2)(c); and
 - (b) if MLM 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 99(2)(b).
- (2) If MLM withdraws the approval, MLM must notify the owner and if applicable, the Surveyor General and Registrar of Deeds of the withdrawal of the approval and instruct the owner to cease the activity immediately.
- (3) The approval is withdrawn from date of notification of the owner.

101 Exemptions to facilitate expedited procedures

MLM 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 80;
 - (ii) the provision of housing with the assistance of a state subsidy; or
 - (iii) incremental upgrading of existing settlements;
- (b) in a life threatening 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

102 Responsibility for providing engineering services

- (1) Every land development area must be provided with such engineering services as MLM 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) MLM is responsible for the installation and provision of external engineering services, subject to the payment of development charges first being received, unless the engineering services agreement referred to in section 104 provides otherwise.

103 Installation of engineering services

- (1) The applicant shall provide and install the internal engineering services and dedicated link services in accordance with the conditions of establishment and to the satisfaction of MLM, and for that purpose the applicant must lodge with MLM such reports, diagrams and specifications as MLM may require.
- (2) MLM must have regard to such standards as the Minister or the Member of the Executive Council 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.

104 Engineering services agreement

- (1) An applicant of a land development application and MLM must enter into an engineering service agreement if MLM requires such agreement.
- (2) The engineering services agreement must –
 - (a) classify the services as internal engineering services or external engineering services;
 - (b) be clear when the applicant and MLM 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;
 - (c) provide for the inspection and handing over of internal engineering services to MLM;
 - (d) determine that the risk and ownership in respect of such services shall pass to MLM when MLM is satisfied that the services are installed to its standards;
 - (e) require the applicant to take out adequate insurance cover in respect of such risks as are insurable for the duration of the land development; and
 - (f) provide for the following responsibilities after the internal services have been handed over to MLM:
 - (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;
 - (g) if any one of the parties is to provide and install an engineering service at the request and at the cost of the other, such service must be clearly identified and the cost or the manner of determining the cost of the service must be clearly set;
 - (h) determine whether additional bulk services are to be provided by MLM and, if so, such services must be identified;
 - (i) determine which party is responsible for the installation and provision of service connections to residential, business, industrial, community facility and municipal erven, and the extent or manner, if any, to which the costs of such service connections are to be recovered;
 - (j) define the service connections to be made which may include all service connections between internal engineering services and the applicable erf or portion of the land and these include –
 - (i) a water-borne sewerage pipe terminating at a sewer connection;
 - (ii) a water-pipe terminating at a water meter; and
 - (iii) an electricity house connection cable terminating on the relevant erf; and
 - (k) clearly identify the level and standard of the internal engineering services to be provided and installed and these include, amongst others –
 - (i) water reticulation;
 - (ii) sewerage reticulation, sewage treatment facilities and the means of disposal of effluent and other products of treatment;
 - (iii) roads and storm-water drainage;
 - (iv) electricity reticulation (high and low tension);
 - (v) street lighting.

- (l) Specify the conditions of validity and the validity period of the services agreement.
- (2) 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.
- (3) 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.

105 Abandonment or lapsing of land development application

Where a land development application is abandoned by the applicant or has lapsed in terms of any provision in terms of the Act, provincial legislation or conditions or this By-law, the engineering services agreement referred to in section 104 lapses and if the applicant had installed any engineering services before the lapsing of the application in terms of the engineering services agreement, he or she shall have no claim against the Council with regard to the provision and installation of any engineering services of whatsoever nature.

106 Internal and external engineering services

For the purpose of this Chapter:

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

Part B: Development Charges

107 Payment of development charge

- (1) MLM must develop a policy for development charges and may levy a development charge in accordance with the policy, for the provision of -
 - (a) the engineering services contemplated in this Chapter where it will be necessary to enhance or improve such services as a result of the commencement of a land development application; and
 - (b) open spaces or parks where the commencement of land development application will bring about a higher residential density.
- (2) If a land development application is approved by the Municipal Planning Tribunal subject to, amongst others, the payment of a development charge or an amendment scheme comes into operation, the applicant or owner of the land to which the scheme relates, must, subject to section 105, pay the development charge to MLM.
- (3) An applicant or owner who is required to pay a development charge in terms of this By-law must pay such development charge to MLM before:
 - (a) any land use right is exercised;
 - (b) any connection is made to the municipal bulk infrastructure;
 - (c) a written statement contemplated in section 118 of the Municipal System Act is furnished in respect of the land;
 - (d) 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;
 - (e) 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.

108 Offset of development charge

- (1) An agreement concluded between MLM and the applicant in terms of section 49(4) of the Act, to offset the provision of external engineering services and, if applicable, the cost of internal infrastructure where

additional capacity is required by MLM, 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 MLM.
- (4) If the cost of the installation of the external engineering services exceeds the amount of the applicable development charge, MLM may refund the applicant or the owner if there are funds available in MLM's approved budget.
- (5) This section does not oblige MLM 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 104.

109 Payment of development charge in instalments

MLM may -

- (a) in the circumstances contemplated in subparagraph (b) or (c), allow payment of the development charge contemplated in section 107 in instalments over a period not exceeding five years;
- (b) in any case, allow payment of the development charge contemplated in section 107 to be postponed for a period not exceeding three months where security for the payment is given to its satisfaction;
- (c) in exercising the power conferred by subparagraphs (a) or (b), impose any condition, including a condition for the payment of interest.

110 Refund of development charge

No development charge paid to MLM in terms of section 107 or any portion thereof shall be refunded to an applicant or owner: Provided that where the owner paid the applicable charge prior to the land use rights coming into operation and the application is abandoned in terms of section 105 the Municipality may, on such terms and conditions as it may determine, authorise the refund of development charges or any portion thereof.

111 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 MLM, 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 MLM 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.

CHAPTER 8

APPEAL PROCEDURES

PART A: MANAGEMENT OF AN AA

112 Presiding officer of AA

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

113 Bias and disclosure of interest

- (1) No presiding officer or member of an AA may sit at the hearing of an appeal against a decision of a Municipal Planning Tribunal if he or she was a member of that Municipal Planning Tribunal when the decision was made or if he or she was the Land Development Officer and he or she made the decision that is the subject of the appeal.
- (2) A presiding officer or member of an AA who has or appears to have a conflict of interest as defined in sub-regulations (5) and (6) must recuse himself or herself from the appeal hearing.
- (3) A party may in writing to the AA request the recusal of the presiding officer or member of that AA 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 AA 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 AA to independently and impartially adjudicate an appeal assigned to the AA.
- (6) A conflict of interest arises where an appeal assigned to an AA 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.

114 Registrar of AA

- (1) The municipal manager of a municipality is the registrar of the AA.
- (2) Notwithstanding the provisions of sub-regulation (1), a municipal council may appoint a person or designate an official in its employ, to act as registrar of the AA and if it so appoints or designates a person or an official, that person or official has delegated authority as contemplated in section 56 of the Act.
- (3) Whenever by reason of absence or incapacity any registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the municipal council may, after consultation with the presiding officer of the AA, 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, as long as it is not in conflict with Section 113 of this By-Law.

115 Powers and duties of registrar

- (1) The registrar is responsible for managing the administrative affairs of the AA 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 AA and to ensure accessibility and maintenance of the dignity of the AA.
- (2) The duties of the registrar include –
 - (a) the determination of the sitting schedules of the AA;
 - (b) assignment of appeals to the AA;
 - (c) management of procedures to be adhered to in respect of case flow management and the finalisation of any matter before the AA;
 - (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 AA;
 - (vii) whether the decision was unanimous or by majority vote; and
 - (viii) any other relevant information.
- (3) The presiding officer of the AA 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

116 Commencing of appeal

An appellant must commence an appeal by delivering a Notice of Appeal to the registrar of the relevant AA within 21 days as contemplated in section 51 of the Act.

117 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 AA to consider in making its decision; and
 - (f) a motivation of an award for costs.
- (2) An appellant may, within seven 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 AA and to every respondent.

118 Notice to oppose an appeal

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.

119 Screening of appeal

- (1) When the AA receives a Notice of Appeal, it must screen such Notice to determine whether:
 - (a) It complies with Section 118;
 - (b) it is submitted within the required time limit; and
 - (c) the AA has jurisdiction over the appeal.
- (2) If a Notice of Appeal does not comply with Section 118, the AA 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 AA by the appellant within a specific time period.
- (3) If the Notice of Appeal is not provided and returned to the AA with the requested information within the specified time period, the appellant's appeal will be considered abandoned and the AA must notify the parties in writing accordingly.
- (4) If the Notice of Appeal is received by the AA after the required time limit has expired, the party seeking to appeal is deemed to have abandoned the appeal and the AA will notify the parties in writing.
- (5) If the appeal relates to a matter that appears to be outside the jurisdiction of the AA, it must notify the parties in writing.
- (6) The AA 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

120 Parties to appeal

- (1) The parties to an appeal before an AA are:
 - (a) the appellant who has lodged the appeal with the AA in accordance with section 51(1) of the Act;
 - (b) the applicant, if the applicant is not the appellant as contemplated in paragraph (a);
 - (c) the Municipal Planning Tribunal that or the Land Development Officer who made the decision;
 - (d) if the Minister or MEC intervenes in the proceeding under regulation 9, the Minister or the MEC, as the case may be; and
 - (e) any other person who has been made a party to the proceeding by the AA after a petition to the AA under section 45(2) of the Act to be granted intervener status.

121 Intervention by interested person

- (1) Where an appeal has been lodged by an appellant to the AA, an interested person referred to in section 45(2) of the Act may, at any time during the proceedings, petition the AA in writing to be granted intervener status on the grounds that his or her rights may have been affected by the decision of the Municipal Planning Tribunal or Land Development Officer and might therefore be affected by the judgement of the AA.
- (2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –
 - (a) does not collude with any of the appellants; and
 - (b) is willing to deal with or act in regard to the appeal as the AA may direct.
- (3) The registrar must determine whether the requirements of this regulation have been complied with and must thereafter transmit a copy of the form to the parties of the appeal.
- (4) The presiding officer of the AA must rule on the admissibility of the petitioner to be granted intervener status and the decision of the presiding officer is final and must be communicated to the petitioner and the parties by the registrar.

PART D: JURISDICTION OF AA**122 Jurisdiction of AA**

An AA 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.
- (c) the provision of infrastructure and development charges.

123 Written or oral appeal hearing by AA

An appeal may be heard by an AA by means of a written hearing and if it appears to the AA that the issues for determination of the appeal cannot adequately be determined in the absence of the parties by considering the documents or other material lodged with or provided to it, by means of an oral hearing.

124 Representation before AA

At an oral hearing of an appeal before an AA, a party to the proceeding may appear in person or may be represented by another person.

125 Opportunity to make submissions concerning evidence

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

PART E: HEARINGS OF AA**126 Notification of date, time and place of hearing**

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

127 Hearing date

A hearing will commence within 15 days after the completed Notice of Appeal has been delivered to the AA, unless the parties and the presiding officer of the AA consent to a later date.

128 Adjournment

- (1) If a party requests an adjournment more than one day prior to the hearing, the party must obtain the written consent of the other party and the presiding officer of the AA.
- (2) The party requesting an adjournment must deliver to the AA a completed form including reasons for the request.
- (3) The AA will notify the parties in writing of the decision of the presiding officer of the AA.
- (4) If the presiding officer of the AA 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 AA at the hearing and may be made notwithstanding that a prior request was not consented to.

129 Urgency and condonation

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

130 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

131 Location of oral hearing

An oral hearing must be held in a location within the area of jurisdiction of MLM but may not be held where the MPT sits or the office of the LDO whose decision is under appeal.

132 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 MPT or the LDO.

133 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.

134 Proceeding in absence of party

- (1) If a party does not appear at an oral hearing, the AA may proceed in the absence of the party if the party was notified of the hearing.
- (2) Prior to proceeding, the AA 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 AA must reschedule the hearing.

135 Recording

Hearings of the AA must be recorded.

136 Oaths

Witnesses (including parties) are required to give evidence under oath or confirmation.

137 Additional documentation

- (1) Any party wishing to provide the AA with additional documentation not included in the appeal record should provide it to the AA at least five days before the hearing date.
- (2) The registrar must distribute the documentation to the other party and the members of the AA.
- (3) If the party is unable to provide the additional documentation to the AA at least five days prior to the hearing, the party may provide it to the AA and the other parties at the hearing.
- (4) The party must bring copies of the additional documentation for the members of the AA 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 AA.

PART G: WRITTEN HEARING PROCEDURE

138 Commencement of written hearing

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

139 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 days to provide a written submission.

- (3) Upon receipt of the appellant's submission within the timelines, the AA must forward the appellant's submission to the Municipal Planning Tribunal or the Land Development Officer.
- (4) The Municipal Planning Tribunal or the Land Development Officer has seven 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.

140 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 AA in advance 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 AA will issue a decision in writing to the parties.

141 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 AA for adjudication.
- (2) If no written submissions are received from the parties, the registrar will forward the existing appeal record to the AA for adjudication.
- (3) Any submission received after the date it was due but before the AA for adjudication has rendered its decision will be forwarded to the presiding officer of the AA to decide whether or not to accept the late submission.
- (4) The AA must issue a decision in writing to the parties and, if the submission is accepted, the other party will be given seven days to provide a written submission in response.

PART H: DECISION OF AA

142 Further information or advice

After hearing all parties on the day of the hearing, the AA –

- (a) may in considering its decision request any further information from any party to the appeal hearing or conduct any investigation which it considers necessary;
- (b) may postpone the matter for a reasonable period to obtain further information or advice, in which case it must without delay make a decision as contemplated by paragraph (c);
- (c) must within 21 days after the last day of the hearing, issue its decision on the appeal together with the reasons therefor.

143 Decision of AA

- (1) The AA may confirm, vary or revoke the decision of the Municipal Planning Tribunal or Land Development Officer and may include an award of costs.
- (2) The presiding officer must sign the decision of the AA and any order made by it.

144 Notification of decision

The registrar must notify the parties of the decision of the AA in terms of section 143-, together with the reasons therefor within seven days after the AA handed down its decision.

145 Directives to municipality

The AA must, in its decision, give directives to MLM 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 MLM as far as implementation of the decision is concerned.

PART I: GENERAL

146 Expenditure

Expenditure in connection with the administration and functioning of the AA must be defrayed from moneys appropriated by the applicable municipality.

**CHAPTER 9
COMPLIANCE AND ENFORCEMENT**

147 Enforcement

MLM must comply and enforce compliance with—

- (a) the provisions of this By-law;
- (b) the provisions of a land use scheme;
- (c) conditions imposed in terms of this By-law or previous planning legislation; and
- (d) Title deed conditions.

148 Offences and penalties

- (1) Any person who—
 - (a) contravenes or fails to comply with any section of this bylaw or land use scheme in operation;
 - (b) fails to comply with a compliance notice issued in terms of section 152;
 - (c) utilises land in a manner other than prescribed by the land use scheme of MLM;
 - (d) supplies particulars, information or answers in an application or in an appeal to a decision on a land development application, knowing it to be false, incorrect or misleading or not believing them to be correct;
 - (e) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
 - (f) hinders or interferes an authorised employee in the exercise of any power or the performance of any duty of that employee,
 is guilty of an offence and is liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.
- (2) An owner who permits land to be used in a manner set out in subsection (1)(c) and who does not cease that use or take reasonable steps to ensure that the use ceases, or who permits a person to breach the provisions of the land use scheme of MLM, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence under this By-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.
- (4) A Municipality must adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

149 Service of compliance notice

- (1) MLM 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 148.
- (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 MLM 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 30 days or such other time period determined by the Municipal Manager; or
 - (b) submit an application in terms of this By-law within 30 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.
- (6) A person who received a compliance notice in terms of this section may lodge representations to MLM within 30 days of receipt of the compliance notice.

150 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 148 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 151 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 148;
 - (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 MLM, 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 MLM has agreed to suspend the operation of the compliance notice in terms of section 151.

151 Objections to compliance notice

- (1) Any person or owner who receives a compliance notice in terms of section 149 may object to the notice by making written representations to the Municipal Manager within 30 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.

152 Failure to comply with compliance notice

If a person fails to comply with a compliance notice MLM may—

- (a) lay a criminal charge against the person;
- (b) apply to an applicable 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; or
- (c) in the case of a temporary departure or consent use, MLM may withdraw the approval granted and then act in terms of section 149.

153 Urgent matters

- (1) In cases where an activity must be stopped urgently, MLM 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, MLM may apply to any applicable court for an urgent interdict or any other relief necessary.

154 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 MLM for any land development contemplated in Chapter 5, unless the person is instructed under section 149 to demolish the building work.
- (2) The applicant must, within 30 days after approval is granted, pay to MLM a contravention penalty in the amount determined by MLM.

155 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.
- (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.

156 Power and functions of authorised employee

- (1) In ascertaining compliance with this by-law as contemplated in section 147, 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.

157 Warrant of entry for enforcement purposes

- (1) A magistrate for the district in which the land is situated may, at the request of MLM, 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 any applicable 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 148 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 156 may be performed under the warrant by the person to whom it is issued and authorises MLM to enter upon the land or to enter the building or premises and to perform any of the acts referred to in section 156 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.

158 Regard to decency and order

The entry of land, a building or structure under this Chapter must be conducted with strict regard to decency and order, which must include regard to—

- (a) 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.

159 Court order

Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in section 161, MLM may apply to an applicable 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****160 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 MLM on the date of the coming into operation of this by-law, shall be dealt with in terms of that legislation or if repealed in terms of its transitional arrangements or in the absence of any other provision, in terms of this by-law, read with section 2(2) and section 60 of the Act;
- (2) Where on the date of the coming into operation of an approved land use scheme in terms of section 26(1) of the Act, any land or building is being used or, within one month immediately prior to that date, was used for a purpose which is not a purpose for which the land concerned has been reserved or zoned in terms of the provisions of a land use scheme in terms of this by-law read with section 26 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 MLM for a continuous period of 15 months, lapse at the expiry of that period;
- (b) lapse at the expiry of a period of 15 years calculated from the date contemplated in subsection (2);
- (c) where on the date of the coming into operation of an approved land use scheme –
 - (i) a building, erected in accordance with an approved building plan, exists on land to which the approved land use scheme relates;
 - (ii) the erection of a building in accordance with an approved building plan has commenced on land and the building does not comply with a provision of the approved land use scheme, the building shall for a period of 15 years from that date be deemed to comply with that provision.
- (d) where a period of 15 years has, in terms of subsection (3), commenced to run from a particular date in the opinion of MLM in respect of any land or building, no regard shall, for the purposes of those subsections, be had to an approved scheme which comes into operation after that date.
- (e) within one year from the date of the coming into operation of an approved land use scheme
 - (i) the holder of a right contemplated in subsection (2) may notify MLM in writing that he is prepared to forfeit that right;
 - (ii) the owner of a building contemplated in subsection (3)(c) may notify MLM 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)(a), such allegation shall be deemed to be correct until the contrary is proved.
- (5) Where any land use provisions are contained in any title deed, deed of grant or 99 year leasehold, which did not form part of a town planning scheme, such land use provisions shall apply as contemplated in subsection (2).
- (6) If the geographic area of MLM 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 MLM amends, repeals or replaces it.
- (7) Applications submitted on land situated on communal land which does not constitute a traditional use in terms of Section 65 shall be subject to the following procedure until such time as such communal land has been included in a land use scheme;
 - (a) the application must be accompanied by;
 - (i) an approved application form, completed and signed by the applicant;
 - (ii) if the applicant is not the owner of the land, a power of attorney signed by the owner authorising the applicant to make the application on behalf of the owner and if the owner is married in community of property a power of attorney signed by both spouses;
 - (iii) a written motivation for the application based on the criteria for consideration of the application;
 - (iv) a locality plan indicating the coordinates of the land and site development plan, when required, or a plan showing the proposal in its cadastral context;
 - (v) any other plans, diagrams, documents or information that MLM may require;
 - (vi) proof of payment of application fees to a similar amount as determined by MLM for a consent use application
 - (vii) Proof from the traditional council of allocation of land in terms of customary law applicable in that traditional area.
 - (b) Notice of the application must be given by serving a notice on each owner of an abutting property, including a property separated from the property concerned by a road.
 - (c) Sections 75 to 79, 82(2), 86(2) and 87 to 101 shall apply mutatis mutandis
- (8) Until such time as a policy for development charges have been developed, the use of the method of calculation prior to the by-law being implemented, shall be continued.

161 Determination of zoning

- (1) Notwithstanding the provisions of section 160(2) and (3), the owner of land or a person authorised by the owner may apply to MLM for the determination of a zoning for land referred to in section 26(3) of the Act
- (2) When MLM 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 MLM; 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, MLM must determine a

zoning and give notice of its intention to do so in terms of section 82.

- (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

162 Delegations

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

164 Short title and commencement

- (1) This By-law is called the Mbombela By-law on Spatial Planning and Land Use Management.
- (2) This By-law comes into operation on the date that the Act comes into operation in the municipal area MLM.

**SCHEDULE 1
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 Mbombela Planning Tribunal; or
- (c) I have the following interests which may conflict or potentially conflict with the interests of the Mbombela Planning Tribunal;

CONFLICTING INTERESTS	

Period

1.

2.

--

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

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

Period

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

3. CRIMINAL RECORD	
1.	
2.	
3.	
4.	

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

Signature of Nominee: _____
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: _____

Period

- 1.
- 2.

SCHEDULE 2
CODE OF CONDUCT OF MEMBERS OF THE MBOMBELA PLANNING TRIBUNAL

I, the undersigned,

Full names: _____
Identity Number: _____
Residing at: _____

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

General conduct

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

Gifts

3. A member of the Municipal Planning Tribunal may not receive or seek gifts, favours or any other offer under circumstances in which it might reasonably be inferred that the gifts, favours or offers are intended or expected to influence a person's objectivity as an advisor or decision-maker in the planning process.

Undue influence

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

Signature of Nominee: _____

Full Names: _____

Date: _____