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### PROVINCIAL NOTICE

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**PROVINCIAL NOTICE**

The following Provincial Notice is published for general information.

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DIRECTOR-GENERAL

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Cape Town.

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21 August 2015

**WITZENBERG MUNICIPALITY**  
**LAND USE PLANNING BY-LAW, 2015**

*PREAMBLE*

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

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

WHEREAS section 23(b) of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) requires the executive authority of a municipality to oversee such responsibilities as it may designate to officials of such municipality and non-officials in the implementation of the Act.

WHEREAS section 2(2) of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) necessitates a municipality to regulate at least the following:

- (a) the development, adoption, amendment and review of a zoning scheme for the municipal area;
- (b) the procedures in terms of which the municipality receives, considers and decides on land use applications;
- (c) the procedures in terms of which the municipality facilitates public participation in its consideration of land use applications;
- (d) the criteria for deciding on land use applications;
- (e) the imposition of conditions of approval for land use applications;
- (f) the procedures applicable after a land use application has been approved; and
- (g) the enforcement by the municipality of its by-laws and decisions with regard to land use planning.

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

NOW THEREFORE the Witzenberg Municipality has adopted this By-Law to regulate and control municipal land use planning.

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## CHAPTER I

### INTERPRETATION

#### Definitions

1. In this By-law, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014), has the meaning assigned to it in that Act and—

“**adopt**” in relation to a spatial development framework, zoning scheme, policy or strategy means the approval by a competent authority of the relevant policy, spatial development framework, policy or strategy;

“**Appeal Authority**” means the Appeal Authority contemplated in section 79;

“**applicable period**”, means the period that may be determined by the Municipality in the conditions of approval subject to section 43(2)(b) of the Spatial Planning and Land Use Management Act or the period referred to in section 43(2)(a) of the Spatial Planning and Land Use Management Act;

“**applicant**” means a person referred to in section 15(2) who makes an application to the Municipality as contemplated in that section;

“**application**” means an application to the Municipality referred to in section 15(2);

“**authorised employee**” means a municipal employee who is authorised by the Council to exercise a power or perform a duty in terms of this By-law or to inspect land and buildings in order to enforce compliance with this By-law or the zoning scheme By-law.

“**consolidation**” in relation to land, means the merging of two or more adjacent land units into a single land unit and includes the physical preparation of land for consolidation;

“**Council**” means the municipal council of the Witzenberg Municipality;

“**date of notification**” means the date on which a notice is served as contemplated in section 48(5) or published in the media or *Provincial Gazette*;

“**department**” means the department of the municipality responsible for town planning and building control;

“**development charge**” means a development charge levied by the Municipality as contemplated in section 82;

“**emergency**” includes a situation which arises through extraordinary circumstances being flooding, strong winds, severe rainstorms, fires, earthquakes, disastrous industrial accidents which leads to people needing to be relocated to a different site, if it is not possible to rectify the damage on site or house the people on site or the disaster has left households homeless;

“**external engineering services**” means all primary engineering services, i.e. engineering services that serve the town/township/suburb as a whole or, alternatively, that serve the major part of the town/township/suburb and include raw water storage dams, water source developments, reservoirs, water purification works, main water supply and feeder pipelines together with main pump stations,

waste water treatment works, sewer mains together with main pump stations, classes 1, 2 and 3 roads, main stormwater channels/pipelines, main sub-stations together with associated works and equipment;

**“internal engineering services”** means all engineering services found within the bounds of the development such as water reticulation, sewerage, roads/streets/accesses and stormwater drainage, together with all associated services and equipment; includes for the purposes of implementation of this By-Law “link services” which means all engineering services that are necessary to connect the internal services to the external or bulk services.

**“land development”** means the erection of a building or structure on land or the change in use of land, including township establishment, the rezoning, the subdivision or consolidation of land or any deviation from the land use or utilisation permitted in terms of the zoning scheme;

**“Land Use Planning Act”** means the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014);

**“municipal spatial development framework”** means a municipal spatial development framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act;

**“Municipality”** means the municipality of Witzenberg established by Establishment Notice No. 487/2000 of 22 September 2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), any employee of the Municipality acting in terms of delegated or sub-delegated authority thereof, and includes the Tribunal;

**“non-conforming use”** means an existing land use, including buildings or structures associated therewith, that was lawful at the time of a previous zoning scheme but which does not conform to the use or development rules stipulated in a current zoning scheme;

**“overlay zone”** means an area or precinct in a zoning scheme that is demarcated for the purpose of conserving natural and heritage resources or promoting certain types of development which is subject to conditions, requirements or restrictions in addition to those of the zoning;

**“Ordinance”** means the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), which is repealed by the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014);

**“owner”** means:

- (a) the person whose name is registered in a deeds registry as the owner of land;
- (b) the beneficial owner of land;
- (c) the owner of land by virtue of vesting in terms of this By-Law or another law; and
- (d) the legal representative of the owner or their estate where the registered owner lacks legal capacity for any reason including age, mental health, mental disability, death, or insolvency;
- (e) the holder of a registered lease area or servitude right;
- (f) includes any successor-in-title;

**“owners’ association”** means an owners’ association established in terms of section 30;

**“public facilities”** means amenities that are intended for the use of the general public, either offering a service or recreational use, ordinarily owned by the state or Municipality;

**“registered planner”** means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002);

**“restrictive condition”** means any condition registered against the title deed of land restricting the use, development or subdivision of the land concerned;

**“service”** means a service provided by the Municipality, any other organ of state or a service provider including the provision of water, sewerage, electricity, refuse removal, roads, storm water and any related infrastructure, systems and processes related to the services;

**“services capacity report”** means an assessment by a qualified engineer of the impact of a proposal on the bulk services and networks and any upgrades that would be required as a result of the proposal, including the estimated actual cost of the works;

**“services report”** means a report dealing with the details regarding water and sewerage connections, internal reticulation, refuse removal, access, parking, stormwater and electricity drawn up by a qualified engineering;

**“site development plan”** means a scaled and dimensioned plan that shows details of the proposed land development including the site layout, positioning of buildings and structures, property access, building designs and landscaping;

**“site traffic assessment (STA)”** means the assessment by a suitably qualified professional of accesses, the site circulation system and transportation facilities proposed by a site development plan or new development;

**“social infrastructure”** means community facilities, services and networks that meet social needs and enhance community wellbeing;

**“Spatial Planning and Land Use Management Act”** means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);

**“traffic impact assessment (TIA)”** means the assessment by a suitably qualified professional of the impact of a proposed change in land use on the transportation system;

**“Tribunal”** means the Municipal Planning Tribunal established by the municipality in terms of section 35(1) of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013).

**“Use right”**, in relation to land, means the right to utilise that land in accordance with its zoning or any other approval granted in respect of the rights to utilise the land;



## **CHAPTER II**

### **APPLICATION OF BY-LAW**

#### **Application of By-law**

2. This By-law applies to all land situated within the municipal area including land owned by the State, organs of state and state owned enterprises.

## **CHAPTER III**

### **SPATIAL PLANNING**

#### **Municipal spatial development framework**

3. (1) The purposes of the municipal spatial development framework include-
  - (a) providing a longer-term spatial depiction of the desired form and structure of the geographic area to which it applies;
  - (b) providing land use management guidelines regarding the appropriate nature, form, scale and location of development;
  - (c) contributing to spatial co-ordination;
  - (d) providing predictable land development;
  - (e) guiding investment and planning of municipal departments and where appropriate other spheres of government;
  - (f) guiding investment for the private sector;
  - (g) guiding decision making on applications; and
  - (h) outlining specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in priority spatial structuring areas.
- (2) The municipal spatial development framework should provide land use management guidelines that relate to-
  - (a) capacity of engineering services;
  - (b) community facility needs;
  - (c) demographic conditions;
  - (d) transportation & road network master planning;
  - (e) urban and rural problems;
  - (f) visual form;
  - (g) biodiversity;
  - (h) environmental opportunities and constraints;

- (i) heritage resources;
- (j) current land use;
- (k) housing market;
- (l) agricultural resources;
- (m) land availability;
- (n) growth potential;
- (o) existing and anticipated private and public development.

#### **Process for drafting or amending the municipal spatial development framework**

4. (1) When drafting or amending the municipal spatial development framework in terms of the Municipal Systems Act, the Municipal Council must, in accordance with the process adopted in terms of section 28 of the Municipal Systems Act:
- (a) approve a consultation plan which meets the requirements of:
    - (i) section 29(1) of the Municipal Systems Act;
    - (ii) section 20(3) of SPLUMA;
    - (iii) section 13 of the Land Use Planning Act; and
  - (b) approve a programme which includes the stages at which a designated political structure, political office bearer or official must comment upon the draft municipal spatial development framework or draft amendment.
- (2) The municipality must:
- (a) consult in accordance with the approved consultation plan;
  - (b) consider the comments received during a consultation process;
  - (c) again invite comment if the municipality makes a material change to the draft municipal spatial development framework or draft amendment after the municipality has invited comment.
- (3) The political structure, political office bearer or official contemplated in paragraph (1)(b) must comment on the draft municipal spatial development framework or draft amendment at each stage required by the approved programme and may give further direction on consultation about the draft municipal spatial development framework or draft amendment.
- (4) Upon completion of the consultation process, the Department must provide a written report to the Municipal Council which must at least:
- (a) assess the draft municipal spatial development framework or draft amendment;

- (b) summarise the process of drafting the municipal spatial development framework or amendment;
  - (c) summarise the consultation process;
  - (d) set out the municipality's responses to the comments received;
  - (e) describe how the municipality has complied with, is complying with and intends to comply with the requirements of relevant national and provincial legislation; and
  - (f) recommend the adoption of the draft municipal spatial development framework or draft amendment.
- (5) A registered planner must sign the report required by subsection (4).

#### **Decision on the adoption or amendment of the municipal spatial development framework**

5. (1) The Municipal Council may:
- (a) accept the report envisaged in section 4(4) and adopt the draft municipal spatial development framework or draft amendment; or
  - (b) refer the report on the adoption of the draft municipal spatial development framework or draft amendment back for further –
    - (i) specified information; and/or
    - (ii) specified consultation.

#### **Publication of the adopted or amended municipal spatial development framework**

6. (1) Within 10 days of the Municipal Council adopting the municipal spatial development framework or an amendment thereof, the Municipal Manager must submit the following to the Provincial Minister:
- (a) a written notice of the decision to adopt or amend the municipal spatial development framework;
  - (b) the adopted or amended municipal spatial development framework;
  - (c) a copy of the report referred to in section 4(4); and a further report or statement to the extent required to comply with section 32(1)(b) of the Municipal Systems Act or section 14 of the Land Use Planning Act or any other legislation.
- (2) Within 14 days of the Municipal Council adopting the municipal spatial development framework or an amendment thereof, the Municipal Manager must:
- (a) publish the adopted or amended municipal spatial development framework; and
  - (b) give notice to the public and publicise a summary in accordance with section 25(4) of the Municipal Systems Act.

### **Status of the municipal spatial development framework**

7. (1) The municipality may not make a decision in terms of this By-Law which is inconsistent with the municipal spatial development framework.
- (2) The municipality may deviate from the provisions of the municipal spatial development framework only if site specific circumstances justify the deviation.
- (3) In determining whether the site specific circumstances exist, the municipality must have regard to the development application which has been submitted and any other relevant considerations, including whether the proposal would not defy the general aim of the municipal spatial development framework.
- (4) The municipal spatial development framework does not confer or take away rights.

### **Review of the municipal spatial development framework**

8. (1) When reviewing the integrated development plan in terms of section 34(a) of the Municipal Systems Act, in relation to the review of the municipal spatial development framework, the municipality must consider at least:
  - (a) the deviations from the municipal spatial development framework and the reasons for the deviations;
  - (b) the requirements of provincial and national legislation relating to the municipal spatial development framework;
  - (c) comments received in the review process.

## **CHAPTER IV**

### **DEVELOPMENT MANAGEMENT**

#### **Zoning register**

9. The municipality must keep and maintain a zoning register.

#### **Error in zoning register**

10. (1) If the municipality finds or is made aware of an error on the zoning register, the municipality may on its own initiative correct the zoning register after:
  - (a) providing notice of the error and of the municipality's intention to correct the error to, and inviting representations within a specified time period from:
    - (i) the owner of the property concerned;
    - (ii) another owner if the proposed correction materially affects the other owner;
    - (iii) the public if the proposed correction materially affects the public;
  - (b) considering any representations received; and
  - (c) taking a decision to correct the zoning register.

- (2) When the Municipality considers determining a zoning in terms of subsection (1) it must have regard to the following:
  - (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;
  - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
  - (c) any departure or consent use that may be required in conjunction with that zoning;
  - (d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the municipality; and
  - (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) 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.

#### **Status of zoning register and exemption of municipality**

11. (1) The zoning register is the municipality's record of the zoning of each land unit.
- (2) A zoning recorded in the zoning map is presumed to be the correct zoning unless proved otherwise.
- (3) A use right ceases to exist on the day when it lapses in terms of this By-Law or a previous zoning scheme even if the zoning register still records the zoning as existing.
- (4) The municipality is exempt from liability from any damage which may be caused by-
  - (i) an error in the zoning register; or
  - (ii) an erroneous representation by the municipality about a use right or the zoning of a land unit.

#### **Use rights**

12. (1) A use right conferred by zoning vests in land and not in a person.
- (2) The exercise of ownership of land is limited by zoning.
- (3) No person may utilize or develop land unless the utilization or development is permitted in terms of the zoning scheme or the municipality has granted an approval in terms of this By-Law.

**Owner's responsibility with respect to the lapsing of the validity period of a zoning**

13. The owner of land bears the onus of notifying the municipality of a zoning that has lapsed and in terms of which the use right has not been taken up.

**Non-conforming uses**

14. (1) A non-conforming use does not constitute an offence in terms of this By-law.
- (2) A non-conforming use may continue as long as it remains otherwise lawful, subject to the following:
- (a) if the non-conforming use ceases for any reason for a period of more than twenty-four consecutive months, any subsequent use of the property must conform to the requirements of this By-law, with or without departures; and
  - (b) a land use application must be made for the alteration or extension of buildings or structures in respect of the non-conforming use.
  - (c) the owner bears the onus of proving that the non-conforming use right exists;
  - (d) the use right is limited to the area of the building or land on which the proven use right is in existence and remains in force to the extent that it has been utilised.
- (3) If an existing building, which constitutes a non-conforming use, is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building, the Council may grant permission for the reconstruction of such building, subject to conditions.

**Application for land development required**

15. (1) No person may commence with, carry on or cause the commencement with or carrying on of land development, except for land development referred to in section 25, without the approval of the Municipality in terms of subsection (2).
- (2) The owner of land or a person authorised by the owner may apply in terms of Chapters IV and V to the Municipality for the following in relation to development of the land concerned:
- (a) a rezoning of land;
  - (b) a permanent departure from the provisions of the zoning scheme;
  - (c) a departure to use land on a temporary basis for which no provision is made in the zoning scheme by-law;
  - (d) a subdivision of land;
  - (e) a consolidation of land;
  - (f) an amendment, suspension or deletion of restrictive conditions in respect of a land unit insofar as it relates to land development;
  - (g) a permission required in terms of the zoning scheme by-law;

- (h) an amendment, deletion or additional conditions in respect of an existing approval;
  - (i) an extension of the period of validity of an approval;
  - (j) an approval of an overlay zone as provided in the zoning scheme by-law;
  - (k) a phasing, amendment or cancellation of a plan of subdivision or a part thereof, including a general plan or diagram;
  - (l) a determination of the existence of a non-conforming use;
  - (m) a permission required in terms of the conditions of approval;
  - (n) the registration of a surveyed lease area that is not exempted in terms of section 25;
  - (o) a closure of a public place or part thereof;
  - (p) a consent use provided for in the zoning scheme.
- (3) If section 53 of Land Use Planning Act is applicable to the land development, the owner must also make application in terms of Land Use Planning Act.
- (4) If an application meets the requirements of section 52 of the Spatial Planning and Land Use Management Act, the owner must also make application in terms of the Spatial Planning and Land Use Management Act.
- (5) 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 zoning scheme.

#### **Continuation of application**

16. (1) If land that is the subject of an application is transferred to a new owner, the new owner may continue with the application as the successor in title to the previous owner and the new owner is regarded as the applicant for the purposes of this By-law.
- (2) The new owner must advise the Municipality in writing of the continuation of the application.

#### **Rezoning of land**

17. (1) The Municipality may, on its own initiative, rezone land of which it is not the owner for—
- (a) public purposes that serves the members of the public in the provision of a service or a recreational space;
  - (b) the purpose of creating a new zoning for one or more land units; or
  - (c) substituting a zoning scheme or part thereof for one in terms of which land is not necessarily zoned in accordance with the utilisation thereof or existing use rights.

- (2) An applicant who wishes to rezone land, must submit an application to the Municipality as contemplated in subsection 15(2).
- (3) The Municipality may, on its own initiative or on application, create an overlay zone for land.
- (4) When the Municipality creates an overlay zone for land it must comply with sections 12 and 13 of the Municipal Systems Act.
- (5) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.

### **Lapsing of rezoning**

- 18.**
- (1) Subject to subsection (2), a rezoning approval contemplated in section 17(2) lapses after the applicable period from the date that the approval comes into operation if, within that period—
    - (a) the zoning is not utilised in accordance with the approval; or
    - (b) the following requirements have not been met:
      - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
      - (ii) commencement of the construction of the building contemplated in subparagraph (i).
  - (2) An approval of a rezoning to subdivisational area contemplated in subsection 21(2) lapses after the applicable period from the date that the approval comes into operation if, within that period—
    - (a) a subdivision application is not submitted; and
    - (b) the conditions of approval are not complied with.
  - (3) If a subdivision application is submitted in respect of land that is zoned as subdivisational area, the zoning of subdivisational area lapses on the later date of the following dates:
    - (a) the date on which the subdivision is approved; or
    - (b) the date after the applicable period contemplated in subsection (2) including any extended period approved in terms of section 70(1).
  - (4) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning as contemplated in section 10.



## Departures

19. (1) An applicant may apply as contemplated in section 15—
- (a) for a departure from the development parameters of a zoning or an overlay zone; or
  - (b) to utilise land on a temporary basis for a purpose for which no provision is made in the zoning scheme in respect of a particular zone for a period not exceeding 5 years.
- (2) A departure contemplated in subsection (1)(a) lapses after the applicable period from the date that the approval comes into operation if within that period—
- (a) the departure is not utilised in accordance with the approval thereof; or
  - (b) the following requirements are not met—
    - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
    - (ii) commencement with the construction of the building contemplated in subparagraph (i).
- (3) The Municipality may approve a departure contemplated in subsection (1)(b) for a period shorter than 5 years, provided that together with any extension approved, in accordance with section 70, the period may not exceed five years;
- (4) A temporary departure as contemplated in subsection (1)(b) may not include the improvement of land that is not temporary in nature and which has the effect that the land cannot, without further construction or demolition, revert back to its previous lawful use upon the expiry of the period contemplated in subsection (1)(b).

## Consent uses

20. (1) An applicant may apply to the Municipality for a consent use provided for in the zoning scheme as contemplated in section 15.
- (2) Where the development parameters for the consent use that is being applied for are not defined in an applicable zoning scheme, the Municipality must determine the development parameters that apply to the consent use as conditions of approval contemplated in section 69.
- (3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval contemplated in section 69.
- (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 for the primary uses in future.

- (5) A consent use contemplated in subsection (1) lapses after the applicable period from the date that the approval comes into operation if, within that period—
- (a) the consent use is not utilised in accordance with the approval thereof; or
  - (b) the following requirements are not met—
    - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
    - (ii) commencement with the construction of the building contemplated in subparagraph (i).

### **Subdivision**

- 21.** (1) No land may be subdivided without the approval of the Municipality in terms of in section 15, unless the subdivision is exempted under section 25.
- (2) No application for subdivision involving a change of zoning may be considered by the Municipality, unless the land concerned is zoned in a manner that would permit the subdivision.
- (3) The Municipality must impose appropriate conditions relating to engineering services for an approval of a subdivision.
- (4) 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) the decision to approve the subdivision;
  - (b) the conditions of approval contemplated in subsection (3) and section 69; and
  - (c) the approved subdivision plan.
- (5) If the Municipality approves a subdivision, the applicant must within the period contemplated in section 23(1), 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 the Municipality that all relevant conditions contemplated in section 69 for the approved subdivision in respect of the area shown on the general plan or diagram have been met; and
  - (d) registration or 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.

- (6) A confirmation from the Municipality in terms of subsection (5)(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.

#### **Confirmation of subdivision**

- 22.** (1) Upon compliance with subsection 21(5), the subdivision or part thereof is confirmed and cannot lapse.
- (2) Upon confirmation of a subdivision or part thereof under subsection 21(5), the zonings indicated on the approved subdivision plan as confirmed cannot lapse.
- (3) A Municipality must in writing confirm to the applicant or at the request of any person, that a subdivision or a part of a subdivision is confirmed, if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements 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 subsection 21(5).

#### **Lapsing of subdivision**

- 23.** (1) An approved subdivision lapses after the applicable period from the date that the approval comes into operation if the requirements contemplated in section 21(5)(a) to (d) have not been met within that period.
- (2) If only a portion of the general plan, contemplated in subsection 21(5)(a) complies with subsection 21(5)(b) and (c), the general plan must be withdrawn and a new general plan must be submitted to the Surveyor-General.
- (3) If an approval of a subdivision or part thereof lapses under subsection (1) —
  - (a) the Municipality must—
    - (i) amend the zoning 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.

#### **Amendment or cancellation of subdivision plan**

- 24.** (1) The Municipality may approve the amendment or cancellation of a subdivision plan and the conditions of approval, in relation to proposed land units in an approved subdivision which have not been registered or on a general plan which has been registered but in respect of land units that have not been transferred by the Registrar of Deeds.

- (2) When the Municipality approves an application in terms of subsection (1), any public place that is affected by the approval must be closed.
- (3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.
- (4) When the Municipality approves an application in terms of subsection (1), the approval is valid for the remainder of the period from the date of approval in terms of section 23.

### **Exemption of subdivisions and consolidations**

- 25.** (1) The subdivision or consolidation of land in the following circumstances does not require the approval of the Municipality—
- (a) if the subdivision or consolidation arises from the implementation of a court ruling; or
  - (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%;
  - (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;
    - (iv) the granting of a right of way; or
    - (v) the granting of a right of habitation or usufruct.
  - (e) the subdivision and consolidation of a closed public place with an abutting erf;
  - (f) in an existing state- or municipal-owned housing scheme in order to make individual ownership possible; and
  - (g) the construction or alteration of a public or proclaimed street.
- (2) The Municipality must, in each case, certify in writing that the subdivision has been exempted by the provisions of this chapter.
  - (3) The Municipality must indicate on the plan of subdivision that the subdivision has been exempted by the provisions of this chapter.

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

26. (1) The ownership of land that is earmarked for a public place or public road as shown on an approved subdivision plan vests in the Municipality upon confirmation of the subdivision or a part thereof, and must be transferred to the municipality at the cost of the applicant.
- (2) The Municipality may in terms of conditions imposed in terms of section 69 determine that land designated for the provision of engineering services, public facilities or social infrastructure on an approved subdivision plan, be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

### **Closure of public places**

27. (1) The Municipality may on own initiative or on application close a public place or any portion thereof in accordance with the procedures in section 36.
- (2) The ownership of the land comprised in any public place or portion thereof that is closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.
- (3) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1), and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

### **Services arising from subdivision**

28. Subsequent to the granting of an application for subdivision in terms of the 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 by the Municipality, in the manner and position as may be reasonably required:
- (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, maintaining, repairing or inspecting any works referred to in paragraphs (a) and (b); and
- (d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

### **Transfer certificate by Municipality**

- 29.**
- (1) A person intending to apply to the Registrar of Deeds to register the transfer of a land unit, must first obtain a certificate in terms of this section.
  - (2) The Municipality may not issue a certificate to transfer a land unit in terms of any law, or in terms of this By-law, unless the owner furnishes the Municipality with—
    - (a) evidence that a compliance notice, issued after 22 September 2000, relating to any contravention of the zoning scheme and/or the National Building Regulations Act, have been complied with;
    - (b) proof of payment of any contravention penalty;
    - (c) proof that the conditions of approval of a valid planning application have been complied with.
  - (3) Except for the transfer of the first erf, the Municipality may not consent to the transfer of any other erf within a private development unless all common property including private roads and private places originating from the subdivision, has been transferred to the owners' association as contemplated in section 30.

### **Owners' associations**

- 30.**
- (1) The Municipality may, when approving an application for a subdivision of land impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
  - (2) An owners' association that comes into being by virtue of subsection (1) is a juristic person and must have a constitution.
  - (3) The constitution of an owners' association must be approved by the Municipality before the transfer of the first land unit and must provide for—
    - (a) the owners' association to formally represent the collective mutual interests of the area, suburb, neighbourhood or development set out in the constitution in accordance with the conditions of approval;
    - (b) control over and maintenance of buildings, open spaces, roads, services or amenities arising from the subdivision;
    - (c) the regulation of at least one yearly meeting with its members;

- (d) control over the design guidelines of the buildings and erven arising from the subdivision;
  - (e) the ownership of private open space, private roads and other services arising out of the subdivision;
  - (f) enforcement of conditions of approval or management plans;
  - (g) the implementation and enforcement by the owners' association of the provisions of the constitution.
- (4) The constitution of an owners' association may have other objects as set by the association but may not contain provisions that are in conflict with any law.
- (5) The constitution of an owners' association may be amended when necessary provided that an amendment that affects the Municipality or a provision referred to in subsection (3) is approved by the Municipality.
- (6) An owners' association which comes into being by virtue of subsection (1)—
  - (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and
  - (b) is upon registration of the first land unit, automatically constituted.
- (7) The design guidelines contemplated in subsection (3)(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.
- (8) If an owners' association fails to meet any of its obligations contemplated in subsection (3) and any person is, in the opinion of the Municipality, adversely affected by that failure, the Municipality may take appropriate action to rectify the failure and recover from the members referred to in subsection (6)(a), the amount of any expenditure incurred by it in respect of those actions.
- (9) The amount of any expenditure so recovered is, for the purposes of section (8), considered to be expenditure incurred by the owners' association.

#### **Owners' association ceases to function**

- 31.** (1) If an owners' association ceases to function or carry out its obligations, the Municipality or any affected person, including a member of the association, may—
- (a) take steps to instruct the association to hold a meeting and to reconstitute itself; or
  - (b) subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association, request the owners' association to dissolve itself;
  - (c) apply to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association.

- (2) In determining which option to follow, the regard must be have to—
  - (a) the purpose of the owners' association;
  - (b) who will take over the maintenance of infrastructure which the owners' association is responsible for, if at all;
  - (c) the impact of the dissolution or the owners' association on the members and the community concerned.

### **Consolidation of land units**

32. (1) The Surveyor-General may not approve a diagram for consolidation in terms of the Land Survey Act, 1997 (Act 8 of 1997), prior to the Municipality granting approval in terms of section 15 of this By-law, unless the consolidation is exempted in terms of section 25.
- (2) If a Municipality 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 consolidation;
  - (b) the conditions of approval contemplated in section 69; and
  - (c) the approved consolidation plan.

### **Lapsing of consolidation**

33. (1) An approved consolidation of land units lapses if the consolidation is not registered in terms of the Deeds Registries Act within the applicable period from the date that the approval comes into operation.

### **Requirements for amendment, suspension or removal of restrictive conditions**

34. (1) The Municipality may, of its own accord or on application in terms of section 15, 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) In addition to the procedures set out in Chapter V, the owner must—
  - (a) submit a certified copy of the title deed to the Municipality; and
  - (b) submit the bondholder's consent to the application, where applicable.
- (3) The Municipality 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) a person whose rights or legitimate expectations are materially and adversely affected by the application;
  - (c) all persons mentioned in the title deed for whose benefit the restrictive condition applies;



- (4) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:
  - (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant 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.
- (5) An approval to remove, suspend or amend a restrictive condition comes into operation-
  - (a) if no appeal has been lodged, after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged; or
  - (b) if an appeal has been lodged, when the Appeal Authority has decided on the appeal.
- (6) The Municipality must cause a notice of the decision to amend, suspend or remove a restrictive condition to be published in the Provincial Gazette after the decision comes into operation as contemplated in subsection (5) and notify the Registrar of the decision.

**Endorsements in connection with amendment, suspension or deletion of restrictive conditions**

- 35.**
- (1) An applicant at whose instance a restrictive condition is removed, suspended or amended must, after the publication of a notice contemplated in section 34(1) in the Provincial Gazette, apply to the Registrar of Deeds to make the appropriate entries in, and endorsements on, any relevant register or title deed to reflect the removal suspension or amendment of the restrictive condition.
  - (2) The applicant must submit the following to the Registrar of Deeds:
    - (a) the original title deed;
    - (b) the original letter of approval; and
    - (c) a copy of the notice published in the Provincial Gazette.

## CHAPTER V

### APPLICATION PROCEDURES

#### Procedures for making application

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

#### Pre-application consultation

37. (1) The Municipality may require an applicant to meet with the authorised employee prior to submitting an application to the Municipality, in order to determine the information that must be submitted together with the application, and other matters connected therewith.
- (2) The Municipality may make guidelines to determine whether an application requires a pre-application consultation, the nature of the information that is required, the employees from the Municipality or other organs of state that must attend the meeting and the procedures to be followed.
- (3) An applicant may request a pre-application consultation.
- (4) The Municipality may keep minutes of the proceedings of a pre-application consultation, and supply the prospective applicant with a copy as soon as possible after the meeting.

#### Information required

38. (1) An application must be accompanied by at least the following documents—
- (a) an application form, as may be provided by the Municipality, completed and signed by the applicant;
  - (b) if the applicant is not the owner of the land, a power of attorney authorising the applicant to make the application on behalf of the owner;
  - (c) if the owner of the land is a company, closed corporation, trust, body corporate or a 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, if required by the Municipality;
  - (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 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 unit;
    - (ii) the proposed zonings in respect of the proposed land units;

- (iii) all existing structures on the property and abutting properties;
  - (iv) the public places and the land needed for public purposes;
  - (v) the existing access points;
  - (vi) all servitudes;
  - (vii) contours, if required by the Municipality;
  - (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 the Municipality may require;
  - (j) the proof of payment of application fees;
  - (k) a full copy of the title deeds;
  - (l) if required by the Municipality, a conveyancer's or land surveyor's certificate indicating that no restrictive condition in respect of the application is contained in such title deeds;
  - (m) the minutes of any pre-consultation meetings, where applicable;
  - (n) a traffic impact assessment when the application is for a change in land use and when the highest total additional hourly vehicular trip generation (including pass-by and diverted trips) as a result of the application exceeds 50 trips per hour;
  - (o) a site traffic assessment whenever:
    - (i) the application would lead to the erection of a building or other structure (roads and other) on a site for which a site development plan is required.
    - (ii) the application proposes roads and related facilities in a new development.
  - (p) a services capacity report whenever:
    - (i) an application would lead to 10 or more additional residential units.
    - (j) an application would lead to industrial use.
    - (k) an application would lead to business use where the total floor area of the building would exceed 1500m<sup>2</sup>.

- (q) a services report whenever:
  - (i) an application would lead to 3 or more additional residential units up to a maximum of 10.
  - (ii) an application that would lead to business use where the total floor area of the building would exceed 500m<sup>2</sup> up to a maximum of 1500m<sup>2</sup>.
- (2) If a subdivision is to be implemented in phases, the subdivision application must be accompanied by a phasing plan showing the following information:
  - (a) the proposed timeline for the completion of the entire subdivision;
  - (b) how the subdivision will be implemented and what engineering services must be in place before a clearance contemplated may be granted;
  - (c) that the engineering services for each phase will be able to function independently and in sequence;
  - (d) the links in engineering services to the next phase;
  - (e) a map indicating:
    - i. the proposed subdivision which clearly marks, in bold lines, the boundaries of each proposed phase;
    - ii. each phase labelled alphabetically; and the roads, land units, open spaces, internal engineering services external engineering services which the applicant will provide for each phase.
- (3) The Municipality may add or remove any information requirements for a particular application as recorded in the pre-consultation contemplated in section 37.
- (4) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

### **Application fees**

- 39. (1) An applicant must pay the application fee, as may be determined by the Municipality, in advance and proof of payment must accompany the application.
- (2) Application fees that are paid to the Municipality are non-refundable, subject to the provisions of section 44.

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

- 40. The Municipality may refuse to accept an application if—
  - (a) a pre-application consultation is required but has not taken place;
  - (b) the municipality has already decided on the application;
  - (c) there is no proof of payment of fees;
  - (d) the application is not in the form required by the Municipality or contains manifestly incorrect or insufficient information.

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

- 41.** (1) The Municipality must—
- (a) record the receipt of an application in writing;
  - (b) assess whether the application is valid having regard to the requirements under section 38;
  - (c) notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require within 21 days of receipt of the application;
  - (d) if the application is complete, notify the applicant in writing that the application is complete within 21 days of receipt of the application.

### **Additional information**

- 42.** (1) The applicant must provide the Municipality with the information or documentation required for the validation of the application within 40 days of the request therefor or within the further period agreed to between the applicant and the Municipality.
- (2) If the applicant does not provide the information within the timeframes contemplated in subsection (1), the Municipality may refuse to consider the application and notify the applicant in writing and close the application.
- (3) When the Municipality closes the application, the application is deemed to be invalid and no right of appeal exist.
- (4) If an application is deemed to be invalid under subsection (3), the applicant may make a new application and pay new application fees.

### **Confirmation of complete application**

- 43.** (1) The Municipality must record that the application is valid with 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 42 applies to the further submission of information that may be required.

### **Withdrawal of application**

- 44.** (1) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the Municipality.
- (2) The owner of land or an applicant must in writing inform the Municipality of the withdrawal of a power of attorney relating to an application given to an applicant.
- (3) The application fee is refundable provided that the application was withdrawn within 7 days of submission.

**Duties of an applicant**

45. (1) An applicant must ensure that—
- (a) all information furnished to the municipality is accurate;
  - (b) no misrepresentation is made to the municipality;
  - (c) the municipality is not misled;
  - (d) the applicant does not omit any relevant information;
  - (e) the applicant makes all the necessary applications to make the development compliant with the zoning scheme.
- (2) An application found not comply with subsection (1) is invalid.

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

46. (1) The Municipality may, on request by an applicant, determine that 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.
- (2) If a Municipality determines that an application may be published as contemplated in subsection (1) it shall be in accordance with the format as agreed with the municipality.
- (3) The Municipality must, within 21 days of having recorded that the application is valid, simultaneously—
- (a) cause public notice of the application to be given in terms of subsection 47(1); and
  - (b) forward a copy of the relevant application to every municipal department, service provider and organ of state that has an interest in the application,
- unless it has been determined by the Municipality that a procedure in terms of another law, as determined in subsection (1), is considered to be public notice in terms of this By-law.
- (4) The Municipality may require the applicant to attend to the publication of the public notice.
- (5) Where an applicant has published a notice in the press at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

**Notification of application in press**

47. (1) Notice must be given in the press, in accordance with this By-law, of the following applications:
- (a) an application for a rezoning or a rezoning on the initiative of the Municipality;

- (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in the municipal spatial development framework;
  - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in the municipal spatial development framework, but excluding subdivisions for bona fide agricultural purposes;
  - (d) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;
  - (e) if the Municipality has no approved municipal spatial development framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area; but excluding subdivisions for bona fide agricultural purposes;
  - (f) the closure of a public place;
  - (g) an application in respect of a restrictive condition;
  - (h) a permission required in terms of the Zoning Scheme By-Law that may have a high impact as determined by the municipality;
  - (i) a departure from the provisions of the Zoning Scheme By-Law that may have a high impact as determined by the municipality;
  - (j) an application that would deviate from the general aim of the municipal spatial development framework;
  - (k) other applications that will materially affect the public interest or the interests of the community if approved.
- (2) Notice of the application in the press in accordance with section 49 must be given by—
- (a) publishing a notice of the application in a newspaper with a general circulation in the area concerned in at least two of the official languages of the Province most spoken in the area concerned; or
  - (b) if there is no newspaper with a general circulation in the area, posting a copy of the notice of application, for at least the duration of the notice period, on the land concerned and on any other notice board as may be determined by the Municipality.
- (3) The Municipality may require the applicant to attend to the publishing of a notice of an application contemplated in subsection (1).
- (4) Where an applicant has published a notice at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

## Serving of notices

48. (1) The Municipality must cause a notice to be served of at least the following applications:
- (a) an application referred to in section 47(1);
  - (b) a determination of a zoning;
  - (c) an application for subdivision, amendment or cancellation of a subdivision;
  - (d) an application for consolidation;
  - (e) the amendment, deletion or imposition of a condition;
  - (f) a permission required in terms of the Zoning Scheme By-Law that may have a low impact as determined by the municipality;
  - (g) a departure from the provisions of the Zoning Scheme By-Law that may have a low impact as determined by the municipality;
  - (h) the Municipality may determine that the serving of notices as contemplated in this subsection, be used for any other application made in terms of this by-law.
- (2) Notice of an application contemplated in subsection (1) and section 47(1) must be served—
- (a) in accordance with section 115 of the Municipal Systems Act;
  - (b) in at least two of the official languages of the Province most spoken in the area concerned; and
  - (c) on each person whose rights or legitimate expectations in the opinion of the municipality could be affected by the approval of the application; and
  - (d) on the ward councillor.
- (3) The Municipality may permit notice of its intention to consider all applications not listed in subsection (1) to be given in terms of section 50.
- (4) The Municipality may require the applicant to attend to the serving of a notice of an application contemplated in subsection (1).
- (5) Where an applicant has served a notice at the request of a Municipality, the applicant must provide proof that the notice has been served as required.
- (6) Any serving of a notice or notification or acknowledgement given in terms of this By-law must be in writing and may be issued to a person—
- (a) by delivering it by hand to the person and signed for;



- (b) by sending it by registered mail—
    - (i) to that person's business or residential address; or
    - (ii) in the case of a juristic person, to its registered address or principal place of business;
  - (c) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or
  - (d) where an address is unknown despite reasonable enquiry, by publishing it once in the *Provincial Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.
- (7) The date of notification in respect of a notice served in terms of this section—
- (a) when it has been served by certified or registered post is the date of registration of the notice; and
  - (b) when it has been delivered to that person personally is the date of signed delivery to that person;
  - (c) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years is the date on which it has been left with that person; or
  - (d) when it has been posted in a conspicuous place on the property or premises to which it relates is the date that it is posted in that place.
  - (e) when it was e-mailed or sent to an electronic address, is the date that it was received by that person as contemplated in the Electronic Communications and Transactions Act, 2002.

### **Content of notice**

- 49.** When notice of an application must be given in terms of this By-Law, the notice must contain the following information:
- (a) the details of the applicant;
  - (b) identify the land or land unit to which the application relates by giving the property description and the physical address;
  - (c) state the intent and purpose of the application;
  - (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
  - (e) state the contact details of the relevant municipal employee;

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

#### **Additional methods of public notice**

- 50.** (1) If the Municipality considers notice in accordance with sections 47 or 48 to be ineffective, the Municipality may on own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:
- (a) to display a notice contemplated in section 49, of a size of at least A3 in size on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
    - (i) the notice must be displayed for a minimum of 30 days during the period that the public may comment on the application;
  - (b) to convene a meeting for the purpose of informing the affected members of the public of the application;
  - (c) to broadcast information regarding the application on a local radio station in a specified language;
  - (d) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
  - (e) to publish the application on the Municipality's website for the duration of the period that the public may comment on the application; or
  - (f) to obtain letters of consent or objection to the application.
- (2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

### Requirements for petitions

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

### Requirements for objections, comments or representations

52. (1) A person may in response to a notice received in terms of sections 47, 48 or 50, object, comment or make representations in accordance with this section.
- (2) Any objection, comment or representation received as a result of a public notice process must be in writing and addressed to the person mentioned in the notice within the time period stated in the notice and in the manner set out in this section.
- (3) The objection must state the following—
- (a) the name of the person or body concerned;
  - (b) the address or contact details at which the person or body concerned will accept notice or service of documents;
  - (c) the interest of the body or person in the application;
  - (d) the reason for the objection, comment or representation.
- (4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to—
- (a) indicate the facts and circumstances which explains the objection, comment or representation;
  - (b) demonstrate the impact which the application will have on the area.

### Amendments prior to approval

53. (1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-laws and prior to the approval thereof—
- (a) at the applicant's own initiative;
  - (b) as a result of objections and comments made during the public notification process; or
  - (c) at the request of the Municipality.

- (2) If an amendment to an application is material, the Municipality may require that further notice of the application be given in terms of this By-law and may refer the application to municipal departments, organs of state and service providers.

#### **Further public notice**

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

#### **Cost of notice**

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

#### **Applicant's right to reply**

56. (1) Copies of all objections or material representations lodged with the Municipality or provided by departments of the 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 material representations, lodge a written reply thereto with the Municipality.
- (3) The applicant may before the expiry of the 30 day period referred to in subsection (2), request the Municipality for an extension of the period to lodge a written reply.
- (4) If the applicant does not submit comments within the period of 30 days or within an additional period requested for, the applicant is considered to have no comment.
- (5) If as a result of the objections or material representations lodged with a Municipality, additional information regarding the application is required by the Municipality, the information must be supplied within 40 days or within a further period as may be agreed upon between the applicant and the Municipality.
- (6) If the applicant does not provide the information within the timeframes contemplated in subsection (5), section 42(2) to (4) applies.

### **Written assessment of application**

57. (1) A registered planner employed by the Municipality must in writing assess an application and recommend to the decision-maker whether the application must be approved or refused.
- (2) An assessment of an application must include reasons for the recommendation and, where applicable, the conditions.

### **Decision-making period**

58. (1) Where the power to take a decision is delegated to an authorised employee, the authorised employee must decide on the application within 120 days of the date that the application is ready for a decision.
- (2) Where the power to take a decision is not delegated to an authorised employee, the Municipal Planning Tribunal must decide on the application within 120 days of the date that the application is ready for a decision.
- (3) An application is regarded as ready for a decision once the administration phase of the application process is concluded.

### **Failure to act within time period**

59. (1) An applicant may lodge an appeal to the Appeal Authority if the Municipal Planning Tribunal or authorised employee fails to decide on an application within the period referred to in section 58(1) or (2).
- (2) Subject to section 42(3), an applicant may not appeal to the Appeal Authority if the Municipal Planning Tribunal or authorised employee fails to decide on an application due to the fact that all required information to decide on the matter is not available or the application is deemed invalid.
- (3) An appeal must be referred for comment to all interested and affected parties as contemplated in section 79 and 80.

### **Powers to conduct routine inspections**

60. (1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a report contemplated in section 57.
- (2) When conducting an inspection, the authorised employee may—
- (a) request that any record, document or item be produced to assist in the inspection;
  - (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
  - (c) on providing a receipt, remove a record, document or other item that is related to the inspection; or

- (d) inspect any building or structure and make enquiries regarding that building or structure.
- (3) No person may interfere with an authorised employee who is conducting an inspection as contemplated in subsection (1).
- (4) The authorised employee must, upon request, produce identification showing that he or she is authorised by the Municipality to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice has been given to the owner or occupier of the land or building.

### **Determination of application**

61. (1) The Municipality may in respect of any application contemplated in subsection 15(2)—
- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;
  - (b) in 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;
  - (h) approved use rights that vest in land and not in a person.

### **Notification of decision**

62. (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and parties who objected, commented or made representations on the application of the decision and their right to appeal if applicable.
- (2) The operation of the approval of an application that is the subject of an appeal is suspended pending the decision of the Appeal Authority on the appeal.

### **Duties of agent of applicant**

- 63.**
- (1) An applicant who is not the owner of the land concerned must ensure that he or she has the contact details of the owner of the property.
  - (2) The agent must ensure that all information furnished to the Municipality is accurate
  - (3) The agent must ensure that no misrepresentations are made.
  - (4) The provision of inaccurate, false or misleading information may cause an application or decision to be invalid.

### **Errors and omissions**

- 64.**
- (1) The Municipality may at any time correct an error in the wording of its decision provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition of its approval.
  - (2) The Municipality may, of its own accord or on application by an applicant or interested party, upon good cause being shown, condone an error in the procedure provided that such condonation does not have material adverse impact on or unreasonably prejudice any party.

### **Withdrawal of approval**

- 65.**
- (1) The Municipality may withdraw an approval granted for a consent use or temporary departure if the applicant or owner fails to comply with a condition of approval.
  - (2) Prior to doing so, the Municipality must serve a notice on the owner—
    - (a) informing the owner of the alleged breach of the condition;
    - (b) instructing the owner to rectify the breach within a specified time period;
    - (c) allowing the owner to make representations on the notice within a specified time period.

### **Procedure to withdraw an approval**

- 66.**
- (1) The Municipality may withdraw an approval granted—
    - (a) after consideration of the representations made in terms of section 65(2)(c); and
    - (b) if the Municipality is of the opinion that the condition is still being breached and not being complied with at the end of the period specified in terms of section 65(2)(b).
  - (2) If the Municipality withdraws the approval, the Municipality must notify the owner of the withdrawal of the approval and instruct the owner to cease the activity immediately.
  - (3) The approval is withdrawn from date of notification of the owner.

### **Exemptions to facilitate expedited procedures**

- 67.** (1) The Municipality may in writing and subject to section 60 of the Land Use Planning Act—
- (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 46;
    - (ii) the provision of housing with the assistance of a state subsidy; or
    - (iii) incremental upgrading of existing settlements;
  - (b) in an emergency situation authorise that a development may depart from any of the provisions of this By-law
- (2) If the Provincial Minister grants an exemption or authorisation to the Municipality in terms of section 60 of the Land Use Planning Act, the municipality is exempted from or authorised to deviate from any corresponding provision in this By-law.

## **CHAPTER VI**

### **CRITERIA FOR DECISION MAKING**

#### **General criteria for consideration of applications**

- 68.** (1) When a municipality 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 notification process 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 registered planner's written assessment of the application;
  - (h) the integrated development plan and municipal spatial development framework;
  - (i) the applicable policies of the Municipality that guide decision-making;
  - (j) where applicable the provincial spatial development framework;
  - (k) where applicable, the regional spatial development framework;



- (l) the policies, principles, planning and development norms and criteria set by national and provincial government;
  - (m) the matters referred to in section 42 of the Spatial Planning and Land Use Management Act;
  - (n) the principles referred to in Chapter VI of the Land Use Planning Act; and
  - (o) the relevant provisions of the zoning scheme by-law;
  - (p) the impact of the proposed land development on municipal engineering services.
- (2) When a municipality considers an application for approval of a site development plan, it may not be refused if it is consistent with the development rules of the zoning, overlay zone, condition of approval, the findings of the traffic assessment, the findings of the services report and this By-law.
- (3) When a site a site development plan is required—
- (a) the municipality may not approve a building plan if the site development has not been approved; and
  - (b) the municipality may not approve a building plan that is inconsistent with the approved site development plan.
- (4) An alleged right to protection against trade competition shall not be taken into account when considering an application.

### **Conditions of approval**

- 69.**
- (1) When the Municipality approves an application subject to conditions, the conditions must be reasonable conditions and must be related to the proposal.
  - (2) Conditions imposed in accordance with subsection (1) may include conditions relating to—
    - (a) the extent of land to be ceded to the Municipality for the purpose of a public open space or road;
    - (b) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
    - (c) agreements to be entered into in respect of certain conditions;
    - (d) the phasing of a development;
    - (e) the delimitation of development parameters or land uses that are set for a particular zoning;
    - (f) the setting of validity periods, in cases where the Municipality determined a shorted period as provided for in this By-law;
    - (g) the setting of dates by which particular conditions must be met;

- (h) requirements relating to engineering services as contemplated in section 81;
  - (i) additional conditions for a subdivisional area that may include the following—
    - (i) the requirements of an applicable spatial development framework;
    - (ii) impact assessments for environment, heritage resources, transport or hazardous installations;
    - (iii) physical development constraints or opportunities;
    - (iv) provision of essential services;
    - (v) development density;
    - (vi) floor space limitations;
    - (vii) open space requirements;
    - (viii) the requirements of government institutions.
    - (ix) major land uses and the extent thereof; and
    - (x) in the case of a phased subdivision, a detailed phasing plan and a framework including—
      - (aa) major transport routes;
      - (bb) major land uses;
      - (cc) bulk infrastructure;
      - (dd) requirements of organs of state;
      - (ee) public open space requirements; and
      - (ff) physical development constraints.
- (3) Conditions which require a standard to be met, must specifically refer to an approved or published standard.
- (4) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.

## CHAPTER VII

### EXTENSION OF THE VALIDITY PERIOD OF APPROVALS

#### Applications for extension of validity periods

70. (1) Subject to section 43(2) of the SPLUMA the Municipality may approve an application for the extension of a validity period, if the application for the extension of the period was submitted prior to the expiry of the validity period.
- (2) When the Municipality considers an application in terms of subsection (1) it must have regard to the following:

- (a) if the circumstances prevailing at the time of the original approval have materially changed; or
  - (b) if the legislative or policy requirements applicable to the approval which prevailed at the time of the original approval, have materially changed; and
- (3) The Municipality may not approve an application for the extension of a validity period, imposed in terms of this by-law if new conditions of approval are required.
- (4) The extended validity period takes effect on and is calculated from the expiry date of the validity period applicable to the original approval.

## **CHAPTER VIII**

### **MUNICIPAL PLANNING DECISION-MAKING STRUCTURES**

#### **Municipal planning decision-making structures**

- 71.** Applications are decided by—
- (a) the Tribunal, where the powers and duties to consider and determine an application has not been delegated to an authorised municipal employee as contemplated in subsection 72(2).
  - (b) an employee who has been authorised by the municipality to consider and determine the application as contemplated in subsection 72(1).
  - (c) the Appeal Authority where an appeal has been lodged against a decision of the authorised municipal employee or the Tribunal.

#### **Consideration of applications**

- 72.**
- (1) The Council may authorise an employee to consider and determine the category of applications contemplated in subsection (2).
  - (2) The municipality may categorise applications for consideration and determination by the authorised employee.
  - (3) In deciding which categories of application may be considered and determined by the authorised employee the municipality must consider whether the application—
    - (a) is minor in impact;
    - (b) is in accordance with municipal policy for a particular area or land use;
    - (c) has elicited any concerns or negative comments from internal departments and municipal service providers' and
    - (d) has elicited any objections from the public.

- (4) The Tribunal considers and determines all applications not considered and determined by the authorised employee contemplated by subsections (1) to (3).
- (5) The Tribunal, contemplated in subsection (4) must be established by the municipality.

### **Establishment and composition of Municipal Planning Tribunal**

- 73.**
- (1) The Municipal Planning Tribunal established under section 72(5) consist of the following members:
    - (a) at least three employees in the full-time service of the municipality appointed by the Municipality; and
    - (b) at least two persons who are not employees of Witzenberg municipality or councillors and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto, appointed by the Municipality.
  - (2) The Council must designate from the members contemplated in subsection (1)(a)—
    - (a) a chairperson; and
    - (b) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or is unable to perform his or her duties.
  - (3) The Municipal Manager must within 30 days of the first appointment of members to a Tribunal—
    - (a) obtain written confirmation form the Council that it is satisfied that the Tribunal is in a position to commence its operations; and
    - (b) after receipt of the confirmation referred to in paragraph (a) publish a notice in the *Provincial Gazette* of the date that the Tribunal will commence with its operation.
  - (4) The Tribunal may only commence its operations after publication of the notice contemplated in subsection (3).

### **Term of office and conditions of service**

- 74.**
- (1) A member of the Tribunal is appointed for a term of 5 years, which is renewable provided that a member may not serve as a member for more than 10 years.
  - (2) The office of a member becomes vacant if—
    - (a) the member is absent from two consecutive meetings of the Tribunal without the leave of the chairperson of the Tribunal;
    - (b) the member tenders his or her resignation in writing to the chairperson of the Tribunal;

- (c) the member is removed from the Tribunal under subsection (3); or
  - (d) the member are deceased.
- (3) The Council may remove a member of the Tribunal if—
  - (a) sufficient reasons exist for his or her removal;
  - (b) a member contravenes the code of conduct referred to in section 76;
  - (c) a member becomes subject to a disqualification as contemplated in section 38(1) of the Spatial Planning and Land Use Management Act, after giving the member an opportunity to be heard.
- (4) A vacancy on the Tribunal must be filled by the Council.
- (5) A member who is appointed by virtue of subsection (4) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.
- (6) Members of the Tribunal referred to in section 73(1)(b) who are not employed by government must be appointed on the terms and conditions, and must be paid the remuneration and allowances and be reimbursed for expenses, as determined by the Council in accordance with applicable national and provincial norms and standards.

### **Meetings of Committee**

- 75.**
- (1) The Tribunal contemplated in section 72(5) must determine its own internal arrangements, proceedings and procedures and those of its committees by drafting rules for—
    - (a) the convening of meetings;
    - (b) the procedure at meetings, and
    - (c) the frequency of meetings.
  - (2) A quorum for a meeting of the Tribunal or its committees is a majority of its appointed members.
  - (3) Decisions of the Tribunal are taken by resolution of a majority of all the members present at a meeting of 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 Tribunal.
  - (4) Meetings of the Tribunal must be held at the times and places determined by the chairperson of the Tribunal in accordance with the rules of the Tribunal.

### **Code of conduct for members of the Municipal Planning Tribunal**

- 76.** The code of conduct in Schedule 1 applies to every member of the Tribunal.

### **Administrator for Municipal Planning Tribunal**

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

### **Functioning of Municipal Planning Tribunal**

78. (1) The meetings of the Tribunal must be held at such times and places as the chairperson may determine, which meetings must at least be held once per month, if there are applications to consider.
- (2) If the chairperson and the deputy chairperson fail to attend a meeting of the Tribunal, the members who are present at the meeting must elect one of their number to preside at that meeting.
- (3) Any person who wishes to make a verbal representation to the Tribunal, must request the Tribunal Administrator in writing 14 days prior to the meeting.

- (4) The Chairperson of the Tribunal must consider and decide on the request and where approved of, impose any reasonable conditions that he or she may deem fit.

### **Appeals**

- 79.**
- (1) The executive authority is the Appeal Authority in respect of decisions made in terms of this By-Law.
  - (2) A person whose rights are affected by a decision of the Tribunal or an authorised employee or by the failure of the Tribunal or an authorised employee to take a decision within the period contemplated in section 59, may appeal in writing to the Appeal Authority within 21 days of the decision or failure to take the decision.

### **Procedure for appeal**

- 80.**
- (1) An appeal that is not lodged within the time period contemplated in section 79 or that does not comply with this section, is invalid.
  - (2) An appellant must set out the grounds on which the appeal is based.
  - (3) The municipality may serve notice of the appeal on any person who commented on or objected to the application.
  - (4) If an objector lodges an appeal, the Municipality must give notice of the appeal to the applicant within 14 days of receipt thereof.
  - (5) A person or body who has received notice of the appeal may comment on the appeal within 21 days of being notified.
  - (6) If comments on the appeal are not lodged within the time period contemplated in subsection (5), it is considered that the party has no comment and consideration and determination of the appeal will proceed.
  - (7) The authorised employee must draft a report assessing the appeal and submit it to the Appeal Authority within 30 days of receipt of the comments contemplated in subsection (5).
  - (8) The Appeal Authority must decide on the appeal within 60 days of receipt of the assessment report contemplated in subsection (7).
  - (9) The parties to the appeal must be notified in writing of the decision of the Appeal Authority within 21 days from the date of the decision as contemplated in subsection 8.
  - (10) The Municipality must, on receipt of an appeal in terms of this section—
    - (a) indicate in writing whether or not the operation of the approval of the application is suspended;
    - (b) if a decision on the appeal upholds an approval, the applicant must be notified in writing that he or she can act on the approval.

## CHAPTER IX

### PROVISION OF ENGINEERING SERVICES

#### Responsibility for provision of engineering services

- 81.** (1) An applicant is responsible for the provision and installation of internal engineering services required for a development at his or her cost when an application is approved.
- (2) The Municipality is responsible for the provision of external engineering services.
- (3) Where the Municipality is not the provider of an engineering service, the applicant must satisfy the Municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.
- (4) The Municipality may enter into a written agreement with an applicant to provide that—
- (a) the applicant will install the external engineering service instead of payment of the applicable development charges; or
  - (b) the fair and reasonable cost of the external services may be set off against the development charges payable.

#### Development charges

- 82.** (1) The applicant must pay development charges to the Municipality in respect of the provision of external engineering services.
- (2) The external engineering services for which development charges are payable may be set out in an approved policy by the Municipality.
- (3) The amount of the development charges payable is calculated in accordance with the policy approved by the Municipality.
- (4) The date and means of development charges payable must be specified in the conditions of approval and may be specified but is not limited to payments before transfer or approval of buildings plans, whichever occurs first.
- (5) The development charge imposed is subject to escalation at the rate calculated in accordance with the policy on development charges.

#### Land for parks, open space and other uses

- 83.** (1) The applicant may be required to provide land for parks or public open space in respect of a new development.
- (2) The land required for parks or public open spaces must be provided within the land area of the development application or may, with the consent of the Municipality, be provided elsewhere within the municipal area.
- (3) Where a development application is approved without the required provision of land for parks or open space, the applicant may be required to pay money to the Municipality in lieu of the provision of land.



## CHAPTER X ENFORCEMENT

### Enforcement

84. (1) The Municipality must comply and enforce compliance with—
- (a) the provisions of this By-law;
  - (b) the provisions of a zoning scheme;
  - (c) conditions imposed in terms of this By-law or previous planning legislation; and
  - (d) title deed conditions.
- (2) The Municipality may not do anything that is in conflict with subsection (1).

### Offences and penalties

85. (1) Any person who—
- (a) contravenes or fails to comply with section 15(1) or 85(2);
  - (b) fails to comply with a compliance notice issued in terms of section 86;
  - (c) utilises land in a manner other than that prescribed by a zoning scheme;
  - (d) upon registration of the first land unit arising from a subdivision, fails to transfer all public roads and public places originating from the subdivision, to the municipality;
  - (e) falsely professes to be an authorised official, or the interpreter or assistant of an authorised employee, or acting as an agent of the municipality;
  - (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 a zoning scheme, 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.

#### **Compliance notice served on persons suspected of certain offences**

- 86.** (1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person or owner is guilty of an offence contemplated in terms of section 85.
- (2) A compliance notice must direct the owner to cease the unlawful land use or construction activity or both, forthwith or within the time period determined by the Municipality and may include an instruction to—
- (a) demolish unauthorised building work and rehabilitate the land or restore the building as the case may be to its original form within 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) No person who has received a compliance notice with an instruction contemplated in subsection (2)(a) is permitted to 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 or cease the unlawful land use whichever the case may be.
- (6) Any person who receives a compliance notice in terms of section 86 may lodge representations to the Municipality within 7 days of receipt of the notice.

#### **Content of a compliance notice**

- 87.** (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 85 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 86 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 85;
    - (ii) on conviction of an offence, the person will be liable for the penalties as provided for;
    - (iii) the person could be required by an order of court to demolish, remove or alter any building, structure or work illegally erected or constructed or to rehabilitate the land concerned or to cease the activity;
    - (iv) in the case of a contravention relating to a consent use or temporary departure, the approval could be withdrawn;
    - (v) in the case of an application for authorisation of the activity or development parameter, that a contravention penalty including any costs incurred by the Municipality, will be imposed;
- (2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Municipality has agreed to suspend the operation of the compliance notice in terms of section 88.

### **Objections to a compliance notice**

- 88.**
- (1) Any person or owner who receives a compliance notice in terms of section 86 may object to the notice by making representations, in writing, to the Municipal Manager within 7 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, modify 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.

### **Failure to comply with compliance notice**

- 89.** If a person fails to comply with a compliance notice the Municipality may—
- (a) lay a criminal charge against the person;
  - (b) apply to the 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, the Municipality may withdraw the approval granted and then act in terms of section 86.

### **Urgent matters**

- 90.** (1) In cases where an activity must be stopped urgently, the Municipality may dispense with the procedures set out above and issue a compliance notice calling upon the person or owner to cease immediately.
- (2) Should the person or owner fail to cease immediately, the Municipality may apply to the Court for an urgent interdict or any other relief necessary.

### **Subsequent application for authorisation of activity**

- 91.** (1) When instructed to rectify or cease an unlawful land use or building activity, a person may when in compliance with such instruction make an application to the Municipality for any land development contemplated in section 15.
- (2) The applicant must, within 30 days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality in accordance with its by-law on tariffs.

### **Power of entry for enforcement purposes**

- 92.** (1) An authorised employee may, with permission of the occupier or owner of land, at any reasonable time, and without a warrant, enter upon land or enter a building or premises for the purpose of ensuring compliance with this By-law.
- (2) Access to the land, building or premises may not be unreasonably withheld.
- (3) An authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of this By-law.
- (4) 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.

### Power and functions of an authorised employee

93. (1) In ascertaining compliance with this By-law as contemplated in section 84, an authorised employee may—
- (a) question any person on that land who, in the opinion of the authorised employee may be able to furnish information on a matter to which this By-law relates.
  - (b) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute—
    - (i) an offence in terms of this By-law;
    - (ii) a breach of such law; or
    - (iii) a breach of an approval or a term or condition of such approval.
  - (c) take photographs for the purpose of his or her investigation;
  - (d) question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for the purpose of the subsection;
  - (e) copy or make extracts from any document, book or record or any written or electronic information referred to in paragraph (d) remove such document, book, record or written or electronic information in order to make copies or extracts;
  - (f) require a person to produce or deliver to a place specified by the authorised employee, any document, book or record or any written or electronic information referred to in paragraph (c) for inspection.
  - (g) examine any such book, record or other document or make a copy thereof or an extract therefrom;
  - (h) require from such a person an explanation of any entry in such book, record or other document;
  - (i) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land or remove for examination or analysis any article, substance, plant or machinery or a part of sample thereof;
  - (j) take photographs or make audio visual recordings of anything or any person that is relevant for the purposes of an investigation or for a routine inspection.
  - (k) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in his opinion may serve as evidence at the trial of any person charged with an offence under this By-law or the common law; provided that the user

of such article, substance, plant or machinery in the building or on the land concerned may make copies of such book, record or document before such seizure;

- (l) direct any person to appear before him or her at such time and place as may be determined by him or her and question such person on any matter to which relates to this By-law;
- (2) When an authorised employee removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he or she must issue a receipt to the owner or person in control thereof.
- (3) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

#### **Warrant of entry for enforcement purposes**

- 94.** (1) A magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or building or premises if the—
- (a) prior permission of the occupier or owner of land cannot be obtained after reasonable attempts; or
  - (b) purpose of the inspection would be frustrated by the prior knowledge thereof.
- (2) A warrant referred to in subsection (1) may be issued by a judge of a High Court or by a magistrate who has jurisdiction in the area where the land in question is situated, and may only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that—
- (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
  - (b) an authorised employee reasonably anticipates that entry to land or a building that he or she is entitled to inspect will be refused;
  - (c) there are reasonable grounds for suspecting that a contravention contemplated in section 85 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 93 may be performed under the warrant by the person to whom it is issued and authorises the Municipality to enter upon the land or to enter the building or premises and to perform any of the acts referred to in section 93 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.

### **Regard to decency and order**

- 95.** 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.

### **Enforcement litigation**

- 96.** Whether or not a Municipality has instituted proceedings against a person for an offence contemplated in section 85, the Municipality may apply to a 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 XI MISCELLANEOUS**

### **Package of plans**

- 97.**
- (1) The general purpose of a package of plans is to provide for a mechanism to plan and manage the development of large or strategic urban development areas. It is a phased process of negotiation, planning and approvals, whereby increasing levels of planning detail are approved together with conditions for such approvals.
  - (2) The municipality may require a package of plans to be submitted for approval in respect of an application for rezoning of certain planning areas.
  - (3) A package of plans consists of the following components that are listed in a hierarchy from higher-order to lower-order plans, and the lower-order plans must be in compliance with the higher-order plans. The municipality may decide that all or only some of the components of the package of plans are required in respect of a particular development.
    - (a) Contextual framework-  
A contextual framework lays down broad land use policy for the development and the surrounding area. It may include principles or heads of agreement summarising the general obligations of the municipality and the developer in relation to the development. The contextual framework

may not be in conflict with a spatial development framework or structure plan approved by the municipality.

(b) Development framework-

A development framework identifies overall policy, broad goals, and principles for development within the development. The development framework identifies the range of uses, general spatial distribution of uses, major transport and pedestrian linkages, infrastructure and any limits within the development, including but not limited to density and floor space.

(c) Precinct plans-

Precinct plans apply to specific areas within the development framework that have common features, functional relationships or phasing requirements. There may be several precinct plans that make up a development. A precinct plan describes in more detail the development objectives and intentions for a specific area in the development, as well as principles for urban form, land use, pedestrian links, traffic movement, floor space and environmental management.

(d) Subdivision plans-

Subdivision plans, if required, are processed in terms of planning law to establish new cadastral boundaries and to facilitate the transfer of land units. Subdivision plans may be approved at any stage after the development framework has been approved.

(e) Site development plans-

Site development plans depict more detailed design and development provisions for one or more land units within a development. These provisions may include, but are not limited to, details relating to land use, floor space, building lines, height, parking requirements, municipal services and landscaping, as well as details relating to the position and appearance of buildings, open space, pedestrian links and traffic movement. A site development plan may be required before or after a subdivision plan.

(f) Building plans-

Building plans contain detailed specifications as required by the National Building Act, and once approved by the municipality, authorise building work to be performed.

- (4) The municipality may require that the area covered by a development framework shall extend beyond the land under consideration if, in its opinion, the proposed development will have a wider impact, and the municipality may determine the extent of such area.
- (5) In approving any component of a package of plans, the municipality may determine the total floor space or density permitted within the development which must be imposed as a condition of approval.
- (6) The allocation of floor space shall take into account the carrying capacity of internal and external infrastructure including but not limited to roads and utility services, and any urban design principles approved by the municipality as part of a rezoning or contextual framework.



- (7) The approved floor space may remain as 'floating floor space' assigned to the overall development for later allocation, or may be assigned to particular precincts or properties when a precinct plan is approved; and in either case shall be allocated in individual subdivisions or site development plans.

### **Naming and numbering of streets**

- 98.**
- (1) If as a result of the approval of a development application, streets or roads are created, whether public or private, the Municipality must approve the naming of the street and must allocate a street number for each of the erven or land units located in such street or road.
  - (2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision.
  - (3) In considering the naming of streets, the Municipality must take into account the relevant policies relating to street naming and numbering.
  - (4) The Municipality must in writing inform the Surveyor-General of the approval of new street names as a result of the approval or amendment of subdivision plans, as contemplated in subsection (1) a street name which is indicated on an approved general plan within 30 days of the approval thereof.

### **Short title and commencement**

- 99.**
- (1) This By-law is called the Witzenberg Land Use Planning By-Law.
  - (2) This By-law comes into operation on the date that the Land Use Planning Act comes into operation in the municipal area of the Municipality.

## SCHEDULE 1

### Code of conduct for members of the Municipal Planning Tribunal

#### General conduct

1. A member of the Municipal Planning Tribunal must at all times—
  - (a) act in accordance with the principles of accountability and transparency;
  - (b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves, or has been requested to serve;
  - (c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which he or she has a personal interest, and leave any chamber in which such matter is under deliberation, unless the personal interest has been made a matter of public record and the Council has given written approval and has expressly authorised his or her participation.

#### Gifts

2. 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 were intended or expected to influence a participant's objectivity as an advisor or decision-maker in the planning process.

#### Undue influence

3. A member of the Municipal Planning Tribunal may not—
  - (a) use the power of any office to seek or obtain special advantage 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 which reflects adversely on the Tribunal, the Municipality, government at large, or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means.

## SCHEDULE 2

### PUBLIC NOTIFICATION REQUIREMENTS IN TERMS OF SECTION 47 AND SECTION 48

By-Law:	Application:	Press:	Serve notice:
sect 47(1)(a)	Rezoning	x	x
sect 47(1)(b)	Subdivision land >5ha inside Urban Edge	x	x
sect 47 (1)(c)	Subdivision land >1ha outside Urban Edge (excluding for bona fide agricultural purposes)	x	x
sect 47 (1)(d)	If no approved SDF: Subdivision land >5ha inside physical edge	x	x
sect 47(1)(e)	If no approved SDF: Subdivision land >1ha outside physical edge (excluding for bona fide agricultural purposes)	x	x
sect 47 (1)(f)	Public Place Closure	x	x
sect 47 (1)(g)	Restrictive Condition	x	x
sect 47 (1)(h)	Zoning Scheme Permission (high impact)	x	x
sect 47 (1)(i)	Departure (high impact)	x	x
sect 47 (1)(j)	SDF deviation	x	x
sect 48(1)(b)	Deemed Zoning		x
sect 48(1)(c)	Subdivision / amendment / cancellation		x
sect 48(1)(d)	Consolidation		x
sect 48(1)(e)	Amendment of Condition		x
sect 48(1)(f)	Zoning Scheme Permission (low impact)		x
Sect 49(1)(g)	Departure (low impact)		x

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