

**PORTFOLIO COMMITTEE :
MANAGEMENT SERVICES**

Chairperson :

Ald P Appelgrein

Committee Members :

**Cllrs M Andrews, J Kloppers-Lourens,
M Sapepa & C Mandindi**

PORTEFEULJEKOMITEE :

BESTUURSDIENSTE

Voorsitter :

Rdh P Appelgrein

Komitee lede :

**Rdle M Andrews, J Kloppers-Lourens,
M Sapepa & C Mandindi**

MANAGEMENT SERVICES PORTFOLIO COMMITTEE

BESTUURSDIENSTE PORTEFEULJEKOMITEE

20 OCTOBER 2015

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**AGENDA of the
Portfolio Committee : Management Services
20 October 2015
(Also the agenda for the Mayoral Committee Meeting : 28 October 2015)**

**1.
DRAFT BY-LAW ON MUNICIPAL LAND USE PLANNING**

1/3/22

L Wallace

(028) 313 5014

Corporate Head Office

28 September 2015

1. Executive Summary

The purpose of this report is for Council to adopt the proposed By-law on Municipal Land Use Planning in terms of Section 12(3) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), hereafter referred to as "*the MSA*". The proposed By-law was introduced as is provided for in terms of Section 12(1) of the MSA and Council's By-law on Rules of Order for Internal Arrangements, P.N. 7188 of 2013. The necessary permission was obtained to publish the proposed by-law in the press in order to give the public an opportunity to make representations.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Management Services
Department: Council Support

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

Constitution of the Republic of South Africa, 1996
Municipal Structures Act, Act 117 of 1998
Municipal Systems Act, Act 32 of 2000
Spatial Planning and Land Use Management Act, Act 16 of 2013
Overstrand Municipality By-law on Rules of Order for Internal Arrangements, P.N. 7188 of 2013

6. Background/Discussion

The Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), hereafter referred to as "LUPO", as a 1985 legislation, predates the current Constitution of the Republic of South Africa, 1996, and was found to be unconstitutional in many respects. The Constitution confers "municipal planning" firmly as a

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municipal competency whilst in LUPO many of these powers vest with the Provincial Minister responsible for land use planning.

As a result of the Constitutional provisions in terms of planning, the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), hereafter referred to as "SPLUMA", was introduced as a national framework act for land use planning. The Minister of Rural Development and Land Reform has on 23 March 2015 also published the Regulations in terms of SPLUMA.

Within the Western Cape Province, the Western Cape Government approved the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014), hereafter referred to as "LUPA".

6.1 Effect of the planning law reform

Both SPLUMA and LUPA are "framework" legislation, meaning that it sets a framework and certain minimum standards which municipalities must comply with in terms of executing their own municipal land use planning functions. This means that municipalities must "give effect to" the provisions of SPLUMA and LUPA via their own legislative powers (i.e. a by-law).

In the past, there was no legislation on national level which made provision for the execution of municipal land use planning. This was done via old order legislation by means of provincial ordinances, such as LUPO.

LUPO did not recognise municipal land use planning as a municipal competency. Besides other matters, LUPO controlled many aspects of municipal land use planning such as:-

- The compilation and approval of town planning schemes and structure plans, which needed to be approved by the Minister;
- Approval of certain land use applications;
- The manner in which subdivision approvals are confirmed;
- Prescribing time frames and lapsing periods; and
- Consideration of appeals

These matters are not regulated in detail by the SPLUMA or LUPA as these are regarded as municipal planning competencies.

In terms of Section 156(2) of the Constitution, municipalities have the right to make by-laws for the matters which they have the right to administer, in this case "municipal planning" as set out in Schedule 4 B of the Constitution, read together with section 11(3)(e) and (m) of the MSA. An effective means to regulate municipal planning would be to make, pass and implement municipal planning by-laws.

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The effect of the two pieces of planning legislation is that Municipalities will now have full responsibility for land use planning within their areas of jurisdiction, which entails:

- drafting of municipal spatial development frameworks;
- drafting of integrated municipal zoning schemes;
- receiving and considering all land use applications;
- decision-making on land use applications by authorised officials and the Municipal Planning Tribunals (MPT) to be established;
- appeals against decisions of the authorised official or the MPT to the Council's appeal authority;
- regulating time frames, notifications, confirmation of subdivision arrangements;
- lapsing of rights; and
- transgressions and enforcements.

6.2 Proposed draft by-law on Municipal Land Use Planning

As the implementation of LUPA is dependent on municipalities passing municipal land use planning by-laws, it is possible that a staggered approach will be considered in terms of repealing LUPO and other old-order planning laws, and the resultant implementation of LUPA.

Since the Minister of Rural Development and Land Reform has now published the SPLUMA Regulations, there is no more uncertainty regarding its content. The by-law before Council was formulated from the draft by-law for municipal land use planning, as compiled and provided by the Western Cape Government. In revising and updating its proposed standard draft by-law for municipal land use planning, the Western Cape Government took heed of the following:-

- all comments and responses received by all municipalities in the Western Cape as a result of the individual public participation process and commenting period undertaken by municipalities;
- comments and inputs received from municipalities;
- the amended and revised content of the approved and published version of the SPLUMA regulations.

The revised proposed municipal land use planning by-law in its current form is regarded as compliant with the Constitution, SPLUMA, LUPA, MSA and other legislation, based on the best available information and knowledge about municipal planning currently available. It should be accepted that this law reform process will in the transition period experience some 'growing pains', but this change is unavoidable and needs to be embraced and negotiated to ensure a smooth transition.

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6.3 Process followed

The draft by-law was advertised for public participation. This was done on 6 August 2015. The advertisement was placed in the Gansbaai Courant, Hermanus Times and Municipal Notice Boards.

Despite the notification of the proposed by-law, no representations were received.

Section 12(3) of the MSA determines that a by-law may only be passed by a municipal council if all members of the council have been given reasonable notice and that the proposed bylaw has been published to allow for representations by the public. Council members have been give reasonable notice of the by-law and as described; the public was also afforded the opportunity to make representations. Section 12 of the MSA as well as the provisions of the By-law on Rules of Order for Internal Arrangements has been complied with.

It is therefore recommended that Council passes the bylaw, attached as Annexure A.

6.4 Publication of the by-law and taking effect thereof

When a municipal council passes a bylaw, Section 13 of the MSA requires that:-

- it must be published promptly in the Provincial Gazette and when feasible also in the local newspaper or in any other way to the contents of the bylaw to the attention of the local community; and
- that it takes effect when published or on a future dates determined in or in terms of the by-law.

Section 13(b) of the MSA provides “that a by-law passed by a municipal council takes effect when published or on a future date determined in or in terms of the bylaws”. 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”. In this way the by-law can be published and will take effect when the LUPA comes into operation.

It cannot take effect before LUPA is implemented in this municipality. In this way the Overstrand municipality will be ready for implementation of LUPA and the by-laws from this perspective.

7. Financial Implications

The by-law must be published in the Provincial Gazette.

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Proposed draft by-law on Municipal Land Use Planning
Annexure B: Formal Public Notices

RECOMMENDATION TO THE COUNCIL:

1. that, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), the By-law on Municipal Land Use Planning **be adopted**; and
2. that, in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) the By-law on Municipal Land Use Planning be published when the Western Cape Land Use Planning Act, Act 3 of 2014, comes into effect in the Overstrand Municipality.

RESPONSIBLE OFFICIAL :

LIONEL WALLACE

TARGET DATE FOR IMPLEMENTATION :

**DEPENDING ON LUPA
IMPLEMENTATION**

5a

**AGENDA of the
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20 October 2015
(Also the agenda for the Mayoral Committee Meeting : 28 October 2015)**

**1.
DRAFT BY-LAW ON MUNICIPAL LAND USE PLANNING**

1/3/22

L Wallace

(028) 313 5014

Corporate Head Office

28 September 2015

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
20 OCTOBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), the By-law on Municipal Land Use Planning **be adopted**; and
2. that, in terms of section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) the By-law on Municipal Land Use Planning be published when the Western Cape Land Use Planning Act, Act 3 of 2014, comes into effect in the Overstrand Municipality.

RESPONSIBLE OFFICIAL :

L WALLACE

TARGET DATE FOR IMPLEMENTATION :

**DEPENDING ON LUPA
IMPLEMENTATION**

OVERSTRAND MUNICIPALITY**BY-LAW ON MUNICIPAL LAND USE PLANNING****PURPOSE:**

To regulate and control municipal land use planning.

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CHAPTER I INTERPRETATION

1. Definitions

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 78(1);

“applicant” means a person referred to in Section 16 (2) who makes an application to the Municipality as contemplated in that section;

“application” means an application to the Municipality referred to in Section 16(2);

“approval” means permission granted in terms of this By-Law and includes the conditions of approval;

“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;

“commencement” means the start of any activity, including acting on any condition as set out in the approval conditions of a land use application, or the preparation of the site or any other activity on the site in accordance with approved building plans and which has gone beyond site clearing, excavation or digging trenches;

“comments” in relation to comments submitted by the public, municipal departments and other organs of state and service providers on an application or appeal, includes objections, representations and petitions;

“consent use” means a land use permitted in terms of a particular zoning with the approval of a Municipality;

“consolidation” in relation to land, means the merging of two or more adjacent land units into a single land;

“contravention penalty” is implemented when a person transgresses the Zoning Scheme Regulations and provisions;

“Council” means the municipal council of the Municipality;

“date of notification” means the date on which a notice is served as contemplated in Section 48(7) or published in the media or *Provincial Gazette*;

“Department” means the provincial department responsible for land use planning;

“departure” means an altered development parameter granted on a permanent basis or a right to utilise land for a purpose granted on a temporary basis;

“development charge” means a development charge levied by the Municipality as contemplated in Section 81;

“deviation” in relation to a spatial development framework, means:

- a) an approval which departs from the provisions of the Municipal Spatial Development Framework contemplated in Section 22(2) of SPLUMA;
- b) a deviation from the provisions of the Municipal Spatial Development Framework authorised in terms of Chapter 3 of this By-Law; or
- c) a deviation from the provisions of a Municipal Spatial Development Framework or Local Spatial Development Framework authorised by Section 10 of this By-Law; and ‘deviate’ has a corresponding meaning;

“emergency” includes a situation which arises through floods, strong winds, severe rainstorms, fires, earthquakes and industrial accidents which requires the relocation of human settlements to identified sites;

“executive authority”, in relation to a Municipality, means the executive committee or executive mayor of the Municipality or, if the Municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the Municipal Council;

“external engineering service” means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area;

“internal engineering service” means an engineering service owned and operated by a municipality or a service provider within the boundaries of a land area referred to in a land use application and that is necessary for the utilisation and development of the land;

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

“Local Spatial Development Framework” means a Local Spatial Development Framework contemplated in Section 8;

“Municipal Manager” means the person appointed as the accounting officer of the Municipality in terms of Section 55A of the Municipal Systems Act;

“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 the Overstrand established by Establishment Notice No. P.N. 494/2000 of 22 September 2000 issued in terms of the Local Government:

Municipal Structures Act, 1998 (Act 117 of 1998), and any employee of the Municipality acting in terms of delegated or sub-delegated authority thereof;

“non-conforming use” means an existing land use that was being utilised lawfully in terms of a previous zoning scheme for a purpose that does not comply with an existing zoning scheme;

“occasional use” means a temporary departure granted for a specific occasion or event;

“overlay zone” means an area or precinct in a zoning scheme that is demarcated for the purpose of conserving natural 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);

“owners’ association” means an owners’ association established in terms of Section 31;

“public facilities” means amenities that are—

- (a) intended for the use of the general public;
- (b) used to offer a service or for recreation; and
- (c) ordinarily owned by the state or a Municipality;

“public place” means any open or enclosed place, park, street, road or thoroughfare or other similar area of land shown on a general plan or diagram that is for use by the general public and is owned by, or vests in the ownership of, a Municipality, and includes a public open space and a servitude for any similar purpose in favour of the general public;

“registered planner” means a professional or technical planner registered in terms of the Planning Profession Act, 2002 (Act 36 of 2002) unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of this Act for a particular category of registered persons in terms of Section 16(2) of the Planning Profession Act, 2002, in which case a registered planner means that category of registered persons for whom the work has been reserved;

“restrictive condition” means any condition registered against the Title Deed of land restricting the use, development or subdivision of land concerned;

“rezoning” means an amendment in order to effect a change of zoning in relation to a particular portion of land to another zoning provided for in the zoning scheme;

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

“site development plan” means a scaled and dimensioned plan that shows details of the proposed land development including the site layout, positioning of buildings, structures, access, building designs and landscaping, as stipulated in the applicable Zoning Scheme Regulations;

“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);

“subdivision”, in relation to land, means the division of a land unit into more land units, and includes any physical activity on the land to prepare the land for subdivision, but does not include the preparation of a subdivision plan;

“subdivisional area” means an applicable zoning approved by the Municipality that permits subdivision where a change of zoning is involved, or a similar zone in the zoning scheme;

“Tribunal” means the Municipal Planning Tribunal established in terms of Section 35 of SPLUMA, 2013 (Act No. 16 of 2013).

CHAPTER II

APPLICATION OF BY-LAW

2. Application of By-law

- (a) This By-Law applies to all land within the geographical area of the Municipality, including land owned by the state.
- (b) This By-Law binds every owner and their successor-in-title and every user/occupier of land, including the state.
- (c) When considering an apparent conflict between this By-Law and national and provincial legislation the applicable national and provincial legislation will prevail. .
- (d) If there is a conflict between this By-law and another By-law of Overstrand Municipality this By-law will prevail.

CHAPTER III

SPATIAL PLANNING

3. Intention to draft or amend the Municipal Spatial Development Framework

When the Council drafts or amends its Municipal Spatial Development Framework in accordance with the Municipal Systems Act, the Council must, as contemplated in Section 11 of the Land Use Planning Act read together with Sections 20 and 21 of the Spatial Planning and Land Use Management Act—

- (a) appoint an intergovernmental steering committee to compile or amend its Municipal Spatial Development Framework; or
- (b) refer its draft Municipal Spatial Development Framework or draft amendment to its Municipal Spatial Development Framework to the Provincial Minister for comment;
- (c) publish a notice in three of the official languages of the Province most spoken in the area of the intention to draft, review or amend the Municipal Spatial Development Framework and the process to be followed in accordance with Section 28(3) of the Municipal Systems Act;
- (d) in writing inform the Provincial Minister of—
 - (i) the intention to draft or amend the Municipal Spatial Development Framework;
 - (ii) its decision in terms of paragraph (a) or (b); and
 - (iii) the process that will be followed in the drafting or amendment of the Municipal Spatial Development Framework including the process for public participation;
- (e) register relevant stake holders who must be invited to comment on the draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework as part of the process to be followed.

4. Appointment of intergovernmental steering committee

- (1) If the Council resolves to appoint an intergovernmental steering committee, the Municipality must in writing invite nominations for representatives to serve on the intergovernmental steering committee from—
 - (a) the head of the provincial government department responsible for land use planning;
 - (b) the head of the provincial government department responsible for environmental affairs; and
 - (c) relevant organs of state.
- (2) The Municipality must establish a project committee for the purposes of drafting the Municipal Spatial Development Framework or amendment of the Municipal Spatial Development Framework.
- (3) If a Municipality establishes an intergovernmental steering committee, referred to in Section 12(b)(i) of Land Use Planning Act, the committee must consist of at least—
 - a) the Municipal Manager, or a municipal employee designated by the Municipal Manager; and
 - b) representatives of—
 - (i) the Municipality, nominated by the Municipal Manager;
 - (ii) the Department, nominated by the Head of Department; and
 - (iii) the provincial department responsible for environmental affairs, nominated by the head of that department.

- (4) The project committee must compile a draft status quo document setting out an assessment of existing levels of development and development challenges in the municipal area and must submit it to the intergovernmental steering committee for comment.
- (5) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the status quo document and submit it to the Council for adoption.
- (6) The project committee must prepare a first draft of the Municipal Spatial Development Framework or first draft amendment of the Municipal Spatial Development Framework and must submit it to the intergovernmental steering committee for comment.
- (7) After consideration of the comments of the intergovernmental steering committee, the project committee must finalise the first draft of the Municipal Spatial Development Framework or first draft amendment of the Municipal Spatial Development Framework and submit it to the Council to approve the publication thereof for public comment.
- (8) After consideration of the comments and representations, as a result of the publication contemplated in Subsection (7), the project committee must compile a final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework for adoption by the Council.
- (9) If the final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework, as contemplated in Subsection (8), is materially different to what was published in terms of Subsection (7), the Municipality must follow a further consultation and public participation process before it is adopted by the Council.
- (10) The Council must adopt the final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework, with or without amendments, and must within 30 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

5. Process of drafting a Municipal Spatial Development Framework if an intergovernmental steering committee is not established

- (1) If the Council does not establish an intergovernmental steering committee to draft or amend its Municipal Spatial Development Framework, the Municipality must—
 - (a) compile a draft status quo document setting out an assessment of existing levels of development and development challenges in the municipal area and submit it to the Council for approval;
 - (b) after approval of the status quo document, prepare a draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework and submit it to the Council to approve the publication thereof for public comment;
 - (c) after approval of the draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework for publication as contemplated in paragraph (b) submit it to the Provincial Minister for comment in terms of Section 13 of the Land Use Planning Act;
 - (d) after consideration of the comments received from the public and the Provincial Minister, a final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework with any further amendments, must be submitted to the Council for adoption.
- (2) The Council must adopt the final Municipal Spatial Development Framework or final amendment of the Municipal Spatial Development Framework, with or without amendments, and must within 30 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

6. Roles and responsibilities

- (1) The role and responsibility of members of the project committee is to, in accordance with the directions of *(the executive committee/ executive mayor/committee of councillors)*—

- (a) draft a Municipal Spatial Development Framework or amendment of the Municipal Spatial Development Framework for adoption by the Council;
 - (b) provide technical knowledge and expertise;
 - (c) monitor progress and ensure that the drafting Municipal Spatial Development Framework or amendment of the Municipal Spatial Development Framework is progressing according to the approved process plan;
 - (d) guide the public participation process, including ensuring that the registered key public sector stakeholders remain informed;
 - (e) oversee the drafting of a report setting out the response of the Municipality to the provincial comments issued in terms of Sections 12 or 13 of Land Use Planning Act.
 - (f) ensure alignment of the Municipal Spatial Development Framework with the development plans and strategies of other affected municipalities and organs of state as contemplated in Section 24(1) of the Municipal Systems Act, 2000;
 - (g) facilitate the integration of other sector plans into the Municipal Spatial Development Framework;
 - (h) oversee the incorporation of amendments to the draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework to address comments obtained during the process of drafting thereof;
 - (i) if the Municipality decides to establish an intergovernmental steering committee—
 - (i) assist the Municipality in ensuring that the intergovernmental steering committee is established and that timeframes are adhered to; and
 - (ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- (2) The role and responsibility of the members of the intergovernmental steering committee is to—
- (a) provide technical knowledge and expertise;
 - (b) provide input on outstanding information that is required to draft the Municipal Spatial Development Framework or an amendment thereof;
 - (c) communicate any current or planned projects that have an impact on the municipal area;
 - (d) provide information on the locality of projects and budgetary allocations; and
 - (e) provide written comment to the intergovernmental steering committee and project committee at each of various phases of the process.

7. Status of a spatial development framework and a Local Spatial Development Framework

- (1) If an application is inconsistent with an applicable spatial development framework or a Local Spatial Development Framework, the applicant must describe the inconsistency in —
 - (a) the application; and
 - (b) the advertisement of the application.
- (2) A person who takes a decision in terms of this By-Law —
 - (a) must be guided by an applicable spatial development framework and/or Local Spatial Development Framework;
 - (b) subject to section 8 of Land Use Planning Act may deviate from the provisions of an applicable spatial development framework and/or Local Spatial Development Framework only if the circumstances justify the deviation.
- (3) A spatial development framework and a Local Spatial Development Framework do not confer or take away rights.

8. Local Spatial Development Frameworks/ Policy Plans

- (1) The Municipality may adopt a Local Spatial Development Framework for an area or functional area of a municipal area.
- (2) The purpose of a Local Spatial Development Framework is to—
 - (a) provide detailed spatial planning guidelines for an area or functional area;
 - (b) provide more detail in respect of a proposal provided for in the Municipal Spatial Development Framework;

- (c) address specific land use planning needs of an area or functional area;
- (d) provide detailed policy and development parameters for land use planning;
- (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, bio diversity and environmental issues; or
- (f) guide decision making on land use applications.

9. Compilation, amendment or review of spatial development frameworks and Local Spatial Development Frameworks

- (1) If the Municipality compiles, amends or reviews a Local Spatial Development Framework, it must draft and approve a process plan, including public participation processes to be followed for the compilation, amendment, review or adoption of a Local Spatial Development Framework.
- (2) The Municipality must, within 30 days of adopting a Local Spatial Development Framework or an amendment of Local Spatial Development Framework, publish a notice of the decision in the media and the *Provincial Gazette*

10. Deviation of spatial development framework and/or Local Spatial Development Framework

- (1) An authority who takes a decision in terms of this By-Law which deviates from the provisions of the Municipal Spatial Development Framework and/or an applicable spatial development framework and/or Local Spatial Development Framework or policy must at the time of making the decision —
 - (a) record in writing the reasons for the deviation; and
 - (b) keep a record of the decision and the written reasons for the deviation

11. Effect of Local Spatial Development Frameworks

- (1) A Local Spatial Development Framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in Section 9(2).
- (2) A Local Spatial Development Framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights.

12. Policies to guide decision making

- (1) The Municipality may adopt a policy to guide decision making in respect of applications made in terms of the By-Law.

CHAPTER IV

DEVELOPMENT MANAGEMENT

13. Determination of zoning

- (1) The owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in Section 8 of the Ordinance and which is not deemed to be zoned by virtue of a determination under Subsection 14(1) of the Ordinance.
- (2) When the Municipality considers an application in terms of Subsection (1) it must have regard to the following:
 - (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;
 - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
 - (c) any departure or consent use that may be required in conjunction with that zoning;
 - (d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms of the title deed conditions or,

- where more than one land use is so permitted, one of such land uses determined by the Municipality; and
- (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this By-law, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If the lawful zoning of land contemplated in Subsection (1) cannot be determined the Municipality must determine a zoning and give notice of its intention in terms of Section 48.
- (4) A land use that commenced unlawfully, whether before or after the commencement of this By-law, may not be considered to be the lawful land use.
- (5) An owner who believes that the zoning map contains an error in respect of their property may apply to the Municipality for the zoning map to be corrected.
- (6) An owner making an application contemplated in Subsection (1) —
- (a) must describe the nature of the error;
 - (b) bears the onus of proving the error and must provide written proof of the lawful land use rights; and
 - (c) must indicate the correct zoning.
- (7) The Municipality must advertise the application —
- (a) to another owner if the application materially affects the other owner; and
 - (b) for public comment if the application materially affects the public.
- (8) The Municipality may approve or refuse the application.
- (9) If the application is approved, the Municipal Manager must amend the zoning map.
- (10) If the Municipality finds an error on the zoning map, the Municipality may on its own initiative amend the zoning map 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; and
 - (iii) the public if the proposed correction materially affects the public;
 - (b) considering any representations received; and
 - (c) taking a decision to amend the zoning map.

14. Status of zoning map and exemption of Municipality from liability for any error

- (1) The zoning map is the Municipality's record of the zoning of each land unit (other than a sectional title 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 map still records the use right as existing.
- (4) The Municipality is exempt from liability for any damage which may be caused by —
 - (a) an error in the zoning map; or
 - (b) an erroneous representation by the Municipality about a use right or the zoning of a land unit.

15. Non-conforming uses

- (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 twelve consecutive months, any subsequent use of the property must conform to the requirements of this By-law, with or without departures;

- (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; and
 - (d) the use right is limited to the area of the building or land on which the proven use right is in existence.
- (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.

16. Application for land development required

- (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 26, 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) are zoning 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;
 - (d) a subdivision of land including the registration of a new servitude or lease agreement that is not exempted in terms of section 26
 - (e) a consolidation of land;
 - (f) an amendment, suspension or deletion of restrictive conditions in respect of a land unit;
 - (g) a permission required in terms of the zoning scheme;
 - (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;
 - (k) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
 - (l) a permission required in terms of the conditions of approval;
 - (m) a determination of a zoning;
 - (n) a closure of a public place or part thereof;
 - (o) a consent use provided for in the zoning scheme;
 - (p) an occasional use of land;
 - (q) to disestablish a home owner's association;
 - (r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;
 - (s) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.
- (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.
- (6) When the Municipality on own initiative develops land as contemplated in Subsection (2) it must comply with Chapters IV and V.

17. Continuation of application

- (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, provided that the following is submitted to the Municipality:

- (a) proof of change of ownership; and
- (b) an amended power of attorney, if an agent has been appointed to handle the application.

- (2) The new owner must advise the Municipality in writing of the continuation of the application.

18. Rezoning of land

- (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 Section 16(2).
- (3) The Municipality may, on its own initiative or on application, create an overlay zone for land.
- (4) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (5) Must, where applicable, include at least the following:
 - (a) density requirements;
 - (b) major land uses and the extent thereof; and
 - (c) a detailed phasing plan or a framework including—
 - (i) major transport routes;
 - (ii) major land uses;
 - (iii) bulk infrastructure;
 - (iv) requirements of organs of state;
 - (v) public open space requirements; and
 - (vi) physical development constraints.

19. Lapsing of rezoning and extension of validity periods

- (1) A rezoning approval lapses after a period of 5 years, or a shorter period as the Municipality may determine, from the date of approval or the date that the approval comes into operation if, within that 5 year period or shorter period—
 - (a) the zoning is not utilised in accordance with the approval thereof; or
 - (b) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).
- (2) A rezoning to sub divisional area zone approval—
 - (a) lapses after five years, or a shorter period as the Municipality may determine from the date that the approval comes into operation—
 - (i) if the applicant does not submit an application for approval of subdivision in accordance with the approved sub-divisional area zoning; or
 - (ii) if such a subdivision application was submitted and the zoning of subdivision area lapses before the subdivision is approved, the validity of the rezoning to subdivisional area lapses when the subdivision is approved.
- (3) The Municipality may grant extensions to the periods contemplated in Subsections (1) and (2), which period together with any extensions that the Municipality grants, may not exceed 5 years.
- (4) If a rezoning approval lapses, the zoning applicable to the land prior to the approval of the rezoning applies, or where no zoning existed prior to the approval of the rezoning, the Municipality must determine a zoning as contemplated in Section 13(2).

20. Departures

- (1) An applicant may apply as contemplated in Section 16(2) —
 - (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 a period of five years or the shorter period as the Municipality may determine from the date that the approval comes into operation if, within that five year period or shorter period—
 - (a) the 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 grant extensions to the period contemplated in Subsection (2), which period together with any extensions that the Municipality grants, may not exceed 5 years.
- (4) The Municipality may approve a departure contemplated in Subsection (1)(b) for a period shorter than 5 years, provided that, the period may not, together with any extension approved in accordance with Section 68, exceed five years;
- (5) A temporary departure contemplated in Subsection (1)(b) may not be granted more than once in respect of a particular use on a specific land unit.
- (6) A temporary departure contemplated in Subsection (1)(b) may not include the improvement of land that is not temporary in nature and which has the effect that the land cannot, without further construction or demolition, revert back to its previous lawful use upon the expiry of the period contemplated in Subsection (1)(b).

21. Consent uses

- (1) An applicant may, as contemplated in Section 16(2), apply to the Municipality for a consent use provided for in the zoning scheme.
- (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 67.
- (3) A consent use may be granted permanently or for a specified period of time in terms of conditions of approval contemplated in Section 67.
- (4) A consent use granted for a specified period of time contemplated in Subsection (3) must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of the land.
- (5) A consent use contemplated in Subsection (1) lapses after a period of five years or the shorter period as the Municipality may determine from the date that the approval comes into operation if, within that five year period or shorter period —
 - (a) the consent use is not utilised in accordance with the approval thereof; or
 - (b) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).
- (6) The Municipality may grant extensions to the period contemplated in Subsection (5), which period together with any extensions that the Municipality grants, may not exceed 5 years.

22. Subdivision

- (1) No person may subdivide land without the approval of the Municipality in terms of Section 16(2), unless the subdivision is exempted under Section 26.
- (2) No application for subdivision involving a change of zoning may be considered by the Municipality, unless the land concerned is zoned for a subdivisational area.
- (3) The Municipality must impose appropriate conditions relating to engineering services for an approval of a subdivision in terms of Section 67(2) (a) of this by-law.
- (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 Municipality's decision to approve the subdivision;
 - (b) the conditions of approval contemplated in Subsection (3) and Section 67; and
 - (c) the approved subdivision plan.
- (5) If the Municipality approves a subdivision, the applicant must within a period of five years or the shorter period as the Municipality may determine, from the date of approval of the subdivision or the date that the approval comes into operation, 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 67 for the approved subdivision in respect of the area shown on the general plan or diagram and that must be complied with before compliance with paragraph (d) have been met; and
 - (d) registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.
- (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.

23. Confirmation of subdivision

- (1) Upon compliance with Section 22(5), the subdivision or part thereof is confirmed and cannot lapse.
- (2) Upon confirmation of a subdivision or part thereof under Section 22(5), the zonings indicated on the approved subdivision plan as confirmed cannot lapse.
- (3) The Municipality must in writing confirm to the applicant or to any other person at his or her written request that a subdivision or a part of a subdivision is confirmed, if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements of Section 22(5) for the subdivision or part thereof.
- (4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in Section 22(5) or the Municipality approved the construction prior to the subdivision being confirmed.

24. Lapsing of subdivision and extension of validity periods

- (1) An approved subdivision or a portion thereof lapses if the applicant does not comply with Section 22(5).
- (2) An applicant may apply for an extension of the period to comply with Section 22(5) or must comply with Subsection (5).
- (3) An extension contemplated in Subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period the requirements of

- Section 22(5) has not been complied with, the subdivision lapses and Subsection (6) applies.
- (4) The Municipality may grant extensions to the period contemplated in subsection (2), which period together with any extensions that the Municipality grants, may not exceed 5 years.
 - (5) If only a portion of the general plan, contemplated in Section 22(5)(a) complies with Section 22(5)(b) and (c), the general plan must be withdrawn and a new general plan must be submitted to the Surveyor-General.
 - (6) If an approval of a subdivision or part thereof lapses under Subsection (1) —
 - (a) the Municipality must—
 - (i) amend the zoning map and, where applicable, the register accordingly; and
 - (ii) notify the Surveyor-General accordingly; and
 - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

25. Amendment or cancellation of subdivision plan

- (2) The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram of which no transfer has been registered in terms of the Deeds Registries Act.
- (3) When the Municipality approves an application in terms of Subsection (1), any public place that is no longer required by virtue of the approval must be closed.
- (4) 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.
- (5) An approval of a subdivision in respect of which an amendment or cancellation is approved in terms of Subsection (1), remains valid for the remainder of the period contemplated in Section 22(5) applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of Subsection (1).

26. Exemption of subdivisions and consolidations

- (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;
 - (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 construction or alteration of a public or proclaimed street;
 - (e) the subdivision of land in order to bring about the registration of a servitude area or lease area in the name of local authority;
 - (f) the subdivision of land in order to bring about its conveyance to or from a local authority or provincial or national government;
 - (g) 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) storm water channels, ditches and channels, and
 - (v) the granting of right of way.
- (2) The Municipality must, in each case, certify in writing that the subdivision and consolidation has been exempted from the provisions of this chapter.