

- (3) The Municipality must indicate on the plan of subdivision and/or consolidation that the subdivision and/or consolidation have been exempted from the provisions of Sections 22 to 26.

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

- (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vest in the Municipality upon confirmation of the subdivision or a part thereof.
- (2) The Municipality may in terms of conditions imposed in terms of Section 67 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.

**28. Closure of public places**

- (1) When a Municipality closes a public place permanently, the Municipality must at least—
- (a) make provision for the payment of compensation to a person who has suffered loss or damage as a result of the permanent closure of the public place; and
  - (b) regulate the ownership of the land following the permanent closure of the public place.
- (2) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered as a result of the wrong doing on the part of the Municipality as a result of the closure of a public place, the authorised employee must—
- (a) require proof of negligence on the part of the Municipality which resulted in the loss or damage; and
  - (b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.
- (3) The Municipality may pay a claim if—
- (a) the claimant has proved his or her loss or damage;
  - (b) the claimant has provided the proof of a fair and reasonable quantum;
  - (c) no claim has been made and paid by personal insurance covering the same loss; and
  - (d) any other relevant additional information as requested by the authorised employee has been received.
- (4) 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.
- (5) The Municipal Manager may, without complying with the provisions of Section (1) temporarily close a public place—
- (a) for the purpose of or pending the construction, reconstruction, maintenance or repair of the public place;
  - (b) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
  - (c) if the street or place is, in the opinion of the Municipal Manager, in a state dangerous to the public;
  - (d) by reason of any emergency or public event which, in the opinion of the Municipal Manager, requires special measures for the control of traffic or special provision for the accommodation of crowds, or
  - (e) for any other reason which, in the opinion of the Municipal Manager, renders the temporary closing of the public place necessary or desirable.
- (6) 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.

**29. Services arising from subdivision**

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

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

**30. Certification by Municipality**

- (1) A person may not apply to the Registrar of Deeds to register the transfer of a new land unit, unless the Municipality has issued a certificate in terms of this section.
- (2) The registration of any property resulting from a land development application may not be performed unless the municipality certifies that all requirements and conditions for the approval have been complied with.
- (3) Proof should be provided to the municipality that all common property including private roads and private places originating from the subdivision, has been developed, before the last erf is transferred to the home owners association as contemplated in section 31.
- (4) The Surveyor – General may not approve or amend a general plan or diagram in respect of the subdivision or consolidation of land units contemplated in this section without written confirmation from municipality that the subdivision or consolidation is exempted by a municipality in accordance with this section.

**31. Owners' associations**

- (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 or neighbourhood set out in the constitution in accordance with the conditions of approval;
  - (b) control over and maintenance of buildings, services or amenities arising from the subdivision;
  - (c) the regulation of at least one yearly meeting with its members;
  - (d) control over the design guidelines of the buildings and erven arising from the subdivision;

- (e) the ownership by the owners' association of private open spaces, private roads and other services arising out of the subdivision;
  - (f) enforcement of conditions of approval or management plans;
  - (g) procedures to obtain the consent of the members of the owners' association to transfer an erf in the event that the owners' association ceases to function;
  - (h) the implementation and enforcement by the owners' association of the provisions of the constitution.
- (7) 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.
  - (8) 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.
  - (9) 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.
  - (10) The design guidelines contemplated in Subsection (3) (d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.
  - (11) If an owners' association fails to meet any of its obligations contemplated in Subsection (3), the Municipality may take appropriate action to rectify the failure and recover from the members referred to in subsection (7)(a), the amount of any expenditure incurred by it in respect of those actions.
  - (12) The amount of any expenditure so recovered is, for the purposes of Subsection (9), considered to be expenditure incurred by the owners' association.

### 32. Owners' association ceases to function

- (1) If an owners' association ceases to function or carry out its obligations, the Municipality may -
  - a) take steps to instruct the association to hold a meeting and to reconstitute itself.
  - b) In terms of section 16(q) to disestablish the owners association subject to the amendment of the conditions of approval to remove the obligation to establish an owners association, and the amendment of the title conditions pertaining to the owners association, to remove any obligation in respect of an owners association.
  - c) In terms of section 16(2)(r) for appropriate action by the municipality to rectify a failure of the owners association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3) (b) or
  - d) To the High Court to appoint an administrator who must exercise the powers of the owners association to the exclusion of the owner's association.
- (2) The Municipality or the affected person may recover from the members of the owners association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of subsection (1).
- (3) The amount of any expenditure so recovered is, for the purpose of 31(9) (a), considered to be expenditure incurred in connection with the owners association.

### 33. Consolidation of land units

- (1) No person may consolidate land without the approval of the Municipality in terms of Section 16(2), unless the consolidation is exempted under section 26.
- (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 and or subdivision;
  - (b) the conditions of approval contemplated in Section 67; and
  - (c) the approved consolidation and or subdivision plan.

- (3) If a Municipality approves a consolidation, the Municipality must amend the zoning map and, where applicable, the register accordingly.

#### 34. Lapsing of consolidation and extension of validity periods

- (1) If a consolidation of land units is approved but no consequent registration by the Registrar of Deeds takes place within five years of the approval, the consolidation approval lapses.
- (2) An applicant may apply for an extension of the period to comply with Subsection (1).
- (3) An extension contemplated in Subsection (2) may be granted for a period not exceeding five years and if after the expiry of the extended period the requirements of Subsection (1) has not been complied with, the consolidation lapses and Subsection (5) 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 an approval of a consolidation lapses under subsection (1) the Municipality must—
- amend the zoning map and, where applicable, the register accordingly; and
  - notify the Surveyor-General accordingly; and
  - the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

#### 35. Requirements for amendment, suspension or removal of restrictive conditions

- (1) The Municipality may, of its own accord or on application in terms of Section 13(2) 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 -
- submit the original title deed to the Municipality or a certified copy thereof; and
  - 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—
- all organs of state that may have an interest in the title deed restriction;
  - every holder of a bond encumbering the land;
  - a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
  - 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:
- 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;
  - the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
  - the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed;
  - the social benefit of the restrictive condition remaining in place in its existing form;
  - the social benefit of the removal or amendment of the restrictive condition; and
  - 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:
- if no appeal has been lodged, after the expiry of the period contemplated in Section 78(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.

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

- (1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in Section 35(1), submit the following to the Registrar of Deeds:
  - (a) the original title deed;
  - (b) the original letter of approval; and
  - (c) a copy of the notification of the approval.
- (2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the *Provincial Gazette* as contemplated in section 35(1), make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

## CHAPTER V

### APPLICATION PROCEDURES

**37. Procedures for making application**

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.

**38. Pre-application consultation**

- (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.
- (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) The Municipality may keep minutes of the proceedings of a pre-application consultation or on request from an applicant.

**39. Information required**

- (1) An application must be accompanied by 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 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/principles for consideration of the application;
  - (f) a copy of the Surveyor-General's diagram of the subject property or if it does not exist, an extract from relevant general plan;
  - (g) a locality plan and site development plan, when required, or a plan showing the proposal in its cadastral context;
  - (h) in the case of an application for the subdivision of land, the Municipality may request copies of the subdivision plan showing some or all of the following:
    - (i) the location of the proposed land units;
    - (ii) the proposed zonings in respect of the proposed land units;

- (iii) all existing structures on the property and abutting properties;
  - (iv) the public places and the land needed for public purposes;
  - (v) the existing access points;
  - (vi) all servitudes;
  - (vii) contours with at least a one meter interval or such other interval as may be approved by the Municipality;
  - (viii) the street furniture;
  - (ix) the light, electrical and telephone poles;
  - (x) the electrical transformers and mini substations;
  - (xi) the storm water channels and catch pits;
  - (xii) the sewerage lines and connection points;
  - (xiii) any significant natural features; and
  - (xiv) 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 indicating all existing title conditions in current and historic title deeds;
  - (l) if required by the Municipality, a conveyancer's certificate indicating that no restrictive condition in respect of the application is contained in such title deeds.
- (2) The Municipality may add or remove any information requirements for a particular application as recorded in the pre-consultation contemplated in Section 38.
- (3) The Municipality may make guidelines relating to the submission of additional information and procedural requirements.

#### 40. Application fees

- (1) An applicant must pay the application fees determined by the Municipality prior to submitting an application in terms of this By-law.
- (2) Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany the application.
- (3) If an applicant wishes to retract the application and the said application has never been advertised, the advertising fees may be refunded to the applicant on request.

#### 41. Grounds for refusing to accept application

The Municipality may refuse to accept an application if—

- (a) the Municipality has already decided on the application;
- (b) there is no proof of payment of fees;
- (c) the application is not in the form required by the Municipality or does not contain the documents required for the submission of an application as set out in Section 39.

#### 42. Receipt of application and request for further documents

The Municipality must—

- (a) record the receipt of an application in writing or by affixing a stamp on the application on the day of receipt;
- (b) notify the applicant in writing of any outstanding or additional plans, documents, other information or additional fees that it may require within 30 days of receipt of the application or the further period as may be agreed upon, failing which it is regarded that there is no outstanding information or documents; and
- (c) if the application is complete, notify the applicant in writing that the application is complete within 14 days of receipt of the application.

#### 43. Additional information

- (1) The applicant must provide the Municipality with the information or documentation required for the completion of the application within 30 days of the request there for or within the further period agreed to between the applicant and the Municipality.

- (2) The Municipality may refuse to consider the application if the applicant fails to provide the information within the timeframes contemplated in Subsection (1).
- (3) The Municipality must notify the applicant in writing of the refusal to consider the application and must close the application.
- (4) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in Subsection (3) to refuse to consider the application.
- (5) If an applicant wishes to continue with an application that the Municipality refused to consider under Subsection (3), the applicant must make a fresh application and pay the applicable application fees.

#### 44. Confirmation of complete application

- (1) The Municipality must notify the applicant in writing that the application is complete within 21 days of receipt of the additional plans, documents or information required by it or if further information is required as a result of the furnishing of the additional information.
- (2) If further information is required, Section 43 applies to the further submission of information that may be required.

#### 45. Withdrawal of application

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

#### 46. Notice of applications in terms of integrated procedures

- (1) The Municipality may, on prior written request and motivation by an applicant, determine that—
  - (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-law; or
  - (b) notice of an application made in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms other legislation;
- (2) If a Municipality determines that an application may be published as contemplated in Subsection (1) (b) an agreement must be entered into by the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.
- (3) The Municipality must, within 30 days of having notified the applicant that the application is complete, simultaneously—
  - (a) cause public notice of the application to be given in terms of Section 47(1); and
  - (b) forward a copy of the notice together with the relevant application to every municipal department, service provider and organ of state that has an interest in the application,
 unless it has been determined by the Municipality that a procedure in terms of another law, as determined in Subsection (1), is considered to be public notice in terms of this By-law.
- (4) The Municipality may require the applicant to give the required notice of an application in the media.
- (5) Where an applicant has published a notice in the media at the request of a Municipality, the applicant must provide proof that the notice has been published as required.

**47. Notification of application in media**

- (1) The Municipality must cause notice to be given in the media, 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 its Municipal Spatial Development Framework;
  - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in its Municipal Spatial Development Framework;
  - (d) if the Municipality has no approved Municipal Spatial Development Framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;
  - (e) if the Municipality has no approved Municipal Spatial Development Framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
  - (f) the closure of a public place;
  - (g) an application in respect of a restrictive condition;
  - (h) other applications that will materially affect the public interest or the interests of the community if approved.
- (2) Notice of the application in the media must be given by—
  - (a) publishing a notice of the application, in newspapers with a general circulation in the area concerned in the three official languages of the Province of the Western Cape; 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.

**48. Serving of notices**

- (1) Notice of an application contemplated in Section 47(1) and Subsection (2) must be served—
  - (a) in accordance with Section 115 of the Municipal Systems Act;
  - (b) in the three official languages of the Province of the Western Cape
  - (c) on each person whose rights or legitimate expectations will be affected by the approval of the application.
- (2) When the Municipality intends to consider any of the following, it must at least cause a notice to be served as contemplated in Section 46 of its intention:
  - (a) a determination of a zoning;
  - (b) a land use application for subdivision or the amendment or cancellation of a subdivision contemplated in Sections 16(2)(d) and (k), respectively;
  - (c) a land use application for consolidation contemplated in Section 16(2)(e); or
  - (d) the imposition, amendment or waiver of a condition contemplated in Section 16(2)(h).
- (3) The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of this By-law.
- (4) The Municipality may require notice of its intention to consider all other applications not listed in Subsection (2) to be given in terms of Section 50.
- (5) The Municipality may require the applicant to attend to the serving of a notice of an application contemplated in Subsection (1).
- (6) 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.
- (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 or his representative is the date of delivery to that person;

- (c) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 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.

#### 49. Content of notice

When notice of an application must be given in terms of Section 47 or served in terms of Section 48, the notice must contain the following information:

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

#### 50. Additional methods of public notice

- (1) If the Municipality considers notice in accordance with Sections 47 or 48 to be ineffective or the Municipality decides to give notice of any application in terms of this By-law, the Municipality may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:
  - (a) to display a notice contemplated in Section 49 of a size of at least 60 cm by 42 cm on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
    - (i) the notice must be displayed for a minimum of 30 days during the period that the public may comment on the application;
    - (ii) the applicant must, within 30 days from the last day of display of the notice, submit to the Municipality—
      - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
      - (bb) at least 2 photos of the notice, 1 from nearby and 1 from across the street.
  - (b) to convene a meeting for the purpose of informing the affected members of the public of the application;
  - (c) to broadcast information regarding the application on a local radio station in a specified language;
  - (d) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
  - (e) to publish the application on the Municipality's website for the duration of the period that the public may comment on the application; or
  - (f) to obtain letters of consent or objection to the application.
- (2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

#### 51. Requirements for petitions

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

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

## 52. Requirements for objections, comments or representations

- (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 undesirable effect which the application will have on the area;
  - (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.
- (5) The Municipality may refuse to accept an objection, comment or representation received after the closing date.

## 53. Amendments prior to approval

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

## 54. Further public notice

The Municipality may, at any stage during the processing of the application—

- (a) require notice of an application to be republished or to be served again; and
  - (b) an application to be resent to municipal departments for comment,
- if new information comes to its attention which is material to the consideration of the application.

## 55. Cost of notice

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

## 56. Applicant's right to reply

- (1) Copies of all objections, comments or representations lodged with a Municipality must be provided to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of its rights in terms of this section.
- (2) The applicant must, within a period of 30 days from the date of the provision of the objections, comments or representations, submit written reply there to with the Municipality.

- (3) The applicant must before the expiry of the 30 day period referred to in Subsection (2), apply to 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 timeframe, the applicant is considered to have no comment.
- (5) If as a result of the objections, comments or representations lodged with a Municipality, additional information regarding the application are required by the Municipality, the information must be supplied within the further period as may be agreed upon between the applicant and the Municipality.
- (6) If the applicant does not provide the information within the timeframes contemplated in Subsection (5), Section 43(2) to (5) with the necessary changes, applies.

**57. Written assessment of application**

- (1) An employee authorised by the Municipality must in writing assess an application in accordance with Section 66 and recommend to the decision-maker whether the application must be approved or refused.
- (2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

**58. Decision-making period**

- (1) When the power to take a decision is delegated to an authorised employee and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days of the closing date for the submission of comments, objections or representations.
- (2) When the power to take a decision is not delegated to an authorised employee and no integrated process in terms of another law is being followed, the Municipal Planning Tribunal must decide on the application within 90 days of the closing date for the submission of comments, objections or representations.
- (3) The authorized employee or Tribunal, as the case may be, may extend the period contemplated in Subsection (1) or (2) in exceptional circumstances including the following:
  - (a) If an interested person has submitted a petition for intervener status;
  - (b) In the case of the Tribunal, if an oral hearing is to be held.

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

- (1) An applicant may lodge an appeal to the Executive 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 43(2), an applicant may not appeal to the Executive 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.
- (3) An appeal must be referred for comment to all interested and affected parties as contemplated in Section 78 and 79.

**60. Powers to conduct routine inspections**

- (1) An employee authorised by the Municipality may, in accordance with the requirements of this section, enter land or a building for the purpose of assessing an application in terms of this By-law and to prepare a report contemplated in Section 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.

#### **61. Determination of application**

The Municipality may in respect of any application contemplated in Section 16(2)—

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

#### **62. Notification of decision**

The Municipality must, within 21 days of its decision, in writing notify the applicant and any person who lodged an objection against the application of the decision and draw the attention of the applicant and that person to the fact that he or she may request reasons for the decision and to any right of review or appeal.

#### **63. Duties of agent of applicant**

- (1) The agent must ensure that all information furnished to the Municipality is accurate.
- (2) The agent must ensure that no misrepresentations are made.
- (3) The provision of inaccurate, false or misleading information is an offence as contemplated in section 84 (1) (e).

#### **64. Errors and omissions**

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.

#### **65. Exemptions to facilitate expedited procedures**

- (1) The Municipality may in writing and subject to Section 60, 61 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

#### 66. General criteria for consideration of applications

- (1) When the 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 and any guidelines issued by the Provincial Minister regarding proposed land uses;
  - (d) the comments in response to the notice of the application and the comments received from organs of state and internal departments;
  - (e) the response by the applicant to the comments referred to in paragraph (d);
  - (f) investigations carried out in terms of other laws which are relevant to the consideration of the application;
  - (g) a registered planner's written assessment in respect of any application in terms of the By-Law;
  - (h) the integrated development plan and Municipal Spatial Development Framework;
  - (i) the applicable Local Spatial Development Frameworks adopted by the Municipality;
  - (j) the applicable structure plans;
  - (k) the applicable policies of the Municipality that guide decision-making;
  - (l) the Provincial Spatial Development Framework;
  - (m) where applicable, the regional spatial development framework;
  - (n) the policies, principles, planning and development norms and criteria set by national and provincial government;
  - (o) the matters referred to in Section 42 of the Spatial Planning and Land Use Management Act;
  - (p) the principles referred to in Chapter VI of the Land Use Planning Act; and
  - (q) the relevant provisions of the Zoning Scheme.
- (2) A Municipality must approve a site development plan submitted to the Municipality for approval in terms of applicable development parameters or conditions of approval if the site development plan—
- (a) is consistent with the development rules of the zoning;
  - (b) is consistent with the development rules of the overlay zone;
  - (c) complies with the conditions of approval; and
  - (d) complies with this By-law.
- (3) When a site development plan is required in terms of development parameters or conditions of approval—
- (a) the Municipality may not approve a building plan if the site development plan has not been approved; and
  - (b) the Municipality may not approve a building plan that is inconsistent with the approved site development plan.

#### 67. Conditions of approval

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

- (e) settlement restructuring;
  - (f) agricultural or heritage resource conservation;
  - (g) biodiversity conservation and management;
  - (h) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
  - (i) energy efficiency;
  - (j) requirements aimed at addressing climate change;
  - (k) the establishment of an owners' association in respect of the approval of a subdivision;
  - (l) the provision of land needed by other organs of state;
  - (m) the endorsement in terms of Section 31 of the Deeds Registries Act in respect of public places where the ownership thereof vests in the Municipality or the registration of public places in the name of the Municipality, and the transfer of ownership to the Municipality of land needed for other public purposes;
  - (n) the implementation of a subdivision in phases;
  - (o) requirements of other organs of state.
  - (p) the submission of a construction management plan to manage the impact of a new building on the surrounding properties or on the environment;
  - (q) agreements to be entered into in respect of certain conditions;
  - (r) the phasing of a development, including lapsing clauses relating to such phasing;
  - (s) the delimitation of development parameters or land uses that are set for a particular zoning;
  - (t) the setting of validity periods, if the Municipality determined a shorter validity period as contemplated in this By-law;
  - (u) the setting of dates by which particular conditions must be met;
  - (v) requirements relating to engineering services as contemplated in Section 80;
  - (w) requirements for an occasional use that must specifically include –
    - (i) parking and the number of ablution facilities required;
    - (ii) maximum duration or occurrence of the occasional use; and
    - (iii) parameters relating to a consent use in terms of the zoning scheme;
- (3) If a Municipality imposes a condition contemplated in Subsection (2)(a), an engineering services agreement must be concluded between the Municipality and the owner of the land concerned before the construction of infrastructure commences on the land.
- (4) A condition contemplated in Subsection (2)(b) may require only a proportional contribution to municipal public expenditure according to the normal need there for arising from the approval, as determined by the Municipality in accordance with norms and standards, as may be prescribed.
- (5) Municipal public expenditure contemplated in Subsection (3) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—
- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
  - (b) conservation purposes;
  - (c) energy conservation;
  - (d) climate change; or
  - (e) engineering services.
- (6) Except for land needed for public places or internal engineering services, any additional land required by the Municipality or other organs of state arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.
- (7) An owners' association or home owners' association that came into being by virtue of a condition imposed under the Ordinance and that is in existence immediately before the commencement of this By-law is regarded as an owners' association that came into being by virtue of a condition imposed by a Municipality in accordance with this By-law.
- (8) A Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.
- (9) Conditions which require a standard to be met must specifically refer to an approved or published standard.

- (10) No conditions may be imposed which affect a third party or which are reliant on a third party for fulfilment.
- (11) If the Municipality approves a land use application subject to conditions, it must specify which conditions must be complied with before the sale, development or transfer of the land.
- (12) The Municipality may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.

## CHAPTER VII

### EXTENSION OF THE VALIDITY PERIOD OF APPROVALS

#### 68. Applications for extension of validity periods

- (1) The Municipality may approve an application for the extension of a validity period imposed in terms of this By-law, on a date before or after the expiry of the validity period of an approval, 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; and
  - b) if the legislative or policy requirements applicable to the approval which prevailed at the time of the original approval, have materially changed.
  - c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.
- (3) The extended validity period takes effect on and is calculated from the expiry date of the validity period applicable to the original approval and or appeal decision.

## CHAPTER VIII

### MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

#### 69. Municipal planning decision-making structures

Applications are decided by—

- (a) an authorised employee who has been authorised by the Municipality to consider and determine the applications contemplated in Section 70 (1).
- (b) the Tribunal, where the powers and duties to consider and determine an application has not been delegated to an authorised employee contemplated in Section 70 (2).
- (c) the Appeal Authority where an appeal has been lodged against a decision of the authorised employee or the Municipal Planning Tribunal.

#### 70. Consideration of applications

- (1) The Municipality may categorise applications for consideration and determination by an authorised employee and must delegate the powers and duties to decide on those applications to an authorised employee.
- (2) The Tribunal considers and determines all applications other than those in respect of which the powers and duties to consider and determine them have been delegated and assigned to an authorised employee under Subsection (1).

#### 71. Establishment of Municipal Planning Tribunal

- (1) The Municipality must—
  - (a) establish a Municipal Planning Tribunal for its municipal area;
  - (b) by agreement with one or more municipalities establish a joint Municipal Planning Tribunal; or