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CONTENTS

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Page

LOCAL AUTHORITY

Knysna Municipality: Regulation of Building Aesthetics and Heritage By-law	2
Knysna Municipality: Regulation of Outdoor Advertising By-law.....	17
Knysna Municipality: Spatial Planning and Land Use Management By-law	48

**Knysna Municipality
Regulation of Building Aesthetics and Heritage By-Law**

In terms of section 156 of the Constitution of the Republic of South Africa, 1996 the Knysna Municipality, enacts as follows:

TABLE OF CONTENTS

CHAPTER 1:	GENERAL
CHAPTER 2:	INSTITUTIONAL FRAMEWORK
CHAPTER 3:	PROCEDURES FOR APPLICATION
CHAPTER 4:	APPEALS PROCEDURE
CHAPTER 5:	AESTHETICS MANAGEMENT
CHAPTER 6:	GUIDELINES & PARAMETERS FOR BUILDINGS WITHIN THE URBAN CONSERVATION AREA & CRITICAL BIODIVERSITY AREAS
CHAPTER 7:	GUIDELINES AND PARAMETERS FOR FENCES & FENCING
CHAPTER 8:	HERITAGE MANAGEMENT
CHAPTER 9:	OFFENCES AND PENALTIES
CHAPTER 10:	ADMINISTRATIVE MATTERS

CHAPTER 1: GENERAL

1 Definitions

In this by-law, unless the context otherwise indicates:

“Aesthetics and Heritage Committee” means the Aesthetic and Heritage Committee established in terms of Chapter 5 of this by-law;

“aesthetics” means the architectural, historical, and artistic value or significance of a building or site;

“applicant” means a person referred to in Section 9 who makes an application to the municipality as contemplated in that section;

“application” means an application to the municipality;

“approval” means approval by the municipality and “approve” has a corresponding meaning;

“Architectural Professions Act” means Act No 44 of 2000 promulgated in terms of notice 1819 dated 1 December 2000;

"authorised official or employee" means an official of the *municipality* authorised to implement the provisions of this by-law and **"designated official"** has the same meaning;

"building" means the same as contemplated in the National Building Regulations and Building Standards Act, 1997 (Act No 103 of 1997);

"Building Act" means the National Building Regulations and Building Standards Act (Act 103 of 1977) as amended and any succeeding legislation and includes all regulations promulgated in terms of such legislation;

"building control officer" means any person appointed or deemed to be appointed by the municipality in terms of section 5 of the National Building Regulations and Building Standards Act, 1977 (Act No 103 of 1977);

"built environment" means the field within which the registered persons practice;

"common boundary façade" means any façade of a building which is built abutting a rear or side boundary of an erf and which façade is blank, that is, having no architectural features, which includes windows;

"conservation" in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;

"Council" means the Municipal Council of the Knysna Municipality;

"external aesthetic alteration" means the physical change of the outside appearance of a building or structure by means of paint, design and architectural elements, windows, and other similar aspects;

"fence" means any fence, together with any gate or any contrivance forming part or serving the purpose of such a gate, erected as a boundary between any erven, lots or stands within the municipal area, and includes a fence which is not erected on a boundary, such as a garden fence or a freestanding wall on an erf, lot or stand;

"heritage building" means any building or structure older than 60 years or any building or structure formally protected in any other way in terms of the National Heritage Resource Act (No 25 of 1999);

"heritage impact assessment" (or HIA) means a visual and contextual assessment of the impact that any proposed development may have on the cultural heritage, whether built or recognised at the locality, and as contemplated in terms of the Heritage Resources Act, 1999 (Act No 25 of 1999);

"heritage resource" means any place, building, or object of cultural significance;

“improvement” in relation to heritage resources, includes the repair, restoration and rehabilitation of a place protected in terms of the National Heritage Resources Act, 1999 (Act No 25 of 1999);

“Knysna Urban Conservation Zone” means the zone designated and established in terms of the Knysna Municipality Zoning Scheme (1992) and in terms of this by-law and as depicted on a map as amended from time to time;

“law” means any law, proclamation, ordinance, municipal by-law, act of parliament or provincial legislature, or any other enactment having the force of law;

“municipality” means the Municipality of Knysna (WC048) established by Establishment Notice in Provincial Gazette P.N. 204/2000 issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998), and where the context so requires, includes:

- a) the Council;
- b) another political structure or a political office bearer of the municipality, authorised or delegated to perform a function or exercise a power in terms of this by-law;
- c) the Aesthetic Committee authorised or delegated to perform a function or exercise a power in terms of this by-law;
- d) the Municipal Manager; and
- e) an authorised employee.

“Municipal Manager” means a person appointed as such by the Municipality in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“N2” means the proclaimed national road within the Knysna Municipal Area;

“National Building Regulations” means the regulations promulgated from time to time under the National Building Regulations and Standards Act, 1977 (Act 103 of 1977), as amended

“National Heritage Resources Act” means Act No 25 of 1999 and its amendments;

“organ of state” means:

- a) any department of state or administration in the national, provincial or local sphere of government;
- b) any other functionary or institution:
 - i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - ii) exercising a public power or performing a public function in terms of any other legislation.

“person” means a natural or legal person;

“urban conservation area” means an area of the built environment demarcated as such on the zoning map within which the Urban Conservation Area Provisions as set out in Chapter 6 of this by-law shall apply;

Purpose of by-law:

2 The purpose of this by-law is to regulate and manage the urban aesthetic in the jurisdiction of Knysna Municipality in an effort to conserve the heritage of the built environment and the maintenance of the aesthetic quality of Knysna.

Application of the by-law:

- 3** The provisions of this by-law relates to aesthetics and the heritage conservation of the built environment.
- 4** The by-law shall be applicable throughout the area of jurisdiction of the Knysna Municipality, irrespective of the ownership or control of the land, and shall apply to land owned by the National Government or under the management of any National Government Department, Provincial Government Department, State Owned Enterprise, or Local Authority, as well as all other land.
- 5** Nothing contained in this by-law shall be construed as being in derogation of any law enacted by any national or provincial authority, in particular, the provisions of the National Heritage Resources Act (Act 25 of 1999) or any regulations made in terms thereof in its application to the municipal area.

CHAPTER 2: INSTITUTIONAL FRAMEWORK

Municipal aesthetics and heritage decision-making designations

- 6** Applications are considered by:
- a) the Building Control Officer;
 - b) the Aesthetics and Heritage Committee;
 - c) the Building Inspector responsible for Aesthetics and/or Heritage; or
 - d) an Appeal Authority where an appeal has been lodged against a decision of Building Inspector or the Building Control Officer.
- 7** The Director responsible for the Building Control function shall be the appeal authority.
- 8** The appeal authority has the discretion to obtain advice from technical- and/or other experts.

CHAPTER 3: PROCEDURES FOR APPLICATION

- 9** Any registered member of the architectural profession who, in terms of the Architectural Professions Act is entitled to submit an application in terms of the Building Act may make a submission for consideration by the Aesthetics and Heritage Committee in terms of this by-law.

Applications requiring consideration

- 10** The owner of land or his or her agent must, for consideration by the Aesthetics and Heritage Committee, submit to the municipality in terms of this bylaw, the following in relation to the built heritage or urban aesthetics:
- a) the draft building plans for the development or external aesthetic alteration of land or buildings located in the Knysna Urban Conservation Zone;
 - b) the draft building plans for the development or external aesthetic alteration of land or buildings located in in any other area of high sensitivity as determined by Knysna Municipality;
 - c) the draft building plans for the development of land or buildings that, in the opinion of the Building Control Officer, and as contemplated in terms of its functions delegated in terms of sub-section 7(1) (b) of the Act, upon the consideration of an application in terms of section 4 of that Act, has significant aesthetic value and implications;
 - d) the draft building plans for the development or external aesthetic alteration of land or buildings or the demolition of structures or part thereof in terms of Chapter 8;
 - e) the draft building plans for the development or external aesthetic alteration of land or buildings located on a scenic ridge line or within a core, buffer or agricultural area, of a critical biodiversity area where it is will be visible from the N2 National road;
 - f) the draft building plans for the development or external aesthetic alteration of land or buildings as determined by any other decision and in terms of any other law or by-law on behalf of the municipality;
 - g) the draft building plans for the development or external aesthetic alteration of land or buildings for any other process as determined by Council.
 - h) an application for a permission envisaged in chapter 7.

Application Fees

- 11** The municipality may require the payment of an application fee based on a tariff, as determined by Council.
- 12** Where an application fee has been determined for any application pertaining to this by-law, an applicant must pay the application fees determined by the municipality before submitting an application in terms of this by-law.

Information required

- 13** A submission for consideration by the Aesthetics and Heritage Committee must include the following:
- a) an application on the form prescribed by the municipality, completed and signed by the applicant;
 - b) if the applicant is an agent, a power of attorney authorizing 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 owners' association, proof that the person is authorized to act on behalf of the company, closed

corporation, trust, body corporate or owners' association and a resolution authorizing the development of the property;

- d) proof of registered ownership;
- e) the draft building plan;
- f) where applicable, a locality plan and site development plan, if required, or a plan showing the proposed land development in its cadastral context;
- g) where applicable, photographic images of the site or buildings or streetscape;
- h) any other documents or information that the municipality may require; and
- i) proof of payment of application fees.

- 14** The municipality may issue further guidelines regarding the submission of information, documents or procedural requirements.
- 15** An applicant must pay the application fees determined by Council before submitting an application in terms of this by-law.

Withdrawal of application and change in agency

- 16** An applicant may, at any time before the Aesthetics and Heritage Committee makes its recommendation, withdraw the application by giving written notice of the withdrawal to the municipality.
- 17** The owner of land must in writing inform the municipality if he or she has withdrawn the power of attorney given to his or her former agent and provide a written confirmation of the following:
 - a) the appointment of a new agent, which must be accompanied by a power of attorney; or
 - b) the withdrawal of the application.

CHAPTER 4: APPEALS PROCEDURE

Procedures for appeals

- 18** The applicant may, within 14 days of notification of a decision made in terms of the by-law, appeal in writing to the appeal authority against a decision made in terms of this by-law.
- 19** An appeal must set out the following:
 - a) the grounds for the appeal;
 - b) whether the appeal is lodged against the whole decision or a part of the decision or recommendation;
 - c) if the appeal is lodged against a part of the decision, a description of the part;
 - d) the factual or legal findings that the appellant relies on; and
 - e) the relief sought by the appellant.
- 20** An application for an appeal will only be validly submitted upon the submission of the proof of payment of appeal fees as may be determined by the approved tariff structure of Council.

Timeframes for appeals

- 21** The Building Control Officer or where the appeal is against the decision of the Building Control Officer, the senior building Inspector must draft a report assessing an appeal and must submit it to the Appeal Authority within 14 days of receipt of the appeal.
- 22** The Appeal Authority must within 21 days of receiving the report contemplated in section 21, decide an appeal.

Consideration by the appeal authority

- 23** An appeal may be considered by the Appeal Authority by means of:

- a) the consideration of the appeal application and appeal report; or
- b) oral presentations on the application and/or appeal report.

- 24** The Appeal Authority may:

- a) uphold the decision or recommendation of the decision maker or recommending body;
- b) amend the decision or recommendation; or
- c) refer the decision back to the decision maker or recommending body with comments on the findings on the ground of appeal which warrants the decision maker to reconsider the decision or recommendation.

Withdrawal of an appeal

- 25** An appellant may, at any time before the Appeal Authority makes a decision, withdraw the appeal, by notifying the designated official thereof in writing.

CHAPTER 5: AESTHETICS MANAGEMENT**Establishment of aesthetics and heritage committee**

- 26** Within six months of the enactment of this by-law, Council will establish a committee to be known as the Knysna Municipality Aesthetics and Heritage Committee.
- 27** The committee will consist of at least the following members:

- a) officials in the employ of Knysna Municipality; and
- b) no fewer than three and no more than five voluntary members who are not in the employ of the municipality.

- 28** The committee will consist of at least the following members in the employ of the municipality:

- a) a municipal town planner;
- b) the official responsible for building aesthetics and heritage;
- c) the head of the division responsible for roads or a person designated by him or her; and
- d) the head of the division responsible for building control or a person designated by him or her;

- 29** The voluntary members of the committee must comprise of the following:
- a) at least one member of the Architectural or Built Environment Profession and registered as an architectural professional;
 - b) at least one member with knowledge or experience in matters pertaining to heritage or the legislation relating thereto;
 - c) at least one member of the with knowledge and experience of business in the Knysna municipal area;
 - d) Any other persons with knowledge or experience in matters relating to the built environment and heritage.
- 30** The voluntary members of the committee will be appointed by Council for a period not exceeding five years, provided that a member may, at the discretion of Council, serve more than one term of office.
- 31** The voluntary members shall be nominated by way of a call for nominations published in a local newspaper.
- 32** The Municipal Manager shall make a recommendation to Council for the appointment of members with due regard to the criteria in sections 28 and 29.
- 33** The Chairperson shall be selected from among the members of the committee for a period of one year, which period may be extended annually for the remainder of the term of operation of the committee.
- 34** The Municipal Manager must appoint or designate an employee as the Administrator and other staff to assist the Aesthetic Committee with the following:
- a) arrange venue for committee meetings;
 - b) maintain a diary of meetings of the committee;
 - c) arrange the attendance of members of the committee at meetings;
 - d) perform the administrative functions in connection with the proceedings of the committee;
 - e) liaise with the relevant committee members and the parties concerned regarding any application filed with, or other proceedings of, the committee;
 - f) allocate a meeting date for, and application number to, an application; and
 - g) keep records and minutes of all meetings and decisions or recommendations.
- 35** The committee will meet at least once a month, if there are applications to consider.
- 36** The functional terms of reference of the committee are as follows:
- a) The committee will consider applications and make recommendations on the development or external aesthetic alteration of land or buildings located in the Knysna Urban Conservation Zone and heritage buildings.
 - b) The committee will consider applications and make recommendations on the development or external aesthetic alteration of land or buildings located on a scenic ridge line or within a core, buffer or agricultural area, or a critical biodiversity area where it will be visible from the N2 National road to ensure that they are to be substantially compliant, to the satisfaction of the Aesthetics and Heritage Committee, with the guidelines of this chapter.

- c) The committee will review plans submitted to it by the Building Control Officer for recommendation in respect of section 7(1)(b)(ii) (aa) of the Building Act, or for consideration in terms any urban or other conservation area guideline applicable to the municipality.
 - d) The committee may make recommendations regarding the development and/or review of urban or other conservation area guideline applicable to the municipality.
- 37** A majority of the members of the committee will constitute a quorum, provided that at least a majority of the voluntary members appointed to the committee is also present and including at least one member of the Architectural or Built Environment Profession and registered as an architectural professional.
- 38** If it is necessary to vote on a matter all members of the committee present at the meeting shall be entitled to vote and all recommendations shall be taken by simple majority. If there is an equal number of votes for and against a matter, the chairperson of the committee shall have a casting vote.
- 39** Minutes of all meetings must be produced by the administration and circulated to all members of the committee within two weeks of the date of each meeting.

Participation in Meetings

- 40** An applicant may make an oral representation at the meeting where the consideration of their submission has been tabled, upon submission of a request to the authorized official, within 5 business days of the date of the meeting.

CHAPTER 6: GUIDELINES AND PARAMETERS FOR BUILDINGS WITHIN THE URBAN CONSERVATION AREA AND CRITICAL BIODIVERSITY AREAS

- 41** An urban conservation zone for the protection and management of the urban character and heritage buildings of Knysna shall be depicted in the zoning scheme of Knysna Municipality.
- 42** Any registered member of the architectural profession who, in terms of the Architectural Professions Act is entitled to submit an application in terms of the Building Act **must** submit concept plans, including elevations, details of materials to be used etc. for consideration by the Aesthetics and Heritage Committee submission for approval in terms of Section 7 of the Building Act, in respect of any application that s/he is entitled to submit in respect of:
- a) a building within the Urban Conservation Area or heritage building;
 - b) on a scenic ridge line or within a core, buffer or agricultural area, of a critical biodiversity area where it will be visible from the N2 National road.
- 43** In the event that such plans have not been submitted for comment to the Aesthetics and Heritage Committee before submission for approval in terms of Section 7 of the Building Act, as required in section 42, all plans relating to any property in the Urban Conservation Area on a scenic ridge line or within a core, buffer or agricultural area, of a critical biodiversity area where it will be visible from the N2 National road must be referred to the Aesthetics and Heritage Committee in terms of

Chapter 3 of this by-law and any delegation to the Building Control Officer or any other official of the Municipality delegated to approve or refuse such plans and shall consider the recommendation of the Aesthetics and Heritage Committee.

- 44** All buildings within the Urban Conservation Area are to be substantially compliant, to the satisfaction of the Aesthetics and Heritage Committee with the guidelines of this chapter.
- 45** The development or external aesthetic alteration of land or buildings on a scenic ridge line or within a core, buffer or agricultural area, of a critical biodiversity area where it is will be visible from the N2 National road are to be substantially compliant, to the satisfaction of the Aesthetics and Heritage Committee with the guidelines of this chapter.
- 46** Within the Urban Conservation Area, the following restrictions shall apply:
- a) roofs must be one of the following colours:
 - i) black
 - ii) dark charcoal
 - iii) dark grey
 - iv) rusty red
 - v) shades of natural dark greens
 - b) walls, boundary walls and other structures may only be painted in the following colours:
 - i) white
 - ii) shades of off-white and bone white
 - iii) light pastel earth tones
 - iv) shades of grey
 - c) A list of colours accepted as falling within the definition of “light pastel earth tones” shall at all times be available from the Building Control Office.
 - d) Up to, but not exceeding 10% of the façade of a building may be painted in an accent colour chosen from the same colour range as the colour of the walls.
 - e) For any building in excess of 500m² of floor area a colour scheme must be submitted for approval by the Aesthetics and Heritage Committee. The colour of the building must at all times match the approved colour scheme on record at the municipality.
 - f) Solar panels, aerials, satellite dishes, external air-conditioning units etc. must be discretely incorporated in the roof or building design, and must not mar the views of neighbours. Except with the specific consent of the Aesthetics and Heritage Committee, only one aerial and one satellite dish per building will be permitted.
 - g) Razor wire may not be installed on, or against any roof or in any position in which it will be visible within the central business area bordered by Main Road and Waterfront Drive.
 - h) No canvas or shade cloth structures will be permitted, without a recommendation from the aesthetics committee, subject to an application brought in terms of Chapter 3 of this by-law.
 - i) Face brick, block walls, vibracrete walls and un-plastered walls will not be allowed except as features where they cover less than 20% of a façade and have been specifically approved by the Aesthetics and Heritage Committee.
 - j) Solid roller, sliding, shutter barriers, or any other window covering on shop fronts will not be permitted.

- k) In respect of boundary walls the following restrictions will apply:
- i) face brick, block walls, vibracrete walls and un-plastered walls will not be allowed;
 - ii) razor wire or electric wire fencing will not be considered;
 - iii) the height of solid plastered brick walls or stone walls along any boundary may not be more than 1,2m above finished ground level. Above this height only palisade fencing and picket fencing between pillars of a traditional design will be considered.

47 Within the, discretion of the Aesthetics and Heritage Committee, on a scenic ridge line or within a core, buffer or agricultural area, of a critical biodiversity area where it is will be visible from the N2 National road the following restrictions shall apply:

- a) For any building a colour scheme must be submitted for recommendation by the Aesthetics and Heritage Committee. The colour of the building must at all times match the approved colour scheme on record at the municipality.
- b) The following paint colours are permitted for roofs:
 - i) black
 - ii) dark charcoal
 - iii) dark grey
 - iv) rusty red
 - v) shades of natural dark greens
- c) The following paint colours are permitted for walls, boundary walls and other structures:
 - i) white
 - ii) shades of off-white and bone white
 - iii) light pastel earth tones
 - iv) shades of grey
- d) A list of colours accepted as falling within the definition of “light pastel earth tones” shall at all times be available from the Building Control Office.

48 Future revisions of design manuals for on a scenic ridge line or within a core, buffer or agricultural area, of a critical biodiversity area where it is will be visible from the N2 National road, must be submitted to the Aesthetics and Heritage Committee for a recommendation in line with the provisions of this chapter.

49 Existing approved design manuals for developments on a scenic ridge line or within a core, buffer or agricultural area, of a critical biodiversity area where it is will be visible from the N2 National road, will be limited to the existing approved development footprint, in as far as it is in conflict with the provisions of this chapter.

CHAPTER 7: GUIDELINES AND PARAMETERS FOR FENCES AND FENCING

- 50** No person may, without the prior written consent of the municipality in terms of this section and subject to any other approval required in terms of the Building Act and/or the Land Use Planning By-law:
- a) on a boundary of premises build, alter or make an addition to an existing fence to a height from ground level exceeding the height prescribed in the zoning scheme bylaw;
 - b) erect or may have on a boundary, an electrified fence, electrified railing or other electrified barrier, unless it:
 - i) is erected on top of a wall which may not be less than 1,8 metres in height from ground level and built of brick, cement, concrete or similar material; and
 - ii) it complies with the Electrical Machinery Regulations, as published in Government Notice R1593, dated 12 August, 1988; and
 - iii) is within a total height of 2,1 meters in height from ground level.
 - c) Erect on a boundary of premises, a barbed-wire fence, railing, paling, wall or other barrier with spikes or other sharp or pointed protrusions unless it – is erected on top of a fencing structure which is less than 1,8 metres high.
 - i) is erected on top of a fencing structure which may not be less than 1,8 metres in height from ground level; and
 - ii) is within a total height of 2,1 meters in height from ground level.
 - d) A person who wishes to obtain the consent of the municipality for a fence exceeding the parameters of subsections (1) to (3) must submit an application as provided for in terms of section 13 of this by-law to the municipality, and the municipality may grant or refuse consent.
 - e) A person who has obtained consent for any of the activities described in sub-sections (a) to (c), must ensure that the fence is maintained in a good condition;
 - f) No person may:
 - i) without the prior written consent of the municipality demolish, a fence for which approval has been granted;
 - ii) erect a fence covered with sheet iron, corrugated galvanized iron or any other sheeting along or within 4,5 m of any street;
 - iii) allow a fence to fall into disrepair.
 - g) The municipality may, whenever it appears that, in the interests of safety:
 - i) a fence needs to be erected or repaired, instruct the owner or occupier on whose premises such fence needs to be erected or repaired, to undertake such steps as stipulated in the instruction; or
 - ii) the height of a wall, hedge or fence at a street corner needs to be reduced to improve traffic sight lines, by order in writing instruct the owner or occupier property to reduce the height of such wall, hedge or fence to a height specified in such order.

CHAPTER 8: HERITAGE MANAGEMENT

Compilation of an inventory of heritage resources

- 51** In accordance with section 30(5) of the National Heritage Resources Act (Act 25 of 1999) Council must, within six months of the promulgation of this by-law, adopt an inventory of heritage resources which fall within its area of jurisdiction and submit the inventory to Heritage Western Cape.
- 52** In addition to any permit required from the Provincial Heritage Authority, in terms of section 34 of the National Heritage Resources Act (Act 25 of 1999), the owner of a property must submit the plans for any alteration or addition or the application for a demolition of any structure or part thereof to the Aesthetics and Heritage Committee for comment where:
- a) a property is listed in the municipal inventory of heritage resources;
 - b) the building or structure or part thereof is older than 60 years.
- 53** A submission in respect of the alteration or demolition pertaining to any structure in terms of this chapter, must, in addition to the information required in terms of section 13, also include:
- a) an assessment of the impact of the proposed alteration or demolition pertaining to such heritage resource;
 - b) if the heritage resource will be adversely affected by the proposed alteration or demolition, the consideration of alternatives;
 - c) proposals for the mitigation of any adverse impact of the alteration or demolition.

CHAPTER 9: OFFENCES AND PENALTIES

Offences

- 54** Any person who contravenes the provisions of this by-law shall be guilty of an offence and liable on conviction to the penalty described in section 57; and:
- a) Whether or not a prosecution has been instituted, the municipality may, by serving a written notice upon a person causing or permitting a contravention to take place or upon the owner of the site upon which such contravention takes place or upon both such person and such owner, direct such person or owner, within a time specified in such notice, to desist from the contravening action or to remove, repair or alter the contravening structure or sign or to alter the manner or place or circumstances in which a contravening sign is displayed, or to comply with any other requirements deemed necessary by the municipality, so that contravention may cease.
 - b) If a person or owner fails to comply with any requirement as contemplated in sub-section (a) the municipality may approach a court to obtain an order requiring the property owner to carry out the directive issued in terms of sub-section (a) and for such other remedies as the municipality may deem necessary and appropriate. The municipality may recover the cost of any such legal action from the owner of the property.

- c) When the municipality has instituted criminal prosecution or any action under sub-section (a) or sub-section (b) in respect of any contravention or any alleged contravention no application, except one that is intended specifically to address the contravention or alleged contravention that is the subject of the action instituted, shall be submitted to or considered by the municipality in respect of the property or properties on which the contravention or alleged contravention have taken place or are alleged to have taken place until such time as the outcome of the action has been finalised either by compliance with the directive of the municipality or by compliance with the directive of a court or by the withdrawal of the action by the municipality.

Magistrate's Court jurisdiction

- 55** A Magistrate shall have jurisdiction, on the application of the municipality, to make an order for the enforcement of any of the provisions of this by-law or of any approval, refusal or condition granted or applicable in terms hereof.
- 56** A Magistrate shall have jurisdiction, on the application of the municipality, to determine fines that may be issued by any peace officer on behalf of Knysna Municipality.

Penalties

- 57** Any person who contravenes any provision of this by-law or who fails to comply with a lawful directive issued by an authorised official of the municipality shall be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and such imprisonment, and in the case of a continued offence, to a further fine per day for every day, from the date on which the directive had been given, that the offence is continued.

CHAPTER 10: ADMINISTRATIVE MATTERS

Transitional Arrangements

- 58** Any approval granted in terms of the Bylaw Relating to Outdoor Advertising, Heritage and Building Aesthetics in the municipal Area and/or an approval granted in terms of the Knysna Municipality: Fences and Fencing By-law, or an approval granted in terms of any previous by-law relating to aesthetics, heritage or fencing will be deemed to be an approval in terms of this by-law.

Maintenance of Records

- 59** It is incumbent upon every property owner to ensure that s/he has in safe keeping a record of any approval that has been granted under this bylaw or any previous bylaw in terms of which a permission has been granted pertaining to building aesthetics or the built heritage.

Repeal of by-laws

- 60** The following bylaws are hereby repealed:

- a) Knysna Municipality: Bylaw Relating to Outdoor Advertising, Heritage and Building Aesthetics in the Municipal Area;
- b) Knysna Municipality: Fences and Fencing By-laws.

Short title and commencement

- 61** This by-law shall be known as the Knysna Municipality By-law Relating to Building Aesthetics and Heritage and shall come into operation on the date of promulgation thereof in the Western Cape Provincial Gazette.

**Knysna Municipality
Regulation of Outdoor Advertising By-Law**

In terms of section 156 of the Constitution of the Republic of South Africa, 1996 the Knysna Municipality, enacts as follows:

TABLE OF CONTENTS

CHAPTER 1:	GENERAL
CHAPTER 2:	INSTITUTIONAL FRAMEWORK
CHAPTER 3:	APPLICATION PROCEDURES
CHAPTER 4:	APPEAL PROCEDURE
CHAPTER 5:	GENERAL GUIDELINES AND PARAMETERS
CHAPTER 6:	TECHNICAL REQUIREMENTS RELATING TO SIGNAGE
CHAPTER 7:	REGULATION OF SIGNAGE ON PRIVATE PROPERTY
CHAPTER 8:	REGULATION OF SIGNAGE ON MUNICIPAL PROPERTY
CHAPTER 9:	SIGNAGE AT SPORTING EVENTS, FESTIVALS AND EXHIBITIONS
CHAPTER 10:	OFFENCES AND PENALTIES
CHAPTER 11:	ADMINISTRATIVE MATTERS

CHAPTER 1: GENERAL

1 Definitions

In this by-law, unless the context otherwise indicates –

"advertisement" means any visible representation of a word, name, letter, figure, object, mark or symbol or of an abbreviation of a word or name, or of any combination of such elements with the object of transferring information;

"advertiser" means the person, or the proprietor of an *enterprise*, placing an *advertisement*, alternatively the supplier of a product which is being advertised, alternatively the owner of the property on which an advertisement is placed;

"advertising" means the act or process of notifying, warning, informing, making known or any other act of transferring information in a visible manner;

"advertising structure" means any physical structure built to display an *advertisement*, whether or not such advertisement is actually displayed on it;

"animated" sign means an *electronic sign* in which a representation of one or more than one figure or illustration is given the appearance of movement by the successive switching on and off of lights or illuminated lines, or a sign which makes use of artificially propelled or compressed air to achieve movement;

“approval” means approval by the municipality and “approve” has a corresponding meaning;

“Architectural Profession Act” means the Architectural Profession Act, 2000 (Act 44 of 2000) as amended and any succeeding legislation, and includes any regulations made in terms of the Act.

“area of maximum control” means an area deemed sensitive to visual disturbance and include, but are not limited to natural open spaces in urban areas, urban conservation area, interface of natural landscape with built-up areas, gateways, residential areas, bodies of water and rivers, ridges, forests, open recreational area, architectural and historical sites, characteristic vistas, heritage sites, special tourist areas and skylines;

“area of minimum control” include, but are not limited to areas seen as centres, areas and nodes of concentrated economic activity where the dominant concern and motivation is to conduct business and to sell products and services, such as areas of concentrated economic activity, commercial districts, shopping centres, office precincts, commercial enclaves and shopping centres in industrial areas and industrial parks, entertainment districts, and prominent transport nodes;

“area of partial control” means areas that can be characterised by a greater degree of integration and complexity of land use, includes but are not limited to a 50m strip between an area of minimum control and an area of maximum control, which will be measured from the edge of the area of maximum control into the area of minimum control, commercial enclaves in residential areas, suburban shopping centres and office parks, ribbon development, educational institutions, institutional premises, sports fields or stadiums, commercialized squares, government enclaves, smallholdings of an urban nature;

“areas of control” means those areas set out in Schedule 1 of the by-law; and which may be modified or amended from time to time, which amendments and modifications will be graphically depicted by way of maps as prepared by the municipality;

“area of sensitivity” means an area referred to in Section 37 of this by-law.;

“Aesthetics Committee” means a committee established by the Knysna Municipality for dealing with matters relating to building aesthetics;

“balcony” means a platform projecting from a wall, enclosed by a railing, balustrade or similar structure, supported by columns or cantilevered out and accessible from an upper-floor door or window;

“banner” means any material upon which a sign is displayed in such a manner as to be fully legible in windless conditions, attached to one or more ropes, poles or flag staffs projecting vertically, horizontally or at an angle, or attached to buildings or special structures, but excludes banners carried as part of a procession. A flag which is not displayed on an approved flag pole shall for the purposes of this by-law, be deemed to be a banner;

"billboard" means any screen or board larger than 4,5m², supported by a *free-standing* structure, which is to be used or intended to be used for the purpose of posting, displaying or exhibiting an *advertisement* and which is also commonly known as an advertising hoarding. The main function of a billboard is to advertise non-locality bound products, activities or services;

"bit" means the basic unit for measuring the length of advertising messages and may consist of letters, digits, symbols, logos or abbreviations;

"building" means any structure whatever with or without walls and with or without a roof or *canopy*;

"Building Act" means the National Building Regulations and Building Standards Act (Act 103 of 1977) as amended and any succeeding legislation and includes all regulations promulgated in terms of such legislation;

"building control officer" means any person appointed or deemed to be appointed as building control officer by the Municipality in terms of the National Building Regulations and Standards Act, 1977 (Act 103 of 1977);

"canopy" means a structure in the nature of a roof projecting from the *facade* of a *building* and cantilevered from that building or anchored otherwise by columns or posts;

"clear height" means the vertical distance between the lowest edge of a *sign* and the level of the ground, footway or roadway immediately below such *sign*;

"combination sign" means a single *free-standing advertising structure* for displaying information on various *enterprises* and services at locations such as road-side service areas, urban shopping centres and other urban complexes;

"commercial advertising" means any words, letters, logos, figures, symbols, pictures relating to the name of a business, trade, partnership, individual, or any information, recommendation or exhortation in respect of any particular goods manufactured or sold, or any particular services rendered or offered, or any event for commerce or entertainment, including sporting events;

"commercially sponsored sign" means a sign which advertises goods or services, but the erection of which has a secondary purpose, which is to promote or contribute to some recognized public or community goal or function;

"common boundary façade" means any façade of a building which is built abutting a rear or side boundary of an erf and which façade is blank, that is, having no architectural features, which includes windows;

"continuing offence" means an offence in terms of this by-law, which offence continues to exist after the expiry of the notice period referred to in a notice served in terms of this by-law;

"corporate signage" means trademark, brand-name, franchise and similar *signage* where only a specified range of signage is available to the proprietor of an *enterprise*;

"Council" means the Municipal Council of the Knysna Municipality;

"designated official" means an official of the *municipality* authorised to implement the provisions of this by-law;

"development board" means a sign displayed at premises upon which building operations are currently in progress and relating to any services being provided, work being done or goods being supplied in connection with such building operations, but excludes contract boards for building and civil engineering projects as required in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);

"direction sign" means a guidance *sign* provided under the South African Traffic Sign System and used to indicate to the road user the direction to be taken in order that they may reach their intended destination;

"display of a sign" includes the erection of any structure if such structure is intended solely or primarily for the support of such *sign*;

"display period" means the period which a specific sign, sign type or advertising structure is allowed on a specific site, at a specific location or against a specific building, structure or vehicle irrespective of any changes in advertising contents;

"electronic sign" means a *sign* in which electric current is used;

"enterprise" means a business undertaking;

"environmental impact assessment" (EIA) means an assessment carried out in accordance with the municipality's guidelines for outdoor advertising;

"estate agency/agent" means a person or group of persons, natural or legal, who renders any service referred to in subsections (i) to (iv) of paragraph (a) of the definition of "Estate Agent" in section 1 of the Estate Agents Act, 1976 (Act 112 of 1976), as amended, or an estate agent as defined in sub-section (vi) of section 1 of that Act;

"façade" means the principal front or fronts of a *building*;

"flag" means a piece of cloth or similar material upon which an advertisement is displayed and which is attached to a single rope, pole or flagstaff projecting vertically in such a way that its contents are normally not legible in windless conditions but excludes:

- a) a national flag which does not carry any advertisement in addition to the design of the flag or flagstaff;
- b) a flag carried as part of a procession; and
- c) a flag which is not displayed on a flagstaff.

"flashing sign" means a *sign* in which the visibility of the contents is enhanced by their intermittently appearing and disappearing or being *illuminated* with varying intensity or colours;

"flat sign" means any *sign* which is affixed to any external wall of a *building* used for commercial, office, industrial or entertainment purposes, but excluding a parapet wall, balustrade or railing of a *veranda* or *balcony* of any such *building*, which sign at no point projects more than 300mm from the surface of such a wall and which may consist of a panel or sheet or of individual numbers, letters or symbols;

"free-standing sign" means any immobile *sign* which is not attached to a *building* or to any structure or object not intended to be used for the primary purpose of *advertising*;

"freeway" means a road designated as a freeway by means of a *road traffic sign*;

"ground level" means the level immediately below any portion of a *sign* and means natural ground level where the natural ground level is uncovered and where such ground level is covered, the top surface level of the covering on the natural ground;

"height (of a sign)" means the vertical distance between the ground level and the uppermost edge of a *sign*;

"illuminated" means an *advertising structure* which has been installed with electrical or other power for the purpose of illumination of the message of such *sign*;

"illuminated sign" means a *sign*, the continuous or intermittent functioning of which depends upon it being *illuminated*;

"locality-bound sign" means a *sign* displayed on a specific site, premises or *building* and which refers to an activity, product, service or attraction located, rendered or provided on that premises or site or inside that *building*;

"location sign" means a guidance *sign* provided under the SA Road Traffic Sign System and used to identify places or locations which either provide reassurance during a journey or identify destinations such as towns, suburbs or streets near the end of a journey;

"loose portable sign" means a freestanding locality bound notice or advertising board placed or erected in the road reserve or in a public open space;

"**main roof-line of a building**" means the gutter-line or wall plate level of any roof of a *building* other than the roof of a *veranda* or *balcony*;

"**main wall of a building**" means any external wall of a *building*, but does not include a parapet wall, balustrade or railing of a *veranda* or a *balcony*;

"**maximum area (of a sign)**" means the measured area of a signboard, or where there is no backing board to the *sign*, the area of an imaginary rectangle drawn around the outer extremities of the contents of a *sign*;

"**media owner**" means the owner of an outdoor advertising structure from which an income is derived by placing advertisements and by selling outdoor advertising space. Media owners make mostly, but not exclusively, use of non-locality-bound advertising structures and are mostly, but not exclusively, involved in commercial advertising.

"**municipal property**" means immovable assets in the registered ownership of the *municipality*, or vested in the municipality and includes land, improvements, road reserves and infrastructure;

"**municipality**" means the Municipality of Knysna established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, Provincial Notice 409 dated 28 August 2000, and includes any political structure, political office bearer, or duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, agent or employee;

"**movable sign**" means a sign not permanently fixed and not intended to remain fixed in one position, but does not include any moving part on a fixed permanent sign;

"**National Building Regulations**" means the regulations promulgated from time to time under the National Building Standards and Regulations Act, 1977 (Act 103 of 1977), as amended;

"**outdoor advertising**" means the act or process of notifying, warning, informing, making known or any other act of transferring information in a visible manner and which takes place out of doors;

"**overall height**" in relation to a sign, means the vertical distance between the uppermost edge of the sign and the finished level of the ground, footway or roadway immediately below the centre point of the sign;

"**person**" means a natural or legal person;

"**poster**" means any placard announcing or attracting public attention to any meeting, event, function, activity or undertaking or to the candidature of any person nominated for election to parliament, local government or any similar body or to a referendum, or any placard advertising any product or service or announcing the sale of any goods, livestock or property;

"**projecting sign**" means any *sign* which is affixed to a main wall of a *building* which is used for commercial, office, industrial or entertainment purposes and which projects more than 300mm from the surface to the *main wall* and is affixed at a right angle to the street line;

"**public façade**" means any façade of a building that has architectural articulations and which is visible to the public;

"**public place**" means any public road, public street, thoroughfare, bridge, subway, footway, foot pavement, footpath, sidewalk, (or similar pedestrian portion of a road reserve), lane, square, open space, garden, park or enclosed place vested in the municipality, or other state authority or indicated as such on the Surveyor General's records, or utilized by the public or zoned as such in terms of the applicable zoning scheme;

"**public road**" means public road as defined in the National Road Traffic Act, 1996 (Act 93 of 1996);

"**road reserve**" means the area contained within the statutory width of a road, and includes roadways, shoulders and sidewalks and the airspace above such roadways, shoulders and sidewalks and all other areas within the road reserve boundary;

"**road traffic sign**" means any road traffic sign as defined in the Road Traffic Act, 1989 (Act No. 29 of 1989), and/or the National Road Traffic Act (Act 93 of 1996), the detailed dimensions and applications of which are controlled by the regulations to this Act and the SA Road Traffic Signs Manual;

"**roadway**" means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic as defined in the National Road Traffic Act, 1996 (Act 93 of 1996);

"**roof sign**" means a sign attached to or painted on the *roof of a building*;

"**SAMOAC**" means the South African Manual for Outdoor Advertising Control (April 1998) published by the national Department of Environment Affairs and Tourism;

"**SANRAL**" means the South African National Roads Agency established in terms of the South African Roads Agency Limited and national Roads Act (Act 7 of 1998);

"**scenic drive**" means a road designated as such on an approved zoning scheme or from which landscapes or features of aesthetic or cultural significance can be seen or viewed as designated by the municipality;

"**sign/signage**" is a more comprehensive term than '*advertisement*' and refers to any *advertisement* or object, structure or device which is in itself an *advertisement* or which is used to display an *advertisement*;

"**signage master plan**" means a set of design guidelines, not in conflict with this by-law, which will govern the type and style of *signage* to be utilised on a *building* or erf containing more than one *enterprise* or undertaking;

"**streetscape**" means a street or a portion of a street in an urban area or any part of an urban area;

"**street furniture**" means public facilities and structures which are not intended primarily for advertising but which are provided for pedestrians and commuters and may include seating benches, planters, pavement litter-bins, bus shelters, pavement clocks and drinking fountains;

"**strobe light**" means an electronic tube that can emit extremely rapid, brief and brilliant flashes of light;

"**temporary signs**" means signs which are displayed for a maximum period as may be approved by the municipality;

"**traffic impact assessment**" (TIA) means a study carried out by a registered professional engineer with demonstrable experience in the field of traffic engineering that investigates the impact a proposed sign may have on vehicle, pedestrian, or cyclist safety and traffic operation, which study should recommend any mitigating measures that may be required as a result of that impact;

"**urban conservation area**" means an area of the built environment demarcated as such on the zoning map within which the Conservation Area Provisions as set out in the Knysna Zoning Scheme Regulations shall apply;

"**veranda**" means a structure in the nature of a roof attached to or projecting from the *facade* of a *building* and supported along its free edge by columns or posts; the window-glass of a building;

"**zone**" means a land use zone as set out in the relevant zoning scheme as amended from time to time and applicable to any erf on which a sign is displayed or intended to be displayed and "**zoning**" has a corresponding meaning.

Purpose of by-law

- 2 This by-law aims to provide a set of regulations governing the use of land and buildings for outdoor advertising and signage and for matters incidental thereto, within the jurisdiction of the Knysna Municipality. It is intended to achieve this aim by establishing a balance between outdoor advertising opportunities to enable economic development and the conservation of the visual character of the town and its tourism and environmental resources, as well as traffic and public safety.

Application of the by-law

- 3 The by-law shall be applicable throughout the area of jurisdiction of the Knysna Municipality, irrespective of the ownership or control of the land, and shall apply to land owned by the National Government or under the management of any National Government Department, Provincial Government Department, State Owned Enterprise, or Local Authority, as well as all other land.

- 4 Nothing contained in this by-law shall be construed as being in derogation of any law enacted by any national or provincial authority relating to advertisements within their legislated mandate.

CHAPTER 2: INSTITUTIONAL FRAMEWORK

Municipal outdoor advertising decision-making designations

- 5 Applications are decided by:
- a) an authorised official;
 - b) the Building Control Officer (BCO); where such authorised official is not the BCO; or
 - c) an Appeal Authority where an appeal has been lodged against any decision of the authorized official or Building Control Officer.
- 6 The Municipal Manager shall appoint an authorised official to make decisions on applications pertaining to:
- a) signage as contemplated in sections 18, 55, 56 and 57;
 - b) signage pertaining to events, as contemplated in Chapter 9 of this by-law.
- 7 The Building Control Officer shall be authorised to decisions pertaining the approval of all other signage types.
- 8 The Director responsible for the Building Control function shall be the appeal authority.
- 9 The appeal authority has the discretion to obtain advice from technical and or other experts.

CHAPTER 3: APPLICATION PROCEDURES

Applications requiring approval

- 10 No person may commence, continue, or cause the commencement or continuation of displaying an advertising structure on a building or site without the consideration by, or approval of the municipality.

Procedures for applications

- 11 An applicant must comply with the procedures in this chapter of this by-law for applications.

Administrative documentation required

- 12 An application must include the following information and documents:
- a) an application form provided by the municipality, completed and signed by the applicant;
 - b) if the applicant is an agent or a tenant, a power of attorney authorizing the applicant to make the application;
 - c) if the owner of the land is a company, closed corporation, trust, body corporate or owners' association, proof that the person is authorized to act on behalf of the company, closed corporation, trust, body corporate or owners' association and a resolution authorizing the agent or tenant to bring the application;
 - d) proof of registered ownership in private land concerned; and
 - e) proof of payment of application fees.

Application Fees

13 An applicant must pay the application fees determined by the municipality before submitting an application in terms of this by-law.

Application information required

14 An application for approval of a sign requiring municipal approval must, in all cases include the following:

- a) a plan, photograph or drawing showing exactly where it is proposed that the sign should be positioned (in most cases this should be a copy of the relevant building plan or site development plan);
- b) if it is intended that the sign should be affixed to a building, an elevation of the building showing the proposed position and dimensions of the sign;
- c) a locality plan and site development plan, if required, or a plan showing any proposed advertising structure;
- d) details of the proposed dimensions of the sign and the height at which it is proposed that the sign is to be fixed;
- e) an impression of the sign, including colours, wording, font sizes etc.;
- f) details of the materials out of which the sign will be manufactured;
- g) details of the mechanism for hanging or erecting the sign;
- h) details of illumination if any;
- i) photographic images of the site or buildings or streetscape; and/or
- j) any other documents or information that the municipality may require.

15 An application for approval of a Signage Master Plan must, in all cases, include the following:

- a) a site plan of the property;
- b) a plan or plans of all buildings on the property showing the proposed positions of all signs;
- c) elevations of all aspects of the buildings to which it is proposed to affix signs, showing the exact proposed positions of the signs and the maximum dimensions to be permitted;
- d) details of the parameters within which it is proposed that tenants are to be permitted to erect signs in the identified positions; such parameters to include:
 - i) dimensions of signs;
 - ii) colours;
 - iii) materials;
 - iv) fonts
 - v) methods of illumination if any
 - vi) methods of fixing; and
- c) written comment from affected persons either within a development location or immediately adjacent thereto, where the municipality determines that such comment would be required.

- 16** An application for Directional Signage or an application for Tourism Signage, where such application is for signage on a road reserve controlled by the municipality and not by Provincial Government or SANRAL, must be made to the designated official on the prescribed form and accompanied by the prescribed fee. Such application must include:
- a) location of the facility;
 - b) details of the sign requested, including the main symbol, any alternative symbols and the name of the facility;
 - c) evidence that the facility complies to acceptable industry standards, which evidence could a grading certificate, an inspection or registration certificate, a brochure; and
 - d) a zoning certificate indicating that the facility complies with the zoning scheme regulations;
 - e) where deemed necessary the municipality may require other supporting documentation such as a liquor license, health certificate and/or any other statutory documentation to certify the legal operation of the facility; and
 - f) written comment from the municipal department responsible for roads.
- 17** An application for other signage on municipal property must be made to the designated official on the prescribed form and accompanied by the prescribed fee. Such application must include:
- a) a detailed motivation as to why the signage should be approved on municipal property, including an explanation as to why approval would not set a precedent that would undermine the implementation of this by-law;
 - b) all details of the proposed sign, including size, contents, colours and fonts;
 - c) the proposed materials out of which the sign would be made and the method of construction;
 - d) all necessary information regarding movement and sight lines in respect of vehicles and pedestrians to facilitate an informed decision;
 - e) written comment from affected persons either within a development location or immediately adjacent thereto, where the municipality determines that such comment would be required; and
 - f) written confirmation from the municipal department responsible for municipal properties that permission had been given in terms of any policy or regulation pertaining to the utilisation of Council Property.

Temporary Signs

- 18** An application for approval of a temporary sign on municipal property must be submitted to the designated official at least ten days before it is intended that the banner should be displayed. The application must be submitted on the prescribed form and must include the following information:
- a) the name, address and contact details of the organisation wishing to display the temporary signage;
 - b) the nature of the event to which the temporary signage relates;
 - c) the duration of the event;
 - d) the target audience for the event, including the numbers of people expected to be interested in it;
 - e) the dates during which the applicants wish to display the signage.

- 19 When an application for temporary signage is approved the approval must indicate the duration of the approval and the date on which the temporary signage is to be removed.
- 20 Any approval for the erection of temporary signage shall be subject to the deposit, as determined by Council in its annual tariffs, which deposit is to be paid before erection of the sign.
- 21 In the event that any temporary sign is not removed by the date recorded in the approval the authorised official must arrange for the removal of the sign and the deposit shall be forfeited. The sign must be kept for a period of 5 working days during which it can be reclaimed by the owner, after which it may be disposed of and the owner shall not be entitled to any claim against Council in respect thereof.

Decision-making period

22 The following timeframes are applicable to the assessment of applications:

- a) following the receipt of all the application information required, the municipality must refer the application within 14 days to the committee for consideration.
- b) the decision maker may request additional information or documents and notify the applicant in writing of any information or documents it requires.
- c) the applicant must provide the committee with the additional information or documents contemplated in subsection (b) within 14 days of the date of notification or within the further period agreed to between the applicant and the municipality.
- d) the applicant may, before the expiry of the 14-day period referred to in subsection (c), apply to the municipality for an extension of the period to submit the outstanding information and documents, to an additional period not exceeding 14 days.
- e) the committee may refuse to consider the application if the applicant fails to provide the information or documents within the period contemplated in subsection (c) and (d).
- f) the decision maker must make a decision within 7 days.

23 The decision-maker may in respect of an application:

- a) approve, in whole or in part, or refuse that application;
- b) upon the approval of that application, impose conditions.

CHAPTER 4: CRITERIA FOR DECISION-MAKING & CONDITIONS OF APPROVAL

General criteria for consideration of applications

24 No advertisement or advertising structure shall:

- a) in the opinion of the municipality constitute a danger to any person or property;
- b) be erected without approval where such approval is required by any Act or Regulations or any other law;
- c) be detrimental to the environment or to the amenity of a human living environment by reason of size, shape, colour, texture, intensity of illumination, quality of design or materials, or for any other reason; or
- d) be allowed that emits noise, smoke, sound, smell or odor.

General conditions of approval

- 25** All signs and advertising structures must be properly constructed of the requisite strength and must be secure and must comply with the requirements pertaining to of the National Building Regulations and Standards Act, 1977 (Act 103 of 1977) and the following shall be applicable:
- a) all signs and their support structures must be constructed of safe, durable materials suited to the function, nature and permanence of the sign.
 - b) every sign and its support structure must be kept in a state of good repair.
 - c) the applicant to whom approval has been granted and the owner of the property or building to which it is attached shall be jointly and severally liable for the maintenance and safety thereof and must undertake at least one inspection per year thereof with a view to satisfying themselves as to the safety thereof.
 - d) where any sign or advertising structure is vandalised or becomes torn or damaged or otherwise falls into a state of disrepair, the applicant to whom the approval has been granted and the owner of the fixture or property which or to which a sign is attached must within 7 working days of a notice in writing to do so, repair it.
 - e) all glass used in a sign, other than glass used in illumination, must be safety glass.
 - f) glass panels used in a sign must not exceed 0,9 m² in area, each panel being securely fixed in the body of the sign, structure or device independently of all other panels.
 - g) no sign may obstruct the opening and closing of any window or opening provided for ventilation of a building or obstruct any stairway or doorway or other means of exit from the building or prevent movement of people from one part of a roof to another.
 - h) no advertising structure may be closer to overhead electrical equipment than the minimum distance as prescribed.
 - i) no signage shall cover or interfere with the heritage features of a listed building such as unique plasterwork, gable design and plaster scrolling.
- 26** The municipality may impose further conditions regarding the position, size and content of any advertisement it considers necessary, in the interest of road safety or environmental impact.
- 27** Should an advertising structure or advertisement be displayed in contravention of conditions imposed by the municipality, the municipality shall act as contemplated in terms of section 67.

CHAPTER 4: APPEALS**Procedures for appeals**

- 28** The following persons may, within 14 days of notification of a decision made in terms of the by-law, appeal in writing to the appeal authority against the decision:
- a) the applicant; or
 - b) where an affected person has submitted comment on the application, such person.

29 An appeal must set out the following:

- a) the grounds for the appeal;
- b) whether the appeal is lodged against the whole decision or a part of the decision;
- c) if the appeal is lodged against a part of the decision, a description of the part;
- d) the factual or legal findings that the appellant relies on; and
- e) the relief sought by the appellant.

30 An application for an appeal will only be validly submitted upon the submission of the proof of payment of appeal fees as may be determined by the approved tariff structure of Council.

Timeframes for appeals

- 31** If a person other than the applicant lodges an appeal, the designated official must give written notice of the appeal to the applicant within 7 days of receipt thereof.
- 32** If the applicant lodges an appeal, an affected person who has submitted comment on the application must be notified of the appeal, within 7 days of receipt of the appeal.
- 33** An applicant who has received notice of an appeal from an affected person or an affected party who has submitted comment on the application of the applicant, may submit comment on the appeal to the Municipality within 14 days of being notified.
- 34** A designated employee, where the decision was made by the Building Control Officer or the Building Control Officer, where the decision was made by another authorised employee, must draft a report assessing an appeal and must submit it to the Appeal Authority within 14 days of receipt of the appeal or any applicable closing date for comment.
- 35** The Appeal Authority must within 21 days of receiving the report contemplated in section 34, decide an appeal.

Withdrawal of an appeal

- 36** An appellant may, at any time before the Appeal Authority makes a decision, withdraw the appeal, by notifying the designated official thereof in writing.

CHAPTER 5: GENERAL GUIDELINES AND PARAMETERS FOR SIGNAGE

- 37** The Municipality may determine areas of visual, environmental or cultural sensitivity within which standards of control will be applicable for advertising signage.
- 38** The following regulations are applicable in respect of signage in the municipal area:
- a) corporate signage, whether relating to a national or international company or a franchise group must comply with the provisions of this by-law.
 - b) signs must be in keeping with the general architectural design and aesthetics of the premises to which they relate, and must be in keeping with the character of their immediate surroundings.
 - c) signs on a property may only relate to the business operated thereon and the products processed or produced thereon or sold therefrom.
 - d) no property may be used for the primary purpose of erecting advertising signage.
 - e) illumination of signage shall generally be permitted only during the hours of business of the specific undertaking, and may not be a source of visual nuisance or interference.

- f) illuminated signs in residential areas are prohibited.
- g) backing illumination shall be limited to the face of the sign and where illumination is by external means or spotlight, such illumination will be directed downwards onto the face of the sign and may not cause nuisance to passing traffic or to other properties.
- h) a sign or a portion thereof may not protrude above the main roof-line or parapet wall of a building, or beyond the edges of the particular portion of the building to which it is attached, nor conceal architectural detail of facades on buildings.
- i) a sign that is affixed to a building, except a projecting sign, may not contain obtrusive visible struts or anchors and the electricity supply to illuminated signs must be concealed a minimum clear height of 2,1m must be adhered to for all signs over public walkways and accesses, except for road traffic signs.
- j) a sign or a portion thereof may not be placed within 500mm (five hundred millimetres) of the vertical line formed by the roadside edge of a kerbed-stone.
- k) signs on balconies and balustrades must not be displayed above the lower edge of any visible window of a floor directly above such balcony or balustrade;
- l) canopy advertisements must- form an integral part of the canopy or blind without dominating the canopy structure or blind;
- m) environmental authorisation may be required for any sign larger than 18m² in area, prior to consideration for approval. Such EIA must, in addition to environmental considerations, also address visual, social and traffic safety aspects.
- n) no advertising pamphlet may be pasted on any wall or structure, or placed under the windscreen wiper of any vehicle without the express permission of the owner thereof, in addition to the approval of the municipality.
- o) The municipality shall hold the advertiser liable for any costs involved in removing such advertisements, including where littering has occurred as a result of unauthorized placing of such pamphlets/ posters.
- p) an information 'i' sign may only be displayed by an enterprise accredited as an information bureau by the Destination Marketing Organisation in terms of the Western Cape Tourism Act, 2004 (Act 1 of 2004).
- q) all signs on main roads must comply with the provisions of the Advertising on Roads and Ribbon Development Act, 1940 (Act 21 of 1940), as amended.
- r) all signage in road reserves must comply with the prescripts of the Urban Transport Guidelines (UTG).
- s) any person who erects any sign that is in contravention of this section shall be guilty of an offense.

Religious or cultural symbols and texts

39 The municipality recognises and respects the rights of all citizens to freedom of conscience, religion, thought and belief. However, in order to avoid visual intrusion that might be caused by competing signs and symbols and to maintain the uncluttered and natural appearance of the area, the following regulations shall apply to the display of religious or cultural symbols or signage:

- a) There is no restriction on the display of symbols or signage inside a building or in a position in which they can be seen from inside the boundaries of a property only;
- b) On any property except a property zoned Institutional Zone or the equivalent zone that is intended to provide for a "Place of Worship":
 - i) no symbol or signage that is bigger than 1,8 metres in height and / or 1 metre in width may be placed in such a position that it is visible from outside the property;

- ii) no symbol or signage that is visible from outside the property may be illuminated and no illumination of any symbol may be visible from outside a property;
- iii) any symbol or signage that is visible from outside a property must be in natural material and muted colours;
- c) No person may erect any religious or cultural symbol or display any religious or cultural signage on municipal property, without consent, as contemplated in section 17.
- d) Any person who wishes to display a religious or cultural symbol or signage that does not comply with sub-section (b) or who wishes to obtain Council consent as required in sub-section (c) must apply to the designated official on the form prescribed for this purpose, clearly stating the nature, size and all relevant details of the proposed object, and must pay the fee determined in Council's tariffs for an application in terms of this section.
- e) Any person who displays a religious or cultural symbol or sign that does not comply with sub-sections (b) or (c) without approval shall be guilty of an offense.

Illumination

40 In any part of the municipal area that is visible from another property, from a public road or public place:

- a) external lighting shall only be permitted if it is indicated on an approved site development plan.
- b) all external lighting is to be directed downward unless specifically approved otherwise and may not create undue light spillage beyond the surface of the sign.
- c) where floodlights may be permitted by the municipality, upon an application made to the Electro-Technical Department, they may not be visible to traffic travelling in either direction.
- d) signs may not be illuminated if no sign content is displayed.
- e) the use of strobe lights or flashing lights will not be permitted.
- f) any person who acts in contravention of sub-sections (a) to (e) shall be guilty of an offense.

CHAPTER 6: TECHNICAL REQUIREMENTS RELATING TO SIGNAGE

41 The following regulations shall be applicable in respect of the safety and construction of signs:

- a) No advertisement or advertising structure, as permitted by this by-law, may:
 - i) be displayed or placed so as to constitute a danger to any person or property;
 - ii) be so placed or contain an element which distracts the attention of drivers in a manner likely to lead to unsafe driving conditions;
 - iii) be illuminated to the extent that it causes discomfort to or inhibits the vision of approaching pedestrians or drivers;
 - iv) be attached to a road traffic sign or signal, combined with a road traffic sign or signal [unless specifically provided for in the South African Road Traffic Signs Manual (SARTSM)], obscure a road traffic sign or signal, create confusion with a road traffic sign or signal, interfere with the functioning of a road traffic sign or signal or create a road safety hazard in the opinion of the roads authority;

- v) obscure the view of a pedestrian or that of a driver of pedestrians, road or rail vehicles and features of the road, railway or pavement such as junctions, bends and changes in width;
 - vi) exceed the minimum clearance with regard to overhead power lines as prescribed in regulation 15 of the Electrical Machinery Regulations (No R1593 in GG. 11458 of 12 August 1988);
 - vii) be erected in a power line servitude without the permission of the relevant authority and a copy of such permission must be made available to the municipality;
- b) Signs or advertisements positioned along roads and specifically targeting the road user must be concise and legible and must comply with the following requirements:**
- i) be displayed or placed so as to constitute a danger to any person or property No sign displaying a single advertisement or message shall exceed **15** "bits" of information.
 - ii) no combination sign or any other sign displaying more than one advertisement or message shall contain more than **6** "bits" of information per enterprise, service or property or per individual advertisement or message displayed on a combination sign.
 - iii) "Bit" values must be calculated as follows:
 - a) Words of up to **8 letters**, inclusive : **1** "bit"
 - b) Numbers of up to **4 digits**, inclusive : **0,5** "bit"
 - c) Numbers of **5-8 digits** : **1** "bit"
 - d) Symbol, logo or abbreviation : **0,5** "bit"
 - iv) No message shall be spread across more than one sign or sign panel.
- c) Any sign permitted by this by-law must:**
- i) be neatly and properly constructed and executed and finished in a workmanlike manner;
 - ii) not be detrimental to, or have a negative aesthetic impact on, the urban design, streetscape or the character of the surrounding area by way of the design of the structure or device;
 - iii) must consist of durable materials in accordance with the function, nature and permanence of the advertisement, sign or structure and materials such as cloth, canvas, cardboard, paper or synthetic cardboard should be used only when essential to the nature and function of a particular sign;
 - iv) have a neat appearance in terms of advertisement content and sign writing;
 - v) be rigidly and securely attached, supported or anchored in a safe manner and so that unwanted movement in any direction is prevented;
 - vi) be capable of effectively securing, supporting and maintaining not less than twice its mass with the addition of any force to which the sign may be subjected, including wind pressure;
 - vii) wherever necessary in accordance with the nature of the sign and when attached to brickwork, masonry or concrete, be securely and effectively attached thereto by means of

- bolts securely embedded in such brickwork, masonry or concrete or passing through the same and secured on the opposite side;
- viii) when attached to conservation-worthy buildings, be attached with the necessary expert advice in order to prevent damage to such buildings.
- d)** Any advertiser or contractor:
- i) may not use water-soluble adhesive, adhesive tape or similar material to display or secure any sign or advertisement elsewhere than on a billboard, board or any structure provided for this purpose;
 - ii) must have all exposed metalwork of any sign painted or otherwise treated to prevent corrosion and all timber treated to prevent decay; and
 - iii) must take measures to prevent the entry of water into and the accumulation of water or moisture on or in any part of its supporting framework, brackets or other members.
- e)** Glass used in signs (other than glass tubing used in neon and similar signs) must be safety glass at least **3mm** thick and glass panels used in signs may not exceed **0,900m²** in area, each panel being securely fixed in the body of the sign, structure or device independently of all other panels.
- f)** Every illuminated sign and every sign in which electricity is used must in accordance with the requirements of the municipality or other electricity regulator:
- i) have power cables and conduit containing electrical conductors positioned and fixed so that they are not unsightly;
 - ii) be constructed of material which is not combustible;
 - iii) be provided with an external switch in an accessible position whereby the electricity supply to the sign may be switched off;
 - iv) be properly wired and constructed.

42 All signs must comply with the relevant provisions of the National Building Regulations.

Maintenance of signs

- 43** The owner of the property on which any sign is erected or displayed and the advertiser shall be jointly and severally responsible for the maintenance of such a sign (together with all its supports, braces, guys and anchors; and to keep it in a state of good repair and preservation both structurally and aesthetically.
- 44** Whenever any alteration is made to the ground level adjacent to any sign, such owner and advertiser shall be jointly and severally responsible for the alteration of the height of such sign so as to comply with the requirements of this by-law.
- 45** Any sign permitted by this by-law:
- a) must, where appropriate, to be located at a height that discourages vandalism;
 - b) shall be serviced on a regular basis; and

- c) shall be maintained in good repair and in a safe condition and according to the highest standards as regards quality of structures, posting and sign writing.
- 46** Should any sign become dangerous or a nuisance, the owner or advertiser must immediately remove the source of danger or the nuisance and failure to do so shall constitute an offence.
- 47** Should an owner or advertiser fail to comply with the terms of a notice issued by the municipality to remove such source of danger or nuisance, the municipality may remove the sign concerned at the expense of the owner or the advertiser and no compensation shall be payable by the municipality to any person in consequence of such removal.
- 48** Any damage or defacement of any building or site caused by or resulting from the removal of any sign must be repaired to the satisfaction of the municipality at the owner's cost.

CHAPTER 7: REGULATION OF SIGNAGE ON PRIVATE PROPERTY

- 49** There are two categories of permitted signage on private property dealt with in this by-law:
- a) signage that may be erected by right without the submission of any application and without the specific approval of the municipality;
 - b) signage that may be erected only with the approval of the municipality given by the authorised official with the correct delegation.
- 50** Having due regard to the regulations stated in section 38 above, and excluding any category of sign listed in section 52 below the following signage may be erected by right without the submission of any application:
- a) On a business, local business, industrial, or similarly zoned property on which one business only operates, signs relating directly and only to the single business operating on that property and/or to products processed or produced or sold or supplied thereon may be erected provided that they meet the following criteria:
 - i) a maximum of two signs per street frontage and three signs altogether will be permitted;
 - ii) no sign may contain more than 3 (three) letter types;
 - iii) each sign must be less than **0,75m²** in extent on business, commercial, industrial or community facility zoned properties with premises up to **100m²** in floor area;
 - iv) no sign may abut or overlap any architectural feature such as a window, door, the edge of a pillar, etc. There must in all cases be a space between the sign and the edge of the plane on which it is displayed;
 - v) each sign must be less than **1,5m²** in extent on business, commercial, industrial or community facility zoned properties with premises greater than **100m²** in floor area;
 - vi) each sign must be less than **0,12m²** on residential zoned premises;
 - vii) flat and painted wall signs or signs affixed in the same plane as the wall may not exceed **15%** of a specific ground floor facade of the enterprise to which they relate;
 - viii) projecting signs must have a maximum size and dimension of **1,2m²**, with a maximum horizontal dimension of **1,0m** and a maximum vertical dimension of **1,5m** and only one such sign shall be allowed per enterprise facade;

- ix) no sign which prevents a person outside the building from seeing the interior of the building may be displayed over more than 25% of the area of any window;
- b) In addition to the signs referred to in sub-section a), flags and flag-type banners (flag-type banners attached to flag-poles or cross-pieces on flag-poles and hung vertically) on the premises of a business may be used for displaying the **name, corporate symbol and nature of enterprises**, provided that:
- i) torn, broken, or faded banners and flags will not be allowed;
 - ii) no banner, flag or flag-type banner shall be larger than **5m²**, and no flagpole shall exceed a relevant height restriction of the zoning of the premises, up to a maximum of **8m** above Natural Ground Level, measured directly below the pole;
 - iii) no more than three flag poles shall be permitted per property.
- c) On a property that has a consent use for an accommodation establishment or is zoned to permit an accommodation establishment (excluding a property on which an accommodation establishment with two or less rooms is operating as an “occupational practice”) a maximum of **five (5)** flagpoles bearing national flags may be erected. Such flagpoles must not exceed **8m** above natural ground level in height.
- d) Signs describing the type of development being carried out on a site and giving details such as the type of accommodation being provided, floor space available and the name, address and telephone number of the developer or agent, provided that:
- i) not more than **two** signs describing the type of development shall be allowed per premises; signs describing the type of development shall not exceed **3,0m** in height, and shall not exceed **4,5m²** in size;
 - ii) signs describing the type of development and other relevant information may, subject to approval by the municipality, remain on the site after completion of construction work for a maximum period of **six months** after date of completion, or until initial sale of all units/erven, whichever date is the earlier.
- e) On Residential, Agricultural or Institutional Zoned properties, identification, direction and warning with regard to place of residence, (e.g. street numbers and names of houses, flat complexes, farms and smallholdings), and notices/signs such as ‘Beware of the dog’ and ‘No entrance’. Such signs may not exceed a total area of **0,25m²** per premises with a maximum letter size of **350mm**, provided that if there is more than one entrance to the premises (i.e. one each on different road frontages), a total sign area of **0,5m²** may be displayed (with not more than **0,25m²** per frontage). Signs informing the public that a property is protected by a security company are dealt with in sub-section j) and are not included in this category.
- f) On Residential, Agricultural or Institutional Zoned properties where small business is operating legally, or where small-scale urban and rural accommodation facilities with a residential and neighbourhood character such as guest houses, B&B establishments, or boarding houses are

operating, signs containing the name and nature of the business, practice or enterprise and/or the name(s) of the owner, practitioner or partners are permitted, subject to the following restrictions:

- i) one sign with a maximum area of **0,75m²** per premises is permitted;
 - ii) if there is more than one entrance to the premises (i.e. one each on different road frontages), two signs with a maximum area of **0,75m²** each may be displayed (each on a different frontage);
 - iii) where a more elaborate and solid supporting structure is provided the maximum area per sign, including the supporting structure, may be increased to 1,5m² on the condition that the sign panel or lettering shall not occupy more than 50% of the total sign area.
- g)** Community services and institutions such as religious, educational, cultural, recreational and certain medical and similar institutions:
- i) such signs may contain the name and nature of the institution, the name(s) of practitioner(s) and the nature and extent of service, opening times, and such other information as may be determined by the municipality;
 - ii) subject to the volume of information to be displayed, a sign not exceeding **3m²** in area may be permitted per premises;
 - iii) if there are more than one entrance to the premises on different road frontages (i.e. one each per road frontage), two signs with a maximum area of **3m²** each may be displayed, each on a different frontage;
 - iv) where a more elaborate and solid supporting structure forms part of the sign, the total sign area may be enlarged to **6m²**, on the condition that the actual sign panel or lettering shall not occupy more than **50%** of the total sign area;
 - v) in cases where more than one institution or community facility shares the same premises, a combination sign or collective board must be provided which will allow for not more than **2m²** per institution or community facility.
- h)** Project boards consisting of signs displaying the involvement of contractors and consultants in construction projects or alterations to existing structures or facilities may be erected on the following conditions:
- i) they may only be erected on the site where the project is being developed;
 - ii) they must describe only the building or structure being erected or other work or activity being carried out, and the names of the contractors or consultants concerned in such work or activity;
 - iii) they may list the branches of the industry or the professions of the contractors or consultants;
 - iv) they must not exceed **1,5m²** per consultant or contractor, whether displayed as part of a combined project board or individually;
 - v) they must not exceed **9m²** in total if they are combined project boards;
 - vi) no individual or single boards shall be displayed if no other consultants or contractors are involved or if a combined project board has already been erected;

- vii) only one such sign per contractor or consultant is permitted per street frontage of a site;
 - viii) they may be displayed only during the period of construction on the site.
- i) Estate agent signs may be displayed on the property that is for sale on the following conditions:
- i) only one sign per estate agency, per erf ,road frontage with a maximum of three estate agencies are permitted and the owner of the erf must ensure that there are no more than three signs per erf road frontage including any signs on Municipal property as provided for under section a) below;
 - ii) a sign must consist of a single board not exceeding 0,3m² in size, including any frame or hanging structure, and measured from the outside perimeter of any such structure shall be permitted for a property either zoned or used for single residential purposes;
 - iii) for a property zoned for other purposes **and not used for single residential purposes** a single board not exceeding 1,2m² in size, including any frame or hanging structure, and measured from the outside perimeter of any such structure, or two duplicate boards with a total size **of 2,4m²** joined at **120°** may be permitted;
 - iv) signs must be placed at or fixed to the building concerned, or attached to the boundary fence of the premises concerned;
 - v) a sign conforming to the same size limits as would apply to a for sale sign, indicating that a property has been sold, may be erected, subject to the same restrictions on position as would apply to a for sale sign and may remain in position for no more than two months after the transfer of the property.
- j) Security Company signs indicating that a premises is protected by apparatus or services provided by a security company may be displayed, subject to the following conditions:
- i) on a business, local business, industrial, or similarly zoned property on which one business only operates, one sign per property measuring a maximum of 400mm x 600mm may be displayed.
 - ii) where more than one enterprise is operating on a single property or in a single building, one sign per property measuring a maximum of 300mm x 500mm may be displayed by any company offering a service on the property. In addition, where a company provides services to more than one enterprise, an additional sign measuring a maximum of 300mm x 500mm may be displayed close to the entrance of any additional enterprises (over and above the first one) served. The positions of all such signage must be provided for on the Signage Master Plan.
 - iii) on Single Residential or Agricultural Zoned Properties one sign measuring a maximum of 300mm x 500mm may be displayed. Such signs may be affixed to a fence, a gate post or the wall of a building. They may not be affixed to any free standing structure.
 - iv) on General Residential or Group Housing zoned properties one sign per property measuring a maximum of 400mm x 600mm may be displayed by any company offering a service on the property. In addition, where a company provides services to more than one dwelling unit, an additional sign measuring a maximum of 300mm x 500mm may be displayed close to the entrance of any additional dwelling units.

51 The following signage may be erected on private property only with the approval of Council:

- a) on a property on which one business only operates, signs relating directly and only to the single business operating on that property and/or to products processed or produced thereon which do not comply with section 50 and are not prohibited by Section 52;
- b) service facility (service station) combination signs may not exceed **7,0m** in height and **2,0m** in width, and a maximum of 8 advertising panels may be permitted per combination sign, with only one enterprise or service allowed per panel. An advertising panel may not exceed **4,5m²** in area and only one combination sign may be permitted on the premises of a filling station or roadside service area. Illumination may be permitted only if the business provides a **24-hour** service. Facilities with limited after-hours services may be permitted to illuminate advertisements during business hours only;
- c) where more than one enterprise is operating on a single property or in a single building, a signage master plan shall be required to be submitted by the owner of the property, for the municipality's approval prior to any signage being displayed. Such Signage Master Plan should comply with the following guidelines:
 - i) a maximum of two signs per enterprise/undertaking per direct street frontage and up to a maximum of three signs per business/undertaking;
 - ii) each sign must be less than **0,75m²** in extent on business, commercial, industrial or community facility zoned properties with premises up to **100m²** in floor area;
 - iii) each sign must be less than **1,5m²** in extent on business, commercial, industrial or community facility zoned properties with premises greater than **100m²** in floor area;
 - iv) each sign must be less than **0,12m²** on residential zoned premises;
 - v) flat and painted wall signs or signs affixed in the same plane as the wall may not exceed **15%** of a specific ground floor facade of the enterprise to which they relate;
 - vi) flat and painted wall signs or signs affixed in the same plane as the wall may not exceed **20%** of the facade of a shopping centre (excluding the business component);
 - vii) projecting signs must have a maximum size and dimension of **1,2m²**, with a maximum horizontal dimension of **1,0m** and a maximum vertical dimension of **1,5m** and only one such sign shall be allowed per enterprise facade.
- d) Free-standing "On-premises business signs" may be permitted where a building, or enterprise is so situated that any such signs affixed to such building are not legible from the road or street onto which it faces, or where it is not structurally possible or visually feasible to affix appropriate signs to such building, or where such a sign is needed to locate the entrance to business premises or the private access road to a business, or where a free-standing combination sign may prevent the proliferation of signs. In such cases the following conditions are applicable:
 - i) this section is not applicable to small businesses on urban residential sites or in buildings that were originally constructed for residential or community purposes;

- ii) only **one** sign or advertising panel on a combination sign may be permitted per enterprise, provided that if there are more than one entrance to a premises on different road frontages, **two** signs or advertising panels may be permitted per enterprise, each on a different road frontage;
- iii) a maximum sign area of **4,5m²** is permitted, provided that where a sign is affixed to a non-advertising structure such as a boundary wall or gate structure it may not occupy more than **50%** of the structure to which it is affixed and a maximum height of **4m** shall apply;
- iv) in the case of elaborate and solid advertising structures, a maximum area per sign, including the supporting structure, of **9m²** is permitted, provided that the actual sign panel or lettering may not occupy more than **50%** of the total sign area and a maximum height of **6m** shall apply;
- v) where a sign is incorporated in a combination sign a maximum area of **3m²** per advertising panel shall be allowed.

e) Locality-bound banners and flags may be used on a temporary basis and only with approval:

- i) for advertising functions, events and enterprises;
- ii) be incorporated in a street-scaping project;
- iii) be used for advertising sales promotions or commercial products or events.

f) Any person who erects any sign on a private property, other than a sign described in section 50 or, without having first obtained Council's approval, a sign described in this section shall be guilty of an offense.

g) Any person who wishes to obtain approval in terms of this section must submit an application to the designated official as set out in section 17 and must pay the fee determined in Council's tariffs for an application.

52 The following signage is not permitted and no approval may be given for it by any official or sub-committee of Council:

- a) any sign which in the opinion of the Aesthetics Committee, is of an indecent, obscene, repulsive, revolting or objectionable character or content or of a nature calculated to produce a pernicious or injurious effect on the public or any person, or is displayed in such a place or in such a manner, or by such means as affects or is likely to affect injuriously the amenities of, or disfigure or is likely to disfigure, any property or neighbourhood;
- b) animated and flashing signage;
- c) enlarged product replicas and inflatable signs (except as provided for in chapter 9 or where such a sign has been approved in terms of section 60);
- d) signs painted, placed or erected on roofs;
- e) any sign, including the name or number of the premises, on or incorporating natural features such as, but not limited to rock faces, trees or hillsides;
- f) any sign which is, detrimental or is likely to be detrimental to the environment or to the amenity of a human living environment by reason of size, shape, colour, texture, intensity of

illumination, quality of design or materials or any other reason provided for in this by-law or any other law;

- g) any sign which obstructs any fire escape or any window or door or other opening used as a means of egress or for ventilation or for fire-fighting purposes or which prevents the free passage from one part of a roof to another;
- h) signs on veranda railings, supporting columns, pillars or posts;
- i) any banner (except as provided for in section 55(1));
- j) any sign which unreasonably obscures, wholly or partially, any sign owned by another person previously erected and legally displayed;
- k) any vehicle, trailer or other craft or object as contemplated in section 70;
- l) "Feather" and similar banners or flags (except as provided for in chapter 12);
- m) signs animated by mechanically generated airstreams and inflated "blimp" signs;
- n) with the exception of the three signs mentioned in section 54(3) any billboard type sign.

Any person who erects or displays any sign described in this section shall be guilty of an offense.

CHAPTER 8: REGULATION OF SIGNAGE ON MUNICIPAL PROPERTY

53 There are five categories of signage permitted on municipal property:

- a) certain categories of sign, including estate agent signage, as set out in section 54, are permitted on the conditions stated in that section.
- b) only after approval by the authorised official in terms of section 55 temporary signs in the form of banners and posters may be displayed at designated points and in terms of any conditions specified.
- c) only after approval the signs as detailed in Sections 58, 59 and 60 may be erected on municipal property under the conditions specified in the respective sections.
- d) only after approval directional and/or tourism signage that conforms to the specifications published by the municipality from time to time may be erected under the conditions specified in sections 56 and 57.
- e) from time to time the municipality may, in terms of section 61 make available, through private contractors, opportunities for advertising on structures such as rubbish bins or lamp posts, or on custom designed and purpose build structures commissioned by the municipality or on behalf of the municipality for the purpose of providing opportunities for advertising.

54 The following signs may be erected on municipal property without specific permission, subject to the conditions set out in each case:

- a) Estate agent signs may be displayed on council property on the following conditions:
 - i) only one sign per estate agency, per erf, road frontage with a maximum of three estate agencies are permitted and the owner of the erf must ensure that there are no more

- than three signs per erf road frontage, including any signs within the property boundaries;
- ii) a sign shall consist of a single board not exceeding 0,3m² in size, including any frame or hanging structure, and measured from the outside perimeter of any such structure shall be permitted for a property either zoned or used for single residential purposes;
 - iii) for a property zoned for other purposes and not used for single residential purposes a single board not exceeding 1,2m² in size, including any frame or hanging structure, and measured from the outside perimeter of any such structure, or two duplicate boards with a total size **of 2,4m²** joined at **120°** may be permitted;
 - iv) signs must be placed within a distance of **0,5m** of the boundary of the premises concerned;
 - v) signs must not be displayed on road islands or medians;
 - vi) agents having houses “on show” may display a board at the nearest primary route intersection and at each intervening intersection **during the time that an agent is on duty at the property that is on show**, provided that:
 - a) such boards may not be on permanent display and must, in all cases, including the case of developments, be removed on a daily basis during the times that the show house is not on show or the sales office is not operational;
 - b) the on show board must not exceed 0,3m² in size, including any frame or hanging structure, and measured from the outside perimeter of any such structure;
 - c) no more than one board may be placed at any intersection pointing in any one direction;
 - d) a maximum of one (1) board not exceed 0,3m² in size, including any frame or hanging structure, and measured from the outside perimeter of any such structure will be permitted outside the show house on show day.
 - vii) A sign conforming to the same size limits as would apply to a for sale sign, indicating that a property has been sold, may be erected, subject to the same restrictions on position as would apply to a for sale sign and may remain in position for no more than two months after the sale of the property.
- b)** Farm or smallholding name signs may be displayed next to the entrance of the access road to a homestead or must be affixed to the gate at the entrance of such access road; In the case of more than one farm/small holding sharing an unnumbered or private access road, a collective advertisement board or combination sign may be placed at the entrance to the access road or, where appropriate, a smaller sign indicating the property numbers in question only may be displayed; If any official traffic sign bearing a destination or route number is displayed at the entrance to such access road, no farm/smallholding name signs shall be allowed; A standardised name sign for specific smallholdings may be prescribed by the municipality.
- c)** Three only bill-board type advertising signs may be erected by or on behalf of municipality or the organisation responsible for the marketing of tourism in the municipal area; one on each side of the town of Knysna and one in the town of Sedgefield.

- d) Free-standing advertising boards on "A-Board" structures may be placed on municipal land on the following conditions:
- i) only one A-board permitted per business;
 - ii) a-boards shall only be placed directly in front of the premises on the pavement on the same side of the road as the premises;
 - iii) a-boards shall not exceed 1,2m high and 0,6m wide;
 - iv) the boards must be properly constructed so that they are stable in light winds;
 - v) boards must not be placed on the road edge but behind the pedestrian area, so as not to obstruct pedestrian movement. In no cases may the free passage for pedestrians be less than 2m;
 - vi) a-boards must not obstruct visibility for traffic;
 - vii) a-boards that do not comply with this by-law may be removed without warning and returned only on payment of the fee determined by Council in its annual tariffs, provided that they are collected within five days.

55 After approval by the authorised official and after payment of the deposit prescribed by Council in its annual list of tariffs, the following temporary signs may be erected on municipal property only in positions indicated to the applicant by the designated official:

- a) temporary banners or flags used for advertising functions and events conducted for religious, social, welfare, sporting, civic or cultural purposes;
- b) posters or placards relating to municipal, provincial or parliamentary elections or referenda, or other political events or campaigns;
- c) signs temporarily affixed to or painted on towers and bridges not used primarily for advertising purposes, including signs on cellular telephone base station towers, water towers, radio towers and similar structures, and signs attached to pylons for advertising of specific events of a civic, cultural, religious, social, sporting or welfare-related nature;
- d) any sign, including those utilised for advertising of events of a civic, cultural, religious, social, sporting or welfare-related nature may display a sponsor's logo not greater than one-third (1/3) of the area of the advertising sign.

56 Directional Signs: Members of the public wishing to have their establishments included in such directional signage must submit applications as set out in section 16.

57 Tourism signs which form part of the South African Road Traffic Sign System and which are provided supplementary to directional signs must comply with the provisions of the SA Road Transport Signage Manual. Owners or managers of tourism establishments who wish to erect such signs must submit an application as set out in Chapter 3. Subject to approval such signs must comply with the following standards:

- a) the applicant must have the approved sign made to the specifications and instructions of the municipality and at the applicant's expense. The quality of the material and the craftsmanship must meet the prescribed requirements and shall be subject to testing by the municipality;
- b) the applicant must provide the signs to the municipality to be erected;

- c) the applicant must fully compensate the municipality for all costs incurred in erecting and installing the sign in addition to a fee to be determined by Council in its annual tariffs;
- d) the applicant shall provide a sign for replacement as determined by the municipality, where such a sign is damaged or becomes unsightly.

58 Subject to approval, and to the registration of a lease over the council's property, project boards consisting of signs displaying the involvement of contractors and consultants in construction projects or alterations to existing structures or facilities may be erected on municipal property adjacent to the project site if it is impractical to erect them on the site itself, provided that:

- a) they must describe only the building or structure being erected or other work or activity being carried out, and the names of the contractors or consultants concerned in such work or activity;
- b) they may list the branches of the industry or the professions of the contractors or consultants;
- c) they must not exceed **1,5m²** per consultant or contractor, whether displayed as part of a combined project board or individually;
- d) they must not exceed **9m²** in total if they are combined project boards;
- e) no individual or single boards must be displayed if no other consultants or contractors are involved or if a combined project board has already been erected;
- f) only one such sign per contractor or consultant is permitted per project;
- g) they may be displayed only during the period of construction of the project and must be removed after a maximum display period of 2 years;
- h) such signs may not impede vehicular or pedestrian traffic movement, nor may they obscure the sightlines of any pedestrian or any vehicle driver in any way that could cause a hazard;
- i) such signs may not cause a distraction in such a way that it may lead to a traffic hazard.

59 Applicants wishing to erect other signage that is not provided for elsewhere in these regulations on municipal property may submit an application to do so in terms of Chapter 3. Such applicants should note that such signage will only be approved in exceptional cases and that it will be subject to the following conditions:

- a) a lease must be entered into for the municipal property on which it is located;
- b) the sign may not impede vehicular or pedestrian traffic movement, nor may it obscure the sightlines of any pedestrian or any vehicle driver in any way that could cause a hazard;
- c) the sign may not cause a distraction in such a way that it may lead to a traffic hazard;

60 In exceptional cases if the municipality is of the view that a particular sign or group of signs makes a positive contribution to the aesthetics, heritage or identity of the area by virtue of the unique nature of the sign or signs, its or their particular use of materials, its or their reference to any aspect of the area, or for any other reason considered significant by the Committee, special approval for such sign or signs may be given.

61 The municipality may provide a for contractual opportunities in respect of the following aspects of signage on municipal land:

- a) the use of street furniture, including, specifically, bus shelters and benches, refuse bins, lamp posts, and street name signs, in respect of their role in the overall conservation of the built

environment, in the definition of place, and in the provision of opportunities for signage and for revenue collection.

- b) the erection of structures specifically for the purpose of giving entrepreneurs the opportunity to advertise their businesses.

62 In respect of section 61, Terms of Reference for invitations to tender or calls for proposals in respect of the opportunities envisaged therein, must determine:

- a) numbers, spacing and positioning of elements;
- b) design parameters such as size, height, material and technology for elements;
- c) technical and aesthetic specifications for signs to be accommodated as part of the systems;
- d) procedures for the allocation of space or signage opportunities in terms of the system.

63 In respect of any contract let to any service provider in respect of the system or systems referred to in sections 61 and 62 the municipality shall retain the right to approve the design and content of any and all signs to be displayed on the structures to be utilised. To this end:

- a) any new contract must provide for standard parameters for all signs that may be accepted for display;
- b) a record of all signs accepted for display must be provided to the designated official;
- c) no sign that does not conform to the standard parameters in the agreement shall be displayed.

CHAPTER 9: SIGNAGE AT SPORTING EVENTS, FESTIVALS AND EXHIBITIONS

64 Approval to display temporary signs at sporting events, festivals, exhibitions, or similar events held in locations which are limited to pedestrian environments such as show grounds, exhibition centres and public roads which have been temporarily closed for motorised traffic may be given by the Aesthetics Committee, subject to an application being made by the event organisers on a prescribed form and the payment of a deposit to the municipality. Such application must include:

- a) a detailed description of the event in terms of which the signage should be approved;
- b) a site plan indicating the location of signage;
- c) the type of signage or proposed materials out of which the signage would be made and the method of construction.

65 Signs at sporting events, festivals, exhibitions, or similar events may include ground-based inflatable signs and replicas, as well as "feather" and other types of banners, under the following conditions:

- a) signs shall not be aimed at passing motorised traffic, but shall be limited to spectators and visitors to the event, festival or exhibition presented in a pedestrian area;
- b) the height of these signs shall be of such a nature as to limit its display to spectators and visitors to a specific event, festival or exhibition, and in any event not higher than 8.5 meters from the natural ground level;
- c) signs shall be anchored directly to the ground, building or other relevant structure in a secure manner;

- d) these signs shall be allowed only for the duration of a specific event, festival or exhibition. All signs along any public road, where such a road has been closed for presenting a sporting event, festival or exhibition shall be removed before such a road is opened for motorised traffic again.
- 66** Any damage or defacement of any building or site caused by or resulting from the removal of any sign must be repaired to the satisfaction of the municipality at the owner's cost.

CHAPTER 10: OFFENCES AND PENALTIES

Offences

- 67** Any person who contravenes the provisions of this by-law shall be guilty of an offence and liable on conviction to the penalty prescribed in section 68:
- a) whether or not a prosecution under this section has been instituted, the municipality may, by serving a written notice upon a person causing or permitting a contravention to take place or upon the owner of the site upon which such contravention takes place or upon both such person and such owner, direct such person or owner to, within a time specified in such notice, to desist from the contravening action or to remove, repair or alter the contravening structure or sign or to alter the manner or place or circumstances in which a contravening sign is displayed, or to comply with any other requirements deemed necessary by the municipality, so that contravention may cease.
- b) if a person or owner fails to comply with any requirement as contemplated in sub-section a), the municipality may revoke any approval given in terms of this by-law in respect of the same property and may approach a court to obtain an order requiring the property owner to carry out the directive issued in terms of sub-section a) and for such other remedies as the municipality may deem necessary and appropriate. The municipality may recover the cost of any such legal action from the owner of the property on which the sign was displayed.
- c) when the municipality has instituted action under sub-section 67 or sub-section a) or both in respect of any contravention or any alleged contravention no application, except one that is intended specifically to address the contravention or alleged contravention that is the subject of the action instituted, shall be submitted to or considered by the municipality in respect of the property or properties on which the contravention or alleged contravention have taken place or are alleged to have taken place until such time as the outcome of the action has been finalised either by compliance with the directive of the municipality or by compliance with the directive of a court or by the withdrawal of the action by the municipality.

Penalties

- 68** Any person who contravenes any provision of this by-law or who fails to comply with a lawful directive issued by a designated official of the municipality shall be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and such imprisonment, and in the case of a continued offence, to a further fine per day for every day, from the date on which the directive had been given, that the offence is continued.
- 69** Any sign or structure that is placed or erected on municipal property that has not been erected or placed in accordance with the provisions of this by-law may be removed without written notice at the advertiser's expense and it will only be returned to the owner on payment of all related costs,

which shall be billed against the property rates account of the owner at a rate determined in Council's annual tariffs.

- 70** The municipality may, at the expense of the owner, impound or confiscate any vehicle, trailer or other craft or object which is not an authorised signage structure and which in the opinion of the municipality, is being parked, positioned or otherwise used for the primary purpose of advertising, unless otherwise approved by the municipality, and the municipality may prescribe conditions, including a fee, for the release of such unauthorised vehicle, trailer or other craft or object.

Magistrate's Court jurisdiction

- 71** A Magistrate shall have jurisdiction, on the application of the municipality:

- a) to make an order for the enforcement of any of the provisions of this by-law or of any approval, refusal or condition granted or applicable in terms hereof;
- b) to determine fines that may be issued by any peace officer on behalf of Knysna Municipality.

CHAPTER 11: ADMINISTRATIVE MATTERS

Transitional Arrangements

- 72** Any approval granted in terms of the By-law Relating to Outdoor Advertising, Heritage and Building Aesthetics in the Municipal Area or in terms of any previous by-law relating to outdoor advertising will be deemed to be an approval in terms of this by-law.
- 73** Any sign or structure that is compliant with the Knysna Municipality: By-law Relating to Outdoor Advertising, Heritage and Building Aesthetics in the Municipal Area or previous by-laws relating to outdoor advertising, immediately prior to the date on which this by-law comes into operation but which is non-compliant with this by-law shall be deemed to be legal for a period not exceeding 12 months after the date on which this by-law comes into operation or until the sign or structure is replaced or is in a condition that requires maintenance of such a nature that it would normally be replaced, whichever occurs first. No such sign shall be renewed or replaced contrary to the provisions of this by-law.

Maintenance of Records

- 74** It is incumbent upon every property owner to ensure that s/he has in safe keeping a record of any approval that has been granted under this by-law or any previous by-law in terms of which a permission has been granted pertaining to any sign or related structure.
- 75** A copy of any signage master plan, together with its approval must be kept on the property at all times and must be available to the an official of the municipality for inspection if requested.

Repeal of by-laws

- 76** The Knysna Municipality: By-law Relating to Outdoor Advertising, Heritage and Building Aesthetics in the Municipal Area is hereby repealed.

Short title and commencement

- 77** This by-law shall be known as the Knysna Municipality's Regulation of Outdoor Advertising By-law and shall come into operation on the date of publication thereof in the Western Cape Provincial Gazette.

KNYSNA MUNICIPALITY
Spatial Planning & Land Use Management By-law
To regulate and control municipal land use planning

Chapter I: Interpretation & Application

- 1 Definitions
- 2 Application

Chapter II: Spatial Planning

- 3 Compilation or amendment of municipal spatial development framework
- 4 Establishment of project committee
- 5 Establishment of intergovernmental steering committee
- 6 Procedure with intergovernmental steering committee
- 7 Procedure without intergovernmental steering committee
- 8 Functions and duties
- 9 Local spatial development frameworks
- 10 Compilation, adoption, amendment or review of local spatial development frameworks
- 11 Status of local spatial development frameworks
- 12 Structure plans
- 13 Determination of zoning
- 14 Non-conforming uses

Chapter III: Development Management

- 15 Land development requiring approval and other approvals
- 16 Continuation of application after change of ownership
- 17 Rezoning of land
- 18 Departures
- 19 Consent uses
- 20 Subdivision
- 21 Confirmation of subdivision
- 22 Lapsing of subdivision
- 23 Amendment or cancellation of subdivision plan
- 24 Exemption of certain subdivisions and consolidations
- 25 Ownership of public places and land for municipal service infrastructure and amenities
- 26 Closure of public places
- 27 Services arising from subdivision
- 28 Certification by Municipality
- 29 Owners' associations
- 30 Owners' associations that cease to function
- 31 Consolidation of land units
- 32 Lapsing of consolidation
- 33 Removal, suspension or amendment of restrictive conditions
- 34 Endorsements in connection with removal, suspension or amendment of restrictive conditions
- 35 Manner and date of notification
- 36 Procedures for applications
- 37 Pre-application consultation
- 38 Information required
- 39 Application fees

Chapter IV: Application Procedures

- 40 Grounds for refusing to accept application
- 41 Receipt of application and commencement of application process
- 42 Provision of additional information or documents
- 43 Withdrawal of application or power of attorney
- 44 Public notice in accordance with other laws and integrated procedures
- 45 Publication of notices
- 46 Serving of notices
- 47 Contents of notice
- 48 Other methods of public notice
- 49 Requirements for petitions
- 50 Requirements for submission of comments
- 51 Intergovernmental participation process
- 52 Amendments before approval
- 53 Further public notice
- 54 Liability for cost of notice
- 55 Right of applicant to reply
- 56 Written assessment of application
- 57 Decision-making period
- 58 Failure to act within period
- 59 Powers to conduct routine inspections
- 60 Decisions on application
- 61 Notification and coming into operation of decision
- 62 Duties of agent
- 63 Errors and omissions
- 64 Exemptions to facilitate expedited procedures

Chapter V: Criteria for Decision-Making

- 65 General criteria for consideration of applications
- 66 Conditions of approval

Chapter VI: Extension of Validity Period of Approvals

- 67 Applications for extension of validity period

Chapter VII: Municipal Planning Decision-Making Structures

- 68 Municipal planning decision-making structures in respect of applications and appeals
- 69 Consideration of applications
- 70 Establishment of Tribunal
- 71 Composition of Tribunal for municipal area
- 72 Process for appointment of members for Tribunal for municipal area
- 73 Term of office and conditions of service of members of Tribunal for municipal area
- 74 Disqualification from membership of Tribunal
- 75 Meetings of Tribunal for municipal area
- 76 Code of conduct for members of Tribunal for municipal area
- 77 Administrator for Tribunal for municipal area
- 78 Functioning of Tribunal for municipal area
- 79 Appeals
- 80 Procedure for appeal
- 81 Consideration by Appeal Authority

Chapter VIII: Provision of Engineering Services

- 82 Responsibility for provision of engineering services
- 83 Development charges and other contributions
- 84 Land for parks, open spaces and other uses

Chapter IX: Enforcement

- 85 Enforcement
- 86 Offences and penalties
- 87 Serving of compliance notices
- 88 Contents of compliance notice
- 89 Objections to compliance notice
- 90 Failure to comply with compliance notice
- 91 Compliance certificates
- 92 Urgent matters
- 93 Contravention penalties
- 94 General powers and functions of authorized employees
- 95 Powers of entry, search and seizure
- 96 Warrant of entry for enforcement purposes
- 97 Regard to decency and order
- 98 Enforcement litigation

Chapter X: Intervener Status

- 99 Intervener Status

Chapter XI: Miscellaneous

- 100 Naming and numbering of streets
- 101 Repeal
- 102 Short title and commencement

Schedule 1

Code of Conduct for Members of Tribunal

Chapter I: Interpretation & Application

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:

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

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

“adjoining owner(s)” means the owner of any property sharing a common boundary with a property(ies) which forms the subject of a land development application or touches any corner of the aforesaid property(ies) and will include a property that may be separated from the aforesaid property by a road or a roadway or a right of way servitude or a railway reserve or open space, or similar properties;

“agent” means a person authorized in terms of a power of attorney to make an application on behalf of an owner;

“Appeal Authority” means the Appeal Authority contemplated in section 79(1);

“applicable period”, referred to in sections 17(5) and (6), 18(2), 19(5), 22(1) and 32(1), means the period that may be determined by the municipality in the approval;

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

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

“authorized employee” means a municipal employee who is authorized in terms of delegated or sub-delegated authority by the municipality 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;

“base zoning” means the zoning before the application of any overlay zone;

“certificate of title” means a certificate of consolidated title or a certificate of registered title as envisaged in terms of section 40 and 43 of the Deeds Registry Act 47 of 1937, respectively;

“commencement”, in relation to construction, means to have begun continuous physical, on-site construction in accordance with building plans approved in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977), and that has gone beyond site clearing, excavation or digging trenches in preparation for foundations;

“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;

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

“Council” means the municipal council of the municipality;

“date of notification” means the date on which a notice is served as contemplated in section 35 or published in the media or *Provincial Gazette*;

“development charge” means a development charge contemplated in section 83 as levied by the municipality;

“emergency” includes a situation that arises from a flood, strong wind, severe rainstorm, fire, earthquake or industrial accident and that requires the relocation of human settlements or people;

“engineering services agreement” means a written agreement which is concluded between an owner of property on which a land development application has been approved in terms of this by-law and the municipality and includes:

- a) detailed and specific respective rights and obligations regarding the provision and installation of the external, internal and link engineering services required for an approved land development, further including the design, provision, installation, financing and maintenance of engineering services;
- b) the associated development charges;
- c) the standard of such engineering services as determined by the municipality;
- d) the classification of engineering services as internal, external or link services; and
- e) any matter related to the provision of engineering services in terms of this by-law;

“external engineering service” means an engineering service outside the boundaries of a land area referred to in an application and that is necessary for the utilization and development of the land;

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

“link service” means the municipal infrastructure service associated with that portion of an external engineering service which links an internal engineering service to the applicable bulk service;

“local spatial development framework” means a local spatial development framework contemplated in section 9;

“Municipal Manager” means the Municipal Manager of the municipality;

“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 Knysna (WC048) established by Establishment Notice in *Provincial Gazette* P.N. 204/2000 of 22 September 2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and where the context so requires, includes:

- a) the Council;
- b) another political structure or a political office bearer of the municipality, authorized or delegated to perform a function or exercise a power in terms of this by-law;
- c) the Tribunal authorized or delegated to perform a function or exercise a power in terms of this by-law;
- d) the Municipal Manager; and
- e) an authorized employee.

“non-conforming use” means an existing land use that was lawful in terms of a previous zoning scheme but that does not comply with the zoning scheme in force;

“overlay zone” means a category of zoning that applies to land or a land unit in addition to the base zoning and that:

- a) stipulates additional development parameters or use rights that may be more or less restrictive than the base zoning; and
- b) may include provisions and/or development parameters relating to:
 - i) primary or consent uses;
 - ii) subdivision or subdivisional areas;
 - iii) development incentives;

- iv) density limitations;
- v) urban form or urban renewal;
- vi) heritage or environmental protection;
- vii) management of the urban edge;
- viii) scenic spaces;
- ix) coastal setbacks; or
- x) any other purpose as set out in the zoning scheme;

“owner” means anybody or person registered in a deeds registry as contemplated in section 1, 2 and 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), as the owner of land or beneficial owner in law and includes a Municipality or any other organ of state as an owner or where properties have been vested and is under the control and management of the municipality;

“owners’ association” means an owners’ association contemplated in section 29;

“pre-application consultation” means a consultation contemplated in section 37;

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

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

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

“site development plan” means a dimensioned plan drawn to scale that indicates details of the proposed land development, including the site layout, positioning of buildings and structures, property access, building designs and landscaping;

“social infrastructure” means community facilities, services and networks that meet social needs and enhance community well-being;

“subdivisional area” means an overlay zone that permits subdivision for the purposes of a subdivision application involving a change of zoning;

“Tribunal” means the Municipal Planning Tribunal established in terms of section 70.

“Zoning Scheme” means a land use scheme as envisaged in terms of Chapter V of the Act.

2 Application of By-law

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

CHAPTER II: SPATIAL PLANNING

3 Compilation or amendment of municipal spatial development framework

- 1) When the Council compiles 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:
 - a) establish an intergovernmental steering committee to compile a draft municipal spatial development framework or draft amendment of its municipal spatial development framework; or

- b) refer its draft municipal spatial development framework or draft amendment of its municipal spatial development framework to the Provincial Minister for comment.
- 2) The municipality must:
- a) publish a notice in two of the official languages of the Province most spoken in the area in two newspapers circulating in the area concerned of:
 - i) the intention to compile or amend the municipal spatial development framework and
 - ii) the process to be followed, in accordance with section 28(3) and 29 of the Municipal Systems Act;
 - b) inform the Provincial Minister in writing of:
 - i) the intention to compile or amend the municipal spatial development framework;
 - ii) its decision in terms of sub-section (1)(a) or (b); and
 - iii) the process contemplated in sub-section (2)(a)(ii).

4 Establishment of project committee

- 1) The municipality may establish a project committee to assist to compile or amend its municipal spatial development framework and to perform the duties of the municipality referred to in sections 6 and 8.
- 2) A project committee must consist of:
 - a) the Municipal Manager or a municipal employee designated by the municipal manager; and
 - b) municipal employees appointed by the Municipal Manager from, inter alia, the following municipal departments where relevant:
 - i) Integrated Development Planning;
 - ii) Town Planning & Building Control;
 - iii) Technical Services;
 - iv) Environmental Management
 - v) Local Economic Development; and
 - vi) Integrated Human Settlements.

5 Establishment of intergovernmental steering committee

- 1) If the Council establishes an intergovernmental steering committee, it must consist of:
 - a) the Municipal Manager, or a designated municipal employee to represent the Municipal Manager; and
 - b) representatives of:
 - i) the municipality, nominated by the Municipal Manager;
 - ii) the provincial department responsible for land use planning, nominated by the Head of Department;
 - iii) the provincial department responsible for environmental affairs, nominated by the head of that department; and
 - iv) other relevant organs of state, if any, who may have an interest in the compilation or amendment of the spatial development framework of the municipality.
- 2) When the Council establishes an intergovernmental steering committee the Municipal Manager must:
 - a) designate a municipal employee to represent the Municipal Manager;
 - b) nominate other representatives of the municipality; and
 - c) in writing, invite written nominations for representatives from the person or organs of state contemplated in sub-section (1)(b)(ii), (iii) and (iv).

6 Procedure with intergovernmental steering committee

- 1) If the Council establishes an intergovernmental steering committee, the municipality must compile a draft *status quo* report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and must submit it to the intergovernmental steering committee for comment.
- 2) After consideration of the comments of the intergovernmental steering committee, the municipality must finalise the *status quo* report and submit it to the Council for adoption.
- 3) After finalising the *status quo* report the municipality must compile a first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.
- 4) After consideration of the comments of the intergovernmental steering committee, the municipality must finalise the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework and submit it to the Council to approve the publication thereof for public comment in accordance with the process adopted in terms of sections 28(3) and 29 of the Municipal Systems Act.
- 5) After consideration of the comments received by virtue of the publication contemplated in sub-section (4), the municipality must compile a final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework and submit it to the intergovernmental steering committee for comment.
- 6) After consideration of the comments of the intergovernmental steering committee contemplated in sub-section (5), the municipality must finalise the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework and submit it to the Council for adoption.
- 7) If the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework contemplated in sub-section (6) is materially different to what was published in terms of sub-section (4), the municipality must in accordance with sub-sections (4), (5) and (6) read with the necessary changes, follow a further consultation and public participation process before the municipal spatial development framework or amendment of the municipal spatial development framework is adopted by the Council.
- 8) The Council or the municipality may at any time in the process of compiling a municipal spatial development framework or drafting an amendment of the spatial development framework request comments from the intergovernmental steering committee.
- 9) The Council must adopt the final draft municipal spatial development framework or final draft amendment of the municipal spatial development framework, with or without amendments and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

7 Procedure without intergovernmental steering committee

- 1) If the Council does not establish an intergovernmental steering committee to compile or amend its municipal spatial development framework, the municipality must:
 - a) compile a draft *status quo* report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and submit it to the Council for adoption;
 - b) after adoption of the *status quo* report, compile a first draft of the municipal spatial development framework or first draft of the 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 first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework for publication contemplated in paragraph (b), submit the first draft of the municipal spatial development framework or first draft of the amendment of the municipal spatial development framework to the Provincial Minister for comment in terms of section 13 of the Land Use Planning Act; and
 - d) after consideration of the comments received from the public and the Provincial Minister, submit the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with any further amendments, to the Council for adoption.

- 2) If the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework contemplated in sub-section (1)(d) is materially different to what was published in terms of sub-section (1)(b), the municipality must follow a further consultation and public participation process before the municipal spatial development framework or amendment of the municipal spatial development framework is adopted by the Council.
- 3) The Council must adopt the final draft of the municipal spatial development framework or final draft of the amendment of the municipal spatial development framework, with or without amendments, and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

8 Functions and duties

- 1) The municipality must, in accordance with the directions of the Executive Mayor:
 - a) ensure the compilation of the municipal spatial development framework or drafting of an amendment of the municipal spatial development framework for adoption by the Council;
 - b) provide technical knowledge and expertise to the Council;
 - c) ensure that the compilation of the municipal spatial development framework or drafting of the amendment of the municipal spatial development framework is progressing according to the process contemplated in section 3(2)(a)(ii);
 - d) guide the public participation process and ensure that the registered stakeholders remain informed;
 - e) ensure the incorporation of amendments to the draft municipal spatial development framework or draft amendment of the municipal spatial development framework based on the consideration of the comments received during the process of drafting thereof;
 - f) ensure the drafting of:
 - i) a report in terms of section 14(c) of the Land Use Planning Act setting out the response of the municipality to the provincial comments issued in terms of section 12(4) or 13(2) of that Act; and
 - ii) a statement setting out:
 - (aa) whether the municipality has implemented the policies and objectives issued by the national minister responsible for spatial planning and land use management and if so, how and to what extent the municipality has implemented it; or
 - (bb) if the municipality has not implemented the policies and objectives, the reasons for not implementing it.
 - g) ensure alignment of the municipal spatial development framework with the development plans and strategies of other affected municipalities and other organs of state as contemplated in section 24(1) of the Municipal Systems Act;
 - h) facilitate the integration of other sector plans into the municipal spatial development framework; and
 - i) if the Council establishes an intergovernmental steering committee:
 - i) assist the Council in establishing the intergovernmental steering committee and adhering to time frames; and
 - ii) ensure the flow of information between the project committee and the intergovernmental steering committee.
- 2) The members of the intergovernmental steering committee must:
 - a) provide the municipality with the following:
 - i) technical knowledge and expertise;
 - ii) input on outstanding information that is required to compile the municipal spatial development framework or draft an amendment thereof;
 - iii) information on budgetary allocations;

- iv) information on and the locality of any current or planned projects that have an impact on the municipal area; and
- b) provide the project committee, if established or the municipality with written comments in terms of section 6.

9 Local spatial development frameworks

- 1) The municipality may adopt a local spatial development framework for a specific geographical area in a part of the municipal area.
- 2) The purpose of a local spatial development framework is to, for a specific geographical area:
 - a) provide detailed spatial planning guidelines;
 - b) provide more detail in respect of a proposal provided for in the municipal spatial development framework;
 - c) meet specific land use planning needs;
 - d) provide detailed policy and recommended development parameters for land use planning;
 - e) provide detailed priorities in relation to land use planning and, insofar as they are linked to land use planning, biodiversity and environmental issues; and
 - f) guide decision-making on land use applications.

10 Compilation, adoption, amendment or review of local spatial development frameworks

- 1) If the municipality compiles, amends or reviews a local spatial development framework, it must adopt a process plan, including the public participation processes to be followed for the compilation, amendment, review or adoption of a local spatial development framework.
- 2) The municipality must, within 21 days of adopting a local spatial development framework or an amendment of a local spatial development framework, publish a notice of the decision in the media and the *Provincial Gazette*.

11 Status 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 10(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 Structure plans

- 1) If the municipality intends to convert a structure plan to a local spatial development framework, the municipality must comply with sections 9 to 11 and must:
 - a) review that structure plan and make it consistent with the purpose of a local spatial development framework contemplated in section 9(2); and
 - b) incorporate the provisions of the structure plan that are consistent with that purpose in the local spatial development framework.
- 2) The municipality must, in terms of section 16(4) of the Land Use Planning Act, withdraw the relevant structure plan by notice in the *Provincial Gazette* when it adopts a local spatial development framework contemplated in sub-section (1).

CHAPTER III: DEVELOPMENT MANAGEMENT

13 Determination of zoning

- 1) The owner or his/her agent may apply in terms of section 15(2) to the municipality for the determination of a zoning for land referred to in section 34(1), (2) or (3) of the Land Use Planning Act.

- 2) When the municipality considers an application in terms of sub-section (1), it must have regard to the following:
 - a) the lawful utilization of the land, or the purpose for which it could be lawfully utilized immediately before the commencement of the Land Use Planning Act if it can be determined;
 - b) the zoning, if any, that is most compatible with that utilization 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 the Land Use Planning Act, the utilization 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 utilization of the land and the purpose for which it could be lawfully utilized immediately before the commencement of the Land Use Planning Act 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 sub-section (2)(e) is applicable, the municipality must rezone the land concerned in terms of section 15(2)(a).
- 4) A land use that commenced unlawfully, whether before or after the commencement of this by-law, may not be considered to be lawful.

14 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 is ceased for any reason for a period of more than twenty-four consecutive months, any subsequent utilization of the property must comply with this by-law and the zoning scheme, with or without departures;
 - b) an appropriate application contemplated in section 15(2) 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 in respect of which the proven use right exists.
- 3) Subject to sub-section (2)(a) and (b), if an existing building that 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 municipality may grant permission for the reconstruction of such building subject to conditions.

15 Land development requiring approval and other approvals

- 1) No person may commence, continue, or cause the commencement or continuation of, land development, other than the subdivision or consolidation of land referred to in section 24, without the approval of the municipality in terms of sub-section (2).
- 2) The owner or his or her agent may apply to the municipality in terms of this Chapter and Chapter IV for the following in relation to the development of the land concerned:
 - a) a rezoning of land;
 - b) a permanent departure from the development parameters of the zoning scheme;
 - c) a departure granted on a temporary basis to utilize land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;
 - d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;
 - e) a consolidation of land that is not exempted in terms of section 24;
 - f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;
 - g) a permission required in terms of the zoning scheme;

- h) an amendment, deletion or imposition of conditions in respect of an existing approval;
 - i) an extension of the validity period of an approval;
 - j) an approval of an overlay zone as contemplated in the zoning scheme;
 - k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram;
 - l) a permission required in terms of a condition of approval;
 - m) a determination of a zoning;
 - n) a closure of a public place or part thereof;
 - o) a consent use contemplated in the zoning scheme;
 - p) to disestablish an owner's association;
 - q) to rectify a failure by an owner's association to meet its obligations in respect of the control over or maintenance of services;
 - r) to determine an administrative penalty as contemplated in section 93;
 - 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) 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.
 - 4) The municipality may, subject to sub-section (6), on its own initiative rezone land of which it is not the owner for a purpose contemplated in sections 13(3) and 17(1).
 - 5) The municipality may, subject to sub-section (6), on its own initiative conduct land development or an activity contemplated in sub-sections (2)(b), (c), (f) to (j) and (l) to (r) in respect of land which is not owned by the municipality.
 - 6) When the municipality on its own initiative acts in terms of sub-section (2), (4) or (5):
 - a) the municipality is regarded for purposes of this Chapter and Chapter IV as an applicant and must comply with this Chapter and Chapter IV, including the publication and notice requirements; and
 - b) the decision must be made by the Tribunal.

16 Continuation of application after change of ownership

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.

17 Rezoning of land

- 1) The municipality may, on its own initiative, rezone land of which it is not the owner to:
 - a) provide a public service or to provide a public recreational space; or
 - b) substitute a zoning scheme or part thereof for a zoning scheme in terms of which the land is not zoned in accordance with the utilization thereof or existing use rights.
- 2) An applicant, including the municipality, who wishes land to be rezoned, must submit an application to the municipality in terms of section 15(2).
- 3) When the municipality creates an overlay zone for land it must comply with sections 12 and 13 of the Municipal Systems Act.
- 4) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- 5) Subject to sub-section (6), a rezoning approval contemplated in sub-section (2) lapses after 10 years if no period for compliance is specified in such approval; or the period for compliance specified in such approval which, together with any extension that may be granted, may not exceed 10 years, reckoned from the date that the approval comes into operation if, within that period:
 - a) the zoning is not utilized in accordance with the approval; or
 - b) the following requirements have not been met:

- i) the approval by the municipality of a building plan envisaged for the utilization of the approved use right; and
 - ii) commencement of the construction of the building contemplated in subparagraph (i).
- 6) An approval of a rezoning to subdivisional area contemplated in section 20(2) lapses after 10 years if no period for compliance is specified in such approval; or the period for compliance specified in such approval which, together with any extension that may be granted, may not exceed 10 years from the date that the approval comes into operation if, within that period:
 - a) a subdivision application is not submitted; or
 - b) any suspensive conditions of approval are not complied with.
- 7) If a subdivision application is submitted in respect of land that is zoned as subdivisional area, the zoning of subdivisional area lapses on the later date of the following dates:
 - a) the date on which the subdivision is approved; or
 - b) the date after the applicable period contemplated in sub-section (6) including any extended period approved in terms of section 67.
- 8) The approval of a rezoning to subdivisional area must include conditions that make provision for at least:
 - a) density requirements;
 - b) main land uses and the extent thereof; and
 - c) a detailed phasing plan or a framework including:
 - i) main transport routes;
 - ii) main land uses;
 - iii) bulk infrastructure;
 - iv) requirements of organs of state;
 - v) public open space requirements; and
 - vi) physical development constraints.
- 9) If a rezoning approval lapses, the zoning applicable to the land before the approval of the rezoning applies or, where no zoning existed before the approval of the rezoning, the municipality must determine a zoning in terms of section 13.

18 Departures

- 1) An applicant may apply to the municipality in terms of section 15(2):
 - a) for a departure from the development parameters of a zoning or an overlay zone; or
 - b) to utilize land on a temporary basis for a purpose not permitted in terms of the primary rights of the zoning applicable to the land for a period not exceeding five years.
- 2) A departure contemplated in sub-section (1)(a) lapses after 10 years if no period for compliance is specified in such approval; or the period for specified in such approval which, together with any extension that may be granted, may not exceed 10 years from the date that the approval comes into operation if, within that period:
 - a) the departure is not utilized in accordance with the approval; or
 - b) the following requirements have not been met:
 - i) the approval by the municipality of a building plan envisaged for the utilization of the approved departure; and
 - ii) commencement of the construction of the building contemplated in subparagraph (i).
- 3) The municipality may approve a departure contemplated in sub-section (1)(b) for a period shorter than five years but, if a shorter period is approved, the period together with any extension approved in accordance with section 67 may not exceed five years;

- 4) A temporary departure contemplated in sub-section (1)(b), except for a right to utilize land for a purpose granted on a temporary basis for a specific occasion or event, as, may not be approved more than once in respect of a particular use on a specific land unit.
- 5) A temporary departure contemplated in sub-section (1)(b) may include an improvement of land only if:
 - a) the improvement is temporary in nature; and
 - b) the land can, without further construction or demolition, revert to its previous lawful use upon the expiry of the use right.

19 Consent uses

- 1) An applicant may apply to the municipality in terms of section 15(2) for a consent use contemplated in the zoning scheme.
- 2) If the development parameters for the consent use that is being applied for are not defined in the zoning scheme, the municipality must determine the development parameters that apply to the consent use in terms of conditions of approval imposed in terms of section 66.
- 3) A consent use may be approved permanently or for a period specified in the conditions of approval imposed in terms of section 66.
- 4) A consent use approved for a specified period must not have the effect of preventing the property from being utilized in the future for the primary uses permitted in terms of the zoning of the land.
- 5) A consent use contemplated in sub-section (1) lapses after the applicable period from the date that the approval comes into operation if, within that period:
 - a) the consent use is not utilized in accordance with the approval; or
 - b) the following requirements have not been met:
 - i) the approval by the municipality of a building plan envisaged for the utilization of the approved consent use; and
 - ii) commencement of the construction of the building contemplated in subparagraph (i).

20 Subdivision

- 1) No person may subdivide land without the approval of the municipality in terms of section 15(2) unless the subdivision is exempted in terms of section 24.
- 2) No application for subdivision involving a change of zoning may be considered by the municipality unless the land concerned is zoned as a subdivisational area.
- 3) An applicant may submit a subdivision application simultaneously with an application for rezoning.
- 4) The municipality must impose appropriate conditions in terms of section 6 relating to engineering services for an approval of a subdivision.
- 5) If the 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 imposed in terms of section 66; and
 - c) the approved subdivision plan.
- 6) The municipality must issue a certificate to the applicant or any other person on his or her written request to confirm that all the conditions of approval contemplated in sub-section 21(1)(c) have been met, if the applicant has submitted the proof contemplated in that section.
- 7) If the municipality issues a certificate referred to in sub-section (6) in error, the owner is not absolved from complying with the obligations imposed in terms of the conditions.

21 Confirmation of subdivision

- 1) A subdivision or part thereof is confirmed and cannot lapse when the following requirements are met within the period contemplated in section 22(1):

- a) approval by the Surveyor-General of the general plan or diagram contemplated in section 20(5);
 - b) completion of the installation of engineering services in accordance with the conditions contemplated in section 20(4) and other applicable legislation;
 - c) proof to the satisfaction of the municipality that all the conditions of the approved subdivision that must be complied with before compliance with paragraph (d) have been met in respect of the area shown on the general plan or diagram; and
 - d) registration of the transfer of ownership, or a certificate of title 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.
- 2) Upon confirmation of a subdivision or part thereof in terms of sub-section (1), zonings indicated on an approved subdivision plan are confirmed and cannot lapse.
 - 3) The municipality must in writing confirm to the applicant or any other person on his or her written request that a subdivision or part of a subdivision is confirmed if the applicant has to the satisfaction of the municipality submitted proof of compliance with the requirements referred to in sub-section (1)(a) to (d) 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 sub-section (1) or the municipality approved the construction of certain buildings or structures, to comply with conditions of approval, before the confirmation of the subdivision.

22 Lapsing of subdivision

- 1) An approved subdivision lapses after 10 years if no period for compliance is specified in such approval; or the period specified in such approval which, together with any extension that may be granted, may not exceed 10 years from the date that the approval comes into operation if the requirements contemplated in section 21(1)(a) to (d) have not been met within that period.
- 2) If an applicant complies with section 21(1)(b) and (c) only in respect of a part of the land reflected on the general plan contemplated in section 21(1)(a), the applicant must withdraw the general plan and submit a new general plan to the Surveyor-General for that part of the land.
- 3) If an approval of a subdivision or part thereof lapses in terms of sub-section (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.

23 Amendment or cancellation of subdivision plan

- 1) The municipality may in terms of section 15(2) 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 that have not been registered yet in terms of the Deeds Registries Act.
- 2) When the municipality approves an application in terms of sub-section (1), any public place that is no longer required by virtue of the approval must be closed in terms of section 26.
- 3) The municipality must notify the Surveyor-General of an approval in terms of sub-section (1) and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.
- 4) An amended subdivision approval contemplated in sub-section (1) does not extend the validity period of the initial approval of the subdivision as contemplated in section 22(1).

24 Exemption of certain subdivisions and consolidations

- 1) The subdivision or consolidation of land does not require the approval of the municipality in the following cases:

- a) a subdivision or consolidation that arises from the implementation of a court ruling;
 - b) a subdivision or consolidation that arises from an expropriation;
 - c) a minor amendment to the common boundary between two or more land units if the resulting change in area of any of the land units does not exceed 10 per cent;
 - d) the consolidation of a closed public place with an abutting erf;
 - e) the construction or alteration of a public or proclaimed street;
 - f) the registration of a servitude or lease agreement for:
 - i) the provision or installation of water pipelines, electricity transmission lines, sewer pipelines, storm water pipes and canals, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - ii) the provision or installation of telecommunication lines by or on behalf of a licensed telecommunications operator;
 - iii) the imposition of height restrictions; or
 - iv) the granting of a right of habitation, private right of way or usufruct;
 - g) the exclusive utilization of land for agricultural purposes if the utilization, in the case of a subdivision, requires approval in terms of legislation regulating the subdivision of agricultural land; and does not lead to urban expansion; or
 - h) the establishment of a development scheme as defined in section 1(1) of the Sectional Titles Act, 1986 (Act 95 of 1986).
- 2) An owner or his or her agent must obtain a certificate from the municipality that certifies in writing that the subdivision or consolidation is exempted from the application of section 15, and sections 20 to 23 in the case of a subdivision, or sections 15, 31 and 32 in the case of a consolidation.
 - 3) The municipality must indicate on the subdivision plan, or on the diagram in respect of the consolidation, that the subdivision or consolidation is exempted from the application of the sections referred to in sub-section (2).
 - 4) Sub-sections (2) and (3) do not apply in respect of a subdivision or consolidation contemplated in sub-section (1)(a), (b) or (h).

25 Ownership of public places and land for municipal service infrastructure and amenities

- 1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vests 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 66 determine that land designated for the provision of municipal service infrastructure and amenities on an approved subdivision plan be transferred to the municipality upon confirmation of the subdivision or a part thereof.

26 Closure of public places

- 1) The municipality may, on its own initiative, apply to permanently close a public place or any part thereof in accordance with Chapter IV.
- 2) An applicant who requires the closure of a public place, whether permanently or temporarily, must apply in terms of section 15(2) to the municipality.
- 3) The ownership of the land comprising any public place, or a part thereof, that is permanently closed in terms of this section continues to vest in the municipality unless the municipality determines otherwise.
- 4) The Municipal Manager may, without complying with Chapter IV, temporarily close a public place:
 - a) for the purpose of, or pending, the construction, reconstruction or maintenance of the public place;
 - b) for the purpose of, or pending, the construction, extension, maintenance or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
 - c) if the public place is in a state that is dangerous to the public;
 - d) by reason of an emergency or public event that requires special measures for the control of

- traffic or crowds; or
 - e) for any other reason that renders the temporary closing of the public place necessary or desirable.
- 5) The municipality must notify the Surveyor-General of an approval in terms of sub-section (1) and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

27 Services arising from subdivision

- 1) Subsequent to the approval of an application for subdivision in terms of this by-law, the owner of any land unit originating from the subdivision must:
- a) allow with or without compensation that the following be conveyed across his or her land unit as may be reasonably required in respect of other land units originating from the subdivision:
 - 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 paragraph (a) or (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 to provide a safe and proper slope to its bank where 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.

28 Certification by municipality

- 1) A person may apply to the Registrar of Deeds to register the transfer of a land unit or a certificate of title, as the case may be, in any of the instances referred to in sub-section (3)(a) to (d), only if the municipality has issued a certificate in terms of this section.
- 2) The Registrar of Deeds may register the transfer of a land unit or a certificate of title, as the case may be, in any of the instances referred to in sub-section (3)(a) to (d) only if the municipality has issued a certificate in terms of this section.
- 3) The municipality must issue a certificate to transfer a land unit contemplated in sub-sections (1) and (2) if the owner provides the municipality with the following:
- a) where an owners' association has been established in respect of that land unit, a conveyancer's certificate confirming that money due by the transferor of the land unit to that owners' association has been paid, or that provision has been made to the satisfaction of the owners' association for the payment thereof;
 - b) in the case of any existing contravention penalty due by the transferor of the land unit, proof of payment thereof and/or proof of compliance with an instruction in a compliance notice issued to the transferor in terms of Chapter IX;

- c) in the case of the first registration of the transfer of ownership of a land unit arising from a subdivision to any person other than the developer and where an owner's association is constituted, proof that:
 - i) all common property arising from the subdivision has been transferred to the owners' association by virtue of section 29(3)(e); or
 - ii) all common property arising from the subdivision will be transferred to the owners' association simultaneously with the registration of the transfer of that land unit;
- d) in the case of the first registration of the transfer of ownership or a certificate of title of a land unit arising from a subdivision and that leads to the confirmation of the subdivision, proof that:
 - i) land needed for public purposes or other municipal infrastructure as contemplated in terms of a condition imposed under section 66 has been transferred to the municipality or will be transferred to the municipality simultaneously with the registration of the transfer of that land unit or certificate of title;
 - ii) the engineering services and amenities that must be provided in connection with the subdivision are available; and
 - iii) a certificate contemplated in section 20(6) has been issued by the municipality.

29 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 sub-section (1) is a juristic person and must have a constitution.
- 3) The constitution of an owners' association must be approved by the municipality before registration of the transfer of the first land unit and must make provision 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 annual 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 all common property arising from the subdivision, including:
 - i) private open spaces;
 - ii) private roads; and
 - iii) land required for services provided by the owners' association;
 - 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; and
 - h) the implementation and enforcement by the owners' association of the provisions of the constitution.
- 4) The constitution of an owners' association may have other objectives as set by the association but may not contain provisions that are in conflict with any law.
- 5) The constitution of the owners' association takes effect upon the registration of the transfer of ownership of the first land unit to a person other than the developer.
- 6) An owners' association may amend its constitution when necessary, but if an amendment affects the municipality or a provision referred to in sub-section (3), the amendment must also be approved by the municipality.
- 7) An owners' association that comes into being by virtue of sub-section (1):
 - a) has as its members all the owners of the land units arising 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 transfer of ownership of the first land unit to a person other than the developer automatically established.
- 8) The design guidelines contemplated in sub-section (3)(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.

30 Owners' associations that cease to function

- 1) If an owners' association ceases to function or carry out its obligations, the municipality or any affected person, including a member of the association, may apply:
 - a) in terms of section 15(2)(p) to disestablish the owners' association subject to:
 - i) the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
 - ii) the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association;
 - b) in terms of section 15(2)(q) 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 sub-section 29(3)(b); or
 - c) to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association.
- 2) In considering an application contemplated in sub-section (1)(a), the municipality must have regard to:
 - a) the purpose of the owners' association;
 - b) who will take over the control over and maintenance of services for which the owners' association is responsible; and
 - c) the impact of the disestablishment of the owners' association on the members of the owners' association and the community concerned.
- 3) 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 sub-section (1).
- 4) The amount of any expenditure so recovered is, for the purposes of section 29(7)(a), considered to be expenditure incurred in connection with the owners' association.

31 Consolidation of land units

- 1) No person may consolidate land without the approval of the municipality in terms of section 15(2) unless the consolidation is exempted in terms of section 24.
- 2) If the 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 municipality's decision to approve the consolidation;
 - b) the conditions of approval imposed in terms of section 66; and
 - c) the approved consolidation plan.
- 3) If the municipality approves a consolidation, the municipality must amend the zoning map and where applicable the register, accordingly.

32 Lapsing of consolidation

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

- 2) If an approval of a consolidation lapses in terms of sub-section (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 consolidation has lapsed.

33 Removal, suspension or amendment of restrictive conditions

- 1) The municipality may:
 - a) remove or amend a restrictive condition permanently;
 - b) suspend or amend a restrictive condition for a period specified in the approval; or
 - c) remove, suspend or amend a restrictive condition as contemplated in paragraph (a) or (b) subject to conditions of approval.
- 2) When an owner applies for a removal, suspension or amendment of restrictive conditions, the owner must in addition to the procedures set out in Chapter IV:
 - a) submit a certified copy of the relevant title deed to the municipality; and
 - b) if there is a mortgage bond registered in respect of the land concerned, submit the bondholder's consent to the application.
- 3) The municipality must cause a notice of an application in terms of section 15(2)(f) to be served on:
 - a) all organs of state that may have an interest in the restrictive condition;
 - b) a person whose rights or legitimate expectations may reasonably be affected by the approval of the application; and
 - c) all persons mentioned in the title deed for whose benefit the restrictive condition applies.
- 4) When the municipality considers the removal, suspension or amendment of a restrictive condition, the municipality must have regard to the following:
 - a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;
 - b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;
 - c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;
 - d) the social benefit of the restrictive condition remaining in place in its existing form;
 - e) the social benefit of the removal, suspension or amendment of the restrictive condition; and
 - f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights;
 - g) whether the removal would be in the public interest.
- 5) An approval to remove, suspend or amend a restrictive condition comes into operation:
 - a) if no appeal has been lodged, after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged; or
 - b) if an appeal has been lodged, when the Appeal Authority has decided on the appeal; and
 - c) the applicant has applied to the Registrar of Deeds for the removal, suspension or amendment to be recorded in the relevant register or title deed and that the notice referred to in sub-section (6) has been published.
- 6) The municipality must cause a notice of the decision to amend, suspend or remove a restrictive condition to be published in the *Provincial Gazette* after the decision comes into operation as contemplated in sub-section (5) and notify the Registrar of Deeds of the decision.

- 7) If an owner intends to apply in terms of section 15(2) for land development that is contrary to a restrictive condition applicable to the land concerned, the owner must when the application for land development is submitted simultaneously apply for the removal, suspension or amendment of the restrictive condition.
- 8) The municipality must consider the land development application and the application for the removal, suspension or amendment of the restrictive condition, contemplated in sub-section (7), together and make an integrated decision, provided that application for the removal, suspension or amendment of the restrictive condition is decided upon first.

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

- 1) An applicant at whose instance a restrictive condition is removed, suspended or amended must, after the publication of a notice contemplated in section 33(6) in the *Provincial Gazette*, apply to the Registrar of Deeds to make the appropriate entries in, and endorsements on, any relevant register or title deed to reflect the removal suspension or amendment of the restrictive condition.
- 2) The Registrar of Deeds may require proof of the removal, suspension or amendment of a restrictive condition from the applicant including the submission of the following to the Registrar of Deeds:
 - a) a copy of the approval;
 - b) the original title deed; and
 - c) a copy of the notice contemplated in section 33(6) as published in the *Provincial Gazette*.

CHAPTER IV: APPLICATION PROCEDURES

35 Manner and date of notification

- 1) Any serving of a notice or notification or acknowledgement given in terms of this by-law must be in writing and may be issued to a person:
 - a) by delivering it by hand to the person;
 - b) by sending it by registered mail and/or email:
 - i) to that person's business or residential address or municipal billing address, or
 - ii) in the case of a juristic person, to its registered address or principal place of business or municipal billing address;
 - c) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or
 - d) where an address is unknown despite reasonable enquiry, by posting it in a conspicuous place on the property or premises, to which it relates and publishing it in a local newspaper circulating in the area where the property is situated.
- 2) The date of notification in respect of a notice served or given to a person in terms of this by-law:
 - a) if it was served by certified or registered post, is the date of registration of the notice; and
 - b) if it was delivered to that person personally, is the date of delivery to that person;
 - c) if it was left at that person's place of residence, work or business in the Republic with a person apparently over the age of sixteen years, is the date on which it was left with that person;
 - d) if it was displayed in a conspicuous place on the property or premises to which it pertains, is the date that it is posted on that place; or
 - e) if it was e-mailed or sent to an electronic address, is the date that it was received by that person as contemplated in the Electronic Communications and Transactions Act, 2002.
- 3) The municipality may determine specific methods of service and notification in respect of applications and appeals including:
 - a) information specifications relating to matters such as size, scale, colour, hard copy, number of copies, electronic format and file format;
 - b) the manner of submission to and communication with the municipality;

- c) the method by which a person may be notified;
- d) other information requirements; and
- e) other procedural requirements.

36 Procedures for applications

- 1) An applicant must comply with the procedures in this Chapter and, where applicable, the specific procedures provided for in Chapter III of this by-law.
- 2) An applicant may apply simultaneously for different types of applications for land development in terms of section 15(2).

37 Pre-application consultation

- 1) The municipality may require an owner who intends to submit an application or his or her agent to meet with the authorized employee and, where applicable, with employees of other relevant organs of state for a pre-application consultation before he or she submits an application to the municipality in order to determine the information and documents that must be submitted with the application.
- 2) The municipality may issue guidelines regarding:
 - a) applications that require a pre-application consultation;
 - b) the nature of the information and documents that must be submitted with an application;
 - c) the attendance of employees from the municipality or other organs of state at a pre-application consultation;
 - d) the procedures at a pre-application consultation.
- 3) The municipality must keep minutes of the proceedings of a pre-application consultation.

38 Information required

- 1) Subject to sub-section (2), an application must be accompanied by the following information and documents:
 - a) an application form provided by the municipality, completed and signed by the applicant;
 - b) if the applicant is an agent, a power of attorney authorizing 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 owners' association, proof that the person is authorized to make the application on behalf of the company, closed corporation, trust, body corporate or owners' association and a resolution authorizing the development of the property;
 - d) proof of registered ownership or any other relevant right held in the land concerned;
 - e) if a mortgage bond is registered in respect of the land concerned, the bondholder's consent;
 - f) a written motivation for the application based on the applicable criteria referred to in section 65;
 - g) a copy of the Surveyor-General's diagram of the property concerned or, if it does not exist, an extract from the relevant general plan;
 - h) a locality plan and site development plan, if required, or a plan showing the proposed land development in its cadastral context;
 - i) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
 - i) the location of the proposed land units;
 - ii) the proposed zonings in respect of the proposed land units;
 - iii) all existing structures on the property and abutting properties;
 - iv) the proposed 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 lamp, electricity and telephone posts;
 - x) the electricity 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) all distances and areas to scale;
- j) proof of an agreement or permission if the proposed land development requires a servitude over land or access to a provincial or national road;
 - k) any other documents or information that the municipality may require;
 - l) proof of payment of application fees;
 - m) a copy of the title deed of the land concerned;
 - n) a conveyancer's certificate indicating that the application is not restricted by any condition contained in the title deed pertaining to the land concerned or a copy of all historical title deeds; and
 - o) where applicable, the minutes of a pre-application consultation in respect of the application.
- 2) The municipality may at a pre-application consultation add any information or documents contemplated in sub-section (1) for a particular application.
 - 3) The municipality may issue guidelines regarding the submission of information, documents or procedural requirements.

39 Application fees

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

40 Grounds for refusing to accept application

- 1) The municipality may refuse to accept an application if:
 - a) there is no proof of payment of the applicable fees; or
 - b) the application is not in the form or does not contain the information or documents referred to in section 38;
 - c) A pre-application consultation is required in terms of section 37(1) but has not taken place
 - d) There are any unlawful structures on the property and in terms of which a determined contravention penalty has not been paid.

41 Receipt of application and commencement of application process

- 1) The municipality must:
 - a) record receipt of an application, in writing or by affixing a stamp on the application, on the day of receipt;
 - b) verify whether the application complies with section 38; and
 - c) notify the applicant in writing within fourteen days of receipt of the application:
 - i) that the application is complete and complies with section 38 and that the application process commences; or
 - ii) of any information, documents or fees referred to in section 38 that are outstanding and that the applicant must provide to the municipality within 14 days of the date of notification.
- 2) The municipality must within fourteen days of receipt of the outstanding information, documents or fees referred to in sub-section (1)(c)(ii) notify the applicant in writing that the application is complete and that the application process commences.

- 3) The municipality may refuse to consider the application if the applicant fails to provide the information or documents or pay the fees within the period contemplated in sub-section (1)(c)(ii).
- 4) The municipality must notify the applicant in writing of a refusal to consider an application under sub-section (3) and must close the application.
- 5) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in sub-section (3) to refuse to consider an application.
- 6) If an applicant wishes to continue with an application that the municipality refused to consider under sub-section (3), the applicant must apply again and pay the applicable application fees.
- 7) The municipality must cause notice of the application to be given within 21 days from the date on which the application process commences as contemplated in sub-section (1)(c)(i) or (2), or within a reasonable longer period where justified.

42 Provision of additional information or documents

- 1) The municipality must, within 21 days of receipt of an application that complies with section 38, notify the applicant in writing of any information or documents it requires in addition to the requirements contemplated in section 38.
- 2) The applicant must provide the municipality with the additional information or documents contemplated in sub-section (1) within 30 days of the date of notification or within the further period agreed to between the applicant and the municipality.
- 3) If the applicant fails to provide the additional information or documents within the period contemplated in sub-section (2), the municipality must consider the application without the information or documents and notify the applicant accordingly.
- 4) The municipality must, within 21 days of receipt of the additional information or documents, if the applicant provided all the required information or documents, acknowledge receipt thereof and notify the applicant in writing that the application process proceeds or that further information, documents or fees are required as a result of the information or documents received.
- 5) If the municipality notified the applicant that further information or documents are required as contemplated in sub-section (4), sub-sections (2) and (3) apply to the further submission of information or documents.

43 Withdrawal of application or power of attorney

- 1) An applicant may, at any time before the municipality makes a decision on an application submitted by the applicant, withdraw the application by giving written notice of the withdrawal to the municipality.
- 2) The owner must in writing inform the municipality if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the application.

44 Public notice in accordance with other laws and integrated procedures

- 1) The municipality may, on written request and motivation by an applicant, before notice is given of an application in terms of section 45 or 46, 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) public notice of the application given in terms of this By-law may be published in accordance with the requirements for public notice applicable to a related application in terms of another law.
- 2) If the municipality determines that an application may be published as contemplated in sub-section (1)(b), an agreement must be entered into between the municipality and the relevant organs of state to facilitate the simultaneous publication of notices;
- 3) The agreement should stipulate that the requirements of sections 45, 46 and 47 of this by-law must be complied with.

45 Publication of notices

- 1) Subject to section 44, the municipality must, in accordance with sub-section (2), cause public notice to be given of the following applications:
 - a) an application for a rezoning;
 - b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in the municipal spatial development framework;
 - c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in the municipal spatial development framework;
 - 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 or part thereof including on the initiative of the municipality;
 - g) an application in respect of a restrictive condition including an application on the initiative of the municipality;
 - h) other applications that will materially affect the public interest or the interests of the community if approved including an application on the initiative of the municipality.
- 2) Public notice of an application referred to in sub-section (1) must be given by:
 - a) publishing a notice with the contents contemplated in section 47 on the municipality's website; and
 - b) publishing a notice with the contents contemplated in section 47 in newspapers or other local publications with a general circulation in the area concerned in at least two of the official languages of the Province most spoken in the area concerned; or
 - c) posting a notice with the contents contemplated in section 47, for at least the duration of the notice period, on the land concerned and on any other notice board, as may be determined by the municipality.
- 3) The municipality may require the applicant to attend to the publication as contemplated in sub-section (2) of the public notice of an application.
- 4) An applicant who publishes a notice in terms of this section must within the period determined by the municipality of publication of the notice provide the municipality with proof, as determined by the municipality that the notice was published in accordance with this section.

46 Serving of notices

- 1) The municipality must cause a notice with the contents contemplated in section 47 to be served of at least the following applications:
 - a) an application referred to in section 45(1);
 - b) a determination of a zoning contemplated in section 13;
 - c) an application for subdivision, amendment or cancellation of a subdivision plan contemplated in section 15(2)(d) and (k) respectively;
 - d) an application for consolidation contemplated in section 15(2)(e);
 - e) the amendment, deletion or imposition of a condition contemplated in section 15(2)(h).
- 2) A notice contemplated in sub-section (1) must be served:
 - a) in accordance with section 35;
 - b) in at least two of the official languages of the Province most spoken in the area concerned;
 - c) on persons whose rights or legitimate expectations may reasonably be affected by the approval of the application;
 - d) on every owner of land adjoining the land concerned; and

- e) on the ward councilor for the ward within which the erf that is the subject of the application falls.
- 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 and that is not listed in sub-section (1).
- 4) The municipality may require the applicant to attend to the serving of a notice as contemplated in sub-section (2).
- 5) An applicant who serves a notice in terms of this section must within the period determined by the municipality from the service of that notice provide the municipality with proof, as determined by the municipality, of the service of the notice in accordance with sub-section (2).
- 6) The municipality may require the applicant to make the application available for inspection by members of the public at a public place determined by the municipality.

47 Contents of notice

- 1) When notice of an application must be published or served in terms of this by-law, the notice must:
 - a) provide the name and contact 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 name and contact details of the person to whom comments must be addressed;
 - f) invite members of the public to submit written comments, together with the reasons therefore, in respect of the application;
 - g) state in which format comments may be submitted;
 - h) state the date by which the comments must be submitted, which date may not be less than 30 days from the date on which the notice was given; and
 - i) state that any person who cannot write may during office hours come to an address stated in the notice where a named staff member of the municipality will assist those persons by transcribing their comments.

48 Other methods of public notice

- 1) The municipality may cause public notice to be given by one or more of the methods referred to in sub-section (2):
 - a) to ensure additional public notice of applications listed in sections 45(1) if the municipality considers notice in accordance with sections 45 or 46 to be ineffective or expects that the notice would be ineffective; or
 - b) to give public notice of any other application in terms of this by-law.
- 2) Public notice contemplated in sub-section (1) may be given by:
 - a) displaying a notice contemplated in section 47 of a size of at least 60 centimetres by 42 centimetres on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that:
 - i) the notice is displayed for a minimum of 30 days during any period that the public may comment on the application; and
 - ii) the applicant, within 30 days from the last day of display of the notice, submits to the municipality:
 - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
 - (bb) at least two photos of the notice, one from close up and one from across the street;
 - b) convening a meeting for the purpose of informing affected members of the public of the application;

- c) broadcasting information regarding the application on a local radio station in a specified language;
 - d) holding an open day or public meeting to notify and inform affected members of the public of the application;
 - e) publishing the application on the municipality's website for the duration of the period within which the public may comment on the application;
 - f) obtaining letters of consent or objection to the application, provided that the letters are accompanied by acceptable evidence that the person signing the letter has been provided with correct and adequate information about the application.
- 3) Additional public notice can be given simultaneously with notice given in accordance with sections 45 or 46 or thereafter.
 - 4) The municipality may require the applicant to attend to the publication of a notice as contemplated in sub-section (2).
 - 5) An applicant who gives notice in terms of this section must within the period determined by the municipality of giving notice provide the municipality with proof, as determined by the municipality that notice has been given in accordance with sub-section (2).

49 Requirements for petitions

- 1) Comments in respect of an application submitted by the public in the form of a petition must clearly state:
 - a) the contact details of the authorized representative of the signatories of the petition;
 - b) the full name and physical address of each signatory; and
 - c) the comments and reasons therefore.
- 2) Notice to the person contemplated in sub-section (1)(a) constitutes notice to all the signatories to the petition.

50 Requirements for submission of comments

- 1) A person may respond to a notice contemplated in sections 44, 45, 46 or 48 by commenting in writing in accordance with this section.
- 2) Any comment made as a result of a notice process must be in writing and addressed to the person mentioned in the notice and must be submitted within the period stated in the notice and in the manner set out in this section.
- 3) The comments must state the following:
 - a) the name of the person concerned;
 - b) the address or contact details at which the person or body concerned will receive notice or service of documents;
 - c) the interest of the person in the application; and
 - d) the reason for the comments.
- 4) The reasons for any comment must be set out in sufficient detail in order to:
 - a) indicate the facts and circumstances that explain the comments;
 - b) where relevant demonstrate the undesirable effect the application will have if approved;
 - c) where relevant demonstrate any aspect of the application that is not considered consistent with applicable policy; and
 - d) enable the applicant to respond to the comments.
- 5) The municipality may only accept comments submitted after the closing date where:
 - a) the applicant agrees to the acceptance; or
 - b) the person submitting the comment shows good reason why the comment was submitted late; and
 - c) the comment is different from, or materially adds to the comments already received within the time limit; and

- d) in the opinion of the authorized official, recorded in writing with reasons, failure to consider the comment might have significant negative impacts on the environment or on the welfare or rights of affected parties.

51 Intergovernmental participation process

- 1) Subject to section 45 of the Land Use Planning Act and section 44 of this by-law, the municipality must, simultaneously with the notification to the applicant that an application is complete as contemplated in section 41(1)(c)(i) or (2) cause notice of the application together with a copy of the application to be given to every municipal department and organ of state that has an interest in the application and request their comment on the application.
- 2) An organ of state must comment on a land use application to the Municipal Manager within 60 days:
 - a) of the date of notification of a request for comment on the application; or
 - b) receiving all the information necessary to comment if the application is not complete and a request for additional information is made within 14 days of the date of notification of the request for comment.
- 3) If an organ of state fails to comment within the period referred to in sub-section (2), the municipality must notify the organ of state's accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), of the failure.

52 Amendments before approval

- 1) An applicant may amend his or her application at any time before the approval of the application:
 - a) at the applicant's own initiative;
 - b) as a result of an objection, comment or representation submitted during the notice process; or
 - c) at the request of the municipality.
- 2) If an amendment to an application is material, the municipality:
 - a) must give notice of the amendment of an application to all municipal departments and other organs of state and service providers who commented on the application and request them to submit comments on the amended application within 21 days of the date of notification.
 - b) may require that further notice of the application be published or served in terms of section 44, 45, 46 or 48.

53 Further public notice

- 1) The municipality must require that notice of an application be given again if more than 18 months have elapsed since any other public notice of the application, including any notice published in terms of any other legislation but containing full details of the application and the comments in response to which are available to the municipality, and if the municipality has not considered the application.
- 2) The municipality may, at any stage during the processing of the application if new information comes to its attention that is material to the consideration of the application, require:
 - a) notice of an application to be given or served again in terms of section 44, 45, 46 or 48;
 - b) an application to be re-sent to municipal departments, other organs of state or service providers for comment.

54 Liability for cost of notice

The applicant is liable for the costs of publishing and serving of all notices of an application in terms of this by-law.

55 Right of applicant to reply

- 1) Copies of all comments submitted to the municipality, and any other information not previously seen by the applicant that will be used in the assessment required in terms of section 56, or will be submitted to the decision maker, must be given to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of his or her rights in terms of this section.
- 2) The applicant may, within 30 days from the date on which he or she received he comments, submit a written reply thereto to the municipality.
- 3) The applicant may, before the expiry of the period of 30 days referred to in sub-section (2), apply to the municipality for an extension of the period to submit a written reply, to an additional period not exceeding 14 days.
- 4) If the applicant does not submit a reply within the period of 30 days or within an additional period contemplated in sub-section (3), if granted, the applicant is considered to have no comment.
- 5) The municipality may in writing request additional information or documents from the applicant as a result of the comments received, and the applicant must supply the information or documents within 30 days of notification of the written request or the further period as may be agreed upon between the applicant and the municipality.
- 6) If the applicant fails to provide the additional information or documents within the period contemplated in sub-section (5), the municipality must consider the application without the information or documents and notify the applicant accordingly.

56 Written assessment of application

- 1) An authorized employee must in writing assess an application in accordance with section 65 and make a recommendation to the decision-maker regarding the approval or refusal of the application.
- 2) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

57 Decision-making period

- 1) When an authorized employee makes a decision in respect of an application as contemplated in section 69(1) and no integrated process in terms of another law is being followed, the authorized employee must decide on the application within 60 days, reckoned from:
 - a) the last day for the submission of comments as contemplated in section 50(2) if no comments were submitted; or
 - b) the last day for the submission of the applicant's reply to comments submitted as contemplated in section 55(2) or (3); or
 - c) the last day for the submission of additional information as contemplated in section 55(5).
- 2) If no integrated process in terms of another law is being followed and the Tribunal must decide on an application as contemplated in section 69(2), the Tribunal must decide on the application within 120 days, reckoned from the applicable date contemplated in sub-section (1)(a), (b) or (c).
- 3) The authorized employee or Tribunal, as the case may be, may extend the period contemplated in sub-section (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.

58 Failure to act within period

Subject to section 41(5), an applicant may lodge an appeal with the Appeal Authority if the authorized employee or the Tribunal fails to decide on an application within the period referred to in section 57(1) or (2) or (3).

59 Powers to conduct routine inspections

- 1) An authorized employee or members of the Tribunal may, in accordance with the requirements of this section, enter land or a building to conduct an inspection for the purpose of obtaining information to assess an application in terms of this by-law and to prepare a written assessment contemplated in section 56, or to assist in making a decision on an application.
- 2) When conducting an inspection, the authorized employee or members of the Tribunal may:
 - a) request that any record, document or item that is relevant to the purpose of the investigation 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;
 - d) inspect any building or structure and make enquiries regarding that building or structure.
- 3) No person may interfere with a person referred to in sub-section (1) who is conducting an inspection as contemplated in sub-section (1).
- 4) The authorized employee or member of the Tribunal must, on request, produce identification.
- 5) An inspection under sub-section (1) must take place at a reasonable time and after reasonable notice has been given to the owner, occupier or person in lawful control of the land or building and with the written consent of the owner, occupier or person in lawful control of the land or building.

60 Decisions on applications

- 1) An employee authorized by virtue of section 69(1), or the Tribunal by virtue of section 69(2), as the case may be, may in respect of an application contemplated in section 15(2):
 - a) approve, in whole or in part, or refuse that application;
 - b) upon the approval of that application, impose conditions in terms of section 66;
 - c) conduct any necessary inspection to assess an application in terms of section 59;
 - d) in the case of the Tribunal, appoint a technical adviser to advise or assist in the performance of the Tribunal's functions in terms of this by-law.

61 Notification and coming into operation of decision

- 1) The municipality must, within 31 days of its decision, in writing notify the owner, the applicant if different to the owner and any person who has submitted a comment on, objection to or has intervened in an application, and anyone in respect of whom an enforcement action is taken in terms of this by-law of the decision, the reasons for the decision and their right to appeal, if applicable.
- 2) A notice contemplated in sub-section (1) must indicate when an approval comes into operation.
- 3) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the municipality.
- 4) An approval comes into operation only after the expiry of the period contemplated in section 79(5) within which an appeal must be lodged if no appeal has been lodged.
- 5) Subject to sub-section (6), the operation of the approval of an application that is the subject of an appeal is suspended pending the decision of the Appeal Authority on the appeal.
- 6) If an appeal is lodged only against conditions imposed in terms of section 66, the Tribunal or the authorized employee who imposed the conditions may determine that the approval of the application is not suspended.

62 Duties of agent

- 1) An agent must ensure that he or she has the contact details of the owner on whose behalf he or she is authorized to act.
- 2) An agent may not provide information or make a statement in support of an application which information or statement he or she knows or should reasonably have known to be misleading, false or inaccurate.

63 Errors and omissions

- 1) The municipality may at any time correct an error in the wording of its decision if the correction does not change the decision or result in an alteration, insertion, suspension or deletion of a condition of approval.
- 2) The municipality may, on its own initiative or on application by the applicant or interested party, upon good cause shown, condone an error in a procedure, if the condonation does not have a material adverse effect on, or unreasonably prejudice, any party.

64 Exemptions to facilitate expedited procedures

- 1) The municipality may in writing and subject to section 55 of the Spatial Planning of the Land Use Planning Management Act and section 60 of the Land Use Planning Act:
 - a) exempt a development from compliance with a provision of this By-law to reduce the financial or administrative burden of:
 - i) integrated application processes contemplated in section 44;
 - ii) the provision of housing with the assistance of a state subsidy; or
 - iii) incremental upgrading of existing settlements;
 - b) in an emergency situation authorize that a development may depart from any of the provisions of this by-law.
- 2) If the National or Provincial Minister grants an exemption or authorization to deviate from a provision of the Act in terms of Section 55 or of the Land Use Planning Act in terms of section 60, the municipality is exempted from or authorized to deviate from any provision in this by-law that corresponds to the provision of the Act or the Land Use Planning Act in respect of which an exemption was granted or deviation was authorized.

CHAPTER V: CRITERIA FOR DECISION-MAKING**65 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 utilization of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses;
 - d) the comments in response to the notice of the application, including comments received from organs of state, municipal departments and the Provincial Minister in terms of section 45 of the Land Use Planning Act;
 - e) the response by the applicant, if any, to the comments referred to in paragraph (d);
 - f) investigations carried out in terms of other laws that are relevant to the consideration of the application;
 - g) a written assessment from a registered planner appointed by the Municipality in respect of an application for:
 - i) a rezoning;
 - ii) a subdivision of more than 20 cadastral units;
 - iii) a removal, suspension or amendment of a restrictive condition if it relates to a change of land use;
 - iv) an amendment, deletion or imposition of additional conditions in respect of an existing use right
 - v) an approval of an overlay zone contemplated in the zoning scheme;
 - vi) a phasing, amendment or cancellation of a subdivision plan or part thereof;
 - vii) a closure of a public place or part thereof;

- viii) the adoption or amendment of a Municipal Spatial Development Framework;
 - ix) the adoption or amendment of a Zoning Scheme
- h) the impact of the proposed land development on municipal engineering services;
 - i) the integrated development plan, including the municipal spatial development framework;
 - j) the integrated development plan of the district municipality, including its spatial development framework, where applicable;
 - k) the applicable local spatial development frameworks adopted by the municipality;
 - l) the applicable structure plans;
 - m) the applicable policies of the municipality that guide decision-making;
 - n) the provincial spatial development framework;
 - o) where applicable, a regional spatial development framework contemplated in section 18 of the Act and provincial regional spatial development framework;
 - p) the policies, principles and the planning and development norms and criteria set by the national and provincial government;
 - q) the matters referred to in section 42 of the Act;
 - r) the principles referred to in Chapter VI of the Land Use Planning Act;
 - s) the applicable provisions of the zoning scheme; and
 - t) any restrictive condition applicable to the land concerned.

66 Conditions of approval

- 1) The municipality may approve an application subject to reasonable conditions that arise from the approval of the proposed utilization of land.
- 2) Conditions imposed in accordance with sub-section (1) may include conditions relating to:
 - a) the provision of engineering services and infrastructure;
 - b) requirements relating to engineering services as contemplated in sections 82 and 83;
 - c) the cession of land or the payment of money;
 - d) settlement restructuring;
 - e) agricultural or heritage resource conservation;
 - f) biodiversity conservation and management;
 - g) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - h) energy efficiency;
 - i) requirements aimed at addressing climate change;
 - j) the establishment of an owners' association in respect of the approval of a subdivision;
 - k) the provision of land needed by other organs of state;
 - l) the endorsement in terms of the Deeds Registries Act in respect of public places where the ownership thereof vests in the municipality;
 - m) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - n) 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;
 - o) the registration of public places in the name of the municipality;
 - p) the transfer of ownership to the municipality of land needed for other public purposes;
 - q) the implementation of a subdivision in phases;
 - r) requirements of other organs of state;
 - s) the submission of a construction management plan to manage the impact of the construction of a new building on the surrounding properties or on the environment;
 - t) agreements to be entered into in respect of certain conditions;
 - u) the phasing of a development, including lapsing clauses relating to such phasing;
 - v) the delimitation of development parameters or land uses that are set for a particular zoning;
 - w) the setting of a validity period and any extensions thereto;
 - x) the setting of a period within which a particular condition must be met;
 - y) requirements for a temporary departure for a specific occasion or event, which must include:

- i) parking and the number of ablution facilities required;
 - ii) the maximum duration or occurrence of the temporary departure for the occasion or event; and
 - iii) any other development parameters that the municipality may determine;
- z) the payment of a contravention penalty in respect of the unlawful utilization of land;
- aa) the imposition of architectural or visual guidelines;
- bb) requirements for the location of the development on a site.
- 3) If the municipality imposes a condition contemplated in sub-section (2)(a) or (b), an engineering services agreement must be concluded between the municipality and the owner of the land concerned before the construction of engineering services and infrastructure commences on the land.
- 4) A condition contemplated in sub-section (2)(c) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the municipality in accordance with section 83(7) and any other applicable provincial norms and standards.
- 5) Municipal public expenditure contemplated in sub-section (4) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to:
- a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
 - b) nature conservation;
 - 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 the 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 Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and that exists 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 the municipality in accordance with this by-law.
- 8) The municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required, however, any planning approval granted in terms of this by-law, must bring to the attention of the applicant that such an approval does not obviate the need for the applicant to observe the requirements of any other applicable legislation to obtain permission for the use to which the applicant intends to put the land in question.
- 9) Conditions requiring a standard to be met must specifically refer to an approved or published standard.
- 10) No conditions may be imposed that rely on a third party for fulfilment.
- 11) Notwithstanding the provisions of any other section in this by-law, a conditional approval of an application lapses if the conditions therein are not complied with within:
- a) a period of ten years from the date of such conditional approval, if no period for compliance is specified in such approval; or
 - b) the period for compliance specified in such conditional approval, which, together with any extension which may be granted, may not exceed ten years.

CHAPTER VI: EXTENSION OF VALIDITY PERIOD OF APPROVALS

67 Applications for extension of validity period

- 1) The municipality may approve an application for the extension of a validity period imposed in terms of a condition of approval, if the application for the extension of the period was submitted at least 150 days before the expiry of the validity period.

- 2) When the municipality considers an application in terms of sub-section (1), it must have regard to the following:
 - a) whether the circumstances prevailing at the time of the original approval have materially changed;
 - b) whether the legislative or policy requirements applicable to the approval that prevailed at the time of the original approval have materially changed; and
 - c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.
- 3) If there are material changes in circumstances or in legislative or policy requirements that will necessitate new conditions of approval if an extension of a validity period is approved, an application contemplated in section 15(2)(h) must be submitted for consideration before or simultaneously with the application for the extension of a validity period.
- 4) The extended validity period takes effect on and is reckoned from the expiry date of the validity period applicable to the original approval or from the expiry date of the previously extended validity period approved in terms of this by-law.

CHAPTER VII: MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

68 Municipal planning decision-making structures in respect of applications and appeals

Applications or appeals are decided:

- 1) in the case of an application referred to in section 15(2)(a) to (f), (h) to (k), (n), (o) or (r), by an authorized employee who has been delegated by the municipality to consider and determine the applications as contemplated in section 69(1);
- 2) in the case of an application referred to in section 15(2)(a) to (f), (h) to (k), (n), (o) or (r) where an authorized employee has not been delegated by the municipality to consider and determine the applications, by the Tribunal as contemplated in section 69(2);
- 3) in the case of an application referred to in section 15(2)(g), (l), (m), (p) or (q), by the Council or an employee to whom the decision has been delegated;
- 4) by the Appeal Authority where an appeal has been lodged against a decision of an authorized employee or the Tribunal in respect of applications referred to in paragraph (1) or (2) respectively; or
- 5) by the appeal authority referred to in section 62(3) of the Municipal Systems Act where an appeal has been lodged against a decision of an employee to whom the decision has been delegated, in respect of applications referred to in section 15(2)(g), (l), (m), (p) or (q).

69 Consideration of applications

- 1) The municipality may categorize applications referred to in section 15(2)(a) to (f), (h) to (k), (n), (o) or (r) for consideration and determination by an authorized employee and must delegate the powers and duties to decide on those applications.
- 2) The Tribunal considers and determines all applications referred to in section 15(2)(a) to (f), (h) to (k), (n), (o) or (r) that have not been categorized for consideration and determination by an authorized employee;
- 3) Notwithstanding (2) above, an authorized employee may refer an application to the Tribunal should the employee consider such a referral appropriate;
- 4) A decision in terms of this by-law is valid only if it is in writing.

70 Establishment of Tribunal

- 1) The municipality must:
 - a) establish a Municipal Planning Tribunal for its municipal area; or
 - b) by agreement with one or more municipalities establish a joint Municipal Planning Tribunal; or
 - c) agree to the establishment of a district Municipal Planning Tribunal by the district municipality.

- 2) An agreement referred to in sub-section (1)(b) or (c) must be approved by Council and must provide for:
 - a) the composition of the Tribunal;
 - b) the terms and conditions of appointment of members of the Tribunal;
 - c) the determination of rules and procedures at meetings of the Tribunal;
 - d) An agreement between two or more municipalities to establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act must describe the rights, obligations and responsibilities of the participating municipalities and must provide for at least:
 - i) the name and demarcation code of each participating municipality;
 - ii) the budgetary, funding and administrative arrangements for the joint Municipal Planning Tribunal and the legal obligations of each participating municipality;
 - iii) the number and manner of designation of officials representing each of the participating municipalities to the joint Municipal Planning Tribunal, the filling of vacancies and the replacement and recall of the officials;
 - iv) the number and manner of appointment of members contemplated in section 36(1)(b) of the Act and the filling of vacancies;
 - v) subject to regulation 3(1)(c), the terms and conditions applicable to the members of the joint Municipal Planning Tribunal;
 - vi) the appointment of a chairperson and deputy chairperson;
 - vii) the institutional requirements referred to in Section 72;
 - viii) the categories of applications it will consider and decide;
 - ix) the administrative support arrangements and the manner in which the municipality must give effect to a decision of the joint Municipal Planning Tribunal;
 - x) the designation of an official in the employ of each participating municipality to inspect, at any time during normal business hours, the records and operations of the joint Municipal Planning Tribunal on behalf of the participating municipalities;
 - xi) determine the conditions for, and consequences of the withdrawal from the agreement of a participating municipality;
 - xii) determine the conditions for, and consequences of, the termination of the agreement, including the method and schedule for winding-up the operations of the joint Municipal Planning Tribunal; and
 - xiii) any other matter relating to the proper functioning of the joint Municipal Planning Tribunal.
 - e) other matters as may be prescribed in terms of the Act.

71 Composition of Tribunal for municipal area

- 1) A Tribunal established in terms of section 70(1)(a) must be appointed by Council and must consist of at least 8 members who have knowledge and experience in any of the disciplines relating to spatial planning, land use management, land development or the law related thereto, be representative of a broad range of experience and expertise and as far as possible of the demographics of the Western Cape comprising of not less than:
 - a) three employees in the fulltime service of the municipality; and
 - b) three persons who are not municipal councilors or employees of the municipality, at least of whom must be a registered town planner.
- 2) A member of the Tribunal appointed in terms of sub-section (1)(b) may be:
 - a) an official or employee of:
 - i) any department of state or administration in the national or provincial sphere of government;
 - ii) a government business enterprise;
 - iii) a public entity;

- iv) organised local government as envisaged in the Constitution;
 - v) an organisation created by government to provide municipal support;
 - vi) a non-governmental organisation; or
 - vii) any other organ of state not provided for in subparagraphs (i) to (iv); or
- b) an individual in his or her own capacity.

72 Process for appointment of members for Tribunal for municipal area

- 1) The members of the Tribunal referred to in sub-section 71(1)(b) may be appointed by the Council only after the municipality has:
 - a) in the case of an official or employee contemplated in section 71(2)(a), extended a written invitation to nominate an official or employee to serve on the Tribunal to the departments in the national and provincial sphere of government, other organs of state and organisations referred to in section 71(2)(a); and
 - b) in the case of member contemplated in section 71(2)(b), by notice on the municipality's website and in a newspaper in circulation in the municipal area, invited interested parties to submit, within the period stated in the notice, names of persons who meet the requirements to be so appointed.
- 2) An invitation for nominations must:
 - a) request sufficient information to enable the municipality to evaluate the knowledge and experience of the nominee;
 - b) request a written nomination in the form that the municipality determines that complies with sub-section (3);
 - c) permit self-nomination; and
 - d) provide for a closing date for nominations, which date may not be less than 14 days from the date of publication of the invitation in terms of sub-section (1)(b) or the written invitation in terms of sub-section (1)(a), and no nominations submitted after that date may be considered by the municipality.
- 3) A nomination in response to an invitation must:
 - a) provide for acceptance of the nomination by the nominee, if it is not a self-nomination;
 - b) include confirmation by the nominee that he or she is not disqualified from serving as a member in terms of section 74;
 - c) include agreement by the nominee that the municipality may verify all the information provided by the nominee; and
 - d) include a statement that the nominee will be obliged to commit to and uphold a code of conduct if he or she is appointed.
- 4) If no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the municipality, the municipality must invite nominations for a second time and follow the process required for the invitation for nominations referred to in this section.
- 5) If after the second invitation for nominations, no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the municipality, the Executive Mayor of the municipality must designate persons who possess the requisite knowledge and experience and comply with any additional criteria which may have been determined by the municipality, and must inform council thereof and appoint the person.
- 6) Nominations submitted to the municipality by virtue of sub-section (1) must be submitted in writing in the form determined by the municipality and must contain the contents referred to in sub-section (3).
- 7) The Municipal Manager must convene an evaluation panel consisting of officials in the employ of the municipality to evaluate nominations that comply with this section as received by the municipality and determine the terms of reference of that evaluation panel.

- 8) The Council must appoint the members of the Tribunal after having regard to:
 - a) the recommendations of the evaluation panel;
 - b) the knowledge and experience of candidates in respect of land use planning or the law related thereto;
 - c) the requirement that the members of the Tribunal must be representative of a broad range of appropriate experience and expertise;
 - d) the powers and duties of the Tribunal; and
 - e) the policy of the municipality in respect of the promotion of persons previously disadvantaged by unfair discrimination.
- 9) The Council may not appoint any person to the Tribunal if that person:
 - a) was not nominated in accordance with the provisions of this section;
 - b) is disqualified from appointment as contemplated in section 74; or
 - c) does not possess the knowledge or experience required in terms of section 71(2).
- 10) The Council must designate from among the members of the Tribunal:
 - a) the chairperson of the Tribunal; and
 - b) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or unable to perform his or her duties.
- 11) The Municipal Manager must:
 - a) inform the members in writing of their appointment;
 - b) obtain written confirmation from the Council that the Council is satisfied that the Tribunal is in a position to commence its operations; and
 - c) after receipt of the confirmation referred to in paragraph (b), upon first appointment of members of the tribunal, publish a notice as envisaged in terms of Section 37(4) of the Act, in the *Provincial Gazette* to the effect that the Tribunal is in a position to commence its operations and stating:
 - i) the date that the Tribunal will commence its operation.
- 12) The Tribunal may commence its operations only after publication of the notice contemplated in sub-section (11) (c).

73 Term of office and conditions of service of members of Tribunal for municipal area

- 1) A member of a Tribunal:
 - a) is appointed for five years or a shorter period as the municipality may determine; and
 - b) may be appointed for further terms, subject to section 37(1) of the Act.
- 2) The office of a member becomes vacant if:
 - a) the member is absent from two consecutive meetings of the Tribunal without the leave of the Chairperson of the Tribunal;
 - b) the member tenders his or her resignation in writing to the Chairperson of the Tribunal or, if the member who is resigning is the Chairperson, to the Council
 - c) the members are removed from the Tribunal under section (3); or
 - d) the member dies.
- 3) The Council may, after having given the member an opportunity to be heard, remove a member of the Tribunal if:
 - a) sufficient grounds exist for his or her removal;
 - b) the member contravenes the Code of Conduct referred to in section 76;
 - c) the member becomes subject to a disqualification from membership of the Tribunal as referred to in section 74.

- 4) A vacancy on the Tribunal must be filled by the Council in terms of section 71 and 72.
- 5) A member who is appointed by virtue of sub-section (4) holds office for the unexpired part of the period for which the member he or she replaces, was appointed.
- 6) Members of the Tribunal referred to in section 71(1)(b) must be appointed on the terms and conditions and must be paid the remuneration and allowances and be reimbursed for expenses, as determined by the Council.
- 7) An official of the municipality appointed in terms of section 71(1)(a) as a member of the Tribunal:
 - a) may only serve as member in this capacity for as long as he or she is in full-time employ of the municipality.
 - b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership on the Tribunal.
- 8) A person appointed in terms of section 71(1)(b) as a member of the Tribunal:
 - a) is not an employee on the staff establishment of the municipality;
 - b) in the case of a person referred to in section 71(2)(a), is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership of the Tribunal;
 - c) performs the specific tasks in respect of the consideration of an application allocated to him or her by the chairperson of the Tribunal;
 - d) sits at such meetings of the Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Tribunal;
 - e) in the case of a person referred to in section 71(2)(b), is entitled to a seating and travel allowance as determined by the municipality for each meeting of the Tribunal that he or she is required to attend; and
 - f) in the case of a person referred to in section 71(2)(b), is not entitled to overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, a performance bonus, medical scheme contribution, pension, motor vehicle or any other benefit to which a municipal employee is entitled.
- 9) The allowances referred to in sub-section (8)(e) are subject to taxation in accordance with the normal tax rules that are issued by the South African Revenue Service.

74 Disqualification from membership of Tribunal

- 1) A person may not be appointed or continue to serve as a member of the Tribunal if that person:
 - a) is an un rehabilitated insolvent;
 - b) fails to comply with the Act or this by-law.
 - c) has at any time been convicted of an offence involving dishonesty;
 - d) is not a citizen or permanent resident of the Republic of South Africa;
 - e) has at any time been removed from an office of trust on account of misconduct;
 - f) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act 17 of 2002);
 - g) is a member of Parliament, a Provincial Legislature, a Municipal Council or a House of Traditional Leaders;
 - h) has been found guilty of misconduct, incapacity or incompetence; or
 - i) has previously been removed from a tribunal for a breach of the Act or this by-law;
- 2) A member must vacate office if that member becomes subject to a disqualification as contemplated in sub-section (1).
- 3) A member of a Tribunal:
 - a) must make full disclosure of any conflict of interest, including any potential conflict; and
 - b) may not attend, participate or vote in any proceedings of the Tribunal in relation to any matter in respect of which the member has a conflict of interest.

- 4) For the purposes of this section, a member has a conflict of interest if:
 - a) the member, a spouse, family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before the Tribunal;
 - b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;
 - c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed, has a direct or substantial interest in the outcome of the matter.
- 5) The Council may at any time remove any member of the Tribunal from office:
 - a) if there are reasonable grounds justifying the removal; or
 - b) where a member has been disqualified in terms of sub-section (1), after giving such a member an opportunity to be heard.
- 6) If a member's appointment is terminated or the member resigns, the Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office, in accordance with sections 71 and 72.

75 Meetings of Tribunal for municipal area

- 1) Subject to section 78, the Tribunal contemplated in section 70(1)(a) must determine its own internal arrangements, proceedings and procedures and those of its committees by drafting rules for:
 - a) the convening of meetings;
 - b) the procedure at meetings; and
 - c) the frequency of meetings.And must inform Council thereof.
- 2) The Tribunal may constitute itself to comprise one or more panels to determine:
 - a) applications in specific geographical areas;
 - b) applications in specific areas within the municipality;
 - c) a particular application or type or category of application; or
 - d) other circumstance that would warrant, its constitution as a panel.
- 3) In this section, section 77 and section 78, unless the context indicates otherwise, 'the Tribunal' includes a panel of the Tribunal contemplated in sub-section (2).
- 4) The Tribunal must meet at the time and place determined by the chairperson or in the case of a panel, the presiding officer, appointed by the chairperson, provided that it must meet at least once per month if there is an application to consider.
- 5) If the Tribunal constitutes itself to comprise a panel, the Tribunal must designate at least three members of the Tribunal to be members of that panel, of whom one must at least be a member contemplated in section 71(1)(b), provided that the panel shall consist of at least one person who is a town planner.
- 6) A quorum for a meeting of the Tribunal is the majority of its appointed members.
- 7) A quorum for a meeting of a panel of the Tribunal is:
 - a) the greater of a majority of its designated members or
 - b) three, if the panel consist of only three members.
- 8) Meetings of the Tribunal or a panel of the Tribunal must be held as contemplated in this section and section 78 in accordance with the rules of the Tribunal.

76 Code of conduct for members of Tribunal for municipal area

- 1) The code of conduct in Schedule 1 applies to every member of a Tribunal contemplated in section 71(1).

- 2) If a member contravenes the code of conduct, the Council may:
 - a) in the case of member contemplated in section 71(1)(a), institute disciplinary proceedings against the member;
 - b) remove the member from office.

77 Administrator for Tribunal for municipal area

- 1) The Municipal Manager must appoint or designate an employee as the Administrator and other staff for the Tribunal contemplated in section 70(1)(a) in terms of the Municipal Systems Act.
- 2) The Administrator must:
 - a) arrange venues for Tribunal meetings;
 - b) maintain a diary of meetings of the Tribunal;
 - c) allocate a meeting date for, and application number to, an application;
 - d) arrange the attendance of members of the Tribunal at meetings;
 - e) perform the administrative functions in connection with the proceedings of the Tribunal;
 - f) liaise with the relevant Tribunal members and the parties concerned regarding any application to be determined by, or other proceedings of, the Tribunal;
 - g) ensure that the proceedings of the Tribunal are conducted efficiently and in accordance with the directions of the chairperson of the Tribunal;
 - h) arrange the affairs of the Tribunal so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated applications and authorizations;
 - i) notify the parties concerned of decisions and procedural directives given by the Tribunal and ensure that they are published on the Council's website within fourteen days of the decision;
 - j) keep a record of all applications submitted to the Tribunal as well as the outcome of each, including:
 - i) reasons for decisions;
 - ii) decisions of the Tribunal;
 - iii) proceedings of the Tribunal; and
 - iv) and on-site inspections and any matter recorded as a result thereof;
 - k) keep records by any means as the Tribunal may deem expedient;
 - l) ensure that all parties to an application including the applicant, objectors and commenting parties are given timeous notice of any meeting of the tribunal for which the application is on the agenda and are informed of their rights in connection therewith.

78 Functioning of Tribunal for municipal area

- 1) The meetings of the Tribunal contemplated in section 75(1)(a) must be held at the times and places as the chairperson may determine and be open to the public and the date, time and venue must be published on the municipal website;
- 2) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application, requests to make an oral representation at a meeting of the Tribunal, he or she must submit a written request to the Administrator, including a brief summary of the oral representation that they intend to make, at least 7 days before that meeting.
- 3) The Chairperson may approve a request contemplated in sub-section (2), subject to reasonable conditions. Such approval may not be unreasonably withheld.
- 4) An application may be considered by the Tribunal by means of:
 - a) an oral hearing; or
 - b) the consideration of the written application and comments;
- 5) The application may be considered in terms of sub-section (4)(a) if it appears to the Tribunal that the issues for determination of the application can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.

- 6) An oral hearing may be held:
 - a) if it appears to the Tribunal that the issues for determination of the application cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
 - b) if such hearing would assist in the expeditious and fair disposal of the application.
- 7) If appropriate in the circumstances, the oral hearing may be held by electronic means.

79 Appeals

- 1) The Executive Mayor of the municipality is the Appeal Authority in respect of decisions made by an authorized employee or the Tribunal referred to in sections 68(1) and (2) respectively.
- 2) In considering an appeal, the Appeal Authority may consult with an advisory panel consisting of the Mayoral Committee member responsible for the Planning function and two other members chosen by the Appeal Authority either from Council or from the administration of the municipality, of whom at least one member must have knowledge and experience in the disciplines relating to spatial planning or land use management and of whom at least one must have knowledge of the law relating thereto.
- 3) The Appeal Authority has the discretion to obtain advice from technical and or other experts, as the Appeal Authority deems necessary;
- 4) Experts, consulted by the Appeal Authority in terms of 79(3) who are not public servants may be remunerated for their service;
- 5) The following persons may, within 21 days of notification of a decision made in terms of the by- law, appeal in writing to the Appeal Authority against the decision:
 - a) the applicant;
 - b) the owner, if the owner is not the applicant;
 - c) the Municipal Manager;
 - d) a person who has been granted intervener status;
 - e) a person who has submitted a comment on or objection to the application which complies with the requirements for a comment or objection set out in this by-law;
 - f) the owner or other person:
 - i) in respect of whom the municipality decides to withdraw an approval for a temporary departure or an approval granted for a limited period of time.
 - ii) who is issued with a directive in terms of this by-law; or
 - iii) upon whom a contravention penalty is imposed in terms of this by-law; and
- 6) An applicant may appeal in writing to the Appeal Authority in respect of the failure of the Tribunal or an authorized employee to make a decision within the period contemplated in section 57(1) or (2), any time after the expiry of the period contemplated in those sections.
- 7) An appeal is lodged by serving the appeal on the Municipal Manager in the form determined by the municipality and, in the case of an appeal contemplated in sub-section (2), within the period contemplated in sub-section (2).
- 8) When the Appeal Authority considers an appeal, it must have regard to:
 - a) the provisions of section 65(1), read with the necessary changes; and
 - b) the comments of the Provincial Minister contemplated in section 52 of the Land Use Planning Act.

80 Procedure for appeal

- 1) An appeal is valid if:
 - a) in the case of an appeal contemplated in section 79(5), it is not lodged within the period referred to in that sub-section; or
 - b) it does not comply with sub-sections (2) to (7).

- 2) An appeal must set out the following:
 - a) grounds for the appeal which may include the following grounds:
 - i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 of (Act 3 of 2000);
 - ii) grounds relating to the merits of the land development or land use application on which the appellant believes the Tribunal or authorized employee erred in coming to the conclusion that the Tribunal or authorized employee did, as the case may be;
 - b) whether the appeal is lodged against the whole decision or a part of the decision;
 - c) if the appeal is lodged against a part of the decision, a description of the part;
 - d) if the appeal is lodged against a condition of approval, a description of the condition;
 - e) the factual or legal findings that the appellant relies on;
 - f) the relief sought by the appellant; and
 - g) any issue that the appellant wishes the Appeal Authority to consider in making its decision; or
 - h) in the case of an appeal in respect of the failure of a decision-maker to make a decision, the facts that prove the failure.
- 3) An applicant who lodges an appeal must, within the period referred to in sub-section 79(5), submit proof of payment of appeal tariffs as may be determined by the municipality to the Municipal Manager.
- 4) An applicant who lodges an appeal must within 48 hours serve notice of the appeal on any person who commented on the application concerned and any other person as the municipality may determine.
- 5) The notice must be served in accordance with section 35.
- 6) The notice contemplated in sub-section 5 must invite persons to comment on the appeal within 21 days of the date of notification.
- 7) The appellant must submit proof of service of the notice as contemplated in sub-section (5) to the Municipal Manager within 14 days of the date of notification.
- 8) If a person other than the applicant lodges an appeal, the Municipal Manager must give written notice of the appeal to the applicant within 14 days of receipt thereof.
- 9) An applicant who has received notice of an appeal in terms of sub-section (8) may submit comment on the appeal to the Municipal Manager within 21 days of the date of notification.
- 10) The Appeal Authority may only accept comments on an appeal submitted after the closing date where:
 - a) the applicant agrees to the acceptance; or
 - b) condonation to do so is granted by the Appeal Authority; or
 - c) the person submitting the comment shows good reason why the comment was submitted late; and
 - d) the comment is different from, or materially adds to the comments already received within the time limit; and
 - e) in the opinion of an authorized employee, recorded in writing with reasons, failure to consider the comment might have significant negative impacts on the environment or on the welfare or rights of affected parties.
- 11) The Municipal Manager:
 - a) may request the Provincial Minister within 14 days of the receipt of an appeal to comment in writing on the appeal within 60 days of the date of notification of the request;
 - b) must notify and request the Provincial Minister within 14 days of the receipt of an appeal to comment on the appeal within 60 days of the date of notification of the request in respect of appeals relating to the following applications:
 - i) a development outside the municipality's planned outer limit of urban expansion as reflected in its municipal spatial development framework;
 - ii) if the municipality has no approved municipal spatial development framework, a development outside the physical edge, including existing urban land use approvals, of the existing urban area;

- iii) a rezoning of land zoned for agricultural or conservation purposes;
 - iv) any category of land use applications as may be prescribed by the Provincial Minister; and
- c) must on receipt of an appeal in terms of this section notify the applicant in writing whether or not the operation of the approval of the application is suspended.
- 12) An authorized employee must draft a report assessing an appeal and must submit it to the Municipal Manager within:
 - a) 30 days of the closing date for comment requested in terms of sub-section (6) and (9), if no comment was requested in terms of sub-section (11); or
 - b) 30 days of the closing date for comments requested in terms of sub-section (11).
- 13) The Municipal Manager must within 14 days of receiving the report contemplated in sub-section (12) submit the appeal to the Appeal Authority.
- 14) The Municipal Manager or an employee designated by him or her must:
 - a) liaise with the Appeal Authority and the parties concerned regarding any appeal lodged with the Appeal Authority;
 - b) maintain a diary of meetings of the Appeal Authority and the advisory panel;
 - c) allocate a meeting date for, and appeal number to, an appeal;
 - d) arrange the venues and attendance of the Appeal Authority and the advisory panel at meetings;
 - e) give notice to all parties to the appeal of the date of the appeal and ensure that it is published on the website;
 - f) perform the administrative functions in connection with the proceedings of the Appeal Authority;
 - g) ensure that the proceedings of the Appeal Authority are conducted efficiently and in accordance with the directions of the Appeal Authority;
 - h) arrange the affairs of the Appeal Authority so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated appeal procedures;
 - i) notify the parties concerned of decisions and procedural directives given by the Appeal Authority;
 - j) keep a record of all appeals lodged as well as the outcome of each, including:
 - i) decisions of the Appeal Authority;
 - ii) on-site inspections and any matter recorded as a result thereof;
 - iii) reasons for decisions; and
 - iv) proceedings of the Appeal Authority; and
 - k) keep records by any means as the Appeal Authority may deem expedient.
- 15) An appellant may, at any time before the Appeal Authority makes a decision on an appeal submitted by the appellant, withdraw the appeal by giving written notice of the withdrawal to the Municipal Manager.
- 16) The appellant must in writing inform the municipality if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the appeal.

81 Consideration by Appeal Authority

- 1) An appeal may be considered by the Appeal Authority by means of:
 - a) the consideration of the written appeal and comments; or
 - b) an oral hearing.
- 2) The appeal may be considered in terms of sub-section (1)(a) if it appears to the Appeal Authority that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
- 3) An oral hearing may be held:
 - a) if it appears to the Appeal Authority that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or

- b) if such hearing would assist in the expeditious and fair disposal of the appeal.
- 4) If appropriate in the circumstances, the oral hearing may be held by electronic means.
- 5) If the Appeal Authority decides to hold an oral hearing, any party to the appeal proceedings may appear in person or may be represented by another person.
- 6) The Appeal Authority must ensure that every party to a proceeding before the Appeal Authority is given an opportunity to present his or her case, whether in writing or orally as contemplated in sub-sections (2) and (3) and, in particular, to inspect any documents to which the Appeal Authority proposes to have regard in reaching a decision in the proceeding and to submit comments thereon in accordance with this Chapter or, in the case of an oral hearing, to make submissions in relation to those documents.
- 7) The Appeal Authority must:
 - a) consider and determine all appeals lawfully submitted to it;
 - b) confirm, vary or revoke the decision of the Tribunal or authorized employee;
 - c) provide reasons for any decision made by it;
 - d) give directions relevant to its functions to the municipality;
 - e) keep a record of all its proceedings; and
 - f) determine whether the appeal falls within its jurisdiction.
- 8) Subject to sub-section (12), the Appeal Authority must decide on an appeal within 60 days of receipt of the assessment report as contemplated in section 80 (13).
- 9) If the Appeal Authority revokes a decision of the Tribunal or authorized employee it may:
 - a) remit the matter to the Tribunal or authorized employee:
 - i) if there was an error in the process which is unfair and which cannot be corrected by the Appeal Authority; and
 - ii) with instructions regarding the correction of the error; or
 - b) replace the decision with any decision it regards necessary.
- 10) The Appeal Authority must within 21 days from the date of its decision notify the parties to an appeal in writing of:
 - a) the decision and the reasons therefore; and
 - b) if the decision on an appeal upholds an approval, notify the applicant in writing that he or she may act on the approval.
- 11) The Appeal Authority may extend the period contemplated in sub-section (8) in exceptional circumstances including the following:
 - a) if an interested person has submitted a petition for intervener status;
 - b) if an oral hearing is to be held.

CHAPTER VIII: PROVISION OF ENGINEERING SERVICES

82 Responsibility for provision of engineering services

- 1) An applicant is responsible for the provision, installation and costs of internal engineering services required for a development once an application is approved.
- 2) The municipality is responsible for the provision and installation of external engineering services.
- 3) If the municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.
- 4) The municipality may enter into a written agreement with an applicant to provide that:
 - a) the applicant is responsible for the provision, installation and costs of external engineering service instead of paying the applicable development charges; or
 - b) the applicant is responsible for the provision, installation and costs of external engineering service and that the fair and reasonable costs of the external engineering service may be set off against the development charges payable by the applicant.

83 Development charges and other contributions

- 1) The applicant must pay development charges to the municipality in respect of the provision and installation of external engineering services.
- 2) These external engineering services for which development charges are payable must be set out in a policy adopted and annually reviewed by the municipality.
- 3) The amount of the development charges payable by an applicant must be calculated in accordance with the policy adopted by the municipality.
- 4) The date by which development charges must be paid and the means of payment must be specified in the conditions of approval.
- 5) The development charges imposed are subject to escalation at the rate calculated in accordance with the policy on development charges.
- 6) The municipality must annually submit a report to the Council on the development charges paid to the municipality, together with a statement of the expenditure of the amount and the purpose of the expenditure.
- 7) When determining the contribution contemplated in section 66(4) and (5), the municipality must have regard to provincial norms and standards as well as:
 - a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;
 - b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;
 - c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;
 - d) money in respect of contributions contemplated in section 66(4) paid in the past by the owner of the land concerned; and
 - e) money in respect of contributions contemplated in section 66(4) to be paid in the future by the owner of the land concerned.

84 Land for parks, open spaces and other uses

- 1) When the municipality approves an application for the use of land for residential purposes, the municipality may require the applicant to provide land for parks or public open spaces in terms of conditions of approval imposed in accordance with section 66.
- 2) The extent of land required for parks or public open spaces is determined by the municipality in accordance with a policy adopted by the municipality.
- 3) The land required for parks or public open spaces must be provided within the land area of the application or may, with the consent of the municipality, be provided elsewhere within the municipal area.
- 4) When an application is approved without the required provision of land for parks or open spaces within the land area of the development, the applicant may be required to pay money to the municipality in lieu of the provision of land.

CHAPTER IX: ENFORCEMENT**85 Enforcement**

- 1) The municipality must comply and enforce compliance with:
 - a) the provisions of this by-law;
 - b) the provisions of a zoning scheme;
 - c) conditions imposed in terms of this by-law or any law repealed by the Land Use Planning Act.
- 2) The municipality may not do anything that is in conflict with sub-section (1).

86 Offences and penalties

- 1) A person is guilty of an offence and is liable on conviction to a fine not exceeding R10 million or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she:
 - a) contravenes or fails to comply with sections 15(1) and (4), 20(1), 21(4), 31(1), 59(3), 62(2) or 88(2);
 - b) utilizes land in a manner other than prescribed by a zoning scheme without the approval of the municipality;
 - c) upon registration of the transfer of ownership of the first land unit arising from a subdivision to a person other than the developer, fails to transfer all common property arising from the subdivision to the owners' association;
 - d) supplies particulars, information or answers in an application, or in an appeal against a decision on an application, or in any documentation or representation related to an application or an appeal, knowing it to be false, incorrect or misleading or should reasonably have known it to be incorrect or misleading;
 - e) falsely professes to be an authorized employee or the interpreter or assistant of an authorized employee; or
 - f) hinders or interferes with an authorized employee in the exercise of any power or the performance of any duty of that employee.
- 2) An owner who permits his or her land to be used in a manner set out in sub-section (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, is guilty of an offence and liable upon conviction to a fine not exceeding R10 million or imprisonment not exceeding 20 years or to both a fine and such imprisonment.
- 3) A person convicted of an offence in terms of this by-law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to a fine not exceeding R125 000 or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.
- 4) The municipality may adopt fines and contravention penalties to be imposed in the enforcement of this by-law.

87 Serving of compliance notices

- 1) The municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person is guilty of an offence in terms of section 86.
- 2) A compliance notice must instruct the person to cease the unlawful utilization of land or construction activity or both, without delay or within the period determined by the municipality, and may include an instruction to:
 - a) demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity, as the case may be, within the period determined by the municipality.
 - b) submit an application for the approval of the utilization of the land or construction activity in terms of this by-law within 30 days of the service of the compliance notice and to pay the contravention penalty within 30 days of the determination thereof; or
 - c) rehabilitate the land or restore the building concerned to its original form or to rectify the contravention of or non-compliance with a condition of approval within a specified period.
- 3) A person who has received a compliance notice with an instruction contemplated in sub-section (2)(a) may not submit an application in terms of sub-section (2)(b).
- 4) An instruction to submit an application in terms of sub-section (2)(b) must not be construed as an indication that the application will be approved.
- 5) In the event that the application submitted in terms of sub-section (2)(b) is refused, the owner must demolish, remove or alter the building, structure or work unlawfully erected or constructed and rehabilitate the land or restore the building.

- 6) A person who received a compliance notice in terms of this section may object to the notice by submitting written representations to the municipality within 30 days of the date of notification.

88 Contents of compliance notice

- 1) A compliance notice must:
 - a) identify the person to whom it is addressed;
 - b) describe the alleged unlawful utilization of land or construction activity and the land on which it is occurring or has occurred;
 - c) state that the utilization of land or construction activity is unlawful and inform the person of the particular offence contemplated in section 86 which that person allegedly has committed or is committing by the continuation of that activity on the land;
 - d) state the steps that the person must take and the period within which those steps must be taken;
 - e) state anything which the person may not do and the period during which the person may not do it;
 - f) make provision for the person to submit representations in terms of section 89 with the contact person stated in the notice; and
 - g) issue a warning to the effect that:
 - i) the person may be prosecuted for and convicted of an offence contemplated in section 86;
 - ii) on conviction of an offence, the person will be liable for the penalty as provided for;
 - iii) the person may be required by an order of court to demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned or to cease the activity;
 - iv) in the case of a contravention relating to a consent use or temporary departure, the approval may be withdrawn; and
 - v) in the case of an application for authorization of the activity or development parameter, the contravention penalty in the amount as stated in the notice, including any costs incurred by the municipality, may be imposed.
- 2) Any person on whom a compliance notice is served must comply with that notice within the period stated in the notice unless the person has objected to the notice in terms of section 89 and the municipality has not decided on the matter in terms of that section or the municipality has agreed to suspend the operation of the compliance notice in terms of section 89(2).

89 Objections to compliance notice

- 1) Any person who receives a compliance notice in terms of section 87 may object to the notice by making written representations to the municipality within 30 days of the date of notification.
- 2) After consideration of any objections or representations made in terms of sub-section (1) and any other relevant information, the municipality:
 - a) may suspend, confirm, vary or withdraw the compliance notice or any part of the compliance notice; and
 - b) must specify the period within which the person to whom the compliance notice is addressed must comply with any part of the compliance notice that is confirmed or varied.

90 Failure to comply with compliance notice

- 1) If a person fails to comply with a compliance notice, the municipality may:
 - a) lay a criminal charge against the person;
 - b) apply to the Court for an order:

- i) restraining that person from continuing the unlawful utilization of the land;
- ii) directing that person to, without the payment of compensation:
 - (aa) demolish, remove or alter any building, structure or work unlawfully erected or constructed; or
 - (bb) rehabilitate the land concerned;
- c) in the case of consent use or a temporary departure, withdraw the approval granted and take any of the other steps contemplated in section 88(1)(g).

91 Compliance certificates

- 1) An authorized employee who is satisfied that the owner or occupier of any land or premises has complied with a compliance notice may issue a certificate, in the manner and form determined by the municipality, to confirm the compliance.
- 2) The authorized employee must submit a report to the municipality regarding his or her findings contemplated in sub-section (1) and the issuing of a compliance certificate.

92 Urgent matters

- 1) Where the circumstances of the unlawful utilization of land present a danger to persons, property, or the environment, the municipality may issue a compliance notice calling upon the person or owner to cease the unlawful utilization of land immediately, without having to comply with sections 87(6), 88(1)(f) and 89.
- 2) If the person or owner fails to cease the unlawful utilization of land immediately, the municipality may apply to the Court for an urgent interdict compelling the person or owner to cease such unlawful utilization, or any other relief necessary.

93 Contravention penalties

- 1) A person who is in contravention of this by-law, and who wishes to rectify the contravention in terms of section 87(2)(b), may apply to the municipality for the determination of an administrative penalty if the municipality has not issued a compliance notice in terms of sub-section 87(2)(a) in respect of the land or building or part thereof concerned.
- 2) The Municipal Planning Tribunal may, where any person has contravened this by-law:
 - a) decide to impose an administrative penalty; and
 - b) determine the amount of the penalty.
- 3) A person making an application contemplated in sub-section (2) must:
 - a) submit an application;
 - b) pay the prescribed fee; and
 - c) provide the information contemplated in sub-sections (8) and (9).
- 4) The municipality may, on its own initiative apply, to the Municipal Planning Tribunal for an order that a person who has contravened this by-law must pay an administrative penalty in an amount determined by the municipal Planning Tribunal, and must provide the information contemplated in sub-sections (8) and (9) to the extent that it is known to the municipality.
- 5) If the municipality submits an application as contemplated in sub-section (4), the municipality must invite the person concerned to make written representations on the application within 30 days of receipt, thereof.
- 6) An authorized employee must submit a written report to the Municipal Planning Tribunal for consideration of any application for a contravention levy.
- 7) The Municipal Planning Tribunal may:
 - a) call for additional information to decide an application in terms of this section; and
 - b) draw an adverse inference against a person who fails or refuses to provide, to the satisfaction of the Municipal Planning Tribunal, information contemplated in sub-section (3)(c) or paragraph (a).

- 8) After considering the report of the authorized employee, and any representations from a person concerned, if the Municipal Planning Tribunal decides to impose a contravention levy on a person who has contravened this by-law, it must determine an amount which in accordance with Council's approved tariff structure.
- 9) When determining an appropriate administrative penalty, the Municipal Planning Tribunal must consider at least the following factors:
 - a) the nature, duration, gravity and extent of the contravention;
 - b) the conduct of the person involved in the contravention;
 - c) whether the unlawful conduct was stopped; and
 - d) whether a person involved in the contravention has previously contravened this by-law or a previous planning law.
- 10) The person who has contravened this by-law must be notified of the decision of the Municipal Planning Tribunal and if the Municipal Planning Tribunal decides to impose an administrative penalty, the notice must:
 - a) set out the administrative penalty;
 - b) inform the person against whom the determination of the contravention levy has been made;
 - c) state that the person must pay the administrative penalty to the municipality within 30 days of the date of decision or within such further period that the Municipal Planning Tribunal may determine at the time of making the decision;
 - d) state that the payment of an administrative penalty in terms of this section does not limit the municipality's power to investigate an offence or institute a criminal prosecution; and
 - e) state that, without further notice, the municipality may apply to a competent court for an order confirming the administrative penalty and other appropriate relief including the costs of the application.
- 11) The municipality may apply to the High Court for an order confirming the order of the Municipal Planning Tribunal to pay an administrative penalty, if the person against whom the determination of the contravention levy has been made fails to pay the contravention levy.

94 Inspections by authorized employees

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

95 Powers of entry, search and seizure

- 1) In ensuring compliance with this by-law an authorized employee may in accordance with section 93:
 - a) question any person on land or premises entered upon or in a building entered, who, in the opinion of the authorized employee, may be able to provide information on a matter that relates to an investigation regarding an offence in terms of, or contravention of, this by-law;
 - b) question any person on that land or those premises or in that building about any act or omission in respect of which there is a reasonable suspicion that it constitutes:
 - i) an offence in terms of this by-law;
 - ii) a contravention of this by-law; or
 - iii) a contravention of an approval or a term or condition of that approval;
 - c) question that person about any structure, object, document, book, record, written or electronic information or inspect any structure, object, document, book, record or written or electronic

- information that may be relevant for the purpose of the investigation;
- d) copy or make extracts from any document, book, record, written or electronic information referred to in paragraph (c), or remove that document, book, record or written or electronic information in order to make copies thereof or extracts there from;
 - e) require that person to produce or deliver to a place specified by the authorized employee any document, book, record, written or electronic information referred to in paragraph (c) for inspection;
 - f) examine that document, book, record, written or electronic information or make a copy thereof or an extract there from;
 - g) require from that person an explanation of any entry in that document, book, record, written or electronic information;
 - h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
 - i) take photographs or make audio-visual recordings of anything or any person on that land or those premises or in that building relevant to the purposes of the investigation; or
 - j) remove or seize a book, record, written or electronic information referred to in paragraph (c) or article, substance, plant or machinery referred to in paragraph (h) or a part or sample thereof that in his or her opinion may serve as evidence at the trial of the person to be charged with an offence under this by-law or the common law, provided that the user of the article, substance, plant or machinery on the land or premises or in the building concerned may make copies of that book, record or document before the removal or seizure.
- 2) When an authorized employee removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated in this section, he or she must issue a receipt to the owner or person in control thereof.
 - 3) An authorized employee may not have a direct or indirect personal or private interest in the matter to be investigated.

96 Warrant of entry for enforcement purposes

- 1) A judge of a High Court or a magistrate for the district in which the land is situated may, issue a warrant to enter upon the land or premises or building if:
 - a) the prior permission of the occupier or owner cannot be obtained after reasonable attempts; or
 - b) the purpose of the inspection would be frustrated by the occupier or owner's prior knowledge thereof.
- 2) A warrant may be issued if it appears to the Judge or Magistrate from information on oath or affirmation that there are reasonable grounds for believing that:
 - a) an offence contemplated in section 86 is occurring or has occurred and an inspection of the premises is likely to yield information pertaining to that offence; and
 - b) an authorized employee has been refused or is likely to be refused entry to land or a building that he or she has a duty to inspect.
- 3) A warrant must authorize the municipality to enter upon the land or premises or to enter the building to take any of the measures referred to in section 94 as specified in the warrant, on one occasion only, and that entry must occur:
 - a) within one month of the date on which the warrant was issued; and
 - b) by day, unless the person issuing the warrant, in writing, authorizes the execution thereof by night.

97 Regard to decency and order

- 1) The entry upon land or premises or in a building under this Chapter must be conducted with strict regard to decency and order, which must include regard to:
 - a) a person's right to respect for and protection of his or her dignity;

- b) the right to freedom and security of the person; and
- c) a person's right to personal privacy.

98 Enforcement litigation

- 1) Whether or not the municipality lays criminal charges against a person for an offence contemplated in section 86, and despite section 87, the municipality may apply to the Court for an interdict or any other appropriate order, including an order compelling that person to:
 - a) demolish, remove or alter any building, structure or work unlawfully erected or constructed;
 - b) rehabilitate the land concerned;
 - c) cease the unlawful utilization of land.

CHAPTER X:

99 Intervener Status

- 1) A person contemplated in sub-section (2) may, within the period contemplated in sub-section (3), submit a petition on the prescribed form to the Municipal Manager to be granted intervener status;
- 2) A person may submit a petition only if he or she has not been given notice of the application in terms of section 46 and:
 - a) If the application has not yet been decided – the petitioner has an interest in the application; or
 - b) If the application has been decided – the petitioner has a pecuniary or proprietary interest which is adversely affected or is able to demonstrate that she or he will be adversely affected by the decision or an appeal in respect of the decision.
- 3) A petition is invalid if it is submitted:
 - a) more than seven days after the petitioner became aware of the application or might reasonably have been expected to have become aware of the application; or
 - b) after the effective date of decision contemplated in section 61.
- 4) A petitioner must submit together with the petition:
 - a) if the application has not yet been decided – in accordance with section 50, any objection, comment or representations and the reasons therefore that the petitioner wishes the decision-maker to consider;
 - b) if the application has been decided – a written notice of appeal and grounds of appeal in accordance with section 80(2); and
 - c) an affidavit stating that he or she is not colluding with any applicant, objector or appellant and is willing to act in regard to the application or appeal as the municipality may direct.
- 5) The Municipal Manager must provide a copy of the petition and the information contemplated in sub-section (4) to the existing parties to the proceedings for comment.
- 6) The Municipal Manager may:
 - a) refuse a petition if it is late;
 - b) if there is no question that the petition should be granted, grant the petitioner intervener status; or
 - c) in the event that a question arises as to whether the petition should be granted, refer the petition for determination to:
 - i) the Municipal Planning Tribunal if the application has not yet been decided; or
 - ii) the appeal authority if the application has been decided.
- 7) In deciding whether to grant a petitioner intervener status, the Municipal Planning Tribunal or the appeal authority, as the case may be, must consider at least whether:
 - a) the petitioner qualifies in terms of sub-section (2);
 - b) no existing party to the proceedings adequately represents the interest of the petitioner;

- c) the petitioner represents other persons who have a similar interest in the proceedings and who are not otherwise represented;
 - d) refusing the petition would impede the ability of the petitioner to protect his or her interest;
 - e) the petitioner's objection, comment or representations are relevant to the proceedings, different from those of the existing parties, and would assist the decision-maker; and
 - f) granting the petition would not cause undue delay or otherwise prejudice the interest of any party to the proceedings;
- 8) The decision-maker must notify the petitioner and the existing parties to the proceedings of the outcome of the petition;
 - 9) There is no appeal against a determination to grant or to refuse a petition;
 - 10) A person who is granted intervener status after an application is decided is regarded as an appellant.

CHAPTER XI: MISCELLANEOUS

100 Naming and numbering of streets

- 1) If as a result of the approval of a development application streets or roads are created, whether public or private, the municipality must approve the naming of streets and must allocate a street number to each of the erven or land units located in such street or road.
- 2) The proposed names of the streets and numbers must be submitted as part of an application for subdivision.
- 3) In considering the naming of streets, the municipality must take into account the relevant policies regarding street naming and numbering.
- 4) The municipality must notify the Surveyor-General of the approval of new streets as a result of the approval of an amendment or cancellation of a subdivision plan in terms of section 23 and the Surveyor-General must endorse the records of the Surveyor-General's Office to reflect the amendment or cancellation of the street names on an approved general plan.

101 Repeal

The provisions of any by-laws previously promulgated by the Knysna Municipality or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed as far as they relate to matters provided for in this by-law.

102 Short title and commencement

This by-law is called the Knysna Municipality's Spatial Planning and Land Use Management By-law and comes into operation on the date of promulgation thereof in the Western Cape Provincial Gazette.

SCHEDULE 1
CODE OF CONDUCT FOR MEMBERS OF TRIBUNAL

General conduct

- 1** A member of the Tribunal must at all times:
- a) act in accordance with the principles of accountability and transparency; and
 - b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve;
 - c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which he or she has a personal interest and may only participate in any other capacity, if the personal interest has been declared and the decision maker has given written approval for his or her participation.
- 2** A member of the Tribunal may not:
- a) use his or her position or privileges as Tribunal member or confidential information obtained as a Tribunal member, for private gain or to improperly benefit another person; or
 - b) participate as a decision-maker concerning a matter in which that Tribunal member or that member's spouse, family member, partner or business associate, has a direct or indirect personal interest or private business interest.

Gifts

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

Undue influence

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