



Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

# Provincial Gazette Extraordinary

8632

Friday, 15 July 2022

# Buitengewone Provinsiale Koerant

8632

Vrydag, 15 Julie 2022

*Registered at the Post Office as a Newspaper*

## CONTENTS

*(\*Reprints are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)*

### LOCAL AUTHORITY

Cape Agulhas Municipality: By-law on Municipal Land Use Planning, 2022 .....	2
Cape Agulhas Municipality Zoning Scheme By-Law 2022 .....	84

**Cape Agulhas Municipality: By-law on Municipal Land Use Planning, 2022**

**To regulate and control municipal land use planning.**

**ARRANGEMENT OF SECTIONS AND SCHEDULES**

**CHAPTER I**

**INTERPRETATION AND APPLICATION**

1. Definitions
2. Application of By-law

**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

**CHAPTER III**

**DEVELOPMENT MANAGEMENT**

13. Determination of zoning
14. Non-conforming uses
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

#### **CHAPTER IV APPLICATION PROCEDURES**

35. Manner and date of notification
36. Procedures for applications
37. Pre-application consultation
38. Information required
39. Application fees
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. General powers and functions of authorised employees
94. Powers of entry, search and seizure
95. Warrant of entry for enforcement purposes

- 96. Regard to decency and order
- 97. Enforcement litigation

**CHAPTER X  
MISCELLANEOUS**

- 98. Naming and numbering of streets
- 99. Repeal and Transitional Arrangements
- 100. Short title and commencement

**SCHEDULE 1  
CODE OF CONDUCT FOR MEMBERS OF TRIBUNAL**

## CHAPTER I INTERPRETATION AND APPLICATION

### Definitions

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

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

“**agent**” means a person authorised in terms of a power of attorney to make an application on behalf of the 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);

“**authorised employee**” means a municipal employee who is authorised 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;

“**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;

“**court**” means a High Court or Magistrate’s court with jurisdiction;

“**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;

“**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 utilisation and development of the land;

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

“**local spatial development framework**” means a local spatial development framework contemplated in section 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 [*insert name*] established by Establishment Notice [*insert notice number*] in *Provincial Gazette* [*insert Provincial Gazette number*] of [*insert date*] 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, authorised or delegated to perform a function or exercise a power in terms of this By-law;



- (c) the Tribunal, 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;

**“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 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 drives;
  - (ix) coastal setbacks; or
  - (x) any other purpose as set out in the zoning scheme;

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

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

**“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;

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

“**Spatial Planning and Land Use Management Regulations**” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015, made under the Spatial Planning and Land Use Management Act and published under Notice R239/2015 in *Government Gazette* 38594 of 23 March 2015;

“**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.

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

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

## CHAPTER II SPATIAL PLANNING

### Compilation or amendment of municipal spatial development framework

3. (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 a 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 subsection (1)(a) or (b); and the process contemplated in subsection (2)(a)(ii); and
  - (c) register relevant stakeholders, who must be invited to comment on the draft municipal spatial development framework or draft amendment of the municipal spatial development framework as part of the process contemplated in subsection (2)(a)(ii).

### Establishment of project committee

4. (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 to 8.
- (2) The 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 the following municipal departments, where relevant:
  - (i) the integrated development planning office;
  - (ii) the spatial planning department;
  - (iii) the engineering department;
  - (iv) the local economic development department; and
  - (v) the housing department.

#### **Establishment of intergovernmental steering committee**

- 5. (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 Department, 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 persons or organs of state contemplated in subsection (1)(b)(ii), (iii), and (iv).

#### **Procedure with intergovernmental steering committee**

- 6. (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 subsection (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 subsection (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 subsection (6) is materially different to what was published in terms of subsection (4), the Municipality must in accordance with subsections (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 municipal 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*.

### Procedure without intergovernmental steering committee

7. (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 subsection (1)(d) is materially different to what was published in terms of subsection (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*.

### Functions and duties

8. (1) The Municipality must, in accordance with the directions of the [*executive committee/executive mayor/committee of councillors*]  
—
- (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 timeframes; 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 intergovernmental steering committee 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
    - (v) written comments in terms of section 6; and
  - (b) provide the project committee, if established, or the Municipality with written comments in terms of section 6.

**Local spatial development frameworks**

9. (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, in so far as they are linked to land use planning, biodiversity and environmental issues; and
  - (f) guide decision-making on land use applications.

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

10. (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*.

**Status of local spatial development frameworks**

11. (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.



### Structure plans

12. (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 subsection (1).

### CHAPTER III DEVELOPMENT MANAGEMENT

#### Determination of zoning

13. (1) The owner or his or 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 subsection (1), it must have regard to the following:
- (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of the Land Use Planning Act, if it can be determined;
  - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
  - (c) any departure or consent use that may be required in conjunction with that zoning;
  - (d) in the case of land that was vacant immediately before the commencement of the Land Use Planning Act, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the Municipality; and
  - (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of 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 subsection (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.

#### Non-conforming uses

14. (1) A non-conforming use does not constitute an offence in terms of this By-law.
- (2) A non-conforming use may continue as long as it remains otherwise lawful, subject to the following:
- (a) if the non-conforming use is ceased for any reason for a period of more than twenty-four consecutive months, any subsequent utilisation 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 subsection (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.

#### **Land development requiring approval and other approvals**

15. (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 subsection (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 utilise 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 owners' association to meet its obligations in respect of the control over or maintenance of services;
  - (r) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.
- (3) If section 53 of the Land Use Planning Act is applicable to the land development, the owner or agent must also apply for approval of the land development in terms of that Act.
- (4) 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.
- (5) The Municipality may, subject to subsection (7), on its own initiative rezone land of which it is not the owner for a purpose contemplated in sections 13(3) and 17(1).
- (6) The Municipality may, subject to subsection (7), on its own initiative conduct land development or an activity contemplated in subsections (2)(b), (c), (f) to (j) and (l) to (r) in respect of land which is not owned by the Municipality.
- (7) When the Municipality on its own initiative acts in terms of subsection (2), (5) or (6)—
- (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.

#### **Continuation of application after change of ownership**

- 16.** 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.

## Rezoning of land

17. (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 utilisation thereof or existing use rights.
- (2) An applicant 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 subsection (6), a rezoning approval contemplated in subsection (2) lapses after the applicable period reckoned from the date that the approval comes into operation if, within that period—
- (a) the zoning is not utilised in accordance with the approval; or
  - (b) the following requirements have not been met:
    - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
    - (ii) commencement of the construction of the building contemplated in subparagraph (i).
- (6) An approval of a rezoning to subdivisional area contemplated in section 20(2) lapses after the applicable period reckoned from the date that the approval comes into operation if, within that period—
- (a) a subdivision application is not submitted; or
  - (b) the 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 subsection (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.

#### **Departures**

- 18.** (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 utilise 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 subsection (1)(a) lapses after the applicable period from the date that the approval comes into operation if, within that period—
- (a) the departure is not utilised in accordance with the approval; or
  - (b) the following requirements have not been met:
    - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved departure; and
    - (ii) commencement of the construction of the building contemplated in subparagraph (i).
- (3) The Municipality may approve a departure contemplated in subsection (1)(b) for a period shorter than 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 subsection (1)(b), except for a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event, may not be approved more than once in respect of a particular use on a specific land unit.
- (5) A temporary departure contemplated in subsection (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.

### **Consent uses**

- 19.** (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 utilised in the future for the primary uses permitted in terms of the zoning of the land.
  - (5) A consent use contemplated in subsection (1) lapses after the applicable period from the date that the approval comes into operation if, within that period—
    - (a) the consent use is not utilised in accordance with the approval; or
    - (b) the following requirements have not been met:
      - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved consent use; and
      - (ii) commencement of the construction of the building contemplated in subparagraph (i).

**Subdivision**

20. (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 66 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 subsection 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 subsection (6) in error, the owner is not absolved from complying with the obligations imposed in terms of the conditions.

**Confirmation of subdivision**

21. (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 certificate of registered 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 subsection (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 subsection (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 subsection (1) or the Municipality approved the construction before the confirmation of the subdivision.

#### **Lapsing of subdivision**

- 22.** (1) An approved subdivision lapses after the applicable period from the date that the approval comes into operation if the requirements contemplated in section 21(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 subsection (1)—
- (a) the Municipality must—
    - (i) amend the zoning map and, where applicable, the register accordingly; and
    - (ii) notify the Surveyor-General accordingly; and
  - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the subdivision has lapsed.

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

23. (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 subsection (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 subsection (1) and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the amendment or cancellation of the subdivision.
- (4) An amended subdivision approval contemplated in subsection 1 does not extend the validity period of the initial approval of the subdivision as contemplated in section 22(1).

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

24. (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;
    - (iv) the granting of a right of habitation, private right of way or usufruct; or

- (v) the provision of a borehole or water pipelines other than water pipelines on behalf of an organ of state or service provider;
  - (g) the exclusive utilisation of land for agricultural purposes if the utilisation—
    - (i) in the case of a subdivision, requires approval in terms of legislation regulating the subdivision of agricultural land; and
    - (ii) 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 subsection (2).
- (4) Subsections (2) and (3) do not apply in respect of a subdivision or consolidation contemplated in subsection (1)(a), (b) or (h).

#### **Ownership of public places and land for municipal service infrastructure and amenities**

25. (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.

#### **Closure of public places**

26. (1) The Municipality may, on its own initiative or on application, 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) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered due to wrongdoing on the part of the Municipality when it permanently closed a public place, the authorised employee must—
  - (a) require proof of negligence or any other wrongdoing on the part of the Municipality which resulted in the loss or damage; and
  - (b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.
  
- (4) The Municipality may pay a claim if—
  - (a) the circumstances of the loss or damage reveal that the Municipality acted wrongfully;
  - (b) in the case of loss of or damage to property, the claimant has proved his or her loss or damage;
  - (c) in the case of personal injury, the claimant has provided proof of a fair and reasonable quantum;
  - (d) no claim has been paid by personal insurance covering the same loss; and
  - (e) any relevant information as requested by the authorised employee has been received.
  
- (5) 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.
  
- (6) 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.
  
- (7) The Municipality must notify the Surveyor-General of an approval in terms of subsection (1) and the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the closure of the public place.

### Services arising from subdivision

27. 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 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.

### Certification by Municipality

28. (1) A person may apply to the Registrar of Deeds to register the transfer of a land unit, a certificate of registered title or certificate of consolidated title, as the case may be, in any of the instances referred to in subsection (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, a certificate of registered title or certificate of consolidated title, as the case may be, in any of the instances referred to in subsection (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 subsections (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 of the penalty 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 certificate of registered 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 registered 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.

### **Owners' associations**

29. (1) The Municipality may, when approving an application for a subdivision of land, impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
- (2) An owners' association that comes into being by virtue of subsection (1) is a juristic person and must have a constitution.
- (3) The constitution of an owners' association must be approved by the Municipality before 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 subsection (3), the amendment must also be approved by the Municipality.
- (7) An owners' association that comes into being by virtue of subsection (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 subsection (3)(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.

**Owners' associations that cease to function**

30. (1) If an owners' association ceases to function or carry out its obligations 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 subsection 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 subsection (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 subsection (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.

**Consolidation of land units**

31. (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.

### **Lapsing of consolidation**

32. (1) An approved consolidation of land units lapses if the consolidation is not registered in terms of the Deeds Registries Act within the applicable period from the date that the approval comes into operation.
- (2) If an approval of a consolidation lapses in terms of subsection (1)—
- (a) the Municipality must—
    - (i) amend the zoning map, and where applicable the register, accordingly; and
    - (ii) notify the Surveyor-General accordingly; and
  - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the notification that the consolidation has lapsed.

### **Removal, suspension or amendment of restrictive conditions**

33. (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 will 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.
- (5) An approval to remove, suspend or amend a restrictive condition comes into operation—
- (a) if no appeal has been lodged, after the expiry of the period contemplated in section 79(2) within which an appeal must be lodged; or
  - (b) if an appeal has been lodged, when the Appeal Authority has decided on the appeal.
- (6) The Municipality must cause a notice of the decision to remove, suspend or amend a restrictive condition to be published in the *Provincial Gazette* after the decision comes into operation as contemplated in subsection (5) and notify the Registrar of 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 subsection (7) together and make an integrated decision.

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

34. (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

### Manner and date of notification

35. (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—
    - (i) to that person's business or residential address and municipal billing address, where the billing address differs from the business or residential address; or
    - (ii) in the case of a juristic person, to its registered address or principal place of business and municipal billing address, where the billing address differs from the business or residential 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 publishing it once in the *Provincial Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.
- (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;
  - (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) 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.

### **Procedures for applications**

- 36.** (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).

### **Pre-application consultation**

- 37.** (1) The Municipality may require an owner who intends to submit an application or his or her agent to meet with the authorised 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.

### **Information required**

- 38.** (1) Subject to subsection (2), an application must be accompanied by the following information and documents where applicable:
- (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 authorising the applicant to make the application on behalf of the owner;

- (c) if the owner of the land is a company, closed corporation, trust, body corporate or owners' association, proof that the person is authorised to make the application on behalf of the company, closed corporation, trust, body corporate or owners' association;
- (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, excluding sections 65(a), (b), (d), (e) and (g);
- (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 catchpits;
  - (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 or remove any information or documents contemplated in subsection (1) for a particular application.
- (3) The Municipality may issue guidelines regarding the submission of information, documents or procedural requirements.

#### **Application fees**

39. (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.

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

40. The Municipality may in terms of section 41(3) 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.

#### **Receipt of application and commencement of application process**

41. (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 14 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 14 days of receipt of the outstanding information, documents or fees referred to in subsection (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 subsection (1)(c)(ii).
- (4) The Municipality must notify the applicant in writing of a refusal to consider an application under subsection (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 subsection (3) to refuse to consider an application.
- (6) If an applicant wishes to continue with an application that the Municipality refused to consider under subsection (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 subsection (1)(c)(i) or (2).

#### **Provision of additional information or documents**

42. (1) The Municipality must, within 30 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 subsection (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 subsection (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 subsection (4), subsections (2) and (3) apply to the further submission of information or documents.



**Withdrawal of application or power of attorney**

43. (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.

**Public notice in accordance with other laws and integrated procedures**

44. (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 subsection (1)(b), an agreement must be entered into between the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.

**Publication of notices**

45. (1) Subject to section 44, the Municipality must, in accordance with subsection (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;
  - (g) an application in respect of a restrictive condition;
  - (h) other applications that will materially affect the public interest or the interests of the community if approved.
- (2) Public notice of an application referred to in subsection (1) must be given by—
- (a) publishing a notice with the contents contemplated in section 47 in newspapers 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;
  - (b) if there is no newspaper with a general circulation in the area, 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; and
  - (c) publishing a notice with the contents contemplated in section 47 on the Municipality's website.
- (3) The Municipality may require the applicant to attend to the publication as contemplated in subsection (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.

### **Serving of notices**

- 46.** (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 subsection (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 each person whose rights or legitimate expectations will be affected by the approval of the application; and
  - (d) on every owner of land adjoining the land concerned.
- (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 subsection (1).
- (4) The Municipality may require the applicant to attend to the serving of a notice as contemplated in subsection (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 subsection (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.

#### **Contents of notice**

47. 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 and the owner;
  - (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 therefor, in respect of the application;
  - (g) state in what manner 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.

#### **Other methods of public notice**

48. (1) The Municipality may cause public notice to be given by one or more of the methods referred to in subsection (2)—
- (a) to ensure additional public notice of applications listed in section 45(1) if the Municipality considers notice in accordance with section 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 subsection (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 section 45 or 46 or thereafter.

- (4) The Municipality may require the applicant to attend to the publication of a notice as contemplated in subsection (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 subsection (2).

#### **Requirements for petitions**

- 49.** (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 authorised representative of the signatories of the petition;
  - (b) the full name and physical address of each signatory; and
  - (c) the comments and reasons therefor.
- (2) Notice to the person contemplated in subsection (1)(a) constitutes notice to all the signatories to the petition.

#### **Requirements for submission of comments**

- 50.** (1) A person may respond to a notice contemplated in section 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 refuse to accept comments submitted after the closing date.

### **Intergovernmental participation process**

51. (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 within 60 days of—
- (a) 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 subsection (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.

### **Amendments before approval**

52. (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 a comment submitted during the notice process; or
  - (c) at the request of the Municipality.
- (2) If an amendment to an application is material, the Municipality 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.

- (3) If an amendment to an application is material, the Municipality may require that further notice of the application be published or served in terms of section 44, 45, 46 or 48.

#### **Further public notice**

53. (1) The Municipality may require that notice of an application be given again if more than 18 months have elapsed since the first public notice of the application 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 and, where applicable, other organs of state or service providers for comment.

#### **Liability for cost of notice**

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

#### **Right of applicant to reply**

55. (1) Copies of all comments and other information submitted to the Municipality 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 the 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 subsection (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 subsection (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 subsection (5), the Municipality must consider the application without the information or documents and notify the applicant accordingly.

#### **Written assessment of application**

56. (1) An authorised employee must in writing in accordance with section 65 assess an application 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.

#### **Decision-making period**

57. (1) When an authorised 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 authorised 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;
  - (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 subsection (1)(a), (b) or (c).



- (3) The authorised employee or Tribunal, as the case may be, may extend the period contemplated in subsection (1) or (2) in exceptional circumstances, including the following:
- (a) if an interested person has submitted a petition for intervener status;
  - (b) in the case of the Tribunal, if an oral hearing is to be held.

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

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

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

59. (1) An authorised employee or member 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.
- (2) When conducting an inspection, the authorised employee or member 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 subsection (1) who is conducting an inspection as contemplated in subsection (1).
- (4) The authorised employee or member of the Tribunal must, on request, produce identification showing that he or she is authorised to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time 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.

### Decisions on applications

- 60.** An employee authorised 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.

### Notification and coming into operation of decision

- 61.** (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and any person whose rights are affected by the decision of the decision, the reasons for the decision and their right to appeal, if applicable.
- (2) A notice contemplated in subsection (1) must inform an applicant 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(2) within which an appeal must be lodged if no appeal has been lodged.
  - (5) Subject to subsection (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 authorised employee who imposed the conditions may determine that the approval of the application is not suspended.

**Duties of agent**

62. (1) An agent must ensure that he or she has the contact details of the owner on whose behalf he or she is authorised 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 believes to be misleading, false or inaccurate.

**Errors and omissions**

63. (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.

**Exemptions to facilitate expedited procedures**

64. (1) The Municipality may in writing and subject to 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 authorise that a development may depart from any of the provisions of this By-law.
- (2) If the Provincial Minister grants an exemption or authorisation to deviate from a provision of the Land Use Planning Act to the Municipality in terms of section 60 of the Land Use Planning Act, the Municipality is exempted from or authorised to deviate from any provision in this By-law that corresponds to the provision of the Land Use Planning Act in respect of which an exemption was granted or deviation was authorised.

## CHAPTER V CRITERIA FOR DECISION-MAKING

### General criteria for consideration of applications

65. When the Municipality considers an application, it must have regard to the following:

- (a) the application submitted in terms of this By-law;
- (b) the procedure followed in processing the application;
- (c) the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding 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 by 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;
- (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 Spatial Planning and Land Use Management 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 Spatial Planning and Land Use Management 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.

### Conditions of approval

66. (1) The Municipality may approve an application subject to reasonable conditions that arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with subsection (1) may include conditions relating to—
- (a) the provision of engineering services and infrastructure;
  - (b) 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 occasional use; and
    - (iii) any other development parameters that the Municipality may determine;
  - (z) the payment of a contravention penalty in respect of the unlawful utilisation of land.
- (3) If the Municipality imposes a condition contemplated in subsection (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 subsection (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 subsection (4) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—
- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
  - (b) 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.
- (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

#### Applications for extension of validity period

67. (1) The Municipality may, on a date before or after the expiry of the validity period of an approval, 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 before the expiry of the validity period.
- (2) When the Municipality considers an application in terms of subsection (1), it must have regard to the following:
- (a) 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

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

- 68.** Applications or appeals are decided—
- (a) in the case of an application referred to in section 15(2)(a) to (f), (h) to (k), (n), (o) or (r), by an authorised employee who has been authorised by the Municipality to consider and determine the applications as contemplated in section 69(1);
  - (b) in the case of an application referred to in section 15(2)(a) to (f), (h) to (k), (n), (o) or (r) where an authorised employee has not been authorised by the Municipality to consider and determine the applications as contemplated in section 69(2), by the Tribunal;
  - (c) in the case of an application referred to section 15(2)(g), (l), (m), (p) or (q), by the Council or an authorised employee;
  - (d) by the Appeal Authority where an appeal has been lodged against a decision of an authorised employee or the Tribunal in respect of applications referred to in paragraph (a) or (b) respectively; or
  - (e) 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 authorised employee in respect of applications referred to in section 15(2)(g), (l), (m), (p) or (q).

### Consideration of applications

- 69.** (1) The Municipality may categorise applications referred to in section 15(2)(a) to (f), (h) to (k), (n), (o) or (r) for consideration and determination by an authorised employee.
- (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 categorised for consideration and determination by an authorised employee.

### Establishment of Tribunal

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

- (2) An agreement referred to in subsection (1)(b) or (c) 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; and
  - (d) other matters as may be prescribed in terms of the Spatial Planning and Land Use Management Act.

### **Composition of Tribunal for municipal area**

71. (1) A Tribunal established in terms of section 70(1)(a) must consist of at least the following members appointed by the Council:
- (a) three employees in the full-time service of the Municipality; and
  - (b) two persons who are not employees of the Municipality or councillors.
- (2) The members of the Tribunal must have knowledge and experience of land use planning or the law related thereto and be representative of a broad range of appropriate experience and expertise.
- (3) A member of the Tribunal appointed in terms of subsection (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.

### **Process for appointment of members for Tribunal for municipal area**

72. (1) The members of the Tribunal referred to in 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(3)(a), extended a written invitation to nominate an official or employee to serve on the Tribunal to the departments in the national and provincial spheres of government, other organs of state and organisations referred to in section 71(3)(a); and
  - (b) in the case of member contemplated in section 71(3)(b), by notice 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 subsection (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 subsection (1)(b) or the written invitation in terms of subsection (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 authority 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 appoint the persons.

- (6) Nominations submitted to the Municipality by virtue of subsection (1) must be submitted in writing in the form determined by the Municipality and must contain the contents referred to in subsection (3).
- (7) The Municipality 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 must 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 a 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), publish a notice in the *Provincial Gazette* of the following:
    - (i) the name of each member of the Tribunal;
    - (ii) the date on which the appointment of each member takes effect;
    - (iii) the term of office of each member; and
    - (iv) the date that the Tribunal will commence its operation.

- (12) The Tribunal may commence its operations only after publication of the notice contemplated in subsection (11)(c).

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

- 73.** (1) A member of a Tribunal contemplated in section 70(1)(a)—
- (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 Spatial Planning and Land Use Management 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 member is removed from the Tribunal under subsection (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 subsection (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(3)(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 serve as member of the Tribunal only for as long as he or she is in the 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(3)(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(3)(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(3)(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 to.
- (9) The allowances referred to in subsection (8)(e) are subject to taxation in accordance with the normal tax rules that are issued by the South African Revenue Service.

#### **Disqualification from membership of Tribunal**

- 74.** (1) A person may not be appointed or continue to serve as a member of the Tribunal if that person—
- (a) is not a citizen or permanent resident of the Republic of South Africa;
  - (b) is a member of Parliament, a Provincial Legislature, a municipal council or a House of Traditional Leaders;
  - (c) is an unrehabilitated insolvent;
  - (d) 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);
  - (e) has at any time been convicted of an offence involving dishonesty;

- (f) has at any time been removed from an office of trust on account of misconduct;
  - (g) has previously been removed from a tribunal for a breach of the Spatial Planning and Land Use Management Act or this By-law;
  - (h) has been found guilty of misconduct, incapacity or incompetence; or
  - (i) fails to comply with the Spatial Planning and Land Use Management Act or this By-law.
  
- (2) A member must vacate office if that member becomes subject to a disqualification as contemplated in subsection (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 subsection (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.

**Meetings of Tribunal for municipal area**

75. (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.
- (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; or
  - (c) a particular application or type or category of application.
- (3) In this section, section 77 and section 78, unless the context indicates otherwise, “the Tribunal” includes a panel of the Tribunal contemplated in subsection (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 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).
- (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 majority of its designated members; or
  - (b) three members, 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.

**Code of conduct for members of Tribunal for municipal area**

76. (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.

#### **Administrator for Tribunal for municipal area**

77. (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) liaise with the relevant Tribunal members and the parties concerned regarding any application to be determined by, or other proceedings of, the Tribunal;
  - (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) arrange venues for Tribunal meetings;
  - (f) perform the administrative functions in connection with the 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 authorisations;
  - (i) notify the parties concerned of decisions and procedural directives given by the Tribunal;
  - (j) keep a record of all applications submitted to the Tribunal as well as the outcome of each, including—
    - (i) decisions of the Tribunal;
    - (ii) on-site inspections and any matter recorded as a result thereof;
    - (iii) reasons for decisions; and
    - (iv) proceedings of the Tribunal; and
  - (k) keep records by any means as the Tribunal may deem expedient.

### Functioning of Tribunal for municipal area

78. (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.
- (2) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application requests to make a verbal representation at a meeting of the Tribunal, he or she must submit a written request to the Administrator at least 14 days before that meeting.
- (3) The Chairperson may approve a request contemplated in subsection (2), subject to reasonable conditions.
- (4) An application may be considered by the Tribunal by means of—
- (a) the consideration of the written application and comments; or
  - (b) an oral hearing.
- (5) The application may be considered in terms of subsection (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;  
o
  - (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.

### Appeals

79. (1) The executive authority (*executive committee/executive mayor of the Municipality/if the Municipality does not have an executive committee or executive mayor, a committee of councillors*) is the Appeal Authority in respect of decisions of the Tribunal or an authorised employee contemplated in section 68(a) or (b) and a failure to decide on an application as contemplated in section 58.

- (2) A person whose rights are affected by a decision contemplated in subsection (1) may appeal in writing to the Appeal Authority within 21 days of notification of the decision.
- (3) An applicant may appeal in writing to the Appeal Authority in respect of the failure of the Tribunal or an authorised employee to make a decision within the period contemplated in section 57(1), (2) or (3) any time after the expiry of the period contemplated in that section.
- (4) An appeal is lodged by serving the appeal on the Municipal Manager in the form determined by the Municipality and subject to section 80(1).
- (5) When the Appeal Authority considers an appeal, it must have regard to—
  - (a) the provisions of section 65, read with the necessary changes; and
  - (b) the comments of the Provincial Minister contemplated in section 52 of the Land Use Planning Act.

### **Procedure for appeal**

- 80.** (1) An appeal is invalid if—
- (a) in the case of an appeal contemplated in section 79(2), it is not lodged within the period referred to in that subsection; or
  - (b) it does not comply with sections 79 (2) – (4) and 80 (2) - (7)
- (2) An appeal must set out the following:
- (a) the 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 (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 authorised employee erred in coming to the conclusion that the Tribunal or authorised 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;

- (g) any issue that the appellant wishes the Appeal Authority to consider in making its decision; and
  - (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 subsection 79(2), submit proof of payment of appeal fees, as may be determined by the Municipality, to the Municipal Manager.
- (4) An applicant who lodges an appeal must simultaneously 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 subsection (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 subsection (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 subsection (8) may submit comment on the appeal to the Municipal Manager within 21 days of the date of notification.
- (10) The Municipality may refuse to accept any comments on an appeal submitted after the closing date for comments on an appeal.
- (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 authorised 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 subsections (6) and (9), if no comment was requested in terms of subsection (11); or
  - (b) 30 days of the closing date for comments requested in terms of subsection (11).
- (13) The Municipal Manager must within 14 days of receiving the report contemplated in subsection (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;
  - (c) allocate a meeting date for, and appeal number to, an appeal;
  - (d) arrange the attendance of members of the Appeal Authority at meetings;
  - (e) arrange venues for the Appeal Authority;
  - (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.

### **Consideration by Appeal Authority**

- 81.** (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 subsection (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 subsections (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 authorised 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 subsection (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 authorised employee it may—
  - (a) remit the matter to the Tribunal or authorised employee—
    - (i) if there was an error in the process that was unfair and that 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 may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.
  
- (11) 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 therefor; 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.
  
- (12) The Appeal Authority may extend the period contemplated in subsection (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**

### **Responsibility for provision of engineering services**

- 82.** (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 services instead of paying the applicable development charges; or
  - (b) the applicant is responsible for the provision, installation and costs of external engineering services and that the fair and reasonable costs of the external engineering services may be set off against the development charges payable by the applicant.

### **Development charges and other contributions**

- 83.** (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.

#### **Land for parks, open spaces and other uses**

- 84.** (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

### Enforcement

- 85.** (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 subsection (1).

### Offences and penalties

- 86.** (1) A person is guilty of an offence and is liable on conviction to a fine 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) utilises 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 not believing them to be correct;
  - (e) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
  - (f) hinders or interferes with an authorised 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 subsection (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 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 an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.

- (4) The Municipality may adopt fines and contravention penalties to be imposed in the enforcement of this By-law.

### **Serving of compliance notices**

- 87.** (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 utilisation 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 Municipal Manager;
- (b) submit an application for the approval of the utilisation 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 approval of the utilisation; or
- (c) 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 subsection (2)(a) may not submit an application in terms of subsection (2)(b).
- (4) An instruction to submit an application in terms of subsection (2)(b) must not be construed as an indication that the application will be approved.
- (5) In the event that the application submitted in terms of subsection (2)(b) is refused, the owner must demolish, 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.

### Contents of compliance notice

88. (1) A compliance notice must—
- (a) identify the person to whom it is addressed;
  - (b) describe the alleged unlawful utilisation of land or construction activity and the land on which it is occurring or has occurred;
  - (c) state that the utilisation 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 authorisation 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).

### Objections to compliance notice

89. (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 subsection (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.

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

- 90.** 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 utilisation 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 a consent use or temporary departure, withdraw the approval granted and take any of the other steps contemplated in section 88(1)(g).

#### **Compliance certificates**

- 91.** (1) An authorised 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 authorised employee must submit a report to the Municipality regarding his or her findings contemplated in subsection (1) and the issuing of a compliance certificate.

#### **Urgent matters**

- 92.** (1) The Municipality does not have to comply with sections 87(6), 88(1)(f) and 89 in a case where an unlawful utilisation of land must be stopped urgently and may issue a compliance notice calling upon the person or owner to cease the unlawful utilisation of land immediately.

- (2) If the person or owner fails to cease the unlawful utilisation of land immediately, the Municipality may apply to the court for an urgent interdict or any other relief necessary.

### **General powers and functions of authorised employees**

93. (1) An authorised employee may, with the written consent of the owner, occupier or person in lawful control of the land or building without a warrant and after reasonable notice has been given to the owner, occupier or person in lawful control of the land or building, 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 authorised employee must be in possession of proof that he or she has been designated as an authorised employee for the purposes of subsection (1).
- (3) An authorised employee may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection.

### **Powers of entry, search and seizure**

94. (1) In ensuring compliance with this By-law an authorised 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 authorised 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 therefrom;

- (e) require that person to produce or deliver to a place specified by the authorised 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 therefrom;
  - (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) 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 seizure.
- (2) When an authorised 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 authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

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

95. (1) A judge of a High Court or a Magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or 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 only if it appears to the Judge or Magistrate from information on oath or affirmation that there are reasonable grounds for believing that—
- (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;

- (b) an authorised employee will be refused entry to land or a building that he or she is entitled to inspect;
  - (c) 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; or
  - (d) the inspection is reasonably necessary for the purposes of this By-law.
- (3) A warrant must authorise 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) at a reasonable time, except where the warrant was issued on grounds of urgency.

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

- 96.** 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.

### **Enforcement litigation**

- 97.** 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 utilisation of land.



## CHAPTER X MISCELLANEOUS

### Naming and numbering of streets

98. (1) If as a result of the approval of a development application streets or roads are created, whether public or private, the Municipality must approve the naming of 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.

### Repeal and Transitional Arrangements

99. (1) The Cape Agulhas by-law on Municipal Land Use Planning, 2015 is hereby repealed.
- (2) Any action taken, application or appeal lodged in terms of the By-law Municipal Land Use Planning, 2015 and that has not been finalised before this by-law comes into operation, must be administered, and finalised as if the By-law on Municipal Land Use Planning, 2015, had not been repealed.

### Short title and commencement

100. (1) This By-law is called the *Cape Agulhas Municipality By-law on Municipal Land Use Planning 2022*.
- (2) This By-law comes into operation on the date it is published in the *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 in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the Council has given written approval and has expressly authorised his or her participation.
  
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.

## **PROVINCIAL NOTICE**

### **CAPE AGULHAS MUNICIPALITY ZONING SCHEME BY-LAW 2022**

#### **CHAPTER 1**

##### **INTERPRETATION**

1. Definitions

#### **CHAPTER 2**

##### **ZONING SCHEME, USE ZONES AND USES**

2. Application of zoning scheme
3. Purpose of zoning scheme
4. Components of zoning scheme
5. Use zones
6. Zoning scheme map
7. Transition to new use zones and savings
8. Zoning scheme register
9. Primary uses
10. Consent uses
11. Temporary departures for specific occasions
12. Non-conforming uses
13. Deemed zoning of closed public places

#### **CHAPTER 3**

##### **OVERLAY ZONES**

14. Purpose of overlay zones
15. Procedures for establishing, reviewing or amending overlay zones

#### **CHAPTER 4**

##### **DISTANCES, LEVELS AND BOUNDARIES**

16. Measuring distances and levels
17. Determining boundaries of use zones

**CHAPTER 5****ENFORCEMENT**

18. Offences, penalties, and enforcement of By-law

**CHAPTER 6****DEVELOPMENT OF LAND**

19. Development parameters applicable to use rights

**CHAPTER 7****GENERAL PROVISIONS**

20. Methodologies for measurement and calculation & encroachment of building lines
21. Street centreline setback
22. Site development plans
23. Hazardous substances
24. Screening
25. Earth banks and retaining structures
26. Boundary walls
27. Maintenance of property
28. Parking of vehicles in residential zones
29. Mobile homes and caravans
30. Rooftop base telecommunication stations and satellite dish antenna systems
31. Geysers and solar panels or similar infrastructure affixed to roofs of buildings
32. Equipment on top of building
33. Parapet walls
34. Chimneys
35. Linear infrastructure
36. Utilisation of outbuildings
37. Determination of natural ground level
38. Animals kept for commercial purposes
39. Hobbies in single and general residential zones

**CHAPTER 8****PARKING AND LOADING**

40. Off-street parking requirements
41. Alternative parking supply
42. Combined parking requirements
43. Additional parking and site access and exits
44. Parking layout requirements
45. Parking for physically disabled
46. Motorcycle and bicycle parking spaces
47. Loading requirements
48. Garages, carports and parking areas
49. Second dwelling units and double dwelling houses
50. Letter of rooms
51. Occupational practice
52. Guest accommodation
53. Day care centres
54. House shops
55. Portable buildings
56. House taverns
57. Preservation of trees

**CHAPTER 9****REFUSE ROOMS AND SERVICE YARDS**

58. Refuse rooms
59. Service yards

**SCHEDULE 1****USE ZONES TABLE AND RECORD OF AMENDMENTS****SCHEDULE 2****DEVELOPMENT PARAMETERS****SCHEDULE 3****OVERLAY ZONES APPROVED IN TERMS OF SECTION 16****SCHEDULE 4****NOTATIONS ON ZONING MAP**

## CHAPTER 1 INTERPRETATION

### 1. Definitions

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

**“4x4 trail”** means a series of roads, tracks, and routes, designed for use by off-road vehicles as a recreational or adventure facility, and includes buildings normally required for the administration and maintenance thereof, but does not include holiday accommodation or tourist facilities.

**“abattoir”** means a place where livestock or poultry is slaughtered and prepared for distribution to butcher shops and food markets.

**“advertisement”** when used in the context of outdoor advertising, means any visible representation of a word, name, letter, figure, or object or of an abbreviation of a word or name, or any sign or flag or banner or symbol or light, which is not intended solely for illumination or warning against danger.

**“agriculture”** Land use description: “agriculture” means the cultivation of land for raising crops and other plants, including plantations, the keeping and breeding of animals, birds or bees, stud farming, game farming, intensive horticulture; intensive animal farming; a riding school or natural veld, and-

(1) includes-

- (a) the harvesting, cooling, storing, sorting, packing, and packaging of agricultural produce grown on that land unit and surrounding or nearby farms.
- (b) harvesting of natural resources limited to living organisms for delivery to the market.
- (c) agricultural buildings or infrastructure that are reasonably connected with the main farming activities, including a dwelling house, agricultural worker accommodation and rooftop base telecommunication stations.
- (d) a camping site limited to a maximum of 10 tent or caravan stands subject to the development parameters applicable to “tourist accommodation”, provided further that a consent use must be applied for in the following cases-
  - (i) the property is smaller than 1ha.
  - (ii) the property is situated within 1km of the high-water mark of the sea or a tidal river.
  - (iii) more than 10 tent or caravan stands are applied for.

- (e) linear infrastructure.
  - (f) agricultural industry
- (2) does not include aquaculture, an abattoir, a farm shop, an animal care centre, any mining activity, utility services and renewable energy structures for commercial purposes.

**“agricultural industry”** means:

- (1) an enterprise for the processing of agricultural products of which the majority of the products are sourced from that land unit and if not produced on that land unit, then from the land units farmed by the owners of the enterprise with a minority of the products sourced from the surrounding or nearby farms.
- (2) includes a winery, dairy, distillery, the bottling of water, a sawmill; and brewery
- (3) does not include an abattoir.

**“ancillary”** means a land use, purpose, building, structure, or activity which is directly related to, and subservient to, the lawful primary use of the property.

**“antenna”** means any system of wires, poles, rods, reflective surfaces, or similar devices, used to transmit or receive electronic communication signals or electromagnetic waves.

**“applicant”** means a person who makes application in terms of the Land Use Planning By-law.

**“application”** means an application under the Land Use By-Law and LUPA, as the case may be, or this By-Law for an authorization or consent from the Municipality, and without limitation includes any application referred to in Section 15 of the Land Use By-Law, and **“applicant”** has a corresponding meaning.

**“atrium”** means a covered courtyard that-

- (1) comprises a void within a building that extends for one or more floors in height that contains a floor and roof or ceiling; and
- (2) does not contain floors that penetrate the void.

**“aquaculture”** means the cultivation and breeding of water-flora and fauna, and the harvesting thereof for commercial purposes, -

- (1) in artificially built dams or holdings tanks, or
- (2) suspended from rafts in natural rivers or dams.

**“Authority usage”** means a use which is practised by or on behalf of authority or public body, and the characteristics of which are such that it cannot be classified or defined under other uses in this By-Law, and includes a use practised by:



- (1) the State, such as a military training centre and installation, police station, correctional institution, or jail.
- (2) the Provincial Government, such as a road station and road camp.
- (3) the Municipality, such as fire services, sewage purification works, a waste control site, a reservoir, a composting installation, or water purification works with related uses, and limited accommodation for staff who are required to be on standby for emergencies, or
- (4) a public utility, such as a telecommunication facility.

**“balcony”** means a floor projecting outside a building at a level higher than that of the ground floor, enclosed only by low walls or railings or by main containing walls of rooms abutting such projecting floor, and includes a roof, if any, over such floor and pillars supporting such roof.

**“bar”** refers to definition of pub.

**“base zone”** means the zone that determines the lawful land use and development parameters for a land unit in terms of this By-Law, before the application of any overlay zone.

**“basement”** means that portion of a building with a ceiling level which does not protrude more than one metre at any point above natural ground level excluding excavations required for access purposes.

**“Biodiversity Act”** means the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004).

**“bio-region”** means an identifiable geographical area that contains one or more ecosystems, which functions as a relatively self-sustaining community, and is characterised by specific landforms, vegetation, or human culture and history, and includes a bio-region declared in terms of Section 40 of the Biodiversity Act, 2004 (Act 10 of 2004).

**“bio-regional planning”** means the planning of human activities within the context of a bioregion that:

- (1) prioritises maintaining and enhancing the functioning of the life-supporting functions of the bioregion.
- (2) takes account of the specific natural and cultural characteristics of the bioregion, and
- (3) aims to define and implement development options that ensure that human needs are met in an ecologically sustainable way.

**“boat launching facility”** means a public or private facility, which is designed to accommodate the launching or landing of watercraft, consisting of a slipway, and may include parking spaces for vehicles.

“**bottle store**” means an establishment where the primary use is the retail sale of alcoholic beverages for consumption off the property, and includes an off-sales facility which is under the same management as a licensed hotel.

“**boundary**” in relation to a land unit means one or more of the cadastral lines separating the land unit from another land unit or from a road reserve.

“**boundary wall**” means any wall, fence or enclosing structure erected on or directly next to a cadastral property boundary, including entrance gates and doors.

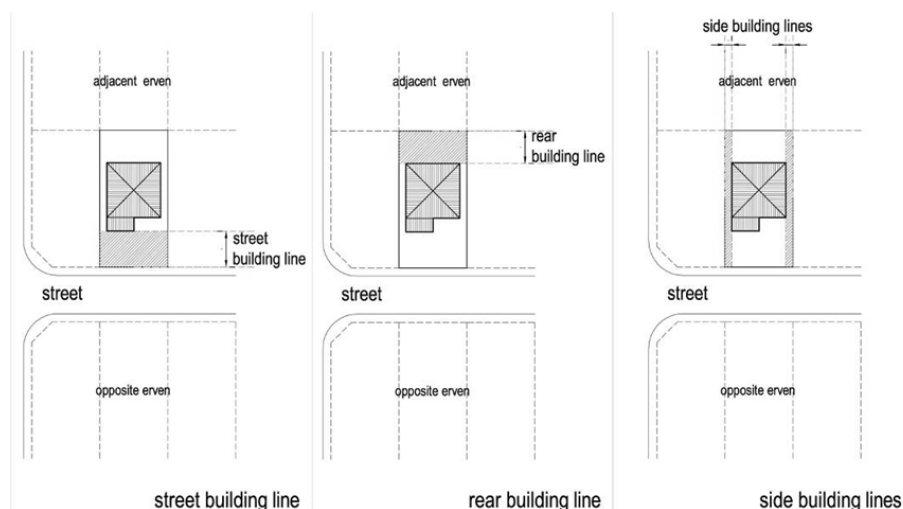
“**builder’s yard**” means a property which is used for the storage of material and equipment which:

- (1) is required for or is normally used for construction work;
- (2) was obtained from demolitions of structures or excavations of ground, or
- (3) is necessary for or is normally used for land improvements, such as storage of material used for building roads, for installing essential services, or for any other construction work (e.g.: of sand or bricks), whether for public or private purposes.

“**building**” without in any way limiting its ordinary meaning, includes:

- (1) any roofed structure;
- (2) any external stairs or landings of a building and any gallery, canopy, balcony, stoep, veranda, porch, or similar feature of a building;
- (3) any walls or railings enclosing any feature referred to in (b), and
- (4) any other portion of a building.

“**building line**” means an imaginary line on a land unit, which defines a distance from a specified boundary, within which the erection of buildings or structures are completely or partially prohibited.



**“business premises”** means a building or property from which business is conducted and includes a shop, office, financial institution and building for similar uses, but does not include a place of assembly, place of entertainment, institutional building, service station, motor repair garage, spray painting and motor vehicle body repair shop, industry, industrial hive, noxious trade, risk activity, restaurant, pornographic entertainment business or bottle store.

**“cadastral line”** means a line representing the official boundary of a land unit as recorded on a diagram or general plan approved by the Surveyor-General and registered in the Deeds Office.

**“camping site”** means a property or part thereof in which tents or caravans are utilised for accommodation for visitors, and includes ablution, cooking and other facilities for the use of such visitors.

**“canopy”** means a cantilevered or suspended roof, slab or covering projecting from the wall of a building, excluding the floor of a balcony.

**“caravan”** means a vehicle which has been equipped or converted for living or sleeping purposes and which can be readily moved.

**“caravan park”** means land for the parking of caravans for short-term holiday accommodation and includes ablution, cooking and other facilities for the use of occupants of the caravans.

**“carport”** means a structure for the storage of one or more vehicles that is covered by a roof, provided that not more than two sides may be permanently enclosed.

**“carriageway crossing”**, in relation to a motor vehicle carriageway crossing, means an entrance or exit way, or a combined entrance and exit way, from a land unit to a road.

**“cemetery”** means a place where the dead are buried and may include buildings that are necessary for the administrative and clerical uses associated therewith, but does not include a crematorium.

**“commercial”**, in relation to a use right, means a use right for the express purpose of making a profit with no or limited social or charitable objectives.

**“commercial kennel”** means kennel services for dogs, cats and similar animals and includes commercial breeding, boarding kennels, pet motels and dog training centres.

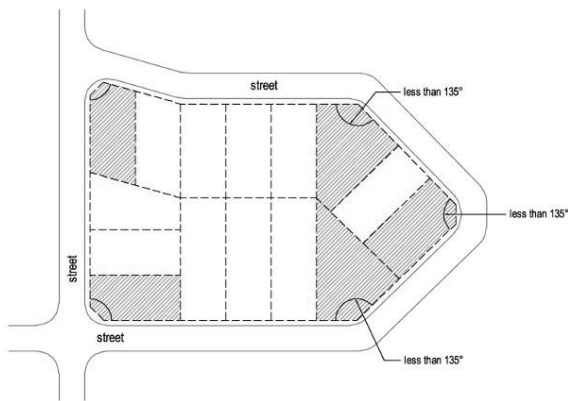
**“common boundary”**, in relation to a property, means a boundary common with the adjoining property other than a street boundary.

**“conference facility”** means a place of assembly with or without overnight accommodation, which also supplies meals, which normally is an additional activity to a primary function such as a hotel, or restaurant and where the building restrictions will be those of the primary function, except that additional parking may be required.

**“consent”** means special permission granted by the Municipality, after due consideration of all relevant facts and after a reasonable and lawful process has been followed, in terms of which a specific type of land use or activity is permitted, in addition to the primary use rights applicable to the property concerned. The granting of a consent use, will not alter the primary use of the land concerned.

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

**“corner property”** means any land unit that has at least two contiguous sides abutting upon one or more streets, and where the interior angle between those two sides, less than 135 degrees.



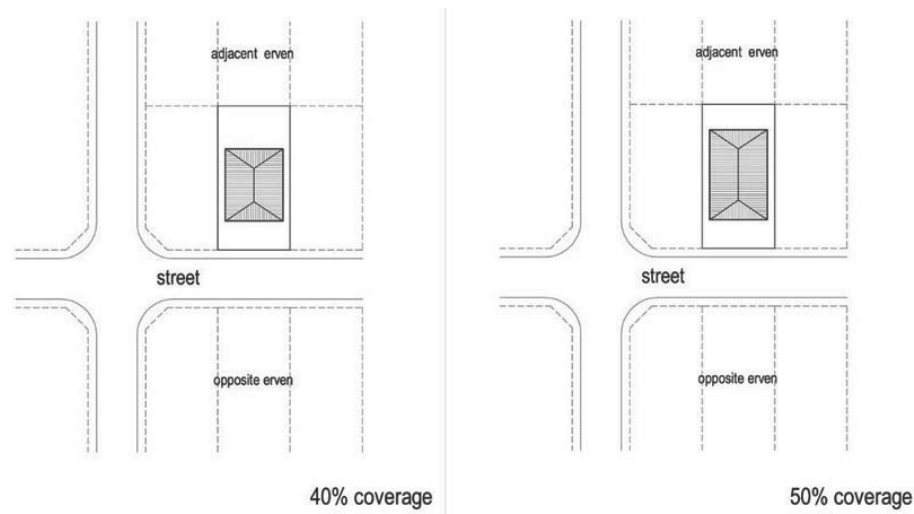
corner properties

**“Council”** means the municipal council of the Municipality.

**“coverage”** means the area of a land unit that is covered by buildings, expressed as a percentage of the total erf area of the land unit. The calculation of coverage for the purposes of determining the percentage of a land unit that is, or will be, covered by buildings, must disregard:

- (1) the panhandle portion of a panhandle property;
- (2) stoeps, entrance steps and landings;
- (3) cornices, chimney breasts, pergolas, flower boxes, water pipes, drain pipes and minor decorative features not projecting more than 500mm from the wall of the building;

- (4) eaves not projecting more than 1,0m from the wall of the building, and
- (5) a basement provided that the basement ceiling does not project above the finished ground level.



“**crèche**” means a facility for the day care of young children in the absence of their parents, and may provide care for more children than are permitted at a day care centre.

“**crematorium**” means a building where the dead are reduced to ash, and includes facilities for associated religious and administrative functions.

“**cultural heritage**” means any place or object of cultural significance and the intangible aspects of inherited culture and includes all archaeological artefacts, palaeontological material and heritage resources and living heritage, as defined in the National Heritage Resources Act, 1999 (Act 25 of 1999).

“**day care centre**” means the use of portion of a dwelling house or outbuildings by the occupant to provide day care, pre-school, play group or after school care services for children provided that no more than 15 children shall be registered at the centre at a time, or on the property at any time.

“**declared road**” means a road proclaimed in terms of the Roads Ordinance, 1976 (Ordinance 19 of 1976).

“**deemed zoning**” means the zoning of a land unit which the Municipality deems it to have in circumstances where no formal zoning determination or rezoning was previously done.

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

**“development parameter”** means a provision or restriction in a zoning scheme that sets out the permissible extent of the land use in terms of a zoning.

**“double dwelling house”** means a building designed as a single architectural entity, containing two dwelling units on one land unit.

**“dwelling house”** means a building containing only one dwelling unit.

**“dwelling unit”** means a self-contained, inter-leading group of rooms-

- (1) with not more than one kitchen, used for the living accommodation and housing of one family, together with such outbuildings as are ordinarily used with a dwelling unit; and
- (2) does not include tourist accommodation or accommodation used as part of a hotel.

**“eave”** means a portion of a roof projecting beyond the face of a building, including any gutters.

**“earth bank”** means land that is shaped to hold back earth or loose rock.

**“ecologically sustainable development”** means using, conserving and enhancing the environment so that ecological processes on which life depends, are maintained, people are able to enjoy a good quality of life now and in the future, and the well-being of the whole community is improved.

**“ecosystem”** means a self-sustaining and self-regulating community of organisms and the interaction between the organisms with one another and with their environment.

**“encroachment agreement”** means an agreement between an owner and the Municipality relating to the projection of portions of a building or structure from the owner’s property onto or over the Municipality’s property.

**“entrance steps and landings”** means steps and landings to a building, including any low walls and railings, if the steps and landings are not within the main containing walls of the building.

**“environment”** has the same meaning as in the National Environmental Management Act, 1998 (Act 107 of 1998).

**“environmental management plan”** means a plan that documents the management of site preparation, construction or operations affecting an environmental resource or an environmentally significant place, its environmental values or management requirements, or both.

**“erection”** in relation to a building or structure includes-

- (1) the construction of a new building or structure;
- (2) the alteration or conversion of, or addition to, a building or structure; and
- (3) the re-construction of a building or structure which has completely or partially been demolished.

**“erf”** has the same meaning as land unit.

**“family”** means:

- (1) a single person maintaining an independent household, or
- (2) two or more persons directly related by blood, marriage or a life partnership maintaining a common household, or
- (3) no more than five unrelated persons maintaining a common household.

**“farm shop”** means a building, located on a farm, used to sell goods to employees of the farm or to the general public.

**“farm stall”** means a building, located on a farm, used to sell products produced and processed on farms to the general public.

**“farm worker accommodation”** means dwelling units provided for persons engaged in *bona fide* farming activities or retired persons previously engaged in *bona fide* farming activities on the property.

**“flats”** means a building of more than one storey containing two or more dwelling units, together with such outbuildings as are ordinarily associated therewith; but not including double dwelling houses and group houses, provided further that in those zones where flats are permissible, one dwelling unit shall also be permissible, whether or not with the consent of the Municipality, in a building approved for other purposes than for flats.

**“floor”** means the inner, lower surface of a room, garage or basement and includes a terrace or atrium to which the occupants of a building have access.

**“floor factor”** means the factor (expressed as a proportion of 1) which is prescribed for the calculation of maximum floor space of a building or buildings permissible on a land unit. If the floor factor is known, the maximum permissible floor space can be calculated by multiplication of the floor factor by the net erf area.

**“floor space”**, in relation to any building, means the area of a floor which is covered by a slab, roof or projection; provided that—For the purposes of calculating the floor space of a building:

- (1) any balconies, terraces, stairs, stairwells, verandas, common entrances and common passages covered by a roof shall be included, but in the case of multi-storey buildings any atrium and any stairwells, lift-wells or other wells, must only be counted once;
- (2) the following must be excluded:
  - (a) any area, including a basement, which is reserved for parking or loading of vehicles;
  - (b) external entrance steps and landings, any stoep and any area required for external fire escapes;
  - (c) a projection including a projection of eaves, and a projection which acts as a sunscreen or an architectural feature, which projection does not exceed 1,0m beyond the exterior wall or similar support;
  - (d) any uncovered internal courtyard, light-well or other uncovered shaft which has an area in excess of 10m<sup>2</sup>;
  - (e) any arcade that is 2,0m or more in width, which provides access through the building concerned from public parking, a public street or open space, to some other public parking, public street or open space, and which at all times is open to the public, as well as any covered walkway, the roof of which allows light to pass through, and
  - (f) any covered paved area outside and immediately adjoining a building at or below the ground floor level, which is part of a forecourt, yard, external courtyard, pedestrian walkway, parking area or vehicular access.

**“freight container”** means a standardised, reusable vessel that was originally, specifically or formerly designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities, and/or designed for or capable of being mounted or moved on a rail car, and/or designed for or capable of being mounted on a chassis for movement by truck trailer or being loaded on a ship. It may also be used for residential purposes.

**“funeral parlour”** means property where the dead are prepared for burial or cremation and includes facilities for associated administrative and religious functions, but does not include a crematorium.

**“gambling machine”** means any electronic or electromechanical device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to be played or operated, and the playing or operation of which, whether by reason of skill of the operator or as a result of chance, or both, may entitle the person playing or operating the machine or any other person, to receive cash or anything of value.

**“garage”** means a building for the storage of motor vehicles, but does not include a motor repair garage or service station.

**“gross leasable area”** or **“GLA”** means the total floor space designed for, or capable of, occupancy and control by tenants, measured from the centre line of the joint



partitions to the inside finished surface of the outside walls, but shall exclude toilets, lift shafts, service ducts, vertical penetrations of floors, interior parking and loading bays.

**“greenhouse”** means a structure with the sides primarily made of a transparent material such as glass, Perspex or plastic, for the purpose of growing delicate plants or hastening growth of plants under controlled environmental conditions.

**“gross density”** means a measure of the number of dwelling units in a specified area, and is calculated as follows:

$$\text{Gross dwelling density (units per hectare)} = \frac{\text{Total number of dwelling units in specified area}}{\text{Extent of specified area in hectares}}$$

**“group housing”** and **“group housing scheme”** means a group of separate and/or linked dwelling units where every dwelling unit has a ground floor; and which is planned, designed and built as a harmonious architectural entity and arranged around or inside a communal open space in a varied and ordered way; and such dwelling units may be cadastrally subdivided.

**“group housing site”** means one or more land units on which a group housing scheme or retirement resort may be erected.

**“guest accommodation”** means a dwelling house which is used for the purpose of letting individual rooms for residential transient accommodation, with or without meals, provided that:

- (1) the property is retained in a form which can easily be reused by a family as a single dwelling house, and
- (2) all amenities and provision of meals shall be for the sole benefit of bona fide guests.

**“gymnasium”** means an establishment, operated for profit, providing space or facilities for physical exercise or for participation in sports activity.

**“habitable room”** means a bedroom, living room, lounge, dining-room, study, and any other room which is used for human habitation or recreation, but excludes a kitchen or bathroom or a storeroom not exceeding 5m<sup>2</sup>.

**“hazardous substance”** has the same meaning as “grouped hazardous substance” as defined in the Hazardous Substances Act, 1973 (Act 15 of 1973).

**“height”** of a structure means a vertical dimension of the structure from the natural ground level to the wall plate or, in the case of a pitched roof, the ridge of the roof or the highest point of a building, measured in metres, provided that-

- (1) the height of a structure does not include chimneys, flues, masts or antenna.
- (2) elevator motor rooms, satellite dishes, ventilation shafts, water tanks, air conditioning plant and equipment on top of a building are included when determining the height of a structure, and
- (3) the general provisions regarding these aspects in this By-law also apply.

**“holiday accommodation”** means premises used for holiday or recreational purposes, whether in private or public ownership, which:

- (1) consists of a single enterprise in which accommodation is supplied by means of short term rental or time sharing only, and
- (2) may include the provision of a camping site and caravan park;
- (3) may also include a restaurant and indoor and outdoor recreational facilities for bona fide guests, but
- (4) does not include a hotel.

**“hotel”** means property used as a temporary residence for transient guests, where lodging and meals are provided, and may include:

- (1) a restaurant or restaurants;
- (2) associated conference and entertainment facilities that are subservient and ancillary to the primary use of the property as a hotel;
- (3) premises for the rendering of personal services such as a beauty salon, and
- (4) premises which are licensed to sell alcoholic beverages for consumption on the property, but excludes an off-sales facility, kitchens in hotel rooms or suites, and dwelling units.

**“house shop”** means the land use of conducting of a retail trade from a dwelling house or outbuilding by one or more occupants of the dwelling house concerned, who shall reside in the dwelling house; provided that the primary use of the dwelling house concerned shall remain for the living accommodation of a single family.

**“house tavern”** means an enterprise, conducted from a dwelling house or outbuilding, by the occupant of the dwelling house concerned, for the sale of alcoholic beverages and may include consumption of alcoholic beverages by customers on the property, provided that the primary use of the dwelling house concerned shall remain for the living accommodation of a single family.

**“industry”** means a property, which in the Municipality’s opinion:

- (1) is used as a factory and in which an article or part of such article is made, manufactured, produced, built, assembled, compiled, printed, ornamented, processed, treated, adapted, repaired, renovated, rebuilt, altered, painted (including spray painting, but excluding spray painting related to motor vehicles or

parts of motor vehicles), polished, finished, cleaned, dyed, washed, broken up, disassembled, sorted, packed, chilled, frozen or stored in cold storage;

- (2) includes an office, caretaker's quarters or other use which is subservient and ancillary to the use of the property as a factory, but does not include a noxious trade.

**"informal trading"** means the land use of legal selling of products in areas demarcated by the Municipality specifically for these purposes such as markets, and demarcated areas in the business district.

**"institutional building"** means a building, or portion of a building or property, used as a social, health or welfare facility, or for the administration thereof, and includes a hospital, clinic, home for the aged, indigent or handicapped, reformatory or place of detention, whether of a commercial or charitable nature, but does not include a jail, or a hospital, sanatorium, dispensary, or clinic for the treatment of infectious or contagious diseases or premises licensed under the Mental Health Act, 1973 (Act 18 of 1973) for the detention of mentally disordered persons, or a mental hospital.

**"integrated development plan"** means the integrated development plan of the Municipality prepared in accordance with Chapter 5 of the Municipal Systems Act, 2000 (Act 32 of 2000).

**"intensive animal farming"** means the breeding, feeding and keeping of animals or poultry within confined pens or buildings on an intensive basis for commercial purposes.

**"intensive horticulture"** means the cultivation of plants under a roof, or in greenhouses for commercial purposes.

**"kitchen"** means a room or part of a room equipped for preparing and cooking meals and excludes a braai room, food and drink preparation area or bar facilities in an entertainment area.

**"land"** means any erf or farm portion and includes any improvement or building on the land and any real right on the land.

**"land unit"** means a portion of land registered or capable of being registered in a deeds registry and includes a servitude right or lease.

**"Land Use By-Law"** means the By-Law on Municipal Land Use Planning, promulgated 15 July 2015 in Provincial Gazette 7428.

**"Land Use Planning Act (LUPA)"** means the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014).

**“landscape plan”** means a plan indicating detailed landscape proposals including walkways, paving, planting, water features, recreational areas, engineering services and any other such land uses.

**“landscaping”** means the planting or placement of plants, the moulding of earth and installation of outdoor features such as walkways and paving for the purpose of protecting and promoting aesthetic appeal, scenic beauty, character and value of property, as well as promoting the reduction of noise pollution, storm water runoff, air pollution, visual pollution or light glare.

**“lateral boundary”** means a boundary of a land unit other than the street boundary or the rear boundary.

**“letting of rooms”** means the provision of bedroom accommodation to lodgers for payment, and the services ordinarily related to such accommodation, and ‘lodger’ and ‘lodging’ has a corresponding meaning.

**“light industry”** means a property used or intended to be used as a bakery, laundry, dry-cleaning works, light engineering works and small repairs work, provided that the Municipality shall determine whether or not any such use as applied for shall be classified as light industrial at the time that an application is made for development, building alterations or extensions.

**“loading bay”** means an area which is clearly demarcated for the loading and off-loading of goods from commercial vehicles, and which has vehicular access to a public street to the satisfaction of the Municipality.

**“lodger”** means a person who utilises lodging services.

**“lodging”** means the provision of bedroom accommodation or, in the case of a backpackers’ lodge, bed accommodation that is made available on payment of a charge or fee, and includes the services ordinarily related to such accommodation.

**“maximum floor space”** means the greatest total floor space that is allowed for a building or buildings on a land unit, and is calculated by multiplying the floor factor by the area of the land unit or that portion of the land unit that is situated within a particular zone; provided that, where the land unit is situated within two or more zones to which different floor factors apply, the maximum floor space for the whole land unit is the total of the maximum floor space for each zoned portion of the land unit.

**“mineral”** means a substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any material occurring in residue stockpiles or in residue deposits, but excludes-

- (1) water, other than water taken from land or sea for the extraction of any mineral from such water;

- (2) petroleum; and
- (3) peat.

“**mining**” means the extraction of raw materials from the earth, whether by means of surface or underground methods, and includes, but is not limited to, the removal of stone, sand, clay, kaolin, ores, minerals, gas and precious stones.

“**motor vehicle**” means a wheeled vehicle designed or used for propulsion by means of an internal combustion or electrical engine, and includes a trailer, caravan or towed structure attached to a motor vehicle, but excludes a vehicle moving exclusively on rails.

“**motor repair garage**” means a property for trading in motor vehicles, oil, tyres or motor spares, the repair or overhauling of motor vehicles or washing of vehicles, but does not include spray-painting, panel beating, black smithery, body work or the retail supply of fuel for the use of motor vehicles.

“**Municipality**” means the Municipality of Cape Agulhas, and where the context so requires, includes-

- (1) the Council;
- (2) 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;
- (3) the Municipal Planning Tribunal, authorised or delegated to perform a function or exercise a power in terms of this By-law;
- (4) the Municipal Manager; and
- (5) any employee of the Municipality acting in terms of delegated or sub-delegated authority of the Municipality.

“**municipal area**” means the geographical area over which the Municipality has jurisdiction.

“**Municipal Manager**” means the Municipal Manager of the Municipality, or an official, acting under delegated powers, charged with the responsibility to administer this By-Law.

“**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

“**National Building Act**” means the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977).

“**National Environmental Management Act**” means the National Environmental Management Act, 1998 (Act 107 of 1998).

**“National Heritage Resources Act”** means the National Heritage Resources Act, 1999 (Act 25 of 1999).

**“natural level of the ground”** means-

- (1) the level of the land in its unmodified state; or
- (2) when altered with the municipality’s approval for the purpose of development, the municipality may approve such altered ground level as the natural ground level, subject to Section 37.

**“nature conservation”** means the use and management of land with the objective of preserving the natural bio-physical characteristics of that land, such as the flora and fauna, but does not include tourist facilities.

**“nature reserve”** means a national park or some other nature area that is owned by an organ of state or remains in private ownership and has been declared as a nature reserve or has a similar status in terms of legislation; it consists of an area that is utilized as a game park or reserve for fauna and flora in their natural habitat and; -

- (1) includes environmental facilities and worker accommodation
- (2) does not include accommodation facilities for tourists or holiday makers.
- (3) is an area that has official status as a conservation area and that is being managed in terms of a long-term environmental management plan that has been approved by the relevant conservation authority.

**“net area”** in relation to a land unit means the total area of the land unit excluding any area reserved for public streets, roads or road-widening purposes, and ‘net erf area’ has a corresponding meaning.

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

**“noxious trade”** means an offensive, poisonous or potentially harmful trade, use or activity which, because of fumes, emissions, smell, vibration, noise, waste products, nature of material used, processes employed, or other cause, is deemed by the Municipality to be a potential source of danger, nuisance or offence to the general public or persons in the surrounding area or which constitutes a health hazard in terms of the Public Health Act, 1997 (Act 63 of 1997), or the operation of a scheduled process as defined in Section 1 of the Explosives Act, 1956 (Act 26 of 1956).

**“occupant”** means any person who occupies a land unit.

**“occupational health and safety law”** means the Occupational Health and Safety Act, 1993 (Act 85 of 1993), or municipal by-laws governing occupational health and safety, whichever is applicable.

**“occupational practice”** means the undertaking of an occupation or enterprise in a dwelling unit used primarily for the living accommodation of a single family, by one or more persons who live in that dwelling unit, but excludes the retailing of products not manufactured on the premises and any wholesale business.

**“open space”** means land which has been reserved or is used for either passive or active recreation and provides major or minor recreational facilities, and it includes a park, garden, playground, sports field, promenade, pavilion, public square, picnic area, pedestrian area and beach, or land used for nature conservation.

**“outbuilding”** means a structure, whether attached or separate from the main building that is normally ancillary and subservient to the main building on a land unit, and includes a building designed to be used for the garaging of motor vehicles, and any other normal activities in so far as these are usually and reasonably required in the connection with the main building, but does not include a second dwelling.

**“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 that takes place out of doors.

**“overlay zone”** means a category of zoning that applies to land or land units in addition to the base zoning and that-

- (1) stipulates development parameters or use rights that may be more or less restrictive; and
- (2) may include provisions and development parameters relating to-
  - (a) primary or consent uses;
  - (b) subdivision and sub-divisional areas;
  - (c) development incentives;
  - (d) density limitations;
  - (e) urban form or urban renewal;
  - (f) heritage and environmental protection;
  - (g) management of urban growth;
  - (h) scenic drives; coastline setbacks;
  - (i) any other purpose as set out in this zoning scheme.

**“panhandle property”** means an erf that is configured with a narrow panhandle portion forming an access corridor to the bulk of the erf which is located behind the bulk of other erven or land units.

**“parapet”** means a low projection, wall or moulding that finishes the uppermost edge of a building with a flat or low pitched roof.

**“parking bay”** means an area measuring not less than 5,0m x 2,5m for perpendicular parking and 6,0m x 2,8m for parallel parking, which is clearly outlined and demarcated for the parking of one motor vehicle and which is accessible to the satisfaction of the Municipality.

**“pergola”** means any unroofed horizontal or approximately horizontal grille or framework and associated vertical support structure and of which the area in the horizontal projection of its solid portions does not exceed 25% of the total area thereof.

**“place of assembly”** means a place which serves the social and community needs of inhabitants, which may attract people in relatively large numbers and which is not primarily a commercial enterprise; including a civic hall, concert hall, indoor sports centre and club house, but does not include a place of entertainment or conference facility.

**“place of entertainment”** means a place used primarily for commercial entertainment which may attract relatively large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis; including a cinema, theatre, amusement park, dance hall and nightclub.

**“place of instruction”** means a place for education at pre-school, school or post school levels, including a crèche, nursery school, primary school, secondary school, college, university and research institute, and associated uses such as boarding hostels; or a civic facility for the promotion of knowledge to the community such as a public library, public art gallery or museum; or a place of instruction in sport where the main objective is instruction as opposed to participation by the public as either competitors or spectators; but excludes a reformatory, commercial conference facility or in-house business training centre.

**“place of worship”** means a church, synagogue, mosque, temple, chapel or other place for practicing a faith or religion, and includes associated uses such as a religious leader’s dwelling, office and place for religious instruction but does not include a funeral parlour, cemetery or crematorium.

**“plant nursery”** means a property which is used for the sale of plants, gardening products and gardening equipment.

**“plaza”** means an urban open space or square, primarily designed for outdoor use by pedestrians.

**“porch”** means a roof (not being the floor of a balcony) projecting from the outside of a building above a doorway, and forming a covered entrance to the building, and includes any paved area underneath the roof, and any low walls or railings enclosing that paved area, and any pillars supporting the roof.



**“portable building”** means any prefabricated structure or freight container, assembled off-site and delivered to the site as a complete unit or a building purchased in kit form and assembled on-site, which can be moved without disassembly to another location.

**“porte cochères”** means a covered entrance large enough for vehicles to pass through, typically opening into a courtyard or a porch where vehicles stop for passengers to get out of the vehicle.

**“pornographic entertainment business”** means the selling or hiring out of items with pornographic elements, such as books, films, videos or photographs, or the offering of live or recorded performances with pornographic elements; it includes an escort agency, as well as a massage parlour other than a massage establishment used for medical, sport or gymnasium purposes.

**“precinct plan”** means a plan, approved by the Municipality, as envisaged in this By-law as a component to a package of plans.

**“previous zoning scheme ”** means a zoning scheme or town planning scheme referred to in section 33(1) or (2) of the Land Use Planning Act.

**“primary use”** in relation to property means any land use specified in this By-law as a primary use, being a use that is permitted within a zoning without the need to obtain the Municipality’s approval.

**“private open space”** means land which is in private ownership or municipal property that is leased on a long term basis, and that is used primarily as a private site for outdoor sports, play, rest or recreation, or as a park or nature area; and includes associated buildings, infrastructure and uses.

**“private parking”** means property, which is reserved for parking purposes, if such parking is not normally accessible to the general public.

**“private road”** means land reserved for the passage or parking of motor vehicles, which is privately owned and does not vest in the Municipality or another public authority.

**“property”** means land together with any improvements or buildings on the land.

**“provincial road”** means a road that is under the jurisdiction of the provincial roads authority.

**“pub”** means an establishment for the sale of primarily alcoholic beverages, and sometimes also food, to be consumed on the premises and is also known as a tavern or bar; but excludes a night club.

**“public nuisance”** means any act, omission or condition that is offensive in the opinion of the Municipality, injurious or dangerous to health, materially interferes with the ordinary comfort, convenience, peace or quiet of the public, or that adversely affects the safety of the public, having regard to the reasonableness of the activities in question in the area concerned, and the impacts that result from these activities.

**“public open space”** means property which is or will be under the ownership of the Municipality or another public authority, with or without access control, and which is set aside for the public as an open space for recreation or outdoor sport; including a park, playground, public square, picnic area, public garden, nature area or outdoor sports stadium; and may include associated buildings, infrastructure and uses.

**“public parking”** means a property that is accessible to the general public for parking purposes with or without a fee.

**“public street”** means land indicated on an approved plan, diagram or map as having been set aside as a public thoroughway for vehicles and pedestrians, of which the ownership as such vests in the Municipality in terms of the Land Use By-Law, LUPA or in terms of any other law.

**“retaining structure”** means a wall or structure constructed to hold back earth or loose rock.

**“rear boundary”** in relation to a land unit means every boundary of that land unit (other than a street or lateral boundary) which is opposite to every street boundary of such land unit and which does not intersect a street boundary, provided that in the case of a panhandle property the Municipality shall determine which boundary, if any, is the rear boundary.

**“refuse room”** means a defined screened refuse receptacle from where refuse is collected, usually on a weekly basis.

**“Register”** means the register maintained by the Municipality in which is recorded all departures, consent uses, environmental management plans, site development plans and conditions relating to use rights or the development and management of special zones.

**“registered land surveyor”** means a professional land surveyor, registered in terms of the Geomatics Profession Act, 2013 (Act 19 of 2013).

**“Republic”** means the Republic of South Africa.

**“residential building”** means a building where lodging is provided, with or without meals, together with such outbuildings as are normally used therewith, and includes an

old age home, children's home, hostel, boarding house and building in which rooms are rented for residential purposes, but does not include flats or a dwelling house, double dwelling house, group house, institutional building, place of instruction or hotel.

**“restaurant”** means a commercial establishment where meals and liquid refreshments are prepared and/or served to paying customers for consumption on the property, and may include licensed provision of alcoholic beverages for consumption on the property.

**“retirement village”** means premises specifically reserved to provide accommodation in the form of group houses, town houses, separate dwelling units or a block of flats for elderly and/or retired persons and may include care and recreational facilities together with a chemist, small shop, café and outbuildings ordinarily and reasonably required therewith.

**“rezoning”** means the amendment of the Zoning Scheme in order to effect a change of zoning in relation to a particular land unit or units.

**“riding school”** means a place or undertaking for the leasing of horses and riding instruction against payment and includes the care and stabling of such horses.

**“road”** includes a public street or a private road.

**“road reserve”** means the designated area of land that contains a public street or private road (including the road and associated verge) and that may be defined by cadastral boundaries.

**“rooftop base station”** means a cell phone base station where antennae are attached to the roof or side of an existing building; provided that any antennae support structure or equipment room that is not part of the building, does not extend more than 2,5m in height above the top of the building.

**“satellite dish antenna”** means apparatus fixed to a structure or mounted permanently on the ground, that is capable of receiving or transmitting communications from a satellite.

**“scenic drive”** means a public street designated as a scenic drive by the Municipality in recognition of the high visual amenity alongside that public street, including background vistas of a mountain, open country, a coastline or a town.

**“scrapyard and salvage building”** mean premises which is utilised for one or more of the following purposes:

- (1) storing, depositing or collecting of junk or scrap material or articles of which the value depends mainly or entirely on the material used in the manufacture thereof;

- (2) the dismantling of second-hand vehicles or machines to recover components or material, and
- (3) the storing or sale of second-hand parts, poles, steel, wire, lumber yards, tyres, bricks, containers or other articles which are suitable to be left in the open without any serious damage being incurred.

**“second dwelling unit”** means a dwelling unit including a kitchen, on a land unit where a dwelling house has already been lawfully erected.

**“self-catering accommodation”** means a dwelling house or a dwelling unit used for the overnight accommodation of *bona fide* transient guests.

**“service station”** means premises used for the retail supply of fuel and includes trading in motor vehicles, oil, tyres or motor spares, the repair or overhauling of motor vehicles and washing of vehicles, but does not include spray-painting, panel beating, black smithery or body work and any portion of a shop or business premises which incorporates facilities for the retail supply of fuel for the use of motor vehicles, shall be deemed a service station.

**“service trade”** means an enterprise which is:

- (1) primarily involved in the rendering of a service for the local community such as the repair of household appliances or the supply of household services;
- (2) not a source of disturbance to surrounding properties;
- (3) employs at most 10 people, and
- (4) is not likely, in the event of fire, to cause excessive combustion, give rise to poisonous fumes or cause explosions;
- (5) and includes a builder’s yard and allied trades, laundry, bakery, dairy depot and similar types of uses, but does not include an abattoir, brick-making site, service station or motor repair garage or sewage works.

**“service yard”** means a defined screened area providing utility services including washing line facilities for, amongst others, general residential developments

**“shelter”** means a unit of accommodation intended for human occupation, constructed of any material, even though such material may not comply with the standards of durability intended by the National Building Act, 1977 (Act 103 of 1977).

**“shop”** means premises used for the retail sale of goods and services individually or in relatively small quantities to the public; it includes a retail concern where goods which are sold in such a concern are manufactured or repaired, provided that the floor space relating to such manufacture or repair shall not comprise more than one-third of the floor space of the shop; “shop” does not include spray painting or an industry, service trade, motor repair garage, motor vehicle body repair shop, service station, restaurant, pornographic entertainment business, bottle store or industrial hive, and if

such uses are included with a shop on a land unit, they shall be regarded as separate uses subject to separate development parameters.

**“sign”** means any sign, sign-writing, mural, graphic design, signboard, screen, blind, boarding or other device by means of which an advertisement or notice is physically displayed, and includes any advertisement, object, structure or device that is in itself an advertisement or is used to display an advertisement.

**“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.

**“spatial development framework”** (or **“SDF”**) means a Municipal Spatial Development Framework that indicates the spatial implications of a Municipal Integrated Development Plan.

**“special usage”** means a use which is such, or in respect of which the development parameters are such, that it is not otherwise catered for in this By-Law.

**“spray painting and motor vehicle body repair shop”** means premises used for spray painting of motor vehicles or parts of motor vehicles and the repair of motor vehicle bodies including panel beating and black smithery.

**“statutory plan”** means a policy, programme, or plan required by legislation and which governs or affects the use of land, and includes:

- (1) the Provincial Spatial Development Framework if approved in terms of law;
- (2) the integrated development plan and spatial development plan of the Municipality;
- (3) the national water resource strategy established under Section 5 of the National Water Act, 1998 (Act 36 of 1998);
- (4) a catchment management strategy established under Section 8 of the National Water Act, 1998 (Act 36 of 1998);
- (5) the national bio-diversity framework and the national bio-diversity strategy and action plan prepared in terms of Chapter 3 of the Biodiversity Act, 2004 (Act 10 of 2004);
- (6) a bio-regional plan prepared in accordance with Sections 40 to 42 of the Biodiversity Act, 2004 (Act 10 of 2004) and
- (7) the national land transport strategic framework and the provincial land transport framework prepared in accordance with Section 19 of the National Land Transport Transition, 2000 (Act 22 of 2000).

**“stoep”** means an uncovered paved area or projecting floor outside and immediately adjoining a building, at or below the level of the ground floor of the building, and includes any low walls or railings enclosing the paved areas or floors.

**“storm water”** means water resulting from natural processes, the precipitation or accumulation of the water, and includes groundwater and spring water ordinarily conveyed by the storm water system, as well as sea water within estuaries, but excludes water in a drinking-water or waste-water reticulation system.

**“storm water system”** means constructed and natural facilities, including pipes, culverts and water courses, used or required for the management, collection, conveyance, temporary storage, control, monitoring, treatment, use or disposal of storm water.

**“street boundary”** means the boundary between a land unit and a public street or private road.

**“street centreline setback”** means the line delimiting the area measured from the centre line of a particular public street, within which no building or other structure, including a boundary fence, may be erected.

**“structure”** without in any way limiting its ordinary meaning, includes any building, shelter, wall, fence, pillar, tower, pergola, steps, landing, terrace, sign, ornamental architectural feature, swimming pool, fuel pump or underground tank, any building ancillary to service infrastructure provision, and any portion of a structure.

**“supermarket”** means a retail concern with a net retail floor space of not less than 250m<sup>2</sup>, which is utilised for sales on a basis of self-service and where the goods for sale fall in one or more of the following categories: foodstuffs and confectionery; toiletries and household cleansing agents; paints and hardware; electrical or gas appliances; musical instruments; crockery and kitchen utensils; camping and garden furniture and equipment; toys; furniture; photographic equipment; haberdashery and clothing; tools and accessories; and pot plants and flowers.

**“tavern”** refer to definition of pub.

**“terrace”** means an area to which occupants of a building have access, created on a flat roof over a portion of the building, resulting from the setting back of part of the building above that portion.

**“top of the roof”**, for the purpose of height control, means the top of the roof ridge in the case of a pitched roof, or the top of the parapet where the parapet extends above the roof.

**“total floor space”** of a building means the sum of the floor space of all the levels of a particular building, including basements.

**“tourist facilities”** means amenities for tourists or visitors such as lecture rooms, restaurants, gift shops, restrooms, or recreational facilities, but does not include a hotel or overnight accommodation.

**“town housing”** and **“town housing scheme”** means housing development which is a row or group of linked or attached dwelling units, designed, and built as a harmonious architectural entity, of which every dwelling unit has a ground floor.

**“Townships Ordinance”** means the Townships Ordinance, 1934 (Ordinance 33 of 1934) and includes all Regulations made under it.

**“traffic impact assessment”** means a statement of demand for travel generated by proposed development in relation to the existing and planned road system;

**“transmission tower”** means any support structure and associated infrastructure of more than 3,0m in height, that is used for the transmission and/or reception of electromagnetic waves and includes telecommunication, cellular telecommunication, radio, television and satellite transmission.

**“transport usage”** means a transport undertaking based on the provision of a transport service and includes public and private undertakings such as airports, railway stations, bus depots, taxi ranks, public transport interchanges and associated purposes.

**“urban agriculture”** means the cultivation of crops, on relatively small areas within the town, for own consumption or sale in neighbouring markets; provided that cultivation of a garden by an occupant shall not be regarded as urban agriculture for the purpose of control in terms of this Zoning Scheme.

**“urban edge”** means a demarcated line indicating the outer limit of an urban area determined in accordance with the SDF.

**“use right”** The right to utilise that land in accordance with its zoning, a departure, consent use, condition of approval or any other approval granted in respect of the rights to utilise the land.

**“used”** in addition to its ordinary meaning, includes “designated or intended to be used”.

**“veranda”** means a covered area (not being an area that is part of a yard or parking area) or projecting floor outside and immediately adjoining a building at or below the level of the ground floor of the building, and includes both the covered area or floor and the roof or other feature covering it, as well as any low walls or railings enclosing the covered area or floor.

**“visual impact assessment report”** means an assessment of the visual impact of proposed development on the area in which it is proposed to be located.

“**wall plate**” means the lowest point of a longitudinal member, bar, rafter, beam, truss, bracket, pillar, post, structure or any other similar device that supports a roof, as determined by the Municipality.

“**warehouse**” means a building used primarily for the storage of goods, except those that are offensive or dangerous, and includes premises used for business of a primarily wholesale nature, but does not include premises used for business of a primarily retail nature.

“**waste disposal site**” means a place where household, commercial or industrial waste products may lawfully be stored, salvaged, treated or disposed of.

“**working day**” means a day that is not a Saturday, Sunday or public holiday.

“**youth hostel**” means a place providing affordable accommodation, aimed mainly at young tourists.

“**zoning**”, when used as a noun, means a category of directions regulating the development of land and setting out the purposes for which the land may be used and the land use or development parameters applicable in respect of the said category of directions, as determined by this By-Law and when used as a verb in relation to land, means to designate that land for a particular zoning. Zoning includes base zoning and overlay zoning.

“**zoning map**” means a map or maps maintained by the Municipality that illustrates the application of this By-Law to land units situated within the municipal area.

“**zoning scheme**” means a land use scheme as defined in section 1 of the Spatial Planning and Land Use Management Act and includes the components referred to in section 4 of this By-Law.



## **CHAPTER 2**

### **ZONING SCHEME, USE ZONES AND USES**

#### **2. Application of zoning scheme**

The zoning scheme applies to the entire municipal area.

#### **3. Purpose of zoning scheme**

The purpose of the zoning scheme is to-

- (1) give effect to the municipal spatial development framework;
- (2) make provision for orderly development and the welfare of the community; and
- (3) determine use rights and development parameters, with due consideration of the principles referred to in the Land Use Planning Act.

#### **4. Components of zoning scheme**

The zoning scheme consists of the following components:

- (1) this By-law;
- (2) the zoning scheme map; and
- (3) the register.

#### **5. Use zones**

- (1) The municipal area is divided into the use zones referred to in column 1 of the table set out in Schedule 1.
- (2) The purpose, primary use and consent use of each use zone is summarized in column 1,2 and 3 respectively in the table set out in Schedule 1.
- (3) The location, boundaries and extent of each use zone is depicted on the zoning scheme map.
- (4) The primary and consent uses applicable to each use zone are subject to the development parameters specified for the land use applicable to each use zone as set out in Schedule 2.

#### **6. Zoning scheme map**

- (1) The zoning scheme map depicts-
  - (a) the zoning of land in accordance with the use zone in which the land is located; and
  - (b) overlay zones, if applicable to the land.
- (2) The official version of the zoning scheme map must be kept on file at the Municipality and is available for inspection during normal office hours.
- (3) The official version of the zoning scheme map as approved together with this By-law must be certified by the Municipal Manager.

- (4) The official version of the zoning scheme map depicts the status of the current zoning classification of land in the Municipality and may only be amended as provided for in this By-law and the Planning By-law.
- (5) The official version of the zoning scheme map is incorporated in and made part of this By-law and publication of this By-law in the *Provincial Gazette* constitutes notice of the approval of the zoning scheme map.
- (6) The Municipality must update the zoning scheme map within a reasonable time after use rights have been granted or have lapsed.
- (7) The Municipality may keep the zoning scheme map in an electronic format.
- (8) The Municipality may provide an extract of the zoning scheme map to members of the public on payment of a fee determined by the Municipality in terms of the Municipality's tariff policy.

#### **7. Transition to new use zones and savings**

- (1) Upon the date of commencement of this By-law, land that is zoned in terms of the previous zoning scheme is translated or reclassified to one of the use zones referred to in section 5.
- (2) Despite the translation or reclassification of the use zones used in the previous zoning scheme to the use zones used in this By-law –
  - (a) any condition of approval or validity period that is applicable to a land unit in terms of the previous zoning scheme applicable immediately before the coming into effect of this By-law, remains applicable and in so far as it determines development parameters that are different from the development parameters applicable in terms of this By-law, it is not to be considered an offence but a lawful non-conforming use;
  - (b) the Municipality must record any condition of approval referred to in paragraph (a) in the register together with any applicable validity period applicable to the zoning in terms of the previous zoning scheme;
  - (c) a zoning approved in terms of the previous zoning scheme that has been exercised within its validity period, cannot lapse, and is translated or reclassified as determined in this By-law;
  - (d) a zoning approved in terms of the previous zoning scheme that has not been exercised, lapses after the expiry of the validity period applicable to that zoning in terms of the previous zoning schemes;
  - (e) in the event of the lapsing of a zoning as contemplated in paragraph (d), the land unit reverts back to the use zone applicable to it in terms of the previous zoning scheme before it was rezoned and is translated or reclassified as determined in Schedule 4.
  - (f) A building plan application that was formally submitted and accepted –
    - (i) immediately before the coming into effect of this By-law and which is still being processed; or
    - (ii) on or after the date of coming into effect of this By-law with the purpose to act on an approval in terms of a previous planning law, must be assessed in accordance with that approval provided that such building plan application is submitted within 30 months after commencement of this zoning scheme, or within the validity period of said application, whichever is the later date.

- (g) Any rezoning or consent use application which was submitted prior to the date of coming into effect of this By-law, must be finalized in terms of the previous zoning scheme, and thereafter is translated or reclassified as determined in Schedule 4 or as determined by the municipality.

## **8. Zoning scheme register**

The Municipality:

- (1) must record all departures, consent uses, or other permissions granted and non-conforming uses in the register;
- (2) may keep the register from the date of commencement of the zoning scheme in an electronic format; and
- (3) must make the register available to members of the public for viewing.

## **9. Primary uses**

Primary uses of land permitted in each use zone, without the Municipality's consent, are listed in the corresponding part of column 2 of the table set out in Schedule 1.

## **10. Consent uses**

Consent uses of land permitted in each use zone, with the Municipality's prior consent in terms of the Planning By-law, is listed in the corresponding part of column 3 of the table set out in Schedule 1.

## **11. Temporary departures for specific occasions**

- (1) The Municipality must record the relevant information relating to a temporary departure for occasional uses applicable to a land unit in the register.
- (2) Approval of a use right as a temporary departure for an occasional use in terms of the Planning By-law must at least be subject to the development parameters applicable to the use right as stipulated in this By-law.

## **12. 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.
- (3) No additions or extensions to a non-conforming use is permitted.

## **13. Deemed zoning of closed public places**

The zoning of land that was previously a public street or public open space, vested in or owned by the Municipality and that is closed, is determined as follows:

- (1) if the land is transferred to an abutting landowner, that portion of the land falls in the same zone as that of the abutting land belonging to the abutting owner; or
- (2) the Municipality must determine which zoning applies to the land if-
  - (a) the land is transferred to an abutting landowner and that owner owns abutting properties falling into more than one zone; or
  - (b) in any other case not provided for in this section.

### **CHAPTER 3 OVERLAY ZONES**

#### **14. Purpose of overlay zones**

- (1) The Municipality may adopt, review, or amend overlay zones for specific areas in the Municipality in accordance with section 16 to-
  - (a) give expression, in a planning context, to the local needs and values of the communities concerned; and
  - (b) promote particular types of development, urban form, landscape character, environmental features, or heritage values.
- (2) The Municipality must determine development parameters for each area of an overlay zone.

#### **15. Procedures for establishing, reviewing, or amending overlay zones**

An overlay zone is adopted, reviewed, or amended by the Municipality as an amendment of this By-law in accordance with sections 12 and 13 of the Municipal Systems Act and section 25 of the Land Use Planning Act.

## **CHAPTER 4**

### **DISTANCES, LEVELS AND BOUNDARIES**

#### **16. Measuring distances and levels**

The following provisions apply with regard to the method of measuring distances and levels:

- (1) when reference is made or implied to the distance between boundaries or between a building and a boundary, this distance must be measured in the following manner:
  - (a) the boundary or boundaries and all points of the building must be projected onto a horizontal plane, and all measurements must be made in the plane; and
  - (b) the distance between a point on a building and a boundary must be measured at right angles to the erf boundary;
- (2) when reference is made to a portion of a boundary opposite a building, that portion must be defined by drawing lines in a manner described in paragraph (a) from points on the building, at right angles to the boundary;
- (3) when reference is made to natural ground level or of a roof wall plate, parapet or other things, the level must be calculated in accordance with recognised geometric principles; and
- (4) when the levels involved are so irregular that calculation in accordance with the principles in paragraphs (a) to (c) is impractical or leads to a result that is not in accordance with the intent of the zoning scheme, the Municipality must determine the level.

#### **17. Determining boundaries of use zones**

If uncertainty exists as to the boundaries of use zones, the following parameters apply in the order listed:

- (1) boundaries shown as following or approximately following any public street or road must be construed as following the street cadastral boundary;
- (2) boundaries shown as following or approximately following any land unit boundary must be construed as following that boundary;
- (3) boundaries shown as following or approximately following natural features must be construed as following those features; and
- (4) in the event of further uncertainty as to the boundaries of a use zone, the Municipality must make a determination.

## **CHAPTER 5 ENFORCEMENT**

### **18. Offences, penalties, and enforcement of By-law**

- (1) Subject to section 13, no person may erect any building or structure or any part thereof-
  - (a) except for a purpose permitted by this By-law and only in accordance with the applicable development parameters; or
  - (b) without first obtaining approval from the Municipality in terms of the Planning By-law.
- (2) A use not reflected as a primary or consent use for a particular use zone is not permitted in the use zone concerned, unless approved in terms of the Planning By-Law.
- (3) A person who contravenes this section and sections 20 to 50 is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.
- (4) A Municipality must enforce the zoning scheme through the measures for enforcement provided for in the Planning By-law.

## CHAPTER 6 DEVELOPMENT OF LAND

### 19. Development parameters applicable to use rights

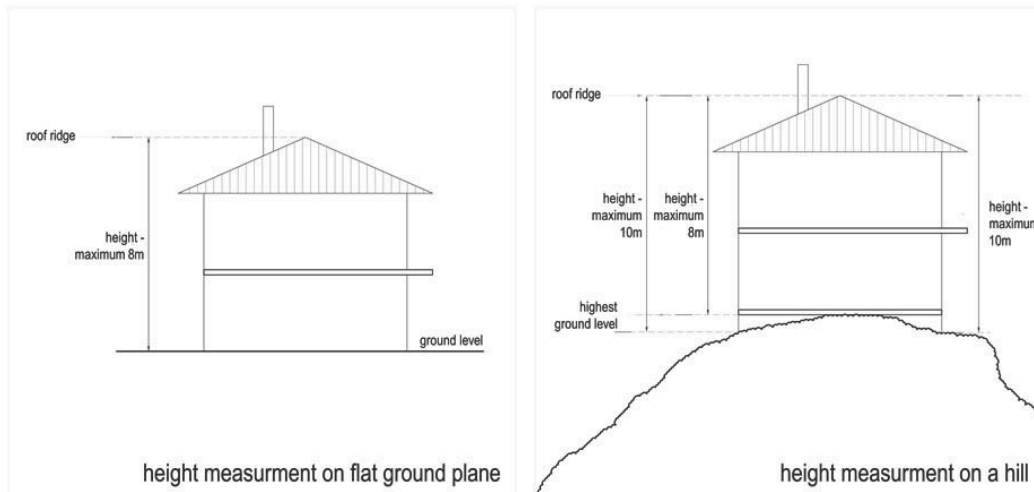
- (1) The land use descriptions and development parameters applicable to each primary and consent use right depicted in the table in Schedule 1 are described in Schedule 2.
- (2) Development parameters are applicable to use rights only and, notwithstanding the zoning of an erf, a specific use right has the development parameters as listed in Schedule 2, provided that the Municipality may grant a departure from the development parameters in terms of the Planning By-law.
- (3) Consent uses listed in Column 3 of Schedule 1 is subject to the following conditions:
  - (a) when a consent use is granted by the Municipality in a particular zone, the applicable land use must be supplementary to the primary use right allowed under the particular zone; and
  - (b) when land is intended to be utilised exclusively for a consent use in a particular zone and the consent use is a primary right in another zone, application must be made for rezoning to the zone where the applicable land use is a primary right.
- (4) No departure from the land use descriptions or definitions may be granted by the Municipality.
- (5) Despite subsections (1) and (2), the Municipality may determine any additional condition of approval in respect of a use right for a specific property as may be required in terms of any other applicable legislation.

## CHAPTER 7 GENERAL PROVISIONS

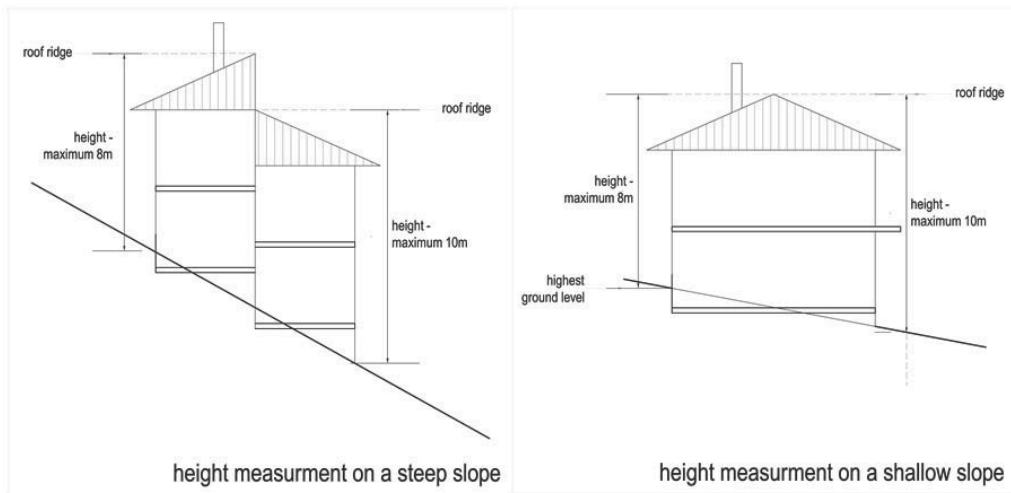
### 20. Methodologies for measurement and calculation & encroachment of building lines

The Municipality may require an applicant or owner of a land unit to appoint a registered surveyor to supply or verify information required by the Municipality to make a decision about compliance with distances or levels required in terms of this By-Law.

- (1) Where reference is made to a distance, ground level, height of a point on a building or other measurement, then that distance, level or height shall be calculated in accordance with recognised geometric principles.
- (2) In any case where the distance, level or height involved is so irregular that calculation in accordance with geometric principles is impractical or leads to a result which is clearly not in accordance with the intent of the By-Law, the Municipality must determine the distance, level or height concerned for the purpose of administering this By-Law.
- (3) The height of a building must be measured in the vertical plane in metres from the natural ground level immediately adjacent to the building to the highest point of the building measured.
- (4) For the purposes of calculating whether or not a building complies with any height restriction, the height must be calculated from the natural level of the ground immediately adjacent to the building or other level specified in law or in the relevant authorisation, to the highest point of the building measured excluding chimneys, flues, masts and antennae.







- (5) The distance between boundaries or between a building and a boundary, must be determined by:
- (a) projection of the boundary or boundaries and all points of the building onto a horizontal plane, and
  - (b) measurement of the shortest distance between the point on the building and the boundary, or between boundaries, on the horizontal plane.
- (6) Where reference is made to the portion of a boundary “opposite” a building, that portion of the boundary shall be defined by the drawing of lines from points on that building, at right angles to the boundary.
- (7) A land unit that abuts on a curved street or streets shall be regarded as a corner property if the bend creates an interior angle of not more than 135 degrees.
- (8) A corner property shall be considered to have two street boundaries and two lateral boundaries.
- (9) A panhandle property shall be considered to have two rear and two lateral boundaries and the Municipality must determine which boundaries are the rear boundaries of a panhandle property.
- (10) Building lines apply only to that section of the property that does not fall within the panhandle part of the land unit.
- (11) The panhandle portion of a panhandle property must be:
- (a) not less than 4,0m wide for its entire length;
  - (b) disregarded for the purposes of calculating coverage on the property.
- (12) The floor space of a building shall be measured from the outer face of the exterior walls or similar supports of the building, and where the building consists of more than one storey, the total floor space shall be the sum of the floor space of all the storeys, including that of basements.
- (13) For the purposes of calculating the floor space of a building:
- (a) any balconies, terraces, stairs, stairwells, verandas, common entrances and common passages covered by a roof shall be included, but in the case of

multi-storey buildings any atrium and any stairwells, lift-wells or other wells, must only be counted once;

- (b) the following must be excluded:
- (i) any area, including a basement, which is reserved for parking or loading of vehicles;
  - (ii) external entrance steps and landings, any stoep and any area required for external fire escapes;
  - (iii) a projection including a projection of eaves, and a projection which acts as a sunscreen or an architectural feature, which projection does not exceed 1,0m beyond the exterior wall or similar support;
  - (iv) any uncovered internal courtyard, light-well or other uncovered shaft which has an area in excess of 10m<sup>2</sup>;
  - (v) any arcade that is 2,0m or more in width, which provides access through the building concerned from public parking, a public street or open space, to some other public parking, public street or open space, and which at all times is open to the public, as well as any covered walkway, the roof of which allows light to pass through, and
  - (vi) any covered paved area outside and immediately adjoining a building at or below the ground floor level, which is part of a forecourt, yard, external courtyard, pedestrian walkway, parking area or vehicular access.

(14) The calculation of coverage for the purposes of determining the percentage of a land unit that is, or will be, covered by buildings, must take account of:

- (a) walls and buildings;
- (b) solid roofs;
- (c) stairs, steps, landings (except entrance landings and steps); galleries, passages and similar features, whether internal or external, and
- (d) canopies, verandas, balconies, terraces and similar features.

(15) The calculation of coverage for the purposes of determining the percentage of a land unit that is, or will be, covered by buildings, must disregard:

- (a) the panhandle portion of a panhandle property;
- (b) stoeps, entrance steps and landings;
- (c) cornices, chimney breasts, pergolas, flower boxes, water pipes, drain pipes and minor decorative features not projecting more than 500mm from the wall of the building;
- (d) eaves not projecting more than 1,0m from the wall of the building, and
- (e) a basement provided that the basement ceiling does not project above the finished ground level.

(16) Despite the building line requirements set out herein, the following structures or portions of structures may be erected within the prescribed building lines, provided they do not extend beyond the boundaries of a land unit:

- (a) boundary walls, screen walls, fences, and gates; not exceeding 2,1 metres in height above the natural ground level, excluding where any such wall will result in infilling higher than 0,5 metres above natural ground level;
  - (b) open and uncovered stoeps that are less than 500 millimetres in height from the natural level of the ground;
  - (c) entrance steps, landings, and entrance porches, excluding porte cochères;
  - (d) a covered entrance or gatehouse that has a roofed area not exceeding 5 m<sup>2</sup> and a roof height not exceeding 3 metres from the floor to the highest point;
  - (e) eaves and awnings projecting no more than 1 metre from the wall of a building;
  - (f) cornices, chimney breasts, flower boxes, water pipes, drainpipes and minor decorative features not projecting more than 500 millimetres from the wall of a building;
  - (g) swimming pools not closer than 1 metre from any boundary;
  - (h) a basement, provided that no part of such a basement projects above natural ground level;
  - (i) drying yards, provided that no drying yard shall be erected over the street building line without the Municipality's consent;
  - (j) a refuse room required by the Municipality in terms of this By-law;
  - (k) water storage tanks not exceeding the height of the boundary wall.
- (17) For the purposes of determining street boundaries, a street centreline setback and site access requirements, the boundary of a pedestrian way or service lane that cannot or will never be used by motor vehicles may be regarded as a common boundary.

## **21. Street centreline setback**

- (1) The portion of a land unit falling within a street centreline setback area is excluded for the purpose of determining coverage and maximum floor space, unless the owner transfers the portion concerned to the Municipality free of charge.
- (2) In such case, the portion must be included for the purpose of determining coverage or maximum floor space on a land unit.

## **22. Site development plans**

- (1) In addition to the zones that specifically require a site development plan, the Municipality may require a site development plan in respect of the following development types:
  - (a) shopping centres or shopping complexes;
  - (b) business or office park developments;
  - (c) industrial park developments;
  - (d) developments in conservation areas;
  - (e) developments that will be sectionalised;
  - (f) incremental residential developments;

- (g) major developments where there are concerns relating to urban form, heritage, traffic, the environment, or planning.
- (2) The Municipality may require the following information to be depicted on a site development plan:
- (a) existing bio-physical characteristics of the property;
  - (b) existing and proposed cadastral boundaries;
  - (c) the layout of the property, indicating the use of different portions of the property;
  - (d) the massing, position, use and extent of buildings;
  - (e) sketch plans and elevations of proposed structures, including information about their external appearance;
  - (f) cross-sections of the site and buildings on site;
  - (g) the alignment and general specification of vehicle access, roads, parking areas, loading areas, pedestrian flow and footpaths;
  - (h) measures of access control to parking areas and reservation of parking areas;
  - (i) the position and extent of private, public and communal space;
  - (j) typical details of fencing or walls around the perimeter of the land unit and within the property;
  - (k) electricity supply and external lighting proposals;
  - (l) provisions for the supply of water, management of storm water, and disposal of sewage and refuse;
  - (m) external signage details;
  - (n) general landscaping proposals, including vegetation to be preserved, removed or to be planted, external paving, and measures for stabilising outdoor areas where applicable;
  - (o) the phasing of a development;
  - (p) the proposed development in relation to existing and finished ground levels, including excavation, cut and fill;
  - (q) statistical information about the extent of the proposed development, floor area allocations and parking supply;
  - (r) relationship of the proposed development to the quality, safety and amenity of the surrounding public environment;
  - (s) relationship of the proposed development to adjacent sites, especially with respect to access, overshadowing and scale;
  - (t) illustrations in a three-dimensional form depicting visual impacts of the proposed development on the site and in relation to surrounding buildings;
  - (u) any other details as may reasonably be required by the Municipality.
- (3) The Municipality may require that the area covered by a site development plan must extend beyond the site under consideration if, in its opinion, the proposed development will have a wider impact.
- (4) The Municipality may determine the extent of the area covered by a site development plan.

- (5) An applicant must submit a site development plan to the Municipality if it is required in terms of this zoning scheme before any development on the relevant land unit may commence.
- (6) The Municipality may require amendments of detail to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban form, landscaping, environmental management, engineering services or similar concerns.
- (7) The following provisions apply with regard to site development plans:
  - (a) the property must be developed generally in accordance with an approved site development plan;
  - (b) if the Municipality considers it necessary, a transport or traffic impact statement or assessment may be required in conjunction with a site development plan, the extent of which must be determined by the Municipality, depending on the size of the development;
  - (c) if the Municipality considers it necessary, a storm water impact assessment or storm water management plan or both may be required in conjunction with a site development plan, the extent of which must be determined by the Municipality, depending on the size of the development;
  - (d) if the Municipality considers it necessary, a visual impact assessment, which may include a landscape character analysis, may be required in conjunction with a site development plan, the extent of which must be determined by the Municipality, depending on the size of the development; and
  - (e) an approved site development plan must be considered as setting additional development parameters applicable to the base zone, and any application for amendment must comply with the Municipality's requirements for the amendments.

### **23. Hazardous substances**

- (1) Any use or ancillary activity that involves the storage or keeping of hazardous substances that may result in an installation being declared a major hazardous installation in terms of occupational health and safety law is not permitted, unless the owner has submitted a risk management and prevention plan and the Municipality has approved the plan.
- (2) The Municipality's approval in terms of subsection (1) above does not exempt the owner from applying for permission in terms of other applicable legislation.

### **24. Screening**

The Municipality may require screening in accordance with the following provisions:

- (1) any part of a land unit that is used for the storage or loading of goods must be enclosed with a suitable wall or landscape screening or both; and
- (2) any external utility service or equipment that is required for a building must be appropriately screened from view from a public street, and the screening must be integrated with the building in respect of materials, colour, shape, and size.

## 25. Earth banks and retaining structures

Unless the prior approval of the Municipality has been obtained-

- (1) no earth bank, retaining structure, column, suspended floor, other device or series of such devices may be constructed that enables the ground floor of a building to be raised more than 0,5 metres above natural ground level, provided that where the raising takes place, the height must still be measured from natural ground level, excluding infill for a driveway;
- (2) no earth bank or retaining structure used for holding back earth or loose rock, whether associated with a building or not, may be constructed to a height of more than 2 metres above natural ground level; and
- (3) no series of earth banks or retaining structures may be constructed to a cumulative height of more than 2,5 metres above natural ground level, unless an approximately level area of at least 2 metres wide is incorporated between successive embankments or retaining structures for every 2 metres of cumulative height.

## 26. Boundary walls

In the absence of an approved site development plan, architectural guidelines or relevant policy, the following development parameters apply to boundary walls:

- (1) Height
  - (a) The maximum height in all cases is 3m with application and approval of the BCO.
- (2) Permeability
  - (a) 60% of a residential street boundary wall must be permeable; and
  - (b) 80% of a street boundary wall in other areas must be permeable.

## 27. Maintenance of property

Property must be properly maintained by the owner or occupier and may not-

- (1) be left in a neglected or offensive state, as may be determined by the Municipality;
- (2) contain an unsightly accumulation of papers, cartons, garden refuse, rubble, or other waste material, as may be determined by the Municipality;
- (3) contain an accumulation of motor wrecks or unroadworthy vehicles or used motor parts, unless these are permitted in terms of the primary or consent use applicable in terms of this zoning scheme; and
- (4) contain outdoor storage of building material, appliances, or similar items unless these-
  - (a) are permitted in terms of the primary or consent use in terms of this zoning scheme;
  - (b) are temporarily being stored for the purpose of construction in accordance with a valid building plan approval; or
  - (c) are being stored in conjunction with the holding of a yard or garage sale with a duration of not more than two consecutive days.

**28. Parking of vehicles in residential zones**

A motor vehicle of an occupant of a dwelling unit and used for commercial activities conducted away from the dwelling unit may be parked on the property where the occupant resides, provided that-

- (1) there is adequate space on the property concerned;
- (2) no more than one commercial vehicle per dwelling unit may be parked on the property; and
- (3) the gross weight of any such commercial vehicle may not exceed 3 500 kg.

**29. Mobile homes and caravans**

- (1) A recreation vehicle, including a mobile home or caravan, may not be used for permanent habitation without the approval of the Municipality, unless the zoning lawfully allows the permanent habitation.
- (2) The following additional development parameters apply with regard to mobile homes approved to be placed on a land unit zoned for residential purposes:
  - (a) the mobile home or caravan must be sited on a foundation slab and properly anchored;
  - (b) solid perimeter skirting, of material and colour complementary to the mobile home or caravan, must be provided from the bottom of the mobile home to the ground surface;
  - (c) the roof and exterior siding of the mobile home or caravan must be of a non-reflective material; and
  - (d) any structural additions must be of materials which, in the opinion of the Municipality, are compatible with the mobile home or caravan.

**30. Rooftop base telecommunication stations and satellite dish antenna systems**

- (1) A rooftop base telecommunication station may not extend more than 3 metres in height above the building that it is attached to without the prior approval of the Municipality.
- (2) No rooftop base telecommunication station or transmission tower granted as a consent use in terms of this By-law may be modified or have its radio-frequency emissions altered without prior written approval from the Municipality.
- (3) The following provisions apply with regard to decommissioned antennae or rooftop base telecommunication stations:
  - (a) the owner or operator must remove all decommissioned infrastructure;
  - (b) if the site has been disturbed, the owner or operator must rehabilitate the site to its original state or to a state acceptable to the Municipality; and
  - (c) if the owner or operator fails to comply with paragraphs (a) or (b), the Municipality may remove that infrastructure, and rehabilitate the site at the expense of the owner or operator.

- (4) Any satellite dish antenna with a diameter in excess of 1,5 metres must be placed in a position that minimises the visual impact on the surrounding area, to the satisfaction of the Municipality.
- (5) Satellite dish antennas of 1,5 metres in diameter and smaller and used solely for the purposes of television reception or telecommunication, do not require the Municipality's approval and are excluded from height restrictions.

### **31. Geysers and solar panels or similar infrastructure affixed to roofs of buildings**

Any external geysers and associated equipment or solar panels or similar infrastructure affixed to the roof of a building may not at any point be more than 1,5 metres above the roof surface, measured perpendicularly from that surface.

### **32. Equipment on top of building**

No elevator motor rooms, satellite dishes, ventilation shafts, water tanks, air conditioning plants or other equipment on top of a flat roofed building may, subject to the definition of "height", exceed a height of 2 metres above the wall plate.

### **33. Parapet walls**

Parapet walls are restricted to 500 millimetres in height above the finished roof level immediately contiguous to the parapet.

### **34. Chimneys**

Chimneys may not extend higher than 1 metre above the highest point of the roof of a dwelling house or dwelling unit.

### **35. Linear infrastructure**

Telecommunication, electrical transmission lines and pipelines or canals for the transportation of liquids and gasses may be permitted by the Municipality or an organ of state to traverse a land unit, as may be reasonably required by the Municipality or an organ of state in accordance with and subject to expropriation laws, other applicable laws and the registration of the necessary servitudes.

### **36. Utilisation of outbuildings**

No outbuilding may be utilised for any purpose other than the purpose submitted in the building plans and approved by the Municipality, and an outbuilding may not be utilised until the main buildings are completed or occupied, unless approved by the Municipality.

### **37. Determination of natural ground level**

- (1) The Municipality may request the submission of a registered land surveyor's certificate to determine the natural ground level before any construction activities may commence.
- (2) Where the level of the land has been altered with the approval of the municipality-
  - (a) any grading for the purpose of development must connect evenly with the existing levels of abutting land units; and



- (b) the municipality may approve the altered ground level to be the natural ground level.
- (3) Where it is not possible to determine the natural ground level due to irregularities or disturbances of the land, the Municipality may-
- (a) determine the natural ground level from measurements supplied on a building plan;
  - (b) deem a level to be the natural ground level based on measurements interpolated from a contour plan, local height benchmark or other information held by the Municipality; or
  - (c) require the owner or applicant to commission a registered surveyor at the cost of the owner or applicant to measure levels of the ground or interpolate levels, in order to provide the Municipality with sufficient information to determine the natural ground level for the purpose of administering this By-law.
- (4) Where a building site is elevated, filled or extended with excavated or any other material, the natural ground level is not altered unless approved by the Municipality in which case the Municipality must define a ground level for the purposes of administering the height restriction of the building.

### **38. Animals kept for commercial purposes**

Animals may be kept for commercial purposes only on a land unit zoned Agricultural Zone I.

### **39. Hobbies in single and general residential zones**

When exercising a hobby in all single and general residential zones, the primary use of the dwelling house or dwelling unit must be for the living accommodation of a single family, provided that-

- (1) no portion of the dwelling, may be used for the purposes of a noxious trade, risk activity or sale of alcoholic beverages;
- (2) in addition to paragraph (1), the following uses are not classified as hobbies:
  - (a) activities conforming to the definition of a shop;
  - (b) animal care centres;
  - (c) butcheries;
  - (d) coal and wood merchants;
  - (e) escort agencies or adult entertainment;
  - (f) fishmongers;
  - (g) hospitals or clinics;
  - (h) house shops;
  - (i) taverns;
  - (j) manufacturing of concrete products;
  - (k) motor vehicle repairs;
  - (l) panel beating or spray painting;

- (m) parcel delivery services;
  - (n) places of entertainment;
  - (o) places of instruction
  - (p) shooting ranges or shooting instructions;
  - (q) taxi businesses;
  - (r) tow-in services;
  - (s) transport contractors;
  - (t) undertakers;
  - (u) vehicle rental agencies; and
  - (v) any other activity that in the opinion of the Municipality does not fit in the particular environment or is of a nature that it must be located on a suitably zoned premises;
- (3) no goods may publicly be displayed, and no external evidence of the hobby may be visible from the street;
- (4) no advertising may be displayed;
- (5) any public exhibition of hobby items or activities on the residential property must:
- (a) be preceded by a written consent from the Municipality; and
  - (b) during the public exhibition, temporary parking must be provided on the land unit in accordance with the parking requirements of this By-law and appropriate traffic regulating measures must be put in place;
- (6) an activity associated with a hobby may not occupy more than 25% of the total floor area of the dwelling on the property or 60 m<sup>2</sup>, whichever is more restrictive, including storage;
- (7) the Municipality may restrict the operating hours relating to the hobby, if the activity proves to be a nuisance to residents in the area; and
- (8) any new structure, or alteration to the existing dwelling or outbuilding, must conform to the residential character of the area concerned.

## CHAPTER 8 PARKING AND LOADING

### 40. Off-street parking requirements

(1) The off-street parking standards are set out in the table below:

*Table A: Off-street Parking Requirements*

Land Use	Normal Areas
Dwelling house	1 bay per dwelling unit
Group dwelling Flats	2 bays per dwelling unit 1.25 bays per dwelling unit 0.25 bays per unit for visitors
Second dwelling / double dwelling house	1 additional bay per unit
Residential building Guest Accommodation Gymnasium Hotel	1 bay per guest suite 6 bays per 100m <sup>2</sup> GLA 1.2 bays per guest suite or room
Hotel with facilities available to overnight guests only Retirement village Hospital (general and private) Clinic / Medical consulting rooms Funeral chapel / place of assembly / worship / entertainment	1 bay per guest suite or room 1 bay per 2 bedrooms 1 bay per four beds 4 bays per consulting room 1 bay per 25 seats or persons calculated at 1.5m <sup>2</sup> GLA per person
Single shops	4 bays per 100m <sup>2</sup> GLA
Shopping centre	4 bays per 100m <sup>2</sup> GLA
Offices	4 bays per 100m <sup>2</sup> GLA

Industry Industrial hive Service Station Schools (including crèches)	2 bays per 100m <sup>2</sup> GLA 4 bays per 100m <sup>2</sup> GLA 4 bays per 100m <sup>2</sup> GLA 1 bay per classroom / office plus 1 per 30 children / learners
Place of instruction (other than schools)	1 bay per classroom / office plus 1 per 5 children / learners
Restaurant	1 bay per 25m <sup>2</sup> of seating area (inside and outside), provided that the seating area is clearly indicated on the building plan
Recreation / sport	1 bay per 8 seats or persons calculated at 1.5m <sup>2</sup> GLA per person
Conference facility	8 bays per 10 seats or persons calculated at 1.5m <sup>2</sup> GLA per person

GLA = "gross leasable area"

- (2) The Municipality shall determine off-street parking requirements for land uses not stipulated in Table A;
- (3) With regard to the parking requirement for shopping centres, the Municipality may require an increased number of bays should this be needed in its opinion;

#### 41. Alternative parking supply

- (1) As an alternative to compliance with the off-street parking requirements in terms of this zoning scheme, an owner may, with the approval of the Municipality-
  - (a) acquire an area of land sufficient for the permanent parking requirements elsewhere, in a location approved by the Municipality; or
  - (b) acquire permanent rights to a parking facility or portion of a parking facility elsewhere, in a location approved by the Municipality, and must register a notarial tie or servitude against that land or parking facility to link the properties concerned for the purpose of parking, and the owner must cause the parking concerned to be constructed and maintained in accordance with the Municipality's requirements and approval.
- (2) The cost of registration of the notarial tie or servitude referred to in paragraph (1)(b) must be borne by the owner.

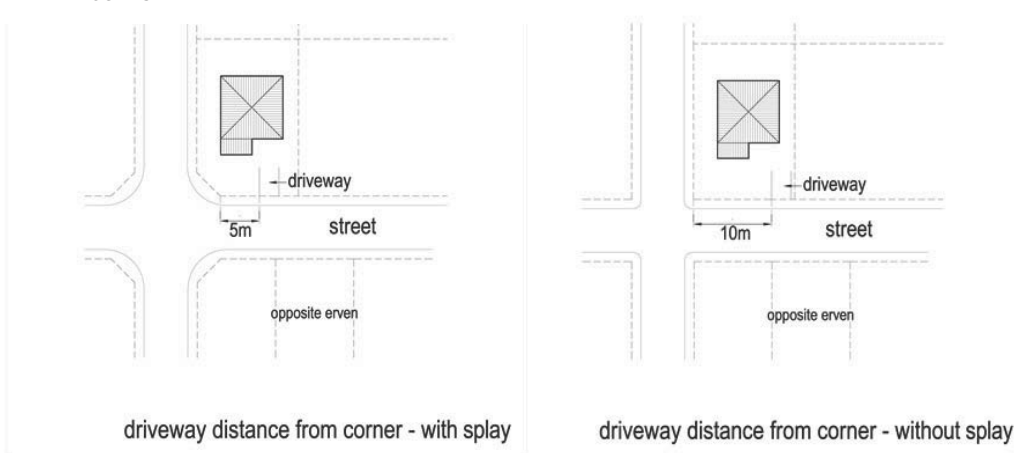
#### 42. Combined parking requirements

If two or more uses combine to share a common parking area, the Municipality may approve parking requirements that provide less than the quantum of the parking required for individual uses provided that-

- (1) the Municipality is satisfied that the utilisation of the same parking area by the different use types or activities in the zones will not result in a concurrent use of the parking area; and
- (2) bays intended for combined uses may not subsequently be reallocated to other uses without the approval of the Municipality.

**43. Additional parking and site access requirements**

- (1) The additional parking and site access requirements in this By-Law apply to all zones except Incremental Housing and Service Station.
- (2) Vehicle access shall be limited to one carriageway crossing per site per public street or road abutting the site.
- (3) A carriageway crossing may comprise a single lane not exceeding 4,0m in width where it crosses the street boundary, or combined entrance and exit lanes not exceeding 8,0m in width where they cross the street boundary.
- (4) Notwithstanding Section (3) above, where the total length of any street boundary of a site exceeds 30m in length, one additional carriageway crossing may be permitted provided that no two carriageway crossings are closer than 15m to each other.
- (5) If the corner at a street intersection is not splayed, vehicle carriageway crossings shall not be closer than 10m to such corner.
- (6) If the corner at a street intersection is splayed, vehicle carriageway crossings shall not be closer than 10m from such corner or 5,0m measured from the point where the splay reaches the road boundary, whichever is the greater distance from the corner.



- (7) Parking areas shall be used for the parking of vehicles that are lawfully allowed on them and any activity that causes an obstruction for the vehicular traffic, or pedestrians in the use of the pavement, is prohibited.
- (8) Additional parking for a public restaurant and/or conference facility at a hotel may be required to the satisfaction of the Municipality.
- (9) Parking areas shall be constructed to the satisfaction of the Municipality.

- (10) Driveways and parking spaces shall be smoothly graded, adequately drained and constructed with suitable sub-grade, base and surfacing to be durable under the use and maintenance contemplated.
- (11) Any grade transitions shall be designed and constructed to prevent undercarriages and bumper guards from scraping the pavement surface.
- (12) Such parking facilities shall be properly maintained and aisles shall remain open and free for traffic flow.
- (13) Each parking space shall be separated with proper striping, or other designation to the satisfaction of the Municipality.
- (14) The Municipality may lay down more restrictive requirements in connection with parking and site access than are provided for in this By-Law if it considers it necessary from a pedestrian or traffic safety point of view.

#### **44. Parking layout requirements**

- (1) The following parking layout requirements apply unless otherwise stated in this zoning scheme:
  - (a) parking layout configurations, minimum dimensions and ramps to a parking area must be in accordance with this zoning scheme or an approved site development plan;
  - (b) the layout of any parking area, except for parking in Single Residential Zone, must ensure that vehicles can readily leave the site without reversing across the sidewalk, unless otherwise approved by the Municipality;
  - (c) a tandem bay accommodating two motor vehicles is regarded as one bay for the purposes of this zoning scheme, except for single residential zones, where a tandem bay is regarded as two bays;
  - (d) visitor parking bays must be clearly demarcated, readily visible and accessible to visitors, and preferably grouped together;
  - (e) parking areas must be used for the parking of vehicles which are lawfully allowed on them, and any activity which causes an obstruction for vehicular traffic or pedestrian use of the sidewalk is prohibited;
  - (f) parking areas must be constructed and maintained in a state suitable for the parking and movement of vehicles;
  - (g) control of access to and reservation of parking bays or areas is not permitted unless written approval has been obtained from the Municipality, either through an approved site development plan or other written approval; and
  - (h) despite paragraphs (a) to (g), the Municipality may lay down more restrictive requirements related to parking, site access or motor vehicle carriageway crossing, if it considers this to be necessary from a pedestrian or traffic safety point of view.
- (2) The Municipality may require an applicant to submit a parking layout plan indicating-
  - (a) the way in which it is proposed that motor vehicles park;
  - (b) the means of entrance and exit from parking areas;
  - (c) landscaping proposals; and
  - (d) construction details.

- (3) A parking layout plan must:
  - (a) be submitted to the Municipality for all parking areas in excess of 6 parking bays, or if required by the Municipality for a lesser number of bays, and
  - (b) indicate the way in which it is intended that vehicles shall park, the means of entrance and exit, and landscaping proposals.
- (4) The Municipality may approve or refuse the parking layout plan and impose conditions of approval.

**45. Parking for physically disabled**

- (1) The Municipality may require parking suitable for use by persons with physical disabilities to be provided on any land unit in order to ensure easy and convenient access for such persons to services and facilities generally open to the public and to residential uses.
- (2) In any parking facility serving the public, parking for persons with physical disabilities must be provided in accordance with the table below:

*Table B: Parking for the Physically Disabled*

Total number of parking bays	Required number of bays accessible to the physically disabled
1 – 50	1
51 – 100	2
101 – 150	3
151 – 200	4
For every additional 100 bays	1 additional parking bay

- (3) Parking bays for physically disabled persons must:
  - (a) be a minimum of 2,5m in width and 5,5m in length;
  - (b) be provided with an adjacent level access aisle that shall be a minimum of 1,5m in width (access aisles may be shared between two adjacent bays for physically disabled persons);
  - (c) be level;
  - (d) be located as near as possible to accessible building or site entrances and shall be located to provide convenient access to curb ramps;
  - (e) be reserved for physically disabled persons;
  - (f) be marked on the parking surface with the international symbol of accessibility.
- (4) Additional signage indicating the parking bay as reserved for exclusive use by physically disabled persons may be required by the Municipality, including a sign

warning drivers of the possibility of towing due to unauthorised use and providing information regarding the recovery of vehicles.

- (5) Where five or less parking bays are provided, at least one bay shall be 4,0m wide and marked to provide a parking bay of 2,5m with an access aisle 1,5m, but the bay need not be reserved exclusively for physically disabled persons only.
- (6) Physically disabled parking provided in terms of this By-Law shall count toward fulfilling off-street parking requirements.

#### **46. Motorcycle and bicycle parking spaces**

- (1) The Municipality may require that parking be provided for motorcycles and bicycles.
- (2) For every 4 motorcycle and 6 bicycle parking spaces provided, a credit of 1 parking bay may be given towards applicable parking requirements, provided that:
  - (a) the total credit may not exceed 2,5% of the parking bays required;
  - (b) the minimum dimension for a motorcycle space is 2,2 metres in length and 1 metre in width; and
  - (c) the minimum dimension for a bicycle space is 2 metres in length and 0,6 metres in width.
- (3) Signage, bollards and racks or other devices for storing bicycles and enabling motorcyclists to make use of the motorcycle and bicycle parking spaces must be installed.

#### **47. Loading requirements**

- (1) Unless the Municipality grants approval to waive this requirement, loading bays must be provided in accordance with the table below.
- (2) The Municipality may determine off-street loading requirements for uses not stipulated in the table.
- (3) The following minimum requirements apply to loading bays:
  - (a) a loading bay must measure not less than 4,5 metres x 10 metres for perpendicular loading, and 2,5 metres x 12 metres for parallel loading;
  - (b) no carriageway crossing to be accessed by loading vehicles may be less than 3 metres in width, and no combined entrance and exit way may be less than 6 metres in width; and
  - (c) covered loading areas must have a minimum headroom of 3,7 metres.



Table C: Loading Bays

Land Use	Floor Area (m <sup>2</sup> )	No of Loading Bays
Offices	0 – 5 000 5 001 – 15 000 15 001 – 30 000 Every additional 30 000 or part thereof	0 1 2 1 additional bay
Business premises other than offices, supermarket, industry	0 – 1 000 1 001 – 2 500 2 501 – 5 000 5 001 – 10 000 Every additional 10 000 or part thereof	0 1 2 3 1 additional bay
Supermarket	0 – 500 501 – 1 000 1 001 and greater	1 2 3 x requirements for business premises other than offices, supermarket, industry

- (4) A loading bay shall have vehicular access to a public street to the satisfaction of the Municipality.
- (5) The Municipality may, for the purpose of preventing the obstruction of traffic on any public street adjacent to a land unit, require the owner to submit proposals, to the satisfaction of the Municipality, for suitable and sufficient space on the land unit for any loading, off-loading or fuelling of vehicles which are likely to occur under normal circumstances.
- (6) No owner or occupant of a land unit, shall undertake or knowingly permit loading, off-loading or refuelling of vehicles other than in accordance with the proposals as approved by the Municipality.
- (7) The following minimum requirements shall apply:
  - (a) a loading bay shall measure not less than 4,5m x 10m for perpendicular loading and 2,5m x 12m for parallel loading;
  - (b) no entrance or exit way to be used for loading shall be less than 3,0m in width and no combined entrance and exit way shall be less than 6,0m in width;
  - (c) covered loading areas shall have a minimum headroom of 3,7m.

#### 48. Garages, carports and parking areas

- (1) The Municipality may permit the erection of a garage within the street building line if, in the Municipality's opinion, the garage cannot reasonably be sited at the

prescribed distance due to the slope of the land unit, or for other reasons provided that:

- (a) the height of such garage from the finished floor level to the top of its roof shall not exceed 4,0m;
  - (b) the garage shall not be closer than 5,0m to the road kerb.
- (2) The Municipality may permit the erection a carport on the street boundary provided that:
- (a) the width of such carport measured edge to edge of the roofing and guttering and parallel to the street boundary shall not exceed 6,5m. Upon written application, the Municipality may permit the 6,5m to be extended.
  - (b) the roof of the carport shall be supported by metal or wrought timber posts or brick, concrete or masonry pillars; provided that there is a space of at least 0,5m between each pillar;
  - (c) the carport not to be enclosed permanently on more than two sides except by:
    - (i) a boundary wall or fence not exceeding 2,1m in height , will be seen as opening, and 3m with approval, not seen as opening ;
    - (ii) a wall which forms an external wall to the building;
    - (iii) The two open sides can be closed for not more than 60% with burglar bars or similar or with roll down canvas, still be seen as an opening.
  - (d) the height of such carport from the floor to the highest point of its roof shall not exceed 3,0m;
  - (e) the edges of the roof sheeting shall be neatly trimmed with a fascia board not less than 150mm in depth.
  - (f) A garage door can be erected on the street entrance of the carport.
  - (g) A carport is described in SANS 10400 A, as a building intended to provide shelter for a motor vehicle, caravan or boat and having a roof but having walls on not more than two sides.
  - (h) A carport can be built on the boundary line without the permission of the neighbour.
- (3) The Municipality may permit the erection of a carport or garage in the lateral building line.

#### **49. Second dwelling units and double dwelling houses**

- (1) A second dwelling unit must have a floor area that is less than that of the main dwelling house on that land unit and must not extend beyond that cadastral unit.
- (2) Building plans for a second dwelling unit must include a site development plan, showing the siting of existing and proposed buildings, access and egress, parking and driveway access, the position of the living areas of the residences, partition walls and landscaping, existing and proposed paved areas, existing and proposed wash-line and refuse areas, street elevations of the proposed building, and materials and finishes of the proposed building.
- (3) Building plan approval for a second dwelling unit is subject to the following conditions:

- (a) only one additional residential unit is allowed per erf;
  - (b) all the developments on the site must comply with the development parameters, including building lines, height and bulk restrictions that apply to the specific zone in question
  - (c) its total floor space will not be less than 30m<sup>2</sup> and shall not exceed 120m<sup>2</sup>, excluding a garage and may be built within the 8,5 meter height restriction of the main dwelling;
  - (d) the materials, exterior finishes and architectural style of the second dwelling will be compatible with the existing dwelling unit;
  - (e) it will not exceed 8m in height measured from the natural ground level;
  - (f) that the Municipality has adequate capacity to provide municipal services to the additional unit;
  - (g) it will not have a detrimental impact on conservation-worthy buildings, building complexes or streetscapes, and
  - (h) the applicant may be required to pay a bulk services contribution levy as may be determined by the Municipality from time to time.
- (4) Unless otherwise specified in the approval of the consent for a double dwelling house:
- (a) both dwelling units in a double dwelling house shall be designed to give the appearance of a single large dwelling house. Both units may have a ground storey, or one unit may be on the ground storey and one on the storey above.
  - (b) the applicant may be required to pay a bulk services contribution levy as may be determined by the Municipality from time to time.
- (5) The Municipality may stipulate minimum subdivision sizes and maximum density ratios for specified areas, as a requirement when considering the approval of building plans for a second dwelling unit or granting consent for a double dwelling house.
- (6) A second dwelling unit or one dwelling unit of a double dwelling house may not be separately alienated in terms of the Sectional Titles Act, 1986 (Act 95 of 1986) and shall not be deemed as sufficient reason for the Municipality to approve the subdivision of the land unit containing a second dwelling unit.
- (7) The Municipality may permit the erection of an outbuilding or second dwelling unit which encroaches into the lateral or rear building line subject to the following conditions:
- (a) no building shall exceed the height of 5,0m
  - (b) no door or window shall be permitted in any wall which is closer than 1,5m to the lateral or rear boundary concerned;
  - (c) an access way, other than through a building and at least 1m wide, shall be provided from a public street to every vacant portion of the land unit concerned, other than a court yard;
  - (d) no runoff of rainwater from the roof shall be discharged directly onto any adjoining property.
- (8) In circumstances where there is a zero lateral or rear building line, the following restrictions shall apply:

- (a) no door or window shall be permitted in any wall which is closer than 1,5m to the lateral or rear boundary concerned;
- (b) no runoff of rainwater from the roof shall discharge onto any adjoining land unit.

#### **50. Letting of rooms**

- (1) An owner or occupant of a dwelling house may let rooms to lodgers subject to the following conditions:
  - (a) the dominant use of the dwelling house or unit must be for the living accommodation of a single family;
  - (b) no more than five lodgers may be permitted to lodge on the property.
  - (c) every room let to lodgers shall have an entrance inside the dwelling house, and
  - (d) no self-sufficient accommodation may be provided and no cooking facilities, except kettles, may be provided in lodger rooms.
  - (e) Rooms may not be let to transient persons.

#### **51. Occupational practice**

- (1) An owner or occupant of a dwelling house may undertake an occupational practice subject to the conditions set out in Sub-section (a) to (r). Where an approval for an occupational practice consent use is required, it will be granted subject to the following conditions, unless otherwise specified in the conditions of approval:
  - (a) the dominant use of the dwelling house or unit shall be for the living accommodation of a single family;
  - (b) the occupational practice must clearly be secondary to the use of the dwelling unit for dwelling purposes and must not change the residential character of the dwelling unit or erf in any manner when seen from the abutting street or streets;
  - (c) where the occupational practice will be undertaken on a property that falls under the jurisdiction of a home owners' association, the written permission of such home owners' association shall be obtained before the occupational practice is commenced;
  - (d) the maximum floor-space of a house allowed for residential business purposes must not exceed 25% of the floor-space of the dwelling unit, while this floor space may not be more than 40m<sup>2</sup>;
  - (e) the economic activity must not result in the employment of more than two employees, and the employee(s) may not practice a profession as such from the premises;
  - (f) no portion of such dwelling, and no home occupation, shall be used for the purposes of a noxious trade, risk activity or sale of alcoholic beverages;
  - (g) the economic activity may not involve the breeding and keeping of animals, including birds and livestock for commercial purposes;
  - (h) the economic activity must not create interference with radio or television reception in the immediate vicinity of the dwelling unit;

- (i) the display of goods to the public, be it in a window or elsewhere is not allowed;
- (j) no advertising sign shall be displayed other than a single un-illuminated sign or notice not projecting over a street. Such sign shall not exceed 2 000cm<sup>2</sup> in area and shall indicate only the name, telephone number and profession or occupation of the occupant;
- (k) no more than one commercial vehicle, not exceeding 3 500kg gross weight, may be utilised for the occupational practice, provided that a vehicle used by an occupant exclusively for personal purposes shall not be regarded as a commercial vehicle;
- (l) the regular parking or storing of smaller vehicles used for transport of goods, materials, passengers, or otherwise is not allowed, unless it is registered in the applicant's own name or belong to bona fide visitors, during such a visit only;
- (m) the economic activity may not cause a traffic volume inconsistent with the normal traffic flow where the dwelling house or unit is situated;
- (n) on-site parking for clients and employees may be required to the satisfaction of the Municipality;
- (o) no products, goods, or supplies connected with the home occupation may be stored on the property outside a building;
- (p) the Municipality may specify the operating hours of the occupational practice;
- (q) the undertaking of an occupation in the single residential, incremental housing, agriculture or smallholding zones does not establish business rights to the premises in respect of those premises, and
- (r) the continued exercising of the rights mentioned above, will be subject to the approval of the Municipality in the case of complaints being received by the Municipality about the manner in which these rights are exercised.

## 52. Guest accommodation

- (1) Unless otherwise specified in the approval, an approval for a guest accommodation consent use is subject to the following conditions:
  - (a) the dominant use of the property must remain as a dwelling for the living accommodation of a single family;
  - (b) the owner and/or manager of the guest accommodation must reside on the property;
  - (c) no more than twelve rooms per land unit in total shall be used for bedroom accommodation for paying guests or lodgers and no more than 24 guests or lodgers shall be supplied with lodging or meals at any time. In granting its consent the Municipality will indicate the maximum number of rooms and guests that may be accommodated;
  - (d) no self-catering accommodation may be provided and no cooking facilities, except kettles, may be provided in guest rooms;
  - (e) a conference facility may be allowed with the specific consent of the Municipality;

- (f) meals may only be provided to guests or lodgers who have lodging at the guest accommodation;
  - (g) no advertising sign shall be displayed other than a single un-illuminated sign or notice not projecting over a street. Such sign shall not exceed 2 000cm<sup>2</sup> in area with no commercial advertising attached.
- (2) The consent for guest accommodation will be granted subject to the approval of a site development plan, which indicates as a minimum, the siting of existing and proposed buildings, access and egress, parking and drive way access.

### 53. Day care centres

- (1) Unless otherwise specified in the approval, an approval for a day care centre consent use is subject to the following conditions:
- (a) no more than 15 children shall be enrolled at the day care centre at a time;
  - (b) at least one toilet and one hand basin shall be available for the use of children attending the day care centre;
  - (c) a minimum area of indoor play space and outdoor place space shall be provided as follows:
    - (i) 1,8m<sup>2</sup> indoor play space per child, of which no more than one third may be enclosed veranda space, and
    - (ii) 4,5m<sup>2</sup> outdoor play space per child, to be fenced off from any public street;
  - (d) the services provided shall be primarily day care and educational and not medical;
  - (e) the services are not provided outside the hours of 06:00 to 18:00;
  - (f) the dominant use of the dwelling house shall remain for the living accommodation of a single family, and
  - (g) the Municipality shall be satisfied that drop-off and collection arrangements are adequate and will not cause undue traffic flow blockages in the immediate vicinity of the area.

### 54. House shops

- (1) The Cape Agulhas House shop By-Law must be considered for:
- (a) the storage or sale of gas and gas containers;
  - (b) the sale of any other flammable substances;
- (2) the use of vending machines, video games and pool tables are only permitted if allowed in terms of the consent approval;
- (3) no food may be produced or processed on the site;
- (4) only pre-packaged food from registered suppliers may be offered for sale;
- (5) perishable food stuffs, if frozen must be stored and displayed below -12°C and if cooled, below +7°C;
- (6) the Municipality may require on-site parking to its satisfaction;

- (7) consent to operate a house shop applies to particular land unit, and is not transferable to other land, and
- (8) the continued exercising of the rights mentioned above, will be subject to the approval of the Municipality in the case of complaints being received by the Municipality about the manner in which these rights are exercised, and the Municipality may revoke consent.

#### **55. Portable buildings**

- (1) Portable buildings must comply with the development parameters, including building lines, height and bulk restrictions that apply to the specific zone in question.
- (2) The Municipality reserves the right to order the screening to its satisfaction or removal of portable buildings, where such structures detract, in its opinion, from the amenity of the area.
- (3) The placement and use of portable buildings require approved building plans as per the requirements of the National Building Act, 1977 (Act 103 of 1977).
- (4) No more than one portable building per property will be permitted in residential zones.
- (5) The floor area of such portable building must not exceed 18m<sup>2</sup>.
- (6) Portable buildings used for residential purposes should be 18m<sup>2</sup> or larger

#### **56. House taverns**

- (1) Unless otherwise specified in the approval, an approval for a house tavern consent use is subject to the following conditions:
  - (a) the total area used for the house tavern on the property, including storage, shall not consist of more than 40% of the total floor area of the dwelling unit(s) on the property or 30m<sup>2</sup>, whichever is the lesser;
  - (b) in addition to the house tavern, the property must contain a dwelling house, which must be occupied by the proprietor or manager of the house tavern;
  - (c) the house tavern must be accommodated in a permanent structure;
  - (d) the applicant must take adequate measures to the satisfaction of Municipality to mitigate the following potential negative impacts:
    - (i) visual impact;
    - (ii) impact of built form;
    - (iii) impact on privacy of surrounding properties;
    - (iv) noise;
  - (e) the applicant must make adequate provision to the satisfaction of Municipality for the following:
    - (i) parking and loading;
    - (ii) disposal of garbage;
    - (iii) ablution facilities;
  - (f) provision must be made for all goods connected with the house tavern to be stored inside a building or screened from the neighbours and the street;

- (g) the Municipality may restrict the maximum number of patrons and number of staff related to the house tavern;
- (h) the Municipality may require structural alterations to the property for fire or health reasons and to ensure that the impact of the house tavern on neighbouring uses is minimised;
- (i) the following uses are not permitted in a house tavern except if allowed in terms of the consent approval: vending machines, gambling machines, video games, pool tables, amusement centre and discotheque;
- (j) a liquor license shall be obtained from the Western Cape Provincial Liquor Board in terms of the relevant legislation within a reasonable period of time from the granting of the consent. In the event of the liquor license being withdrawn or suspended, the Municipality's consent for the operation of a house tavern shall automatically lapse;
- (k) consent to operate a house tavern applies to a particular land unit, and is not transferable to another land unit;
- (l) no external evidence of the house tavern may be visible from the street, except for one un-illuminated sign, which shall be affixed to the wall of the dwelling or outbuilding, which may not exceed 2 000cm<sup>2</sup> in area and such sign shall indicate only the name of the owner, name of the business, and nature of the retail trade;
- (m) no house tavern may be authorized or established where its proximity to community uses, such as schools, places of worship, old age homes, crèches, public open spaces, hospitals, clinics, libraries, is likely to have a negative impact on the facility in the opinion of Municipality;
- (n) trading may only be conducted during the operating hours specified by the Municipality.

#### **57. Preservation of trees**

- (1) When an application is submitted in terms of this By-Law, the Municipal Manager may require the applicant to submit a plan of the land unit concerned showing any tree that is not classified under Section 2(3) of the Conservation of Agriculture Resources Act; 1983 (Act 43 of 1983) as an invader plant for the Western Cape, and that:
  - (a) is a protected tree listed under Section 12 of the National Forest Act, 1998 (Act 84 of 1998), or
  - (b) is taller than 6,0m, or
  - (c) has a trunk circumference of more than 1,5m at a height of one metre above the ground.
- (2) The Municipality may decide which trees it considers to be worthy of preservation and must indicate these when approving a plan referred to in Sub-section (1).
- (3) No person may damage, destroy, or remove any tree that has been indicated on a plan referred to in this By-Law as worthy of preservation except with the prior approval of the Municipal Manager.



## CHAPTER 9 REFUSE ROOMS AND SERVICE YARDS

### 58. Refuse Rooms

- (1) The Municipality may, for the purposes of collecting refuse, require the owner to install a refuse receptacle on a property and require the refuse receptacle to-
  - (a) be of sufficient size to accommodate the refuse generated from the property for one week;
  - (b) be located adjacent to a public street, or in a position which will provide acceptable access to a refuse collection vehicle;
  - (c) be designed in a manner that is architecturally compatible with the other structures on the property and will screen refuse bins from public view; and
  - (d) to comply with any other conditions or standard requirements that the Municipality may impose relating to access, health, pollution control, recycling, safety or aesthetics.

### 59. Service Yards

- (1) The Municipality may require the owner to install a screened area providing utility services, including washing lines, for residential developments.
- (2) The utility services must-
  - (a) be designed in a manner that is architecturally compatible with the other structures on the property and in the case of refuse bins must be screened from public view; and
  - (b) comply with any other conditions or standard requirements that the Municipality may impose relating to access, health, pollution control, safety, or aesthetics.

**SCHEDULE 1**  
**USE ZONES TABLE AND RECORD OF AMENDMENTS**

**A. USE ZONE TABLE**

*Table D: Use Zones*

ZONING	CODE	PRIMARY USE	CONSENT USE
<b>Single Residential</b>	<b>SR</b>		
<p>The purpose of this zone is:</p> <p>(1) to ensure healthy, safe and pleasant living conditions for single families living in separate dwelling units, and</p> <p>(2) to allow for limited opportunities for home-based economic activity, provided that the general character and amenity of the zone is not adversely affected.</p>		<ul style="list-style-type: none"> <li>• Dwelling house</li> <li>• Occupational practice</li> <li>• Second dwelling unit</li> <li>• Urban agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Day care centre</li> <li>• Guest accommodation</li> <li>• Double dwelling house</li> <li>• House shop</li> <li>• House tavern</li> <li>• Renewable energy structure</li> </ul>
<b>Medium Density Residential</b>	<b>MDR</b>		
<p>The purpose of this zone is:</p> <p>(1) promote and regulate medium density residential development, such as group housing or town house schemes, and</p> <p>(2) to ensure that adequate provision is made for open space, community facilities, traffic circulation and parking.</p>		<ul style="list-style-type: none"> <li>• Group housing</li> <li>• Town housing</li> <li>• Retirement village</li> <li>• Occupational practice</li> </ul>	<ul style="list-style-type: none"> <li>• Institutional building</li> <li>• Double dwelling house</li> <li>• Flats</li> <li>• Renewable energy structure</li> </ul>

ZONING	CODE	PRIMARY USE	CONSENT USE
<b>High Density Residential</b>	<b>HDR</b>		
The purpose of this zone is to provide for high density residential development, such as flats. Limited mixed-use development may be allowed with the consent of the Municipality.		<ul style="list-style-type: none"> <li>• Flats</li> <li>• Group housing</li> <li>• Town housing</li> <li>• Retirement village</li> <li>• Residential building</li> <li>• Occupational practice</li> </ul>	<ul style="list-style-type: none"> <li>• Business on the ground floor</li> <li>• Guest accommodation</li> <li>• Institutional building</li> <li>• Hotel</li> <li>• Place of assembly</li> <li>• Place of instruction</li> <li>• Dwelling house</li> <li>• Double dwelling house</li> <li>• Rooftop base station</li> <li>• Renewable energy structure</li> </ul>
<b>Incremental Housing</b>	<b>IH</b>		
The purpose of this zone is to provide for upgrading of housing from informal settlements to formal settlements. In recognition of the realities of poor and marginalised communities, development parameters are not restrictive and local employment generation is encouraged within this zone. Once upgrading of an area has reached an appropriate stage, as determined by the Municipality, it is contemplated that the area may be rezoned to Single Residential Zone or another zone.		<ul style="list-style-type: none"> <li>• Dwelling house</li> <li>• Second dwelling unit</li> <li>• Occupational practice</li> <li>• House shop</li> <li>• Shelter</li> <li>• Urban agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Guest accommodation</li> <li>• House tavern</li> <li>• Day care centre</li> <li>• Double dwelling house</li> <li>• Place of instruction</li> </ul>
<b>Business</b>	<b>B</b>		
The purpose of this zone is to provide for the establishment of mixed uses in business nodes and along activity streets.		<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Flats (provided that flats may only be provided above ground floor along a street boundary)</li> <li>• Public parking</li> </ul>	<ul style="list-style-type: none"> <li>• Warehouse</li> <li>• Place of worship</li> <li>• Guest accommodation</li> <li>• Residential building</li> <li>• Service trade</li> <li>• Bottle store</li> <li>• Supermarket</li> </ul>

ZONING	CODE	PRIMARY USE	CONSENT USE
		<ul style="list-style-type: none"> <li>• Place of entertainment</li> <li>• Restaurant</li> <li>• Hotel</li> <li>• Gymnasium</li> <li>• Funeral parlour</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Gambling machine</li> <li>• Pornographic entertainment business</li> <li>• Place of instruction</li> <li>• Place of assembly</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>
<b>Local Business</b>	<b>LB</b>		
The purpose of this zone is to provide for a mix of uses in local business nodes and along activity streets, as well as for convenience stores.		<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Flats</li> <li>• Public parking</li> <li>• Restaurant</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Service trade</li> <li>• Place of assembly</li> <li>• Place of entertainment</li> <li>• Place of instruction</li> <li>• Place of worship</li> <li>• Funeral parlour</li> <li>• Guest accommodation</li> <li>• Hotel</li> <li>• Residential building</li> <li>• Bottle store</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>
<b>Service Business</b>	<b>SB</b>		
The purpose of this zone is to allow for the transitional area between business and industrial uses, and in particular for service trade, motor repair garages, and low impact, small-scale industry and manufacturing, factory shops and warehousing.		<ul style="list-style-type: none"> <li>• Light Industry</li> <li>• Service trade</li> <li>• Motor repair garage</li> <li>• Business premises</li> <li>• Warehouse</li> <li>• Public Parking</li> <li>• Place of entertainment</li> <li>• Restaurant</li> <li>• Gymnasium</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Place of Worship</li> <li>• Place of Instruction</li> <li>• Scrapyard and salvage buildings</li> <li>• Flats (above ground floor)</li> <li>• Transport usage</li> <li>• Pornographic entertainment business</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>
<b>Service Station</b>	<b>SS</b>		
The purpose of this zone is to provide opportunities for petrol filling stations, service stations, motor repair garages and associated facilities.		<ul style="list-style-type: none"> <li>• Service station</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Restaurant</li> <li>• Motor repair garage</li> <li>• Shop</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>

ZONING	CODE	PRIMARY USE	CONSENT USE
These have specific vehicle access requirements and potential negative impacts on the adjoining area.			
<b>Noxious Industry</b>	<b>NI</b>		
The purpose of this zone is to provide for industries which are noxious in terms of emissions, run-off, smell or solid waste storage or disposal, or for any other reason regarded as such and which carry a high risk in the case of fire or accidents.		<ul style="list-style-type: none"> <li>• Noxious trade</li> <li>• Spray painting and motor vehicle body repair shop</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Industry</li> <li>• Service trade</li> <li>• Warehouse</li> <li>• Public parking</li> <li>• Shop</li> <li>• Waste disposal site</li> <li>• Scrap yard and salvage building</li> <li>• Crematorium</li> <li>• Aquaculture</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>
<b>Mining</b>	<b>M</b>		
The purpose of this zone is to provide for the extraction of minerals and raw materials and to allow for limited associated business operations.		<ul style="list-style-type: none"> <li>• Mining</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Industry</li> <li>• Noxious trade</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>
<b>Civic and Social</b>	<b>CS</b>		
The purpose of this zone is to provide for uses directed at serving community needs related to education, religion, health, social interaction, and recreation. Some of these uses require only consent in zones such as business and service business. However, where it is considered that such uses may potentially have a significant impact on surrounding uses, in residential areas for instance, rezoning will be required.		<ul style="list-style-type: none"> <li>• Place of instruction</li> <li>• Place of worship</li> <li>• Institutional building</li> <li>• Public open space</li> <li>• Urban agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Conference facility</li> <li>• Cemetery</li> <li>• Dwelling house</li> <li>• Place of assembly</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> </ul>

ZONING	CODE	PRIMARY USE	CONSENT USE
<b>Authority Usage</b>	<b>AU</b>		
<p>The purpose of this zone is to provide for such uses related to all spheres of government, which do not readily fall into any other use zone, such as prisons, military installations, electricity substations, etc. However, the general principle should be that land used by any sphere of government should be classified according to its use and not ownership. The zone also provides for the mitigation of the impact of such government uses on surrounding areas.</p>		<ul style="list-style-type: none"> <li>• Authority usage</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• As may be determined by the Municipality</li> <li>• Transmission tower</li> </ul>
<b>Transport Usage</b>	<b>TU</b>		
<p>The purpose of this zone is to reserve land for transportation systems, excluding private roads and public streets, but including all other transport undertakings such as airports, heliports, harbours, railway lines, bus depots, taxi ranks, cable car stations and modal interchanges.</p>		<ul style="list-style-type: none"> <li>• Transport usage</li> <li>• Public parking</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Restaurant</li> <li>• Warehouse</li> <li>• Industry</li> <li>• Service trade</li> <li>• Service station</li> <li>• Place of entertainment</li> <li>• Place of assembly</li> <li>• Institutional building</li> <li>• Motor repair garage</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>
<b>Street</b>	<b>S</b>		
<p>The purpose of this zone is to provide for public and private roads and streets, whether existing or to be constructed.</p>		<ul style="list-style-type: none"> <li>• Public street</li> <li>• Private road</li> <li>• Public parking</li> <li>• Private parking</li> </ul>	

<b>Parking</b>	<b>P</b>		
The purpose of this zone is to provide for parking of operable motor vehicles on a temporary basis in order to meet a parking demand, with or without a fee. Such parking may be provided in buildings as well as open parking lots and may be privately or publicly owned. This zone should be used where only parking is required as a primary use and other uses need to be restricted.		<ul style="list-style-type: none"> <li>• Public parking</li> <li>• Private parking</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Transmission tower</li> </ul>
<b>Nature Conservation Area</b>	<b>NCA</b>		
The purpose of this zone is to provide for open spaces that are not actively used for recreational purposes, but form part of the visual amenity of an area and play an ecological or conservation role. Consent for limited tourism related uses may be granted in such zones.		<ul style="list-style-type: none"> <li>• Nature conservation</li> <li>• One dwelling unit</li> <li>• Public open space</li> <li>• Private open space</li> </ul>	<ul style="list-style-type: none"> <li>• 4x4 trail</li> <li>• Place of instruction</li> <li>• Tourist facilities</li> <li>• Holiday accommodation</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> </ul>
<b>Open Space</b>	<b>OS</b>		
The purpose of this zone is to provide for active and passive open space and public spaces in urban areas. This may include spaces that are intensively landscaped (green) and which are used for recreational purposes, and which add to the amenity of an area, or spaces that may be used for a variety of community and commercial uses on a non-permanent basis such as informal trading, periodical markets, con-certs or public meetings.		<ul style="list-style-type: none"> <li>• Public open space</li> <li>• Private open space</li> <li>• Urban agriculture</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Cemetery</li> <li>• Place of worship</li> <li>• Place of assembly</li> <li>• Crematorium</li> <li>• Informal trading</li> <li>• Institutional building</li> <li>• Place of instruction</li> <li>• Restaurant</li> <li>• Boat launching facility</li> <li>• Transmission tower</li> <li>• Container facility</li> </ul>

<b>Resort</b>	<b>R</b>		
<p>The purpose of this zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes so as to encourage access to these facilities by the general public.</p>		<ul style="list-style-type: none"> <li>• Holiday accommodation</li> <li>• Nature conservation</li> <li>• Open space</li> <li>• Conference facility</li> </ul>	<ul style="list-style-type: none"> <li>• Tourist facilities</li> <li>• Hotel</li> <li>• Transmission tower</li> <li>• Rooftop base station</li> <li>• Renewable energy structure</li> </ul>
<b>Agriculture</b>	<b>A</b>		
<p>The purpose of this zone is to provide for and protect agricultural activities and viable agricultural units as an important economic, environmental and cultural resource. Provision is made for non-agricultural activities, in particular tourism related activities, so as to allow for the realisation of the optimum economic potential of agricultural properties, provided that these do not have a significant impact on the agricultural resource base. Environmental management plans should be required for tourism related uses, such as 4X4 trails, as well as other uses that may in the opinion of the Municipality have a potentially significant impact on the resource base.</p> <p>It includes:-</p> <p>(1) Harvesting, cooling, storing, sorting, packing and packaging of agricultural produce grown on that land unit and surrounding or nearby farms</p> <p>(2) Harvesting of natural resources limited to living organisms for</p>		<ul style="list-style-type: none"> <li>• Agriculture</li> <li>• Occupational practice</li> <li>• Dwelling house</li> <li>• Intensive horticulture</li> <li>• Intensive animal farming</li> <li>• Dwelling unit for use by bona fide farm manager</li> <li>• Farm worker accommodation</li> </ul>	<ul style="list-style-type: none"> <li>• Second dwelling unit</li> <li>• Guest accommodation</li> <li>• Farm shop</li> <li>• Farm stall</li> <li>• Restaurant</li> <li>• Tourist facilities</li> <li>• Riding school</li> <li>• Plant nursery</li> <li>• 4x4 trail</li> <li>• Commercial kennels</li> <li>• Aquaculture</li> <li>• Service industry</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>



<p>delivery to the market</p> <p>(3) Agricultural buildings or infrastructure that are reasonably connected with the main farming activities, including a dwelling house, agricultural worker accommodation and rooftop base telecommunication stations</p> <p>(4) A camping site limited to a maximum of 10 tent or caravan stands subject to the development parameters applicable to 'tourist accommodation', provided further that a consent use must be applied for the following cases:</p> <ul style="list-style-type: none"> <li>(a) The property is smaller than 1Ha;</li> <li>(b) The property is situated within 1km of the high water mark of the ocean or a tidal river; and</li> <li>(c) More than 10 tent or caravan stands are applied for</li> </ul> <p>(5) Linear infrastructure</p> <p>(6) Agricultural industry; and</p> <p>(7) Does not include aquaculture, an abattoir, farm shop, animal care center, any mining activity, utility services and renewable energy structures for commercial purposes</p>			
---	--	--	--

Agricultural Processing	AP		
<p>The purpose of this zone is to make provision for the processing of agricultural products on farms or portions of farms where such processing may, in the Municipality's opinion, potentially impact negatively on the amenity of the surrounding area in terms of the size or intensity of the activity, but for reasons of efficiency these activities are best situated within an agricultural area, as opposed to an urban or industrial area. The use category "agricultural industry" has a different meaning to "agriculture" to protect the agricultural resource base and amenity of agricultural areas.</p> <p>It includes;-</p> <p>(1) An enterprise for the processing of agricultural products of which the majority of the products are sourced from that land unit and if not produced on that land unit, then from the land units farmed by the owners of the enterprise with a minority of the products sourced from the surrounding or nearby farms</p> <p>(2) Includes a winery, dairy distillery, the bottling of water, a sawmill; and</p>		<ul style="list-style-type: none"> <li>• Agricultural industry</li> <li>• Abattoir</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Tourist facilities</li> <li>• Farm shop</li> <li>• Farm stall</li> <li>• Aquaculture</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>

<b>Smallholdings</b>	<b>SH</b>		
<p>The purpose of this zone is to accommodate larger residential properties which may be used for limited agriculture, but primarily serve as places of residence for people who seek a rural lifestyle. Such properties often occur close to towns and villages and should only occur within a demarcated urban edge. Development of this type should conform to provincial policy on the establishment of agricultural smallholdings in the urban fringe.</p>		<ul style="list-style-type: none"> <li>• Agriculture</li> <li>• Dwelling house</li> <li>• Second dwelling unit</li> <li>• Occupational practice</li> </ul>	<ul style="list-style-type: none"> <li>• Guest accommodation</li> <li>• Tourist facilities</li> <li>• Riding school</li> <li>• Plant nursery</li> <li>• Intensive horticulture</li> <li>• Commercial kennels</li> <li>• Service industry</li> </ul>
<b>Undetermined</b>	<b>U</b>		
<p>The purpose of this zone is to enable the Municipality to defer a decision regarding a specific land use and development parameters until the circumstances affecting the land unit have been properly investigated; or until the owner of the land makes an application for rezoning; or a zoning determination is made by Municipality.</p>			
<b>Special</b>	<b>SP</b>		
<p>The objective of this zone is to provide for circumstances where special or unique factors justify the creation of specific development parameters for a specific site or sites without justifying the creation of a new zone in this By-Law. In addition, it provides an</p>		<ul style="list-style-type: none"> <li>• Special usage</li> </ul>	<ul style="list-style-type: none"> <li>• Any use specified by the Municipality</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> </ul>

<p>opportunity to introduce collaboration between the Municipality and the owner/developer in the development process. It allows for unforeseen or special circumstances where it is not possible to accommodate the use or activity in an existing use zone, and it allows for innovative design, architectural styles, building forms and site layout.</p>			
<b>Sub-divisional Area</b>	<b>SA</b>		
<p>The objective of this zone is to designate land where future subdivision and development rights are granted in terms of the Land Use By-Law and LUPA, as the case may be subject to conditions including the submission of a detailed subdivision application.</p>			
<b>Heritage Conservation Overlay Zone</b>	<b>HCO</b>		
<p>The heritage conservation overlay provides for the protection of the heritage resources in specific areas in the Cape Agulhas Municipality. As such the overlay zone is not so much concerned with the use of land, but the impact of land use changes, or any construction work, landscaping or any other action on conservation-worthy resources such as historic buildings or streetscapes. The overlay zone provides for the legislation and management of such changes.</p>			

Scenic Drive Overlay Zone	SDO		
<p>The purpose of the Scenic Drive Overlay Zone is to protect, conserve and enhance the scenic resources adjacent to important tourist and transport routes. The visual amenity of specific routes in the Cape Agulhas Municipality is a significant resource that should be protected in order to ensure the quality of the environment as a whole, as well as promote the tourism and recreational potential of the Municipal area. It is therefore important that development, in particular along tourist routes, be managed to prevent development that may detract from the natural beauty of the landscape or cultural significance of the built environment. This zone is directed at protecting views of scenic beauty alongside designated roads, while at the same time allowing reasonable development to occur. The Scenic Drive Overlay Zone should therefore ensure that new development is managed in a sensitive manner so that important views from the scenic drive are not impaired.</p>			

<b>Urban Renewal Overlay Zone</b>	<b>URO</b>		
<p>The purpose of the zone is to provide for development incentives so as to encourage investment in specific areas in the Cape Agulhas Municipality in accordance with the Integrated Development Plan, Spatial Development Framework, or any other Municipal policy. The overlay zone allows for the introduction of a variety of incentives to promote investment and development.</p>			
<b>Urban Edge Overlay Zone</b>	<b>UEO</b>		
<p>The purpose of this zone is:-</p> <ol style="list-style-type: none"> <li>(1) To demarcate the outer edge of urban areas in order to contain urban sprawl, promote densification within urban areas and to allow for the application of different development parameters in relation to rural and conservation areas beyond the urban edge;</li> <li>(2) To ensure a sensitive transition between urban areas and rural or conservation areas; and</li> <li>(3) To protect valuable natural, agricultural and rural landscapes and resources adjacent to urban development</li> </ol>			

Intermediate Housing Overlay Zone	IHO		
<p>The Intermediate Housing Overlay Zone recognises the reality that many of the residents of the Cape Agulhas Municipality do not live in permanent housing structures and that this situation is likely to persist for the foreseeable future, until housing delivery has caught up with demand for housing. The zone provides for areas designated by the Municipality where informal housing structures will be allowed, with a view to formalising such areas over time. As such housing becomes formalised the overlay zone will no longer be applicable, but the zoning will now relate to the permanent use of the land.</p>		<ul style="list-style-type: none"> <li>• Dwelling house</li> <li>• Second dwelling unit</li> <li>• Occupational practice</li> <li>• House shop</li> <li>• Shelter</li> </ul>	<ul style="list-style-type: none"> <li>• Guest accommodation</li> <li>• House tavern</li> <li>• Day care centre</li> <li>• Place of instruction</li> </ul>
Local Area Overlay Zone	LAO		
<p>The purpose of the Local Area Overlay Zone is to provide the opportunity for communities to determine specific local development management provisions to reflect local circumstances. It is recognised that different communities may have different requirements, and that local area identities add to the diversity and richness of the urban and social fabric. The Local Area Overlay Zone also provides the Municipality with the opportunity to</p>			

determine specific local development management provisions to encourage development in support of the local economy.			
--	--	--	--

## B. RECORD OF AMENDMENTS

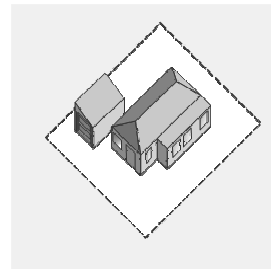
*Table E: Record of Amendments*

Page Description or Number	Date of latest Issue



**SCHEDULE 2  
DEVELOPMENT PARAMETERS**

**SINGLE RESIDENTIAL**



**1. Designation**

The Single Residential Zone may be referred to by the code “SR” and must be indicated on a zoning map in yellow.

**2. Purpose of the Zone**

The purpose of this zone is:

- (1) to ensure healthy, safe and pleasant living conditions for single families living in separate dwelling units, and
- (2) to allow for limited opportunities for home-based economic activity, provided that the general character and amenity of the zone is not adversely affected.

**3. Policy Guidelines**

- (1) In considering applications for consent uses, the Municipality must refer to all approved Spatial Development Framework and other statutory plans, to ensure that these uses are appropriately located.
- (2) Informal housing is not permitted in this zone. Informal housing will be provided for in the Incremental Housing zone as well as an overlay zone to facilitate the rezoning of those areas to this zone once the informal housing complies with the parameters of formal housing.

**4. Land Use within Zone**

- (1) The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Dwelling house</li> <li>• Occupational practice</li> <li>• Second dwelling unit</li> <li>• Urban agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Day care centre</li> <li>• Guest accommodation</li> <li>• Double dwelling house</li> <li>• House shop</li> <li>• House tavern</li> <li>• Renewable energy structure</li> </ul>

- (2) The Municipality may allow the use of a dwelling house or dwelling unit for overnight accommodation for transient guests, through a consent use application, provided that such use does not cause an undue disturbance to the neighbourhood. he continued use of the property for self-catering

accommodation will be subject to the approval of the Municipality in the case of complaints being received by the Municipality about the manner in which these rights are exercised, and the Municipality may revoke such rights at its discretion, or alternatively, set conditions to control the use of the property for self-catering accommodation.

**5. Development Parameters**

(1) The following development parameters apply to buildings in this zone:

Erf Size	Max. Coverage	Max. Height	Street Building Line		Lateral Building Lines			Rear Building Lines
Less than or equal to 150m <sup>2</sup>	80%	8,5m from highest point of the natural ground level immediately adjacent to the building provided that if the building is situated on a slope it may at no point exceed 10 m when measured from the natural ground level immediately adjacent to that point.	1m		Avg. width of less than 13m: 1m from one lateral boundary and zero from the other	Avg. width of 13m – 20m: 1.5m	Avg. width of more than 20m: 2m	1m
Greater than 150m <sup>2</sup> but not more than 250m <sup>2</sup>	75%		2m					1m
Greater than 250m <sup>2</sup> but not more than 500m <sup>2</sup>	60%		2.5m					1m
Greater than 500m <sup>2</sup>	50%		Avg. depth of less than 20m: 3m	Avg. depth of 20m or more: 4m				Avg. width of 20m or more: 2m

(2) For outbuildings only used for the storage of vehicles and goods, the lateral and rear building lines are 1,5m, where the provisions above are more restrictive.

**6. Building Lines**

A 5,0m street building line is required where the street boundary abuts a declared road.

**7. Minimum Subdivision Area**

A zoning map may designate areas within this zone within which subdivisions will not be permitted unless the net area of each land unit created by the subdivision and any remainder, to be zoned as Single Residential, is not less than a minimum size specified in the zoning map.

**8. Maximum Density**

- (1) A zoning map may designate areas within this zone within which a maximum density is specified for a land unit, area or precinct and no development that will result in this maximum density being exceeded, will be authorised.
- (2) No landowner or occupier of land may exceed the maximum density specified in a zoning map.

**9. Window and Door Placement**

- (1) Any wall of a building which contains a window or door facing directly onto a lateral or rear boundary, shall be placed a distance of at least 1,0 m away from that boundary.
- (2) In addition to Sub-section (1), sections related to fire protection as promulgated by the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1997) as amended, will be applicable.

**10. Rainwater Harvesting**

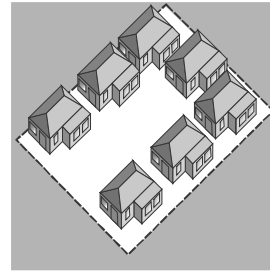
- (1) The Municipality may require a person who applies for land to be zoned or rezoned into this zone to undertake rainwater harvesting to the satisfaction of the Municipality.
- (2) If the Municipality imposes a condition in respect of rainwater harvesting, it:
  - (a) must approve the placement of the storage facility;
  - (b) may require the screening of such facilities to its satisfaction;
  - (c) may not exceed the wall plate of single storey dwellings or the first floor level of multi-level dwellings; and
  - (d) should adhere to 1m building lines.

**11. Renewable Energy**

The Municipality may require a person who applies for land to be zoned or rezoned to this zone to use renewable energy sources in the development and use of the property, such as solar water heating, or to install devices designed to conserve energy in the use of the property to the satisfaction of the Municipality.

- (1) If the Municipality imposes a condition in respect of wind turbines, it:
  - (a) All neighbours should give consent;
  - (b) All wind turbines should be erected on ground level;
  - (c) The height should not exceed 1m from the roof of the building; and
  - (d) Should conform to the normal building lines applicable to the property.

**MEDIUM DENSITY RESIDENTIAL**



**12. Designation**

The Medium Density Residential Zone may be referred to by the code “MDR” and must be indicated on a zoning map in yellow with black hatching.

**13. Purpose of the Zone**

The purpose of the Zone is:

- (1) to promote and regulate medium density residential development, such as group housing or town house schemes, and
- (2) to ensure that adequate provision is made for open space, community facilities, traffic circulation and parking.

**14. Policy Guidelines**

The design of the dwelling units, communal spaces and circulation areas must result in a harmonious architectural entity, and attention must be given to aesthetics, urban design and landscaping.

**15. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Group housing</li> <li>• Town housing</li> <li>• Retirement village</li> <li>• Occupational practice</li> </ul>	<ul style="list-style-type: none"> <li>• Institutional building</li> <li>• Double dwelling house</li> <li>• Flats</li> <li>• Renewable energy structure</li> </ul>

**16. Development Parameters**

The following development parameters shall apply to buildings in this zone:

Maximum gross density	Maximum height	Street building line	Lateral and rear building lines	Garages
40 dwelling units per hectare, provided that the Municipality is satisfied that environmental,	8,0m from the highest point of the natural ground level immediately adjacent to the building provided that	4,0m along external roads, 0m along internal roads, unless a more restrictive building line is required to	0m, provided that no doors and windows are permitted and in the case of erven abutting another zone,	0m set back from the internal street boundary and 4 m set back from an external street boundary

<p>aesthetic, planning or topographical concerns are adequately addressed.</p>	<p>where the building is situated on a slope it may at no point exceed 10m when measured from the natural ground level immediately adjacent to that point.</p>	<p>accommodate traffic flow.</p>	<p>the building line of the last mentioned zone shall apply, or unless otherwise required for firefighting purposes by the Municipality.</p>	<p>provided that 2 parking areas are provided on the site.</p>
--	--	----------------------------------	--	--

**17. Building Lines**

A 5,0m street building line is required where the street boundary abuts a declared road.

**18. Open Space**

- (1) Each dwelling unit shall have access to an outdoor living area, which may include private, public, or communal open space but excludes roads, service yards and parking areas.
- (2) A minimum outdoor living area of 25m<sup>2</sup> or 25% of the floor area of the dwelling unit, whichever is the greatest, shall be provided on the erf containing the dwelling unit, and a minimum of 50m<sup>2</sup> per dwelling unit shall be provided as public or communal open space within the medium density housing site. Circulation space in the form of internal roads and pathways may constitute 50% of such communal space.
- (3) Where there is no distinction between public or communal open space, and outdoor living area is provided on each erf, the open space requirements shall be replaced by a combined open space requirement of at least 100m<sup>2</sup> per dwelling unit within the medium density housing site. Circulation space in the form of internal roads and pathway may constitute 50% of such communal space.
- (4) Outdoor living areas shall be provided in a form which shall not exceed a ratio of 2:1 (length to width), and which in the opinion of the Municipality, can be effectively used as open space.
- (5) Garages and carports shall be excluded in the calculation of floor space for the purpose of determining the area of outdoor living area.
- (6) A landscape plan shall be prepared to the satisfaction of the Municipality.

**19. Service Yard**

- (1) A service yard shall be provided for each dwelling unit, or a combined service yard may be provided for several units.

- (2) Service yards must be of an adequate area to accommodate a washing line and must be screened from the communal area by a wall, to the satisfaction of the Municipality.

#### **20. Internal Road Width**

The minimum internal road reserve width is 6,0m, but the Municipality may require a greater road reserve width where it is of the opinion that the vehicular use or length of road justifies such greater road reserve width.

#### **21. Minimum Property Size**

The minimum property size for applications to rezone and subdivide a property to this zone is 2500m<sup>2</sup>, except where an approved spatial development framework provides an alternative guideline.

#### **22. Site Development Plan**

- (1) The Municipality may require a person who applies for land to be zoned or rezoned to this zone or for approval of a consent use, to submit a site development plan for approval by the Municipality.
- (2) The Municipality:
  - (a) may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, landscaping, engineering services and other matters relevant to achieving the purposes and objects of the zone and of the Zoning Scheme, but
  - (b) may not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval.
- (3) The Municipality may require-
  - (a) that any development in this zone be fenced in a style that is in keeping with the architectural style of the development and may prohibit the use of any material they perceive to be undesirable to be used as fencing.
  - (b) adequate provision has been made outside any walls surrounding the additional group housing scheme for landscaping, either on the medium density housing site, in the road reserve, or on public open space in the vicinity of the medium density housing site;
  - (c) any boundary walls or fences situated between the additional group housing site and a public street, must be designed, and constructed to allow adequate visual contact between the additional medium density site and the public street, and
  - (d) a plan must be prepared which co-ordinates the provision of public amenities, including community facilities, public streets, open space and public transport requirements, to the satisfaction of the Municipality.

**23. Homeowners' Association**

The Municipality may require the developer of a medium density housing scheme:

- (1) to establish a homeowners' association and for each erf to be part thereof, prior to the transfer of the subdivided portions, and
- (2) to submit the constitution of such homeowners' association to the Municipality for approval.

**24. Occupational Practice**

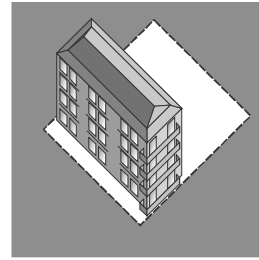
Occupational practice may be exercised in this zone provided that:

- (1) the owner has obtained the permission of a relevant homeowners' association, and
- (2) the Municipality may at any time impose conditions that may include or be more restrictive than the conditions stipulated in Part Four of this By-Law.

**HIGH DENSITY RESIDENTIAL**

**25. Designation**

The High Density Residential Zone may be referred to by the code “HDR” and must be indicated on a zoning map in orange.



**26. Purpose of the Zone**

The purpose of this zone is to provide for high density residential development, such as flats.

**27. Policy Guidelines**

Note that this zone has particular locational requirements, such as proximity to public transport, amenities, and socio-economic opportunities, as might be prescribed by the relevant strategic plans applicable to the site.

**28. Land Use within Zone**

(1) The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Flats</li> <li>• Group housing</li> <li>• Town housing</li> <li>• Retirement village</li> <li>• Residential building</li> <li>• Occupational practice</li> </ul>	<ul style="list-style-type: none"> <li>• Business on the ground floor</li> <li>• Guest accommodation</li> <li>• Institutional building</li> <li>• Hotel</li> <li>• Place of assembly</li> <li>• Place of instruction</li> <li>• Dwelling house</li> <li>• Double dwelling house</li> <li>• Rooftop base station</li> <li>• Renewable energy structure</li> </ul>

(2) Where premises for the rendering of personal services such as a beauty salon, are included in a hotel development, the floor area used for such purposes shall not exceed 10% of the total floor area of the hotel.

(3) The support structure or equipment room of a rooftop base station that is not part of the building, may not extend more than 2,5m above the top of the building.



**29. Development parameters**

The following development parameters shall apply to buildings in this zone:

<b>Floor factor</b>	<b>Maximum coverage</b>	<b>Maximum height</b>	<b>Street building line</b>	<b>Lateral and rear building lines</b>
2.5	50%	12m from highest point of the natural ground level immediately adjacent to the building provided that where the building is situated on a slope, it may at no point exceed 15m when measured from the natural ground level immediately adjacent to that point.	5,0m	4,5m or half the height of the building, whichever is more restrictive.

**30. Open Space**

- (1) Every block of flats, residential building or hotel in this zone shall have access to an outdoor living area on the land unit, which may include private or communal open space, but excludes roads, service yards and parking areas.
- (2) A minimum outdoor living area of 15% of the net erf area shall be provided, and such outdoor living area must be of reasonable proportions and located to allow for leisure or recreational use by residents.
- (3) The Municipality may consider a relaxation of the open space requirements, if, in its opinion, adequate open space in the form of public open space is accessible within reasonable proximity to the site.
- (4) Where the Municipality concedes a relaxation of the open space requirements in terms of Sub-section (3) it may require a reasonable levy as contribution to the development and maintenance of public open spaces.

**31. Minimum Property Size**

The minimum property size for applications to rezone a property to this zone is 1000m<sup>2</sup>.

**32. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction, provided that:

- (1) the Municipality may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, landscaping, engineering services or similar concerns, and

- (2) the Municipality shall not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval.

**33. Homeowners' Association**

- (1) The Municipality may require the developer of any site in this zone to establish a homeowners' association, prior to the transfer of portions of such development.
- (2) The constitution of such homeowners' association must be submitted to the satisfaction of the Municipality.

**34. Group Housing, Town Housing, Retirement Village**

The development parameters applicable to the Medium Density Residential Zone apply to town housing, group housing and retirement villages in this zone.

**35. Institutional Building, Place of Instruction, Place of Assembly**

The development parameters, including parking requirements that apply to an institutional building or place of instruction or place of assembly in the Civic and Social Zone shall apply in this zone. However, in cases where the institutional building, place of instruction or place of assembly is situated within a building that is also used for flats, then the coverage, height and building line requirements for the flats shall apply.

**36. Occupational Practice**

Occupational practice may be exercised in this zone provided that:

- (1) the owner has obtained the permission of a relevant homeowners' association, and
- (2) the Municipality may at any time impose conditions that may include or be more restrictive than the conditions stipulated in Part Four of this By-Law.

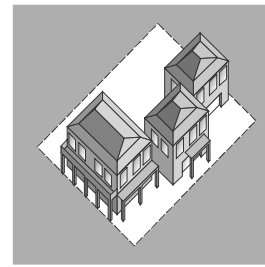
**37. Business**

The Municipality may grant its consent for a business to be incorporated within the ground floor of a block of flats, provided that the gross leasable area of the business does not exceed 50m<sup>2</sup>, or 25% of the floor space of the ground floor, whichever is the lesser.

**BUSINESS**

**38. Designation**

The Business Zone may be referred to by the code “B” and must be indicated on a zoning map in blue.



**39. Purpose of the Zone**

The purpose of the zone is to provide for the establishment of mixed uses in business nodes and along activity streets.

**40. Land Use within Zone**

(1) The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Flats (provided that flats may only be provided above ground floor along a street boundary)</li> <li>• Public parking</li> <li>• Place of entertainment</li> <li>• Restaurant</li> <li>• Hotel</li> <li>• Gymnasium</li> <li>• Funeral parlour</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Warehouse</li> <li>• Place of worship</li> <li>• Guest accommodation</li> <li>• Residential building</li> <li>• Service trade</li> <li>• Bottle store</li> <li>• Supermarket</li> <li>• Gambling machine</li> <li>• Pornographic entertainment business</li> <li>• Place of instruction</li> <li>• Place of assembly</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>

(2) Where a property in this zone has two street boundaries, flats may be provided on the ground floor facing onto one of the street boundaries and the Municipality will decide which of the two street boundaries may accommodate flats.

(3) Where premises for the rendering of personal services such as a beauty salon, are included in a hotel development, the floor area used for such purposes shall not exceed 10% of the total floor area of the hotel.

**41. Development Parameters**

(1) The following development parameters apply to buildings in this zone:

Floor Factor	Coverage	Height	Street building line	Lateral and Rear building lines
5.0	100%	16m from highest point of the natural ground level immediately adjacent to the building, provided that where the building is situated on a slope it may at no point exceed 20m when measured from the natural ground level immediately adjacent to that point.	0m	0m, provided that no doors, windows, ventilations or other openings are inserted.  Where a lateral or rear boundary of a property in this zone abuts a residential zone, the building line shall be 3m from the lateral or rear boundary adjacent to the residential zone.

(2) The Municipality may waive the requirement of a 3,0m lateral building line where a business property abuts a residential property, in circumstances where such a residential property is situated within an area clearly earmarked for future business use in an approved spatial development framework.

**42. Canopy or Balcony Projection**

(1) The Municipality may require, and may permit, a canopy or balcony projection over the street boundary in accordance with the following conditions:

- (a) the canopy shall not project nearer than 500mm to a vertical plane through the kerb line or proposed kerb line;
- (b) no portion of a canopy projection shall be less than 3,0m above the pavement.

(2) The Municipality may lay down more restrictive requirements relating to the dimensions, design and materials of the canopy or balcony.

**43. Building Projection Over the Street Boundary**

Notwithstanding the street building line, the Municipality may permit a projection of the building over the street boundary subject to the following conditions:

- (1) the projection may not exceed the width of the pavement within the road reserve or 3,0m, whichever is the lesser distance;
- (2) the ground floor level of the projection shall be used exclusively as a public pedestrian way, with or without a colonnade;

- (3) the projection shall provide at least 2,8m clearance above the level of the pavement;
- (4) the floor space of the additional storey that may be erected over the ground floor level of the projection, shall not be included in the calculation of maximum floor space; and
- (5) the owner must enter into an encroachment agreement with the Municipality.

#### **44. Street Corners**

The Municipality may require that the owner of a building, to be situated at a public street corner that the Municipality considers to be significant, shall incorporate in the building architectural features which focus visual interest on the corner, and which emphasize the importance of pedestrian movement around the corner. Such features may include building cut-offs, walk through covered arcades, plazas or other elements.

#### **45. Facades**

The Municipality may stipulate requirements regarding the façades of buildings in this zone at ground floor level, with a view ensuring adequate visual and physical permeability, which is in its opinion required to create a vibrant streetscape.

#### **46. Screening**

The Municipality may require:

- (1) that any part of the land unit which is used for the storage or loading of goods, be enclosed with a suitable brick wall, concrete wall or landscape screening;
- (2) any external utility service or equipment which is required for a building, whether on the roof, side of the building or ground, shall be appropriately screened from view, and such enclosure of screening shall be integrated with the building in terms of materials, colour, shape and size and shall be to the Municipality's satisfaction.

#### **47. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction, provided that:

- (1) the Municipality shall not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval;
- (2) the Municipality may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, landscaping, engineering services or similar concerns.

#### **48. Place of Assembly, Place of Instruction, Place of Worship**

The development parameters, including access and parking requirements for the above uses that apply in the Civic and Social Zone, apply in this zone.

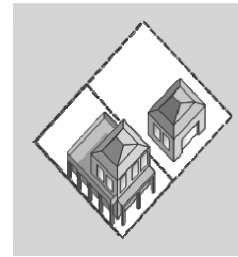
**49. Visual Impact Assessment**

When considering an application for any proposed development in this zone, the Municipality may require a visual impact assessment of the proposed development to be submitted to its satisfaction.

**LOCAL BUSINESS**

**50. Designation**

The Local Business Zone may be referred to by the code “LB” and must be indicated on a zoning map in blue with black hatching.



**51. Purpose of the Zone**

The purpose of this zone is to provide for a mix of uses in local business nodes and along activity streets, as well as for convenience stores.

**52. Land Use within Zone**

(1) The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Flats</li> <li>• Public parking</li> <li>• Restaurant</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Service trade</li> <li>• Place of assembly</li> <li>• Place of entertainment</li> <li>• Place of instruction</li> <li>• Place of worship</li> <li>• Funeral parlour</li> <li>• Guest accommodation</li> <li>• Hotel</li> <li>• Residential building</li> <li>• Bottle store</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>

(2) Where premises for the rendering of personal services such as a beauty salon, are included in a hotel development, the floor area used for such purposes shall not exceed 10% of the total floor area of the hotel.

**53. Development Parameters**

(1) The following development parameters apply to buildings in this zone:

Floor Factor	Coverage	Height	Street building line	Lateral and Rear building lines
0.8	75%	8,0m from highest point of the natural ground level immediately adjacent to the building, provided that where the building is situated on a slope, it may at no point exceed 12m when measured from the natural ground level immediately adjacent to that point.	0m	0m, provided that no doors, windows, ventilations or other openings are inserted.  Where a lateral or rear boundary of a property in this zone abuts a residential zone, the building line shall be 3,0m from the lateral or rear boundary.

(2) The Municipality may waive the requirement of a 3,0m lateral building line where a business property abuts a residential property, in circumstances where such a residential property is situated within an area clearly earmarked for future business use in an approved spatial development framework.

**54. Canopy or Balcony Projection**

(1) The Municipality may require, and may permit, a canopy or balcony projection over the street boundary in accordance with the following conditions:

- (a) the canopy shall not project nearer than 500mm to a vertical plane through the kerb line or proposed kerb line;
- (b) no portion of a canopy projection shall be less than 3,0m above the pavement.

(2) The Municipality may lay down more restrictive requirements relating to the dimensions, design and materials of the canopy or balcony.

**55. Building Projection Over the Street Boundary**

Notwithstanding the street building line, the Municipality may permit a projection of the building over the street boundary subject to the following conditions:



- (1) the projection may not exceed the width of the pavement within the road reserve or 3,0m, whichever is the lesser distance;
- (2) the ground floor level of the projection shall be used exclusively as a public pedestrian way, with or without a colonnade;
- (3) the projection shall provide at least 2,8m clearance above the level of the pavement;
- (4) the floor space of the additional storey that may be erected over the ground floor level of the projection, shall not be included in the calculation of maximum floor space, and
- (5) the owner must enter into an encroachment agreement with the Municipality.

#### **56. Street Corners**

The Municipality may require that the owner of a building, to be situated at a public street corner that the Municipality considers to be significant, shall incorporate in the building architectural features which focus visual interest on the corner, and which emphasize the importance of pedestrian movement around the corner. Such features may include building cut-offs, walk through covered arcades, plazas or other elements.

#### **57. Facades**

The Municipality may stipulate requirements regarding the façades of buildings in this zone at ground floor level, with a view to ensuring adequate visual and physical permeability, which is in its opinion required to create a vibrant streetscape.

#### **58. Screening**

The Municipality may require that:

- (1) any part of the land unit which is used for the storage or loading of goods, shall be enclosed with a brick or concrete wall or suitable landscape screening;
- (2) any external utility service or equipment which is required for a building, whether on the roof, side of the building or ground, shall be appropriately screened from view, and such enclosure of screening shall be integrated with the building in terms of materials, colour, shape and size and shall be to the Municipality's satisfaction.

#### **59. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction, provided that:

- (1) the Municipality shall not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval, and
- (2) the Municipality may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, landscaping, engineering services or similar concerns.

**60. Place of Assembly, Place of Instruction, Place of Worship**

The development parameters, including access and parking requirements for the above uses that apply in the Civic and Social Zone, apply in this zone.

**SERVICE BUSINESS**



**61. Designation**

The Service Business Zone may be referred to by the code “SB” and must be indicated on a zoning map in blue-purple.

**62. Purpose of Zone**

The purpose of this zone is to allow for the transitional area between business and industrial uses, and in particular for service trade, motor repair garages, and low impact, small-scale industry and manufacturing, factory shops and warehousing.

**63. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Light Industry</li> <li>• Service trade</li> <li>• Motor repair garage</li> <li>• Business premises</li> <li>• Warehouse</li> <li>• Public Parking</li> <li>• Place of entertainment</li> <li>• Restaurant</li> <li>• Gymnasium</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Place of Worship</li> <li>• Place of Instruction</li> <li>• Scrapyard and salvage buildings</li> <li>• Flats (above ground floor)</li> <li>• Transport usage</li> <li>• Pornographic entertainment business</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>

**64. Development Parameters**

The following development parameters apply to buildings in this zone:

Floor factor	Coverage	Maximum height	Street building line	Lateral and rear building lines
1.5	75%	8,0m	5,0m	See below

**65. Lateral Building Lines**

- (1) Where an external wall is constructed of a material which has one hour fire resistance, where there are no openings in such external walls, and the land unit abuts another service business or industry zone, a 0m lateral building line is permitted, provided there is at least a 1,0m lateral building line on the other lateral boundary.

- (2) Where the land unit abuts a zone that is not a service business or industry zone, or no fire wall as contemplated above is provided, a 3,0m lateral building line shall apply.

**66. Rear Building Lines**

- (1) No building shall be erected closer than 3,0m to the rear boundary.
- (2) In cases where a building extends to both side boundaries, and there is no other means of obtaining access to the rear of the property, other than through the building, at least one opening in the external wall of the building shall be provided to the rear boundary, and such opening shall be protected by automatic fire shutters to the satisfaction of the Municipality.

**67. Boundary Walls**

Where a land unit has a common boundary with another land unit that is not zoned for service business purposes, the Municipality may require a wall to be erected, to a maximum of 3m along the boundary, to its satisfaction.

**68. Screening**

The Municipality may require any part of the land unit that is used for storage or the loading of goods, to be enclosed with a brick or concrete screen wall to its satisfaction.

**69. Risk Management and Prevention Plan**

No activity that includes storage of on-site hazardous substances shall be permitted unless a risk management and prevention plan has been approved by the Municipality.

**70. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction, provided that:

- (1) the Municipality shall not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval; and
- (2) the Municipality may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, engineering services or similar concerns.

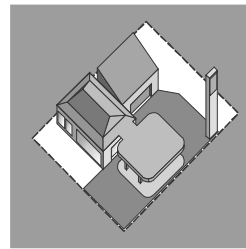
**71. Place of Worship, Place of Instruction**

The development parameters, including access and parking requirements, for the above uses that apply in the Civic and Social Zone, apply in this zone.

**SERVICE STATION**

**72. Designation**

The Service Station Zone may be referred to by the code “SS” and must be indicated on a zoning map in blue-purple with grey hatching.



**73. Purpose of the Zone**

The purpose of this zone is to provide opportunities for petrol filling stations, service stations, motor repair garages and associated facilities. These have specific vehicle access requirements and potential negative impacts on the adjoining area.

**74. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Service station</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Restaurant</li> <li>• Motor repair garage</li> <li>• Shop</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> </ul>

**75. Development Parameters**

The following development parameters apply to buildings in this zone:

Floor factor	Coverage	Maximum height	Street building line	Lateral and rear building lines
1.0	75%	8,0m	3,0m	0m, provided that no doors, windows, ventilations or other openings are inserted. Where a lateral or rear boundary of a property in this zone abuts a residential zone, the building line shall be 3,0m from the lateral or rear boundary.

**76. Site Access Requirements**

- (1) The total width of vehicle carriageway crossings shall, where they cross the street boundary, not exceed 10m.
- (2) A wall, at least 100mm thick and 200mm high, shall be erected on the street boundary between different carriageway crossings. The wall shall continue along such boundary unless the property is otherwise enclosed.
- (3) The vehicle carriageway crossings shall be limited to two per site, unless the total length of a street boundary exceeds 30m, in which case one additional carriageway crossing may be permitted.
- (4) At the point where it crosses the street boundary, a vehicle carriageway crossing shall not be closer than:

**77. Screening**

Any part of the property of a service station which is used for the repair of motor vehicles or the storage of inoperable motor vehicles or parts of motor vehicles, empty containers such as oil drums and packing cases, or any other scrap whatsoever, shall be enclosed with a brick or concrete screen wall, to the satisfaction of the Municipality, at least 2,1m high, or contained in a building.

**INDUSTRY**

**78. Designation**

The Industry Zone may be referred to by the code “I” and must be indicated on a zoning map in red-purple.



**79. Purpose of the Zone**

The purpose of this zone is to provide for all forms of industry, except noxious industry. Additional uses are allowed to support such industry, as well as uses that could reasonably be accommodated in such a zone, because they take place outside of normal business hours.

**80. Land Use within Zone**

(1) The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Industry</li> <li>• Light industry</li> <li>• Service trade</li> <li>• Warehouse</li> <li>• Public parking</li> <li>• Motor repair garage</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Place of worship</li> <li>• Place of assembly</li> <li>• Place of instruction</li> <li>• Dwelling unit incidental to industry</li> <li>• Funeral parlour</li> <li>• Transport Usage</li> <li>• Restaurant</li> <li>• Spray painting and motor vehicle body repair shop</li> <li>• Place of entertainment</li> <li>• Shop</li> <li>• Scrap yard and salvage building</li> <li>• Aquaculture</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>

(2) The land uses of industry and service trade may include the selling of goods that have been completely or partially manufactured on the property, and such other goods as the Municipality may permit, provided that:

- (a) the total floor space devoted to the sale of goods shall not exceed 10% of the total floor space of all the buildings on the land unit, and
- (b) such other goods that are offered for sale but that are not manufactured on the property, are connected with the goods that are manufactured or partially completed on the property.

**88. Environmental Management Plan**

No activity that includes storage of on-site hazardous substances shall be permitted unless a risk management and prevention plan has been approved by the Municipality.

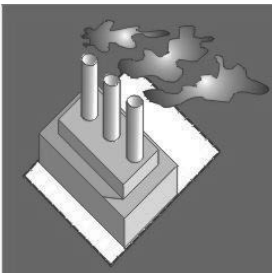
**89. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction, provided that:

- (1) the Municipality shall not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval, and
- (2) the Municipality may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, engineering services or similar concerns.



**NOXIOUS INDUSTRY**



**90. Designation**

The Noxious Industry Zone may be referred to by the code “NI” and must be indicated on a zoning map in red-purple with black hatching.

**91. Purpose of the Zone**

To provide for industries which are noxious in terms of emissions, run-off, smell or solid waste storage or disposal, or for any other reason regarded as such and which carry a high risk in the case of fire or accidents.

**92. Policy Guidelines**

This zone may not be located close to residential areas, or places which attract a high number of people on a daily basis, e.g. a taxi rank or school.

**93. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Noxious trade</li> <li>• Spray painting and motor vehicle body repair shop</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Industry</li> <li>• Service trade</li> <li>• Warehouse</li> <li>• Public parking</li> <li>• Shop</li> <li>• Waste disposal site</li> <li>• Scrap yard and salvage building</li> <li>• Crematorium</li> <li>• Aquaculture</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>

**94. Development Parameters**

(1) The following development parameters apply to buildings in this zone:

Floor factor	Coverage	Street building line	Lateral and rear building lines	Height
2.0	75%	5,0m	5.0m	12m

**95. Boundary Walls**

Where a land unit has a common boundary with another land unit that is not zoned for industrial purposes, the Municipality may require a wall, to a maximum of 3m, to be erected along the boundary to its satisfaction.

**96. Screening**

The Municipality may require any part of the land unit that is used for storage or the loading of goods, to be enclosed with a brick or concrete screen wall to the satisfaction of the Municipality.

**97. Environmental Management Plan**

No activity that includes the storage of on-site hazardous substances shall be permitted unless a risk management and prevention plan has been approved by the Municipality.

**98. Site Development Plan**

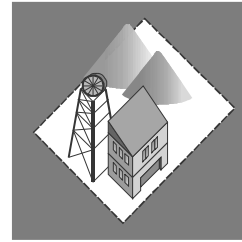
The Municipality may require a site development plan to be submitted to its satisfaction, provided that:

- (1) the Municipality shall not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval, and
- (2) the Municipality may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, engineering services or similar concerns.

**MINING**

**99. Designation**

The Mining Zone may be referred to by the code “M” and must be indicated on a zoning map in red-purple with black cross-line hatching.



**100. Purpose of the Zone**

The purpose of this zone is to provide for the extraction of minerals and raw materials and to allow for limited associated business operations.

**101. Land use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Mining</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Industry</li> <li>• Noxious trade</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>

**102. Application Requirements**

- (1) When applying for a rezoning to the Mining Zone, the owner shall provide proof to the satisfaction of the Municipality that the proposed operation complies with national and provincial statutory requirements applicable to mining, including but not limited to:
  - (a) the permits and licences necessary in accordance with the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002);
  - (b) the authorisations or exemptions necessary in accordance with the National Environmental Management Act, 1998 (Act 107 of 1998).
  
- (2) Any application to rezone a land unit to Mining shall contain an explanation of the measures that will be implemented to address safety and environmental concerns, including but not limited to:
  - (a) control of drainage, sedimentation, and erosion;
  - (b) preservation of natural vegetation and wildlife habitats;
  - (c) protection of surface and sub-surface water;
  - (d) preservation of topsoil;
  - (e) the disposal of waste;
  - (f) provision for restoration and the re-use of the site;
  - (g) provision for noise and visual buffering;
  - (h) accommodation of heavy traffic and vehicles on roadways;

- (i) provision for a phased programme of commitments and liabilities commensurate with the restoration requirements.
- (3) In the assessment of an application to conduct industrial activities in this zone, particular consideration shall be given to the potential nuisance or risk such activity may pose to the surrounding area and persons or community.

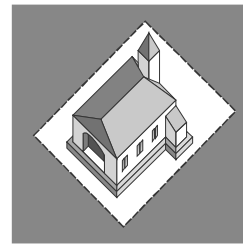
### **103. Site Development Plan**

A site development plan shall be submitted to the satisfaction of the Municipality.

### **104. Operational Requirements**

- (1) A person undertaking a mining activity must:
- (a) notify the Municipality of any seasonal, temporary or permanent cessation of mining activities;
  - (b) ensure that drainage and water runoff to any adjacent property or watercourse is not increased;
  - (c) provide adequate on site dust control to the satisfaction of the Municipality, and
  - (d) obtain the approval of the Municipality for all haulage routes for vehicles and equipment to and from the site, before using those routes.
- (2) The Municipality may impose such other conditions and development parameters, as it deems necessary.

**CIVIC AND SOCIAL**



**105. Designation**

The Civic and Social Zone may be referred to by the code “CS” and must be indicated on a zoning map in grey.

**106. Purpose of the Zone**

The purpose of this zone is to provide for uses directed at serving community needs related to education, religion, health, social interaction, and recreation. Some of these uses require only consent in zones such as business and service business.

**107. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Place of instruction</li> <li>• Place of worship</li> <li>• Institutional building</li> <li>• Public open space</li> <li>• Urban agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Conference facility</li> <li>• Cemetery</li> <li>• Dwelling house</li> <li>• Place of assembly</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> </ul>

**108. Development Parameters**

(1) The following development parameters apply to buildings in this zone:

Building Type	Floor factor	Coverage	Street building line	Lateral and rear building lines	Height
Place of Instruction	1.0	60%	5m	4.5m	8m
Place of Worship	1.0	60%	5m	4.5m	8m Tower may not exceed this height calculated at a ratio of 1:1 in relation to the height of the building
Institutional Building	1.5	60%	5m	4.5m	8m

- (2) Where the Municipality grants its consent for a dwelling house of a religious leader, the development parameters for the Single Residential Zone shall apply.

#### **109. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction, provided that:

- (1) the Municipality shall not unreasonably refuse a site development plan that is consistent with the development parameters of this zone, or conditions of a rezoning approval, and
- (2) the Municipality may require amendments to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban design, landscaping, engineering services or similar concerns.

#### **110. Environmental Management Plan**

The Municipality may require an environmental management plan as a condition of rezoning to the Civic or Social Zone or of its consent for any of the uses indicated above.

**AUTHORITY USAGE**

**111. Designation**

The Authority Usage Zone may be referred to by the code “AU” and must be indicated on a zoning map in red.



**112. Purpose of the Zone**

The purpose of this zone is to provide for such uses related to all spheres of government, which do not readily fall into any other use zone, such as prisons, military installations, electricity substations, etc. However, the general principle should be that land used by any sphere of government should be classified according to its use and not ownership. The zone also provides for the mitigation of the impact of such government uses on surrounding areas.

**113. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Authority usage</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Conference facility</li> <li>• Cemetery</li> <li>• Dwelling house</li> <li>• Place of assembly</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> </ul>

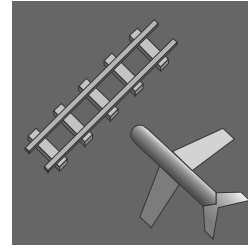
**114. Development Parameters**

- (1) No structure shall be erected on land in this zone unless it is considered by the Municipality to be compatible with the permitted uses in this zone.
- (2) The Municipality shall determine the development parameters for land units in this zone.
- (3) The Municipality may require an environmental management plan for uses and structures in this zone.

**TRANSPORT USAGE**

**115. Designation**

The Transport Usage Zone may be referred to by the code “TU” and must be indicated on a zoning map in dark-brown.



**116. Purpose of the Zone**

The purpose of this zone is to reserve land for transportation systems, excluding private roads and public streets, but including all other transport undertakings such as airports, heliports, harbours, railway lines, bus depots, taxi ranks, cable car stations and modal interchanges.

**117. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Transport usage</li> <li>• Public parking</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Restaurant</li> <li>• Warehouse</li> <li>• Industry</li> <li>• Service trade</li> <li>• Service station</li> <li>• Place of entertainment</li> <li>• Place of assembly</li> <li>• Institutional building</li> <li>• Motor repair garage</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>

**118. Development Parameters**

(1) The following development parameters apply to buildings in this zone:

Maximum coverage	Floor factor	Street building line	Lateral and rear building lines	Height
75%	2.0	0m	0m, except where a boundary abuts a zone which is not a transport usage, street or parking zone in which case the building line shall be 3,0m.	12m



**119. Air Rights and Underground Rights**

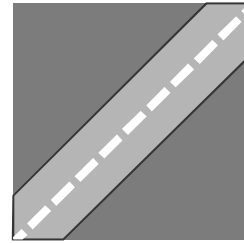
The Municipality may grant permission for consent uses to be implemented as air rights above or below land in this zone, provided that:

- (1) the Municipality is satisfied that structural components, clearance and operational characteristics are sufficient to ensure safe and efficient operation of the transport usage or public parking, and
- (2) an agreement defining the extent of rights, ownership and maintenance obligations relating to property affected by air and/or underground rights, is concluded between the parties concerned and is approved by the Municipality.

**STREET**

**120. Designation**

The Street Zone may be referred to by the code "S" and must be indicated on a zoning map in light-brown.



**121. Purpose of the Zone**

The purpose of this zone is to provide for public and private roads and streets, whether existing or to be constructed.

**122. Land Use within Zone**

(1) The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Public street</li> <li>• Private road</li> <li>• Public parking</li> <li>• Private parking</li> </ul>	

(2) The Municipality may allow utility services within this zone provided that such services do not compromise the movement of vehicles and/or pedestrians.

**123. Informal Trading**

Use of the road reserve and parking in a public street for aesthetically pleasing business by street vendors, peddlers, or hawkers within the road reserve of a public street is permitted subject to:

- (1) compliance with any applicable Municipal by-law relating to street vendors, peddlers, or hawkers, and
- (2) the Municipality terminating such use if, in its opinion, there is interference with pedestrian or vehicular movement, or with the amenity of the area, or such use constitutes a public nuisance.

**124. Construction and Deposit of Materials**

No person shall:

- (1) construct a private crossing, bridge, or culvert onto or across a public street;
- (2) construct or lay a pavement on a public street;
- (3) construct a veranda, stoep, wall, steps, or other projection in or over a public street;
- (4) deposit or leave any goods, articles, building materials or waste in a public street, other than for a reasonable period for the purpose of loading, off-loading or removal thereof, except in accordance with the written permission and requirements of the Municipality.

**125. Air Rights and Underground Rights**

The Municipality may grant permission for consent uses to be implemented above or below the primary uses, provided that:

- (1) the Municipality is satisfied that structural components, clearance and operational characteristics are sufficient to ensure safe and efficient operation of the street, road or parking, and
- (2) an agreement defining the extent of rights, ownership and maintenance obligations relating to the property affected by air and/or underground rights, is concluded between the parties concerned and is approved by the Municipality.

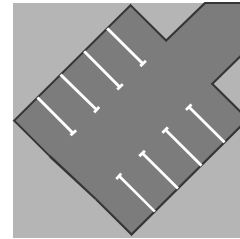
**126. Proposed Public Street, Street Widening and Street Closure**

- (1) The Municipality may indicate on its zoning map:
  - (a) new public streets which it proposes to establish;
  - (b) public streets which it proposes to widen, and
  - (c) public streets which it proposes to close.
- (2) Such indications provided for in Sub-section (1) are intended for the information of the public, and to assist the Municipality in achieving the general planning and development principles of the Zoning Scheme. The zoning of the land in question does not change until the new public street, widening or closure has been approved in terms of relevant legislation, and any further legal procedures relating to rezoning have been complied with.

**PARKING**

**127. Designation**

The Parking Zone may be referred to by the code “P” and must be indicated on a zoning map in light-brown with black hatching.



**128. Purpose of the Zone**

The purpose of this zone is to provide for parking of operable motor vehicles on a temporary basis in order to meet a parking demand, with or without a fee. Such parking may be provided in buildings as well as open parking lots and may be privately or publicly owned. This zone should be used where only parking is required as a primary use and other uses need to be restricted.

**129. Land Use within Zone**

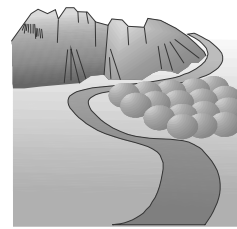
The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Public parking</li> <li>• Private parking</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Transmission tower</li> </ul>

**130. Development Parameters**

- (1) The Municipality may determine the development parameters applicable to a land unit in this zone.
- (2) Alternatively, the Municipality may require a site development plan for a parking facility and such approved site development shall constitute the development parameters for development in this zone, which include disabled parking, according to ratio.

**NATURE CONSERVATION AREA**



**131. Designation**

The Nature Conservation Area Zone may be referred to by the code “NCA” and must be indicated on a zoning map in dark-green with black hatching.

**132. Purpose of Zone**

The purpose of this zone is to provide for open spaces that are not actively used for recreational purposes, but form part of the visual amenity of an area and play an ecological or conservation role. Consent for limited tourism related uses may be granted in such zones.

**133. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Nature conservation</li> <li>• Public open space</li> <li>• Private open space</li> </ul>	<ul style="list-style-type: none"> <li>• 4x4 trail</li> <li>• Place of instruction</li> <li>• Tourist facilities</li> <li>• Holiday accommodation</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> <li>• Dwelling unit</li> </ul>

**134. Additional Conditions**

Land may only be rezoned to the Nature Conservation Zone, should the property in question be declared a nature reserve by the official conservation body, or form part of an official contractually agreed conservation programme, administered by the relevant official conservation body, such as a contractual stewardship programme and managed according to a long term environmental management plan as approved by the official conservation body and the Provincial Department of Environmental Affairs of the time.

**135. Environmental Management Plan**

The Municipality may require an environmental management plan as a condition of rezoning to conservation area or of its consent for any of the consent uses indicated above.

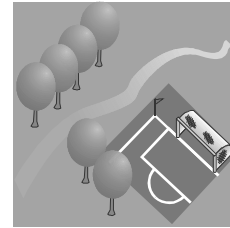
**136. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction as a condition of rezoning to conservation area or of its consent for any of the consent uses indicated above.

**137. Visual Impact Assessment**

When considering an application for any proposed development in this zone, the Municipality may require a visual impact assessment of the proposed development to be submitted to its satisfaction.

**OPEN SPACE**



**138. Designation**

The Open Space Zone may be referred to by the code “OS” and must be indicated on a zoning map in dark green.

**139. Purpose of Zone**

The purpose of this zone is to provide for active and passive open space and public spaces in urban areas. This may include spaces that are intensively landscaped (green) and which are used for recreational purposes, and which add to the amenity of an area, or spaces that may be used for a variety of community and commercial uses on a non-permanent basis such as informal trading, periodical markets, concerts or public meetings, as occasional uses.

**140. Land use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Public open space</li> <li>• Private open space</li> <li>• Urban agriculture</li> <li>• Rooftop base station</li> </ul>	<ul style="list-style-type: none"> <li>• Cemetery</li> <li>• Crematorium</li> <li>• Institutional building</li> <li>• Place of instruction</li> <li>• Restaurant</li> <li>• Boat launching facility</li> <li>• Transmission tower</li> </ul>

**141. Development Parameters**

The Municipality may determine development parameters in accordance with the purpose of this zone.

**142. Environmental Management Plan**

The Municipality may require an environmental management plan as a condition of rezoning to open space or of its consent for any of the uses indicated above.

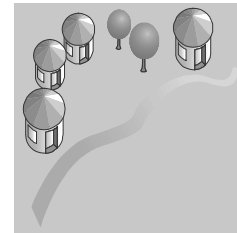
**143. Site Development Plan**

The Municipality may require a site development plan to be submitted to its satisfaction as a condition of rezoning to open space or consent for any of the consent uses indicated above.

**144. Visual Impact Assessment**

When considering an application for any proposed development in this zone, the Municipality may require a visual impact assessment of the proposed development to be submitted to its satisfaction.

**RESORT**



**145. Designation**

The Resort Zone may be referred to by the code “R” and must be indicated on a zoning map in pink.

**146. Purpose of the Zone**

The purpose of the zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes so as to encourage access to these facilities by the general public.

**147. Policy Guidelines**

Where this zone applies to areas outside built-up areas or urban edges, particular care is needed to minimise the potentially negative impacts of development on sensitive environments and the guidelines for resort development published by the Western Cape Provincial Government shall apply. A resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for people living and working in the vicinity.

**148. Land Use within Zone**

(1) The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Holiday accommodation</li> <li>• Nature conservation</li> <li>• Open space</li> <li>• Conference facility</li> </ul>	<ul style="list-style-type: none"> <li>• Tourist facilities</li> <li>• Hotel</li> <li>• Transmission tower</li> <li>• Rooftop base station</li> <li>• Renewable energy structure</li> </ul>

(2) Where premises for the rendering of personal services such as a beauty salon, are included in a hotel development, the floor area used for such purposes shall not exceed 10% of the total floor area of the hotel.

(3) The Municipality may place a restriction on the capacity of a conference facility.

**149. Development Parameters**

(1) The Municipality shall stipulate development parameters with regard to density, height, coverage, layout, building design, landscaping, parking, access and the use of buildings or land.

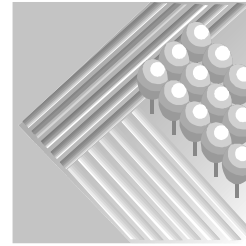
(2) A site development plan shall be submitted to the satisfaction of the Municipality.

(3) A landscape plan shall be prepared to the satisfaction of the Municipality.



- (4) An environmental management plan shall be prepared to the satisfaction of the Municipality.
- (5) The Municipality may require that a qualified landscape architect form part of the design team that prepares the site development plan, and to supervise implementation of the landscaping proposals.
- (6) The Municipality may require an environmental contract to form part of any civil and building contracts for development on the property.

**AGRICULTURE**



**150. Designation**

The Agriculture Zone may be referred to by the code “A” and must be indicated on a zoning map in yellow-green.

**151. Purpose of the Zone**

The purpose of the zone is to provide for and protect agricultural activities and viable agricultural units as an important economic, environmental and cultural resource. Provision is made for non-agricultural activities, in particular tourism related activities, so as to allow for the realisation of the optimum economic potential of agricultural properties, provided that these do not have a significant impact on the agricultural resource base. Environmental management plans should be required for tourism related uses, such as 4X4 trails, as well as other uses that may in the opinion of the Municipality have a potentially significant impact on the resource base.

**152. Land use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Agriculture</li> <li>• Occupational practice</li> <li>• Dwelling house</li> <li>• Intensive horticulture</li> <li>• Intensive animal farming</li> <li>• Dwelling unit for use by bona fide farm manager</li> <li>• Farm worker accommodation</li> </ul>	<ul style="list-style-type: none"> <li>• Second dwelling unit</li> <li>• Guest accommodation</li> <li>• Farm shop</li> <li>• Farm stall</li> <li>• Restaurant</li> <li>• Tourist facilities</li> <li>• Riding school</li> <li>• Plant nursery</li> <li>• 4x4 trail</li> <li>• Commercial kennels</li> <li>• Aquaculture</li> <li>• Service industry</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> <li>• Renewable energy structure</li> <li>• Camping site</li> </ul>

**153. Additional Requirements**

- (1) When assessing such applications, the Municipality may require a visual impact assessment.
- (2) In addition to a dwelling house, the total number of dwelling units allowed on a land unit in the Agricultural Zone, including a dwelling unit used by a bona fide farm manager, a second dwelling and guest accommodation, but excluding farm

worker accommodation, shall not exceed 1 unit per 10 hectares, up to a maximum of 5 dwelling units.

- (3) Notwithstanding the provisions hereof, guest accommodation in the Agricultural Zone may include self-catering units.

#### 154. Development Parameters

- (1) The following development parameters apply to this zone:

Area of land unit	Maximum height	Street building line	Lateral and rear building lines
Greater than 10Ha	8m	30m	30m
≤ 10ha and ≥1ha	8m	10m	10m
< 1ha	8m	4m	4m

- (2) The total floor area of a second dwelling unit and dwelling units for farm worker accommodation shall not exceed 120m<sup>2</sup>.
- (3) Agricultural buildings other than dwelling units shall not exceed 10m in height and where the Municipality is satisfied that a greater height is required for the agricultural function of the building, it may permit such greater height.
- (4) The total floor area of a farm shop or farm stall shall not exceed 100m<sup>2</sup>.
- (5) The Municipality may stipulate floor area and height limitations for other consent uses in this zone considering the character of the area and operational requirements of a particular use.
- (6) A camping site limited to a maximum of 10 tent or caravan stands subject to the development parameters applicable to 'tourist accommodation', provided further that a consent use must be applied for the following cases:
- The property is smaller than 1Ha;
  - The property is situated within 1km of the high water mark of the ocean or a tidal river; and
  - More than 10 tent or caravan stands are applied for

#### 155. Farm Worker Accommodation

Dwelling units provided for persons engaged in genuine farming activities or retired persons previously engaged in genuine farming activities on the property, shall not be regarded as second dwellings for the purpose of this By-Law, provided that the Municipality may require reasonable documentation, such as a business plan, in support of the application for building plan approval of such dwelling units.

**156. Service Industry**

Consent for service industry use in this zone may only be granted if the use applied for is directly related to agricultural activities reasonably associated with the area.

**157. Environmental Management**

- (1) The Municipality may require an environmental management plan as a condition of granting its consent for any of the uses indicated above.
- (2) When making an application for a consent use in the Agriculture Zone, the applicant must be able to demonstrate that all applicable legislation regarding the use of water and disposal of effluent will be satisfied.

**158. Site Development Plan**

The Municipality may require that a site development plan be submitted to its satisfaction when considering an application for a consent use in this zone.

**159. Special Provisions Applying to a Renewable Energy Structure**

The following special provisions apply to a renewable energy structure:

- (1) Definitions applicable to these measures
  - (a) "Appurtenant structure" means any structure or accessory necessary for, or directly associated with generation of renewable energy;
  - (b) "Owner" has the same meaning as in the Land Use Planning land use by-law and LUPA, as the case may be, 1985.
  - (c) "Site" means the land utilised for renewable energy structures, regardless of cadastral boundaries, and inclusive of the renewable energy structures.
- (2) Development parameters
  - (a) Height
    - (i) A maximum height of 200m for a wind turbine, measured from the mean ground level of the footprint of each structure to the highest point of the blade.
    - (ii) The height of a structure for solar generation facilities will be technology-dependent.
    - (iii) The height of buildings is restricted to a maximum of 8,0m.
  - (b) Setback
    - (i) In the case of a wind turbine, the setback required is a distance equal to 1.5 times the overall blade tip height of the turbine, measured from the nearest residential, commercial or critical agricultural structures such as animal housing, outbuildings, store rooms, but excluding structures such as water troughs, feed dispensers and windmills; the cadastral boundary of the land unit, and any public road or public right of way.
    - (ii) This setback requirement does not apply to a cadastral boundary in the case of a renewable energy site which straddles such cadastral

boundary. Setbacks are required for safety reasons and may not be deviated from.

(3) Additional requirements

(a) Site development plans

- (i) As part of the application or as a condition of approval, a site development plan must be submitted to the competent authority and all development and building plans must be in general accordance with the approved site development plan.
- (ii) To the extent necessary, any relevant measures contained in this By-Law must be incorporated into a site development plan.
- (iii) Each renewable energy structure must be surveyed, and coordinates of the exact delineation shown on the site development plan.

(b) Initial measure in the case of failing

- (i) As a condition of consent use approval, the owner must make financial provision, to the satisfaction of the competent authority, for the rehabilitation or management of negative environmental impact of decommissioning or of abandonment in the case of the owner not being financially able to fulfil any obligations in this regard.
- (ii) If the owner fails as contemplated above, the competent authority may, after written notice to the owner, use all or part of the financial provision to rehabilitate or manage negative environmental impact or to remove the facility.

(c) Visual and environmental impacts must be taken into account for height determination and in general, to the satisfaction of the competent authority.

(d) Land clearing, soil erosion and habitat impact

- (i) The clearing of natural vegetation is limited to that which is necessary for the construction, operation and maintenance of the renewable energy structure as regulated by the applicable environmental legislation.
- (ii) Wind turbines, solar structures, access roads and other infrastructure must be located to minimise damage to natural vegetation, water courses and wetlands.
- (iii) All land cleared and which does not form part of the footprint of a renewable energy structure, must be rehabilitated according to a rehabilitation plan for the land concerned, approved by the competent authority.
- (iv) Soil erosion may not take place, and the rehabilitation of any high risk erosion area, to the satisfaction of the competent authority, is essential.
- (v) The applicant must prove, to the satisfaction of the competent authority, that all impacts in respect of, and necessary distances which should be maintained from, wetlands, water bodies, threatened ecosystems, mountains, ridges, hills, coastal buffers, settlements, telecommunication towers, transmission towers and power lines, have been considered and accounted for.

- (vi) The exact coordinates in the above regard must be provided to determine possible environmental impacts.
- (e) With regard to noise, air quality and nuisance, the development must be compliant with regulations controlling pollution, including:
  - (i) the National Environmental Management Act, 1998 (Act 107 of 1988);
  - (ii) the provincial regulations in force, and
  - (iii) municipal bylaws.
- (f) Finishing and colour
  - (i) A wind turbine structure must be treated with a neutral, non-reflective colour designed to blend with the surrounding natural environment, to the satisfaction of the competent authority.
  - (ii) A solar structure may not cause any adverse effects due to its reflective nature and must be designed and erected accordingly, as required by the competent authority.
- (g) Appurtenant structures
  - (i) All appurtenant structures to a renewable energy structure prescribed by the competent authority, concerning bulk, height, yard sizes, building lines, open space, parking and building coverage requirements, must be subject to regulations.
  - (ii) Appurtenant structures, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, must be architecturally compatible with the receiving environment as required by the competent authority, and contained within a renewable energy structure site development plan as part of the approval.
  - (iii) Appurtenant structures shall only be used for the storage of equipment or other uses directly related to the operation of the particular facility.
  - (iv) Appurtenant structures must be screened from view by indigenous vegetation and/or located in an underground vault or be joined and clustered to avoid adverse visual impacts.
- (h) Lighting
  - (i) A renewable energy structure or any part thereof may only be lit for safety and operational purposes and the lighting must be appropriately screened from abutting land units.
  - (ii) The lighting requirements of the South African Civil Aviation Authority in accordance with aeroplane safety standards must be adhered to.
- (i) Signs on renewable energy structures must comply with national and local signage regulations and be limited to:
  - (i) those necessary to identify the operator;
  - (ii) provide 24-hour emergency contact numbers, and
  - (iii) warning of any danger.
- (j) No commercial advertising, including in respect of the service provider and operator, may be displayed on renewable energy structures.

- (k) The owner is responsible to maintain a renewable energy structure in good condition. Maintenance must include, but is not restricted to:
  - (i) painting;
  - (ii) structural repairs;
  - (iii) rehabilitation measures, and
  - (iv) the upkeep of security and safety measures.
- (l) The owner is responsible for the cost of maintaining the facility and any access road, unless deemed a public way, and for the cost of repairing any damage resulting from construction or operation.
- (m) Any modification, excluding inconsequential in situ technical improvements to a renewable energy structure made after approval and which is not largely in accordance with the approval, requires authorisation from the competent authority within the parameters of this By-Law by means of:
  - (i) departure;
  - (ii) amendment of conditions;
  - (iii) new consent use approval;
  - (iv) amendment of the site development plan, or
  - (v) amendment of the building plan.
- (n) Decommissioning
  - (i) Any renewable energy structure which has reached the end of its productive life or has been abandoned must be removed.
  - (ii) When a renewable energy structure is scheduled to be commissioned or operations have been discontinued or it has been abandoned, the landowner must notify the competent authority by registered mail of the proposed or past date concerned, and of plans for removal.
  - (iii) The owner is responsible for the removal of the structure in all its parts within 150 days after the date of the discontinued operation or as agreed upon by the competent authority after submission of a plan for decommissioning. The competent authority, where justifiable in its opinion, may grant extension of time for removal of the structure. The land must then be rehabilitated, to the satisfaction of the competent authority, to the condition it was in prior to the construction of the facility.
  - (iv) Decommissioning must include, inter alia, the removal of all wind turbines, solar voltaic structures and appurtenant structures, including equipment, bases, foundations, security barriers and transmission lines; the disposal of all solid and hazardous waste in accordance with provincial and local waste disposal regulations, and the stabilisation and re-vegetation of the site to minimise erosion.
  - (v) The competent authority may, in order to minimise erosion and disruption to natural vegetation and habitats, grant approval to the owner not to remove landscaping or underground foundations.
  - (vi) If the owner fails to remove the structure or part thereof in accordance with the requirements of this By-Law within 150 days of abandonment or the date of decommissioning or an approved extension time, the

competent authority may enter the property and remove the structure or parts thereof. All removal costs in such a case may be recovered from the owner.

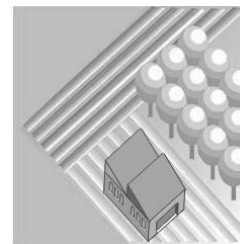
- (o) A renewable energy structure shall be considered abandoned when the structure fails to continuously operate for more than one year unless the owner can prove otherwise.



**AGRICULTURAL PROCESSING**

**160. Designation**

The Agricultural Processing Zone may be referred to by the code “AP” and must be indicated on a zoning map in yellow-green with black hatching.



**161. Purpose of the Zone**

The purpose of the agricultural processing zone is to make provision for the processing of agricultural products on farms or portions of farms where such processing may, in the Municipality’s opinion, potentially impact negatively on the amenity of the surrounding area in terms of the size or intensity of the activity, but for reasons of efficiency these activities are best situated within an agricultural area, as opposed to an urban or industrial area. The use category “agricultural industry” has a different meaning to “agriculture” to protect the agricultural resource base and amenity of agricultural areas.

**162. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Agricultural industry</li> <li>• Abattoir</li> <li>• Rooftop base station</li> <li>• Aquaculture</li> </ul>	<ul style="list-style-type: none"> <li>• Tourist facilities</li> <li>• Farm shop</li> <li>• Farm stall</li> <li>• Renewable energy structure</li> <li>• Transmission tower</li> </ul>

**163. Development Parameters**

(1) The following development parameters apply to this zone:

Area of land unit	Street building line	Lateral and rear building lines
Greater than 10ha	30m	30m
≤ 10ha and ≥1ha	10m	10m
< 1ha	4m	4m

- (2) The Municipality may stipulate floor area and maximum height limitations for buildings used for agricultural industry, an abattoir and buildings related to aquaculture, taking into account the character of the area and the operational requirements of the particular agricultural industry, abattoir or aquaculture undertaking.
- (3) The total floor area of a farm shop, farm stall or tourist facilities shall not exceed 100m<sup>2</sup>.
- (4) The maximum height of a building housing a farm shop, farm stall or tourist facility shall not exceed 8m.

#### **164. Additional Conditions**

- (1) With the rezoning of land to the Agricultural Processing Zone, the Municipality may prescribe any special conditions in respect of permissible uses, parking and loading requirements, access, fencing and aesthetic treatment so that the land use will have the minimum impact on the environment.
- (2) When making an application for the rezoning of land to the Agricultural Processing Zone, the applicant must be able to demonstrate that all applicable legislation regarding the use of water and disposal of effluent will be satisfied.

#### **165. Site Development Plan**

The Municipality may require a site development plan for any proposed development to its satisfaction.

#### **166. Environmental Management Plan**

The Municipality may require an environmental management plan as a condition of granting its consent for any of the uses indicated above.

#### **167. Visual Impact Assessment**

When considering an application for any proposed development in this zone, the Municipality may require a visual impact assessment of the proposed development to be submitted to its satisfaction.

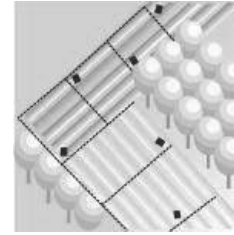
#### **168. Rainwater Harvesting**

- (1) The Municipality may require a person who applies for land to be zoned or rezoned to this zone, to undertake rainwater harvesting to the satisfaction of the Municipality.
- (2) If the Municipality imposes a condition in respect of rainwater harvesting, it:
  - (a) must be satisfied with the placement of the storage facility, and
  - (b) may require the screening of such facilities to its satisfaction.

#### **169. Renewable Energy**

The Municipality may require a person who applies for land to be zoned or rezoned to this zone, to use renewable energy sources in the development of the property, such as solar water heating, or to install devices designed to conserve energy in the development of the property to the satisfaction of the Municipality.

**SMALLHOLDING**



**170. Designation**

The Smallholding Zone may be referred to by the code “SH” and must be indicated on a zoning map in light-green.

**171. Purpose of the Zone**

The purpose of the zone is to accommodate larger residential properties which may be used for limited agriculture, but primarily serve as places of residence for people who seek a rural lifestyle. Such properties often occur close to towns and villages and should only occur within a demarcated urban edge. Development of this type should conform to provincial policy on the establishment of agricultural smallholdings in the urban fringe.

**172. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Agriculture</li> <li>• Dwelling house</li> <li>• Second dwelling unit</li> <li>• Occupational practice</li> </ul>	<ul style="list-style-type: none"> <li>• Guest accommodation</li> <li>• Tourist facilities</li> <li>• Riding school</li> <li>• Plant nursery</li> <li>• Intensive horticulture</li> <li>• Commercial kennels</li> <li>• Service industry</li> </ul>

**173. Development Parameters**

(1) The following development parameters apply to this zone:

Total coverage	Maximum height	Street building line	Lateral and rear building lines
30%	8,0m	10m	10m

(2) Any new subdivision or any remainder to be zoned Smallholding, shall make use of municipal water distribution and sewerage services.

**174. Minimum Subdivision Size**

(1) Land units or any remainder zoned Smallholding shall be at least 3,0ha in extent if no minimum subdivision size is specified on the zoning map or spatial development framework, or

- (2) the specified minimum size if the zoning map or spatial development framework specifies a minimum subdivision size for a land unit in this zone.

**175. Screening**

The Municipality may require any part of the land unit that is used for storage or the loading of goods, to be enclosed with a brick or concrete screen wall, or any other form of screening to the satisfaction of the Municipality.

**176. Site Development Plans**

The Municipality may require that a site development plan be submitted to its satisfaction when considering an application for a consent use in this zone.

**177. Visual Impact Assessment**

When considering an application for any proposed development in this zone, the Municipality may require a visual impact assessment of the proposed development to be submitted to its satisfaction.

**178. Rainwater Harvesting**

- (1) The Municipality may require a person who applies for land to be zoned or rezoned to this zone, to undertake rainwater harvesting to the satisfaction of the Municipality.
- (2) If the Municipality imposes a condition in respect of rainwater harvesting, it:
  - (c) must be satisfied with the placement of the storage facility, and
  - (d) may require the screening of such facilities to its satisfaction.

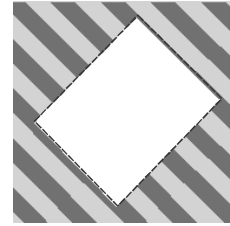
**179. Renewable Energy**

The Municipality may require a person who applies for land to be zoned or rezoned to this zone, to use renewable energy sources in the development of the property, such as solar water heating, or to install devices designed to conserve energy in the development of the property to the satisfaction of the Municipality.

## UNDETERMINED

### 180. Designation

The Undetermined Zone may be referred to by the code "U" and must be indicated on a zoning map in blue-green.



### 181. Purpose of the Zone

The purpose of this zone is to enable the Municipality to defer a decision regarding a specific land use and development parameters until the circumstances affecting the land unit have been properly investigated; or until the owner of the land makes an application for rezoning; or a zoning determination is made by Municipality.

### 182. Land Use within Zone

The following use restrictions apply to property in this zone:

- (1) No primary uses apply in this zone, provided that it shall not preclude the owner of the property to carrying on any lawful utilisation on the land, which commenced before the date of commencement of this By-Law.
- (2) No consent uses apply in this zone.

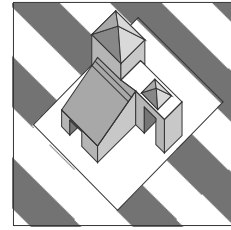
### 183. Development Parameters

No new development shall be permitted on any land portion in this zone.

**SPECIAL**

**184. Designation**

The Special Zone may be referred to by the code “SP” and must be indicated on a zoning map in olive green.



**185. Purpose of the Zone**

The objective of this zone is to provide for circumstances where special or unique factors justify the creation of specific development parameters for a specific site or sites without justifying the creation of a new zone in this By-Law. In addition, it provides an opportunity to introduce collaboration between the Municipality and the owner/developer in the development process. It allows for unforeseen or special circumstances where it is not possible to accommodate the use or activity in an existing use zone, and it allows for innovative design, architectural styles, building forms and site layout.

**186. Land Use within Zone**

The following uses are allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Special usage</li> </ul>	<ul style="list-style-type: none"> <li>• Any use specified by the Municipality</li> <li>• Rooftop base station</li> <li>• Transmission tower</li> </ul>

**187. Development Parameters**

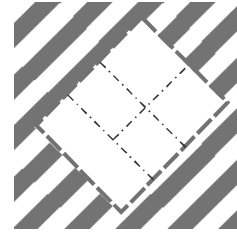
- (1) The Municipality may, at its discretion, employ one of the following methods of development management in this zone:
  - (a) Special development parameters may be determined by the Municipality and described as a separate Special Zone in an annexure to this By-Law. This method is known as the Special Zone Annexure.
  - (b) The development parameters may also be determined by the Municipality, by means of a site development plan. This method is known as the Special Zone Site Development Plan.
  - (c) The Municipality may combine both the Special Zone Annexure method and the Special Zone Site Development Plan method.
- (2) Once a land unit has been zoned Special, Special Zone Annexures and Special Zone Site Development Plans may be adopted or amended by the Municipality in terms of a Municipal resolution, and do not require the formal amendment of this By-Law.
- (3) When the Municipality employs the Special Zone Annexure method of development management, it shall identify the area concerned on the zoning map by way of a separate number, and shall stipulate the development land use restrictions for that area as a separate Special Zone in an annexure to this By-Law.

- (4) Each Special Zone where the land use restrictions differ from those of another Special Zone, shall be given a separate number, and each number with the accompanying development parameters, shall be described as a separate Special Zone in the annexure to this By-Law.
- (5) Where the Municipality employs the Site Development Plan method of development management, it shall require a site development plan to be submitted to its satisfaction.
- (6) The reference number of a site development plan approved by the Municipality shall be recorded in the register.

## SUB-DIVISIONAL AREA

### 188. Designation

The Sub divisional Area Zone may be referred to by the code "SA" and must be indicated on a zoning map with a purple outline.



### 189. Purpose of the Zone

The objective of this zone is to designate land where future subdivision and development rights are granted in terms of the land use by-law and LUPA, as the case may be subject to conditions including the submission of a detailed subdivision application.

### 190. Development Parameters

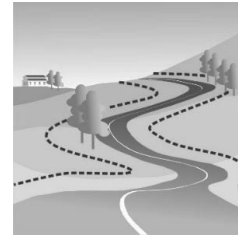
- (1) The zoning of the land unit as Sub divisional Area, shall not exempt an owner from compliance with the provisions of relevant planning laws that govern the subdivision of land.
- (2) The density requirement and other conditions that are laid down at the time of approval of the rezoning to Sub divisional Area shall apply.
- (3) Such conditions may include, but are not limited to, requirements for a development framework, environmental management plans, traffic impact assessments, landscape master plans, precinct plans or site development plans.
- (4) At the confirmation of a subdivision for land which has been zoned as Sub divisional Area, the zoning parameters approved by the Municipality as part of the subdivision approval shall be deemed to be a substitution scheme.



## HERITAGE CONSERVATION OVERLAY ZONE

### 191. Designation

The Heritage Conservation Overlay Zone may be referred to by the code "HCO" and must be indicated on a zoning map with a brown dash outline.



### 192. Purpose of the Zone

The heritage conservation overlay provides for the protection of the heritage resources in specific areas in the Cape Agulhas Municipality. As such the overlay zone is not so much concerned with the use of land, but the impact of land use changes, or any construction work, landscaping or any other action on conservation-worthy resources such as historic buildings or streetscapes. The overlay zone provides for the regulation and management of such changes.

### 193. Designation of a Heritage Conservation Overlay Area

The Municipality may designate an area of exceptional historic interest, architectural significance or conservation worthy aesthetic or cultural value as a heritage conservation area.

### 194. Guidelines for Heritage Conservation Areas

The Municipality may prepare guidelines for a heritage conservation area, which indicates acceptable architectural form and treatment of existing and new development in such areas, urban design and landscaping measures, and the treatment and protection of streetscapes and vistas.

### 195. Development Parameters

- (1) No demolition of or alterations to any buildings, fencing, landscaping, public spaces and streetscapes located in a heritage conservation area may be undertaken without the prior consent of the Municipality.
- (2) The Municipality may require a heritage impact assessment and a site development plan in addition to building plans when considering any application within a heritage conservation area.
- (3) The Municipality shall take into account any such guidelines as prepared in terms hereof when considering its consent for any application in a heritage conservation area.

### 196. Advisory Committee

- (1) The Municipality may convene an advisory committee to consider any applications in heritage conservation areas and make recommendations to the Municipality with regard to such applications.
- (2) Such an advisory committee may consist of conservation architects in private practice on a rotational basis, heritage specialists on a rotational basis, representatives of other heritage authorities, members of the community and officials from the Cape Agulhas Municipality.

## **SCENIC DRIVE OVERLAY ZONE**

### **197. Designation**

The Scenic Drive Overlay Zone may be referred to by the code “SDO” and must be indicated on a zoning map with a green dash outline.

### **198. Purpose of the Zone**

The purpose of the Scenic Drive Overlay Zone is to protect, conserve and enhance the scenic resources adjacent to important tourist and transport routes. The visual amenity of specific routes in the Cape Agulhas Municipality is a significant resource that should be protected in order to ensure the quality of the environment as a whole, as well as promote the tourism and recreational potential of the Municipal area. It is therefore important that development, in particular along tourist routes, be managed to prevent development that may detract from the natural beauty of the landscape or cultural significance of the built environment. This zone is directed at protecting views of scenic beauty alongside designated roads, while at the same time allowing reasonable development to occur. The Scenic Drive Overlay Zone should therefore ensure that new development is managed in a sensitive manner so that important views from the scenic drive are not impaired.

### **199. Designation of a Scenic Drive Overlay Area**

The Municipality:

- (1) may designate a public street or portion of a public street to be a Scenic Drive;
- (2) may determine the scenic drive corridor associated with the Scenic Drive, and
- (3) shall record all Scenic Drive designations.

### **200. Management Provisions for Scenic Drive Areas**

- (1) The Municipality may, at its discretion, employ one of the following methods of development management in a Scenic Drive Overlay Zone:
  - (a) specific development parameters may be adopted for particular scenic drive corridors or portions of scenic drive corridors, or
  - (b) in an area where no specific development parameters have been adopted, the Municipality may apply the general provisions stipulated in this Section of this By-Law.
- (2) The Municipality may require that a site development plan be submitted to its satisfaction in terms hereof for all new development within the Scenic Drive Overlay Zone, and in addition to the standard requirements, the site development plan should identify but not be limited to:
  - (a) the nature of the scenic amenity of the property;
  - (b) the particular views that need to be preserved and enhanced;
  - (c) the location, nature, and form of the development, and
  - (d) compliance with the provisions of this Overlay Zone.
- (3) The Municipality shall take into consideration the relevant development parameters adopted in terms hereof before approving any site development plan.

### 201. Development Parameters

The following principles apply to the placement of buildings:

- (1) buildings and structures shall be sited so as to limit alteration of the natural topography, landforms, tree removal and earthworks;
- (2) buildings shall be designed to blend with the natural setting, or if applicable the cultural setting;
- (3) buildings shall be located to retain existing panoramic and scenic views as seen from the scenic drive.

### 202. Height

The following provisions apply to the height of buildings in relation to scenic amenity and views:

- (1) on the down-slope side of a scenic drive, no portion of a building or structure shall project to a height above the footway in the public street, unless the Municipality grants its approval on the basis that:
  - (a) exceptional circumstances exist which directly affect the land, building or use concerned;
  - (b) the building design is of a unique character or landmark as seen from the scenic drive; or
  - (c) they deem that circumstances exist which make it impossible to erect a building on the land unit, without such projection;
- (2) on the up-slope side of a scenic drive, no portion of a building shall project so as to impair the view of the top of a ridge, hill or mountain, identified as significant by the Municipality, when viewed from a point 1,0m above the centreline of the scenic drive at a position or positions determined by the Municipality;
- (3) building heights must, in the Municipality's opinion, be compatible with existing development and avoid creating sharp contrasts with neighbouring structures or with the landscape;
- (4) all plumbing, rooftop equipment, air conditioning units, elevator shafts, and other mechanical equipment shall be screened from view as seen from the scenic drive.

### 203. Buffer Areas

The following provisions apply to the creation of buffer areas alongside a scenic drive:

- (1) Buffer areas shall be provided along any street boundary which abuts a scenic drive, and the width of the buffer areas shall not be less than:
  - (a) 5,0m in urban areas,
  - (b) 10m in suburban areas,
  - (c) 30m in rural areas;provided that the Municipality shall determine which is an urban, suburban or rural area;
- (2) Within the buffer area:
  - (a) no parking is permitted unless the floor or ground level of such parking is at least

- (b) 2,0m below the level of the footway of the scenic driveway concerned;
- (c) any portion of a fence or wall which exceeds 1,2 m in height shall be constructed of open work which allows visual permeability to the satisfaction of the Municipality;
- (d) berms and soft landscaping may be used to provide privacy and screening, provided that important views and the scenic amenity of the scenic drive are not, in the Municipality's opinion, adversely affected.

#### **204. Parking Areas**

The following provisions apply to the establishment of parking areas alongside a scenic route:

- (1) for land uses requiring large amounts of parking, the Municipality may require that parking areas be broken up into smaller units not exceeding 50 parking bays per area, resulting in a series of smaller parking areas;
- (2) loading bays, refuse rooms and unsightly accessory equipment shall be located in such a manner as to be screened from view from the scenic drive;
- (3) all surface parking areas visible from the scenic drive shall include at least one tree for every six parking bays, and such trees shall be located so as to help screen parked vehicles, and
- (4) where possible indigenous species of trees shall be used to the satisfaction of the Municipality.

#### **205. Land Alongside a Scenic Drive**

The following landscaping requirements apply to property alongside a scenic drive:

- (1) plants, shrubs, and trees shall be selected to fit in with the preprimary landscape character of the area, with the emphasis on indigenous, low maintenance species or locally appropriate species;
- (2) significant natural features shall be preserved and the development on a land unit shall respect ridgelines, gullies, streams, wetlands, rocky outcrops, endangered species and trees worthy of conservation;
- (3) where existing trees or shrubs have to be removed, an equivalent number of trees or shrubs shall be replanted on the land unit and the type of plants to be replanted shall be compatible with the surrounding vegetation and micro-climatic conditions to the satisfaction of the Municipality; provided that where possible indigenous species should be used.

#### **206. Exterior Lighting**

The following requirements apply to exterior lighting on property alongside a scenic drive:

- (1) all exterior lighting shall be located and controlled so as to avoid direct illumination, glare or reflection onto any adjoining property or scenic drive;
- (2) all non-residential exterior lighting shall be turned off during non-business hours, except lighting deemed necessary for public safety or for security on the land unit, to the satisfaction of the Municipality.

**207. Earthworks**

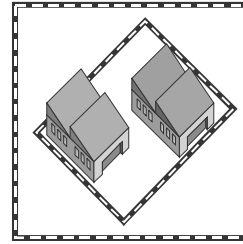
The following requirements apply to grading and earthworks on property alongside a scenic drive:

- (1) grading shall be permitted only to the extent necessary to construct buildings and access roads, and shall not adversely affect views from the scenic drive;
- (2) graded slopes shall be rounded to blend with the existing topography, to fit in with the natural contours of the land, and to establish a transition between constructed and existing slopes;
- (3) the natural surface drainage system shall be maintained;
- (4) cut and fill surfaces shall be stabilised by the planting of low maintenance indigenous or locally appropriate ground cover and shrubs.

## URBAN RENEWAL OVERLAY ZONE

### 208. Designation

The Urban Renewal Overlay Zone may be referred to by the code “URO” and must be indicated on a zoning map with a blue dash outline.



### 209. Purpose of the Zone

The purpose of the zone is to provide for development incentives so as to encourage investment in specific areas in the Cape Agulhas Municipality in accordance with the Integrated Development Plan, Spatial Development Framework, or any other Municipal policy. The overlay zone allows for the introduction of a variety of incentives to promote investment and development.

### 210. Designation of an Urban Renewal Overlay Area

- (1) The Municipality may designate an area or areas as an Urban Renewal Overlay area and indicate such areas on the zoning map.
- (2) When designating an area as an Urban Renewal Overlay area, the Municipality, must consider:
  - (a) the provisions of the Integrated Development Plan and/or Spatial Development Framework, or any other Municipal policy, and
  - (b) the likely impact of the declaration of such a zone on surrounding areas.

### 211. Land Use within Zone

The overlay zone does not impact on the uses permitted in the underlying zone.

### 212. Development Parameters

The development parameters specified in the underlying zone, may be relaxed within the overlay zone as an incentive to development and investment.

### 213. Types of Incentives

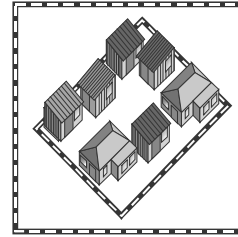
When designating an Urban Renewal Overlay Zone, the Municipality may formulate incentives and policies related to, but not limited to, the following:

- (1) property tax rebates;
- (2) development parameters as specified in the underlying zones;
- (3) contributions towards municipal service provision;
- (4) improved cleansing and management of the area, and
- (5) improved landscaping and public spaces.

## INTERMEDIATE HOUSING OVERLAY ZONE

### 214. Designation

The Intermediate Housing Overlay Zone may be referred to by the code "IHO" and must be indicated on a zoning map with a yellow dash outline.



### 215. Purpose of the Zone

The Intermediate Housing Overlay Zone recognises the reality that many of the residents of the Cape Agulhas Municipality do not live in permanent housing structures and that this situation is likely to persist for the foreseeable future, until housing delivery has caught up with demand for housing. The zone provides for areas designated by the Municipality where informal housing structures will be allowed, with a view to formalising such areas over time. As such housing becomes formalised the overlay zone will no longer be applicable, but the zoning will now relate to the permanent use of the land.

### 216. Designation of an Integrated Housing Overlay Area

- (1) The Municipality may designate an area or areas as an Intermediate Housing Overlay area and indicate such areas on the zoning map.
- (2) When designating an area as an Intermediate Housing Overlay Zone the Municipality, must consider:
  - (a) the provisions of the underlying zone;
  - (b) the provisions of the Less Formal Townships Establishment Act, 1991 (Act 113 of 1991);
  - (c) the provisions of the Integrated Development Framework, Spatial Development Framework, or any other relevant policy;
  - (d) the impact of the proposed area on surrounding areas;
  - (e) any relevant policies such as an urban edge policy;
  - (f) the availability of services;
  - (g) geo-technical stability of the land;
  - (h) any surface run-off that may affect the land;
  - (i) environmental issues,
  - (j) the proximity of socio-economic opportunities, and
  - (k) the ability to serve the area with public transport.

**217. Land Use within Zone**

Notwithstanding the provisions of the underlying zone the following uses shall be allowed in this zone:

Primary Uses	Consent Uses
<ul style="list-style-type: none"> <li>• Dwelling house</li> <li>• Second dwelling unit</li> <li>• Occupational practice</li> <li>• House shop</li> <li>• Shelter</li> </ul>	<ul style="list-style-type: none"> <li>• Guest accommodation</li> <li>• House tavern</li> <li>• Day care centre</li> <li>• Place of instruction</li> </ul>

**218. Development Parameters**

The following development parameters shall apply to buildings in this zone:

Maximum coverage	Maximum height	Street building line	Lateral building lines	Rear building lines
80%	8,0m from the highest point of the natural ground level immediately adjacent to the building provided that the building may at no point exceed 10m when measured from the natural ground level immediately adjacent to that point.	1,0m	If the Municipality is satisfied that adequate fire protection measures exist, a land unit may have a zero lateral building line on one lateral boundary, provided there is at least a 1,0m lateral building line on the other lateral boundary, and that the combined distance between two structures on adjacent erven amounts to 2,0m. If, in the Municipality's opinion, there are inadequate fire protection measures on the land unit, the lateral building line shall be at least 1,0m from both lateral boundaries.	The rear building line is 1m, provided further that if a mid-block sewerage system is installed, a rear building line of 2,0m may be imposed by the Municipality.



**219. Parking and Access**

Parking shall be provided in this zone in accordance with the following table:

<b>Use of Land or Building</b>	<b>Parking Standard</b>
Shelter	No parking required
Dwelling house, second dwelling unit, occupational practice, guest accommodation, house tavern	One parking bay if required by the Municipality
Place of instruction, place of worship, house shop	As required by the Municipality

### **SCHEDULE 3**

#### **OVERLAY ZONES APPROVED IN TERMS OF SECTION 16**

##### **SUBDIVISIONAL AREA OVERLAY ZONE**

**(1) General Purpose of Sub-divisional Area Overlay Zone**

The sub-divisional area overlay (SAO) zoning designates land for future subdivision with development rights by providing development directives through specific conditions as approved in terms of this By-law. The SAO zoning confirms the principle of development and acceptance of future subdivision of land; but not the detailed layout that will be determined when an actual application for subdivision is approved.

**(2) Use of the Property**

Land zoned as a sub-divisional area may be subdivided as contemplated in the Planning By-law.

**(3) Development Parameters**

When the municipality approves a sub-divisional area overlay zone, it must impose conditions making provision for at least-

- (a) density requirements;
- (b) mainland uses and the extent of the uses; 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.

##### **SPECIAL PLANNING OVERLAY ZONE**

**(1) General Purpose of Special Planning Area Overlay Zone**

The general purpose of the special planning overlay zone is to provide for a package of plans mechanism to plan and manage the development of large or strategic urban development areas with a greater degree of flexibility. The package of plans mechanism is a phased process of negotiation, planning and

approvals, where appropriate levels of planning detail are approved together with conditions for those approvals.

A special planning area overlay zone is generally created in respect of an application that involves a mixed use development proposal or where the development does not generally comply with the development parameters of the applicable land uses of this zoning scheme.

## **(2) Use of the Property**

- (a) Primary uses are as stipulated in the conditions of approval imposed in terms of the Planning By-Law.
- (b) Consent uses are as stipulated in the conditions of approval imposed in terms of the Planning By-Law.

## **(3) Development Parameters**

- (a) The Municipality must require a package of plans as set out in section 2.3.4 of Schedule 3 to be submitted for areas zoned as special planning area overlay zones.
- (b) The applicant must, during pre-application discussions with the Municipality, ascertain whether a package of plans procedure has to be followed.
- (c) The development parameters of the lowest order package of plans as contemplated in section 2.3.2 of Schedule 3 and as approved by the Municipality are the development parameters of the special planning overlay zone applicable to the property concerned.
- (d) The package of plans consists of all of the following components that are listed in a hierarchy from higher-order to lower-order plans, and the lower-order plans must be in compliance with the higher-order plan:
  - (i) Contextual framework
    - The contextual framework lays down broad land use policy for the development and the surrounding area.
    - It may include principles or heads of agreement summarising the general obligations of the Municipality and the developer in relation to the development.
    - The contextual framework may be prepared by the Municipality, or by a landowner or development agency under supervision of the Municipality and may not be in conflict with a spatial development framework or structure plan approved by the Municipality.
  - (ii) Development framework
    - The development framework must identify overall policy, broad goals, and principles for development within the development.
    - The development framework must identify the range of uses, general spatial distribution of uses, major transport and pedestrian linkages, infrastructure, and any limits to development within the development, including but not limited to density and floor space.

(iii) Precinct plans

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

(iv) Subdivision plans

- Subdivision plans, if required, must be processed in terms of planning law to establish new cadastral boundaries and to facilitate the transfer of land units.
- Subdivision plans may be approved at any stage after the development framework has been approved, and the provisions of section 16.2 apply to such plans.

(v) Site development plans

- Site development plans depict more detailed design and development provisions for one or more land units within a development.
- These provisions may include details relating to land use, floor space, building lines, height, parking requirements, municipal services, and landscaping, as well as details relating to the position and appearance of buildings, open space, pedestrian links and traffic movement.
- A site development plan may be required before or after a subdivision plan and must provide for the information as required for a site development plan in terms of this By-law.

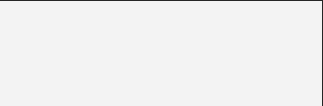


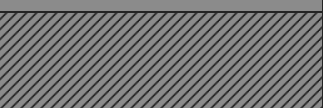

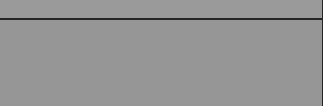
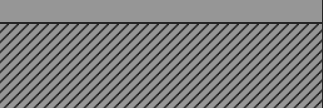


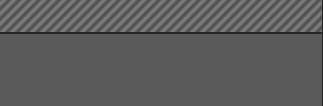



(vi) Building plans

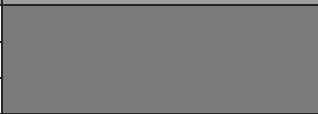
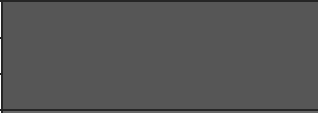




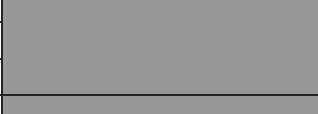
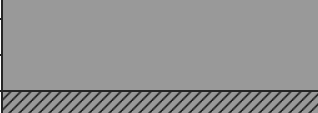
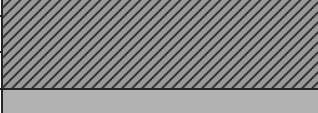
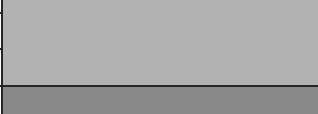
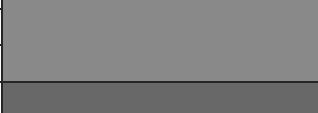

- Building plans contain detailed specifications as required by the National Building Regulations.
- Building work may only commence once building plans have been approved by the Municipality.








- (e) The Municipality may require all or only some of the components of the package of plans to be applied in respect of a particular development.
- (f) The Municipality may require that the area covered by a contextual framework must extend beyond the land under consideration if, in its opinion, the proposed development will have a wider impact, and the Municipality may determine the extent of that area.
- (g) In approving a special planning area overlay zone, the Municipality must determine the total floor space or density permitted within the development as a condition of approval.

- (h) The allocation of floor space must take into account the carrying capacity of internal and external infrastructure including roads and utility services, and any urban design principles approved by the Municipality as part of a rezoning or contextual framework.
- (i) The approved floor space may remain as “floating floor space” assigned to the overall development for later allocation or may be assigned to particular precincts when a precinct plan is approved; and in either case must be allocated to individual subdivisions or site development plans.
- (j) When a special planning area overlay zone and a package of plans is required in terms of this By-law, the relevant components must be submitted to the Municipality for its approval before any development on a land unit can commence, provided that-
  - (i) Building plans contain detailed specifications as required by the National Building Regulations.
  - (ii) Building work may only commence once building plans have been approved by the Municipality.
- (k) The general provisions contained in this By-law apply with regard to site development plans.

**SCHEDULE 4**  
**NOTATIONS ON ZONING MAP**

Zoning	Description	RGB Code	Colour Notation
Single Residential	Yellow	R: 255	
		G: 255	
		B: 0	
Medium Density Residential	Yellow with black hatching	R: 255	
		G: 255	
		B: 0	
High Density Residential	Orange	R: 236	
		G: 113	
		B: 20	
Estate Housing	Orange with black hatching	R: 249	
		G: 65	
		B: 7	
Incremental Housing	Mustard yellow	R: 218	
		G: 152	
		B: 20	
Business	Blue	R: 0	
		G: 176	
		B: 240	
Local Business	Blue with black hatching	R: 0	
		G: 176	
		B: 240	
Service Business	Blue-purple	R: 68	
		G: 23	
		B: 233	
Service Station	Blue-purple with grey hatching	R: 68	
		G: 23	
		B: 233	
Industry	Red-purple	R: 153	
		G: 0	
		B: 153	
Noxious Industry	Red-purple with black hatching	R: 153	
		G: 0	
		B: 153	
Mining	Red-purple with black cross-line hatching	R: 153	
		G: 0	
		B: 153	
Civic and Social	Grey	R: 128	
		G: 128	
		B: 128	

Zoning	Description	RGB Code	Colour Notation
Authority Usage	Red	R: 255	
		G: 0	
		B: 0	
Transport Usage	Dark-brown	R: 122	
		G: 60	
		B: 40	
Streets	Light-brown	R: 175	
		G: 70	
		B: 5	
Parking	Light-brown with black hatching	R: 175	
		G: 70	
		B: 5	
Nature Conservation Area	Dark-green with black hatching	R: 3	
		G: 101	
		B: 22	
Open Space	Dark-green	R: 3	
		G: 101	
		B: 22	
Resort	Pink	R: 255	
		G: 102	
		B: 255	
Agriculture	Yellow-green	R: 147	
		G: 176	
		B: 4	
Agricultural Processing	Yellow-green with black hatching	R: 147	
		G: 176	
		B: 4	
Smallholding	Light-green	R: 100	
		G: 215	
		B: 91	
Undetermined	Blue-green	R: 36	
		G: 168	
		B: 80	
Special	Olive green	R: 90	
		G: 112	
		B: 46	

Zoning	Description	RGB Code	Colour Notation
Subdivisional Area	Purple outline	R: 112	
		G: 48	
		B: 160	
Heritage Conservation Overlay	Brown dash outline	R: 121	
		G: 57	
		B: 5	
Scenic Drive Overlay	Green dash outline	R: 4	
		G: 172	
		B: 24	
Urban Renewal Overlay	Blue dash outline	R: 0	
		G: 112	
		B: 192	
Urban Edge Overlay	Red dash outline	R: 255	
		G: 0	
		B: 0	
Intermediate Housing Overlay	Yellow dash outline	R: 255	
		G: 255	
		B: 0	
Local Area Overlay	Black dash outline	R: 0	
		G: 0	
		B: 0	