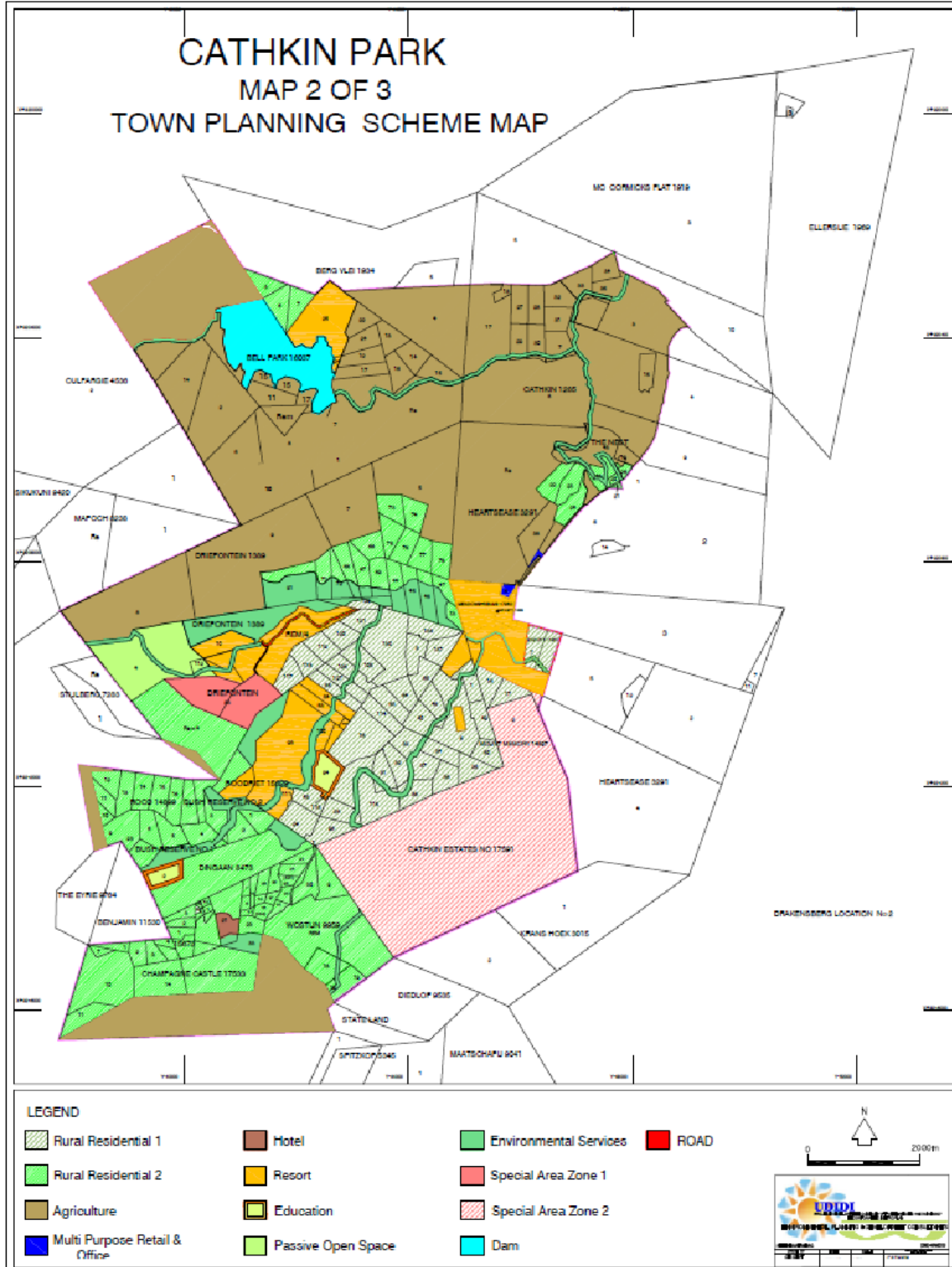


CENTRAL DRAKENSBURG RATEPAYERS ASSOCIATION

APPLICATION PROCEDURES FOR "DEVELOPMENT" IN THE WORLD HERITAGE SITE BUFFER ZONE



This is a guideline on the laws applicable to development in Cathkin Park, to assist ratepayers to understand what is required **before** land is developed, buildings are erected or any activities that may have environmental impacts or require water use licences are undertaken.

TABLE OF CONTENTS

1.	TOWN PLANNING	4
1.1.	Check zoning of property	4
1.2.	Is your proposed use permitted by the Scheme?	4
1.3.	Note that other approvals, authorisation and licences may be required even if no town planning approval is required	4
1.4.	Special Consent Procedure	4
1.5.	Land Development Applications (rezoning, subdivisions, consolidations etc.)	5
1.6.	Appeals	6
2.	KWAZULU-NATAL PLANNING AND DEVELOPMENT ACT	6
3.	BUILDING PLANS	7
3.1.	All buildings, including alterations, unless specifically exempted, require approval under the Building Regulations.	7
4.	ENVIRONMENTAL AUTHORISATION	8
4.2.	No Listed Activity may be undertaken without environmental authorisation.	8
5.	WATER USE LICENCES	12
5.1.	Activities requiring a water use licence (WUL) under the NWA are listed in section 21 and are:	12
5.2.	Permissible use of water without a licence:	12
5.3.	Schedule 1 uses:	12
5.4.	Water Use Licence Application (WULA) process	13
5.5.	General Authorisations	13

6.	EXTRACTS FROM THE BYLAW	15
	Applications requiring municipal planning approval	15
	SCHEDULE 4	15
	Persons who may make an application	15
	Applications that must be prepared by a person with a qualification and experience in land use planning or law	16
	Pre-application procedure	16
	Failure by an organ of state to comment on an application for municipal planning approval	17
	Lodging of application	17
	Provision of additional information	19
	Confirmation of lodging of complete application, if additional information was required	19
	Referral of application affecting the national interest to the Minister of Rural Development and Land Reform	20
	Monitoring of application by the responsible Member of the Executive Council	20
	Public consultation	20
	Applicant's right to respond	20
	Referral of application to Municipal Planning Approval Authority	21
	Site inspection	22
	Public hearing	23
	Registered planner's report on an application	24
	Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council	25

Referral of application that must be decided by the Municipal Council to the council	25
Time within which a Municipal Council must decide an application	26
SCHEDULE 5	26
Methods of public notice	26
Contents of public notice	27
Joint public notice for an application for municipal planning approval and an application for environmental authorisation	28

1. TOWN PLANNING

1.1. Check zoning of property

- 1.1.1. Get a copy of the Okhahlamba Land Use Management Scheme (Town Planning Scheme) – “the Scheme”.
- 1.1.2. Look at the land uses and controls applicable, and what are permitted, allowed by special consent or precluded by the Scheme.
- 1.1.3. Look at the definitions of the land uses permitted to establish what land use your proposed use falls into.
- 1.1.4. Note the special controls contained in table.

1.2. Is your proposed use permitted by the Scheme?

- 1.2.1. If your use is permitted, no town planning application is required.
- 1.2.2. If the use is permissible by special consent, a special consent application must be made.
- 1.2.3. If the use is not permitted, and if it is to be pursued, a rezoning will be required.

1.3. Note that other approvals, authorisation and licences may be required even if no town planning approval is required

- 1.3.1. Activities for which **environmental authorisation** under the National Environmental Management Act 107 of 1998 (NEMA), require the **prior** undertaking of an EIA (basic assessment or scoping and environmental impact report).
- 1.3.2. It is usual for a municipality to require the applicant to get confirmation from the Department of Economic Development, Tourism and Environmental Affairs (EDTEA)

that no environmental authorisation is required. To get this confirmation, EDTEA requires the submission of a “minimum requirements form” completed by an environmental consultant appointed by the applicant. EDTEA normally conducts an inspection to determine if the information submitted is correct.

- 1.3.3. Water uses listed under the National Water Act 36 of 1998 (“the Water Act”) require a **water use licence** or registration under the applicable **General Authorisation**. Certain “permissible uses” are allowed without licence, being uses in existence when Water Act came into effect in 1998.
- 1.3.4. All buildings and other structures require **building plan approval** under the National Building Regulations and Building Standards Act 103 of 1977 (“the Building Regulations”).

1.4. Special Consent Procedure

- 1.4.1. The application must be prepared by a registered town planner, land surveyor, architect, attorney or advocate.
- 1.4.2. If the written consent of all neighbours is obtained, the approval process is simple and the decision made by the relevant official.
- 1.4.3. However, even though the procedure is simple, the relevant official is bound by the Scheme and the Bylaw to apply the guidelines set out in section 11 of the Scheme, especially in regard to biodiversity areas, agriculture and the buffer zone of the World Heritage Site.
- 1.4.4. Given the public interest in the protection of biodiversity and the World Heritage Site, **the relevant official should not approve any application without requiring a public participation process**. (Note section 2 of NEMA, which guides the interpretation and application of all laws involved in the protection or management of the environment, requires that a public process must be followed.)
- 1.4.5. If there are objections, or the consent of **all** neighbours is not obtained, a formal application must be made, a public participation process followed, and generally, the same procedure as for a rezoning application.
- 1.4.6. On approval, conditions of approval of the special consent can be imposed and these must be adhered to/implemented.

1.5. Land Development Applications (rezoning, subdivisions, consolidations etc.)

- 1.5.1. The application must be prepared by a registered town planner, land surveyor, architect, attorney or advocate.
- 1.5.2. A “pre-application meeting” must be held with the municipal planner to establish if the municipality is likely to support the application (i.e. it is consistent with the

Scheme, the Spatial Development Framework (SDF) and supports the development policies and priorities of the Municipality).

- 1.5.3. With the municipal planner, check to see if the proposed use is consistent with the SDF), which sets out the current and proposed future uses of the land as a matter of policy. **Note that the Municipality may not approve an application for a land use that is in conflict with the SDF** (except in limited "site specific" exceptions) as this is prohibited by section 22(1) of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA).
- 1.5.4. If the proposed use is consistent with the SDF, a formal application must be made following the procedure set out in **Schedule 4** of the Okhahlamba Local Municipality Spatial Planning and Land Use Management Bylaw, 2016 ("the Bylaw).
- 1.5.5. An application form and a full motivation for the proposed development must be submitted. The motivation must include an assessment of all impacts on the neighbourhood, the availability of infrastructure and services, and generally show that the development is in the public interests.
- 1.5.6. The application must also show that the development promotes the development principles set out in section 7 of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA).
- 1.5.7. Public notice of the application must be given in local newspapers and physically (or by registered post) on neighbours. Notices of the application, which must be visible from a public road or access must be erected on the property.
- 1.5.8. All organs of state that might have an interest in the application must be given notice of the application by service of a copy on them. These organs of state include EDTEA, the Department of Water and Sanitation, Ezemvelo KZN Wildlife, and the national and provincial departments of Agriculture, Land Reform and Rural Development (DALRRD).
- 1.5.9. Interested and affected parties have the right to comment on the application and the applicant has the right to reply.
- 1.5.10. The Municipal Planning Tribunal (MPT) must hold an inspection of the property and may have a public hearing to which everyone who has commented on the application may must be invited to attend.
- 1.5.11. The MPT makes a decision on the application unless it determines that it must be decided by the full council.

1.6. Appeals

- 1.6.1. Appeals against the decision go the Municipal Planning Appeal Authority, which can be a Municipal Councillor, a committee of municipal officials, a municipal

official, or an outside body or institution authorised under provincial legislation to act as the appeal authority. Generally the appeals are heard by EXCO of the municipality.

- 1.6.2. Being an “internal appeal” the chances of winning are slim.
- 1.6.3. Decisions of the Appeal Authority can be taken on judicial review to the High Court.

[SEE EXTRACTS FROM THE BYLAW BELOW FOR MORE DETAILS]

2. KWAZULU-NATAL PLANNING AND DEVELOPMENT ACT

- 2.1. The KwaZulu-Natal Planning and Development Act 6 of 2008 (PDA) has been superseded by SPLUMA and municipal bylaws. Part of it has been declared unconstitutional, but it remains in effect in all other respects.
- 2.2. The PDA defines “development” in relation to any land as “the erection of buildings and structures, the carrying out of construction, engineering, mining or other operations on, under or over land, and a material change to the existing use of any building or land for non-agricultural purposes”.
- 2.3. Section 75 makes it an offence to “develop” land without municipal approval, or to undertake development that is contrary to any provision of the municipality's Scheme.
- 2.4. Apart from the criminal sanctions, in addition to a fine, the municipality can be awarded damages equal to the monetary value of the benefit of development to the contravener.
- 2.5. The PDA also makes it easy to obtain prohibition orders, urgent prevention orders and interdicts against contraveners.
- 2.6. Section 31 restricts certain activities before a development is approved. A person may not enter into an agreement, with or without suspensive or other conditions, for the disposal of the erf, whether by sale, exchange or any other manner; or grant an option to purchase or sell an erf, or a right of first refusal in respect thereof, unless the municipality has issued a certificate that the conditions that must be complied with before land may be sold have been complied with.
- 2.7. **This means that a development cannot be “pre-sold” pending approval of the development.**

3. BUILDING PLANS

3.1. All buildings, including alterations, unless specifically exempted, require approval under the Building Regulations.

3.2. Note the definition of “building” –

“building” includes-

(a) any structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with-

- (i) the accommodation or convenience of human beings or animals;
- (ii) the manufacture, processing, storage, display or sale of any goods;
- (iii) the rendering of any service;
- (iv) the destruction or treatment of refuse or other waste materials;
- (v) the cultivation or growing of any plant or crop;

(b) any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith;

(c) any fuel pump or any tank used in connection therewith;

(d) any part of a building, including a building as defined in paragraph (a), (b) or (c);

(e) any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, storm-water disposal, electricity supply or other similar service in respect of the building.

3.3. The Municipality building control officer must scrutinise the plan and if satisfied with it, may recommend its approval.

3.4. The Municipality may approve the plan only if it complies with the requirements of the Building Regulations **and any other applicable law**, (which includes compliance with NEMA and the Water Act, which may require environmental authorisation for the construction or use of the building, or a water use licence).

3.5. If the Municipality considers the building to which the application in question relates is to be erected in such manner or will be of such nature or appearance **that the area in which it is to be erected will probably or in fact be disfigured thereby, it will probably or in fact be unsightly or objectionable, it will probably or in fact derogate from the value of adjoining or neighbouring properties**, or will probably or in fact be dangerous to life or property, it must refuse to approve the building plans.

- 3.6. Given the sensitivity of the World Heritage Site buffer zone, it is important that the Building Regulations are strictly applied.
- 3.7. It is a failing of the Building Regulations that they do not require a public participation process before plans are approved. However, on a proper reading of the Constitution and the Local Government: Municipal Systems Act 32 of 2000, the Municipality **must** consult affected communities on any decisions that affect them. Clearly the approval of building plans in a sensitive environment is in the interests of both residents and public generally.
- 3.8. The Municipality must make a decision on the application for approval of building plans within 30 days in the case of a building of less than 500 square metres, or 60 days in the case of larger building.

4. ENVIRONMENTAL AUTHORISATION

- 4.1. Activities identified by the Minister (Forestry, Fisheries and the Environment) under section 24(2) of NEMA requiring environmental authorisation are published in three "listing notices" (Listing Notices 1,2, and 3, published in Government Notices 983, 984 and 985 of 4 December 2014 (and amended on 7 April 2019, 13 July 2018 and 11 June 2021)).

4.2. No Listed Activity may be undertaken without environmental authorisation.

- 4.3. The Basic Assessment process must be followed for activities listed in Listing Notices 1 and 3, and the Scoping and Environmental Impact Report process followed for activities listed in Listing Notice 2.
- 4.4. Because Cathkin Park is located within a Critical Biodiversity Area, and is within 10km of a World Heritage Site, all three Listing Notices potentially apply. **Listing Notice 3 is of particular importance.**
- 4.5. The activities most likely to be undertaken in developments in Cathkin Park, are the following:

4.5.1. Listing Notice 1

(a) Activity 12 - The development of—

(i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or

(ii) infrastructure or structures with a physical footprint of 100 square metres or more;

where such development occurs—

within a watercourse;

in front of a development setback; or

if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse,

- (b) Activity 13 - The development of facilities or infrastructure for the off-stream storage of water, including dams and reservoirs, with a combined capacity of 50000 cubic metres or more, unless such storage falls within the ambit of activity 16 in Listing Notice 2 of 2014.
- (c) Activity 14 - The development and related operation of facilities or infrastructure, for the storage, or for the storage and handling, of a dangerous good (e.g. fuel), where such storage occurs in containers with a combined capacity of 80 cubic metres or more but not exceeding 500 cubic metres.
- (d) Activity 19 - The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse.
- (e) Activity 27 -The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation. **(Note - this threshold is reduced in Listing Notice 3 to 300 square metres)**

Note definition of "indigenous vegetation" - vegetation consisting of indigenous plant species occurring naturally in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding ten years.

- (f) Activity 28 - Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development-
 - (i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or
 - (ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;

excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes.

4.5.2. Listing Notice 2

- (a) Activity 13 - The physical alteration of virgin soil to agriculture, or afforestation for the purposes of commercial tree, timber or wood production of 100 hectares or more;

- (b) Activity 15 - The clearance of an area of 20 hectares or more of indigenous vegetation;
- (c) Activity 16 - The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.

4.5.3. Listing Notice 3

- (a) Activity 1 - The development of billboards exceeding 18 square metres in size outside urban areas, mining areas or industrial complexes;
- (b) Activity 2 - The development of reservoirs, excluding dams, with a capacity of more than 250 cubic metres;
- (c) Activity 3 - The development of masts or towers of any material or type used for telecommunication broadcasting or radio transmission purposes where the mast or tower—
 - (a) is to be placed on a site not previously used for this purpose; and
 - (b) will exceed 15 metres in height—but excluding attachments to existing buildings and masts on rooftops.
- (d) Activity 4 - The development of a road wider than 4 metres with a reserve less than 13,5 metres;
- (e) Activity 5 - The development of resorts, lodges, hotels, tourism or hospitality facilities that sleep less than 15 people;
- (f) Activity 6 - The development of resorts, lodges, hotels, tourism or hospitality facilities that sleeps 15 people or more;
- (g) Activity 8 - The development and related operation of above ground cableways and funiculars;
- (h) Activity 9 - The development and related operation of zip-lines or foefie-slides exceeding 100 metres in length;
- (i) Activity 10 - The development and related operation of facilities or infrastructure for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of 30 but not exceeding 80 cubic metres;
- (j) Activity 12 - The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan;

- (k) Activity 14 - the development of—
- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area exceeds 10 square metres; or
 - (ii) infrastructure or structures with a physical footprint of 10 square metres or more;
- where such development occurs—
- (a) within a watercourse;
- (l) Activity 15 - The transformation of land bigger than 1000 square metres in size, to residential, retail, commercial, industrial or institutional use, where, such land was zoned open space, conservation or had an equivalent zoning, on or after 02 August 2010.
- (m) The expansion of any of these activities.

Note definitions:

“watercourse” means—

(a) a river or spring;

(b) a natural channel in which water flows regularly or intermittently;

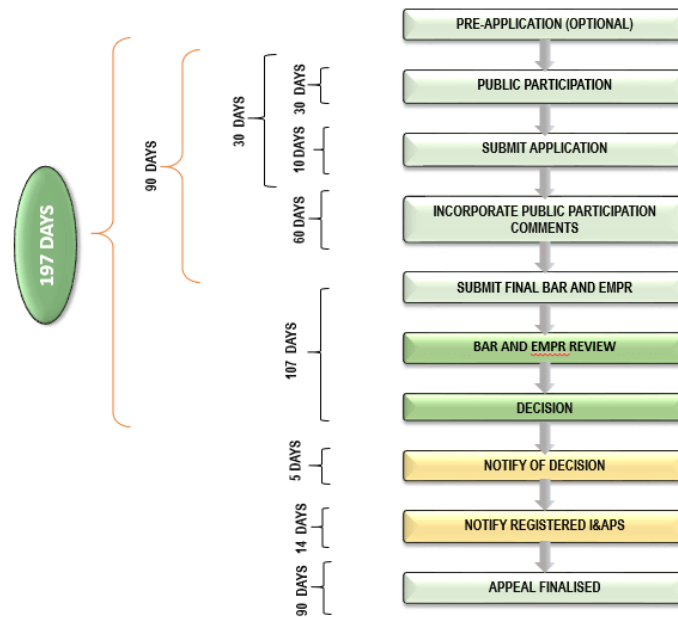
(c) a wetland, pan, lake or dam into which, or from which, water flows; and

(d) any collection of water which the Minister may, by notice in the Gazette, declare to be a watercourse as defined in the National Water Act, 1998 (Act No. 36 of 1998); and

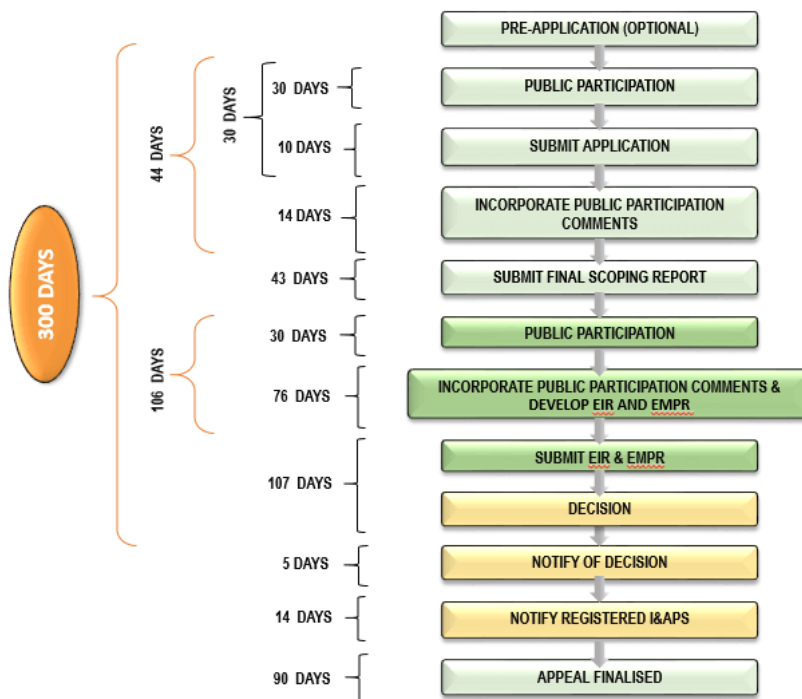
a reference to a watercourse includes, where relevant, its bed and banks; and

“wetland” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

BASIC ASSESSMENT PROCESS



SCOPING AND ENVIRONMENTAL IMPACT REPORT



The processes must follow the EIA Regulations, 2014 and must be undertaken by an independent, registered Environmental Assessment Practitioner (EAP).

5. WATER USE LICENCES

5.1. Activities requiring a water use licence (WUL) under the NWA are listed in section 21 and are:

- (a) Taking water from a water resource;
- (b) storing water;
- (c) impeding or diverting the flow of water in a watercourse;
- (d) engaging in a stream flow reduction activity contemplated in section 36;
- (e) engaging in a controlled activity identified as such in section 37 (1) or declared under section 38 (1);
- (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (g) disposing of waste in a manner which may detrimentally impact on a water resource;
- (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- (i) altering the bed, banks, course or characteristics of a watercourse;
- (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- (k) using water for recreational purposes.

5.2. Permissible use of water without a licence:

- (i) if that water use is permissible under Schedule 1;
- (ii) if that water use is permissible as a continuation of an existing lawful use; or
- (iii) if that water use is permissible in terms of a general authorisation issued under section 39;
- (iv) if the water use is authorised by a licence under this Act; or
- (v) if the responsible authority has dispensed with a licence requirement under subsection (3).

5.3. Schedule 1 uses:

- (a) take water for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access;
- (b) take water for use on land owned or occupied by that person, for—

- (i) reasonable domestic use;
 - (ii) small gardening not for commercial purposes; and
 - (iii) the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land, from any water resource which is situated on or forms a boundary of that land, if the use is not excessive in relation to the capacity of the water resource and the needs of other users;
- (c) store and use runoff water from a roof;
- (d) in emergency situations, take water from any water resource for human consumption or firefighting;
- (e) for recreational purposes—
- (i) use the water or the water surface of a water resource to which that person has lawful access; or
 - (ii) portage any boat or canoe on any land adjacent to a watercourse in order to continue boating on that watercourse; and
- (f) discharge—
- (i) waste or water containing waste; or
 - (ii) runoff water, including stormwater from any residential, recreational, commercial or industrial site,

into a canal, sea outfall or other conduit controlled by another person authorised to undertake the purification, treatment or disposal of waste or water containing waste, subject to the approval of the person controlling the canal, sea outfall or other conduit.
- (2) An entitlement under this Schedule does not override any other law, ordinance, bylaw or regulation, and is subject to any limitation or prohibition thereunder.

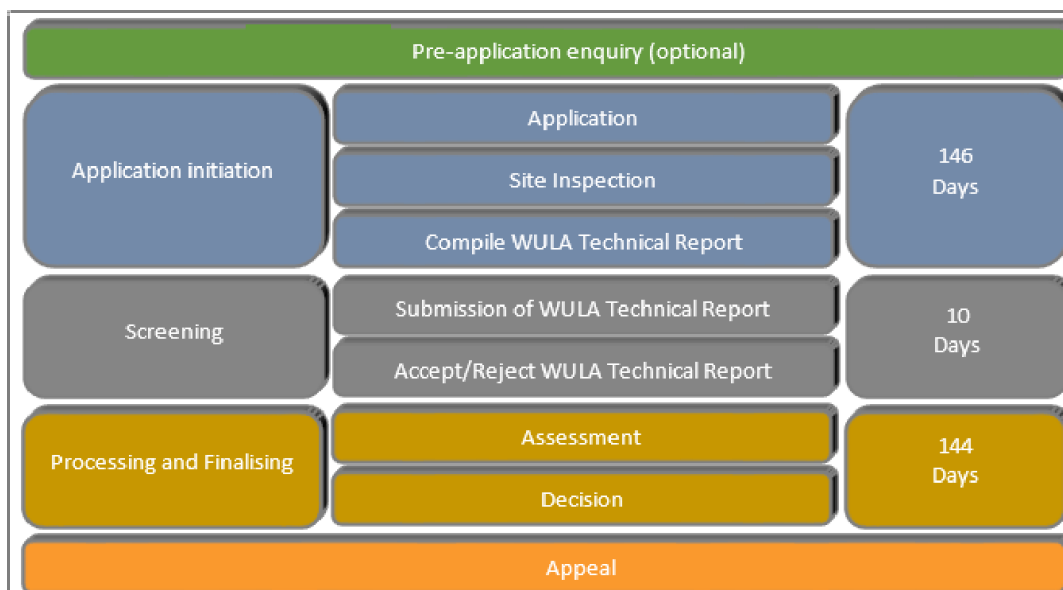
5.4. Water Use Licence Application (WULA) process

- 5.4.1. The procedure is regulated by the Water Use Licence Application and Appeals Regulations published GNR.267 of 24 March 2017 ("the WULA Regulations").
- 5.4.2. The procedure is now wholly electronic and is known as the "e-WULAAS" (Electronic Water Use Licence (WUL) Application and Authorisation System).
- 5.4.3. A "pre-application enquiry" to discuss the process and documentation requirements is compulsory.
- 5.4.4. In theory, and according to the WULA Regulations, the process must be completed within 30 days. An applicant will be lucky to get a decision within 600 days!

5.5. General Authorisations

- 5.5.1. Limited volumes of water may be abstracted, stored and used without a WUL under the applicable General Authorisation.
- 5.5.2. Note the General Authorisation in terms of section 39 of the Water Act for water uses as defined in section 21 (c) (impeding or diverting the flow of water in a watercourse) or section 21 (l) (altering the bed, banks, course **or characteristics of a watercourse**) published in GN 509 of 26 August 2016.
- 5.5.3. This allows these water uses within 500 metres of a watercourse/wetland provided the prescribed “risk assessment” shows the risk to the water resource is low. Otherwise, these activities must be licenced.
- 5.5.4. The General Authorisation does not apply to any wastewater management infrastructure.
- 5.5.5. Conceivably, (and this is the approach taken by the Department of Water and Sanitation (DWS)), **any development within 500 metres of watercourse/wetland could alter its “characteristics”**, and therefore, all activities must be subjected to a risk assessment, before any development commences.
- 5.5.6. **Undertaking water uses without a water use licence or General Authorisation is illegal and is a criminal offence.**

WATER USE LICENCE APPLICATION PROCESS



6. EXTRACTS FROM THE BYLAW

Applications requiring municipal planning approval

46. An application for municipal planning approval is required for –

- (a) the adoption of a land use scheme;
- (b) the amendment of a land use scheme;
- (c) a Municipality's consent in terms of a land use scheme;
- (d) the repeal of a land use scheme;
- (e) the development of land that is situated outside the area of a land use scheme, if the development constitutes an activity contemplated in Schedule 3;
- (f) the extension or replacement of a building on land that is used for a purpose defined in Schedule 3, notwithstanding that municipal planning approval was not required at the time that the use of the original building for that purpose commenced;
- (g) the subdivision of a land;
- (h) the consolidation of land;
- (i) township establishment;
- (j) the notarial tying of adjacent land;
- (k) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;
- (l) the permanent closure of a municipal road or a public place;
- (m) the removal, amendment or suspension of a restrictive condition of title or a servitude;
- (n) a material change to a Municipality's decision on an application for municipal planning approval;
- (o) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

SCHEDULE 4

APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL: ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT IN AN UNSTRUCTURED MANNER BY A TRADITIONAL COMMUNITY OR INDIGENT HOUSEHOLDS (SCHEDULE 7)

(Section 53(1))

Persons who may make an application

1.(1) An application for municipal planning approval must be made by –

- (a) the owner of the land that is the subject of an application, including an organ of state;
- (b) a person acting with the written consent of the owner of the land that is the subject of the application;
- (c) an organ of state, if it is in the process of acquiring the land that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

Applications that must be prepared by a person with a qualification and experience in land use planning or law

2.(1) The following applications for municipal planning approval must be prepared by a Registered Planner, a person registered in terms of section 18(1)(a) of the Architectural Profession Act, or a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a Land Surveyor, or under the direction or in association with such a person–

- (a) an application for the adoption of a land use scheme;
- (b) an application to amend the wording of a land use scheme, including development controls contained in it;
- (c) an application to zone or rezone land;
- (d) an application for consent in terms of land use scheme to use land for a purpose that it may only be used for with the municipality's consent;
- (e) an application for township establishment; and
- (f) an application for the permanent closure of a municipal road or a public place.

(2) A person under whose direction or with whom a person has prepared an application for municipal planning as contemplated in subitem (1) must sign the application and by their signature assumes responsibility for the application, as if he or she has prepared the application himself or herself.

(3) An application for municipal planning approval that is not listed in subitem (1) may be prepared by any person, but the Municipal Planning Registrar may require that it must be prepared by a Registered Planner, a person registered in terms of section 18(1)(a) of the Architectural Profession Act, a person registered in terms of section 13(1)(d) of the Geomatics Professions as a Land Surveyor, an attorney or advocate, or under the direction or IN

association with such a person, if it is a complex application that requires such technical expertise.

(4) If the Municipal Planning Registrar is not a Registered Planner, he or she must consult a Registered Planner employed by the Municipality before requiring that an application for municipal planning approval must be prepared or be prepared under the direction of or in association with a person contemplated in subitem (3).

Pre-application procedure

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, and any other information which are necessary for determining an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide an applicant with the information that he or she needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information, or such further period as agreed upon with the applicant.

(3) The Municipal Planning Registrar may assist an applicant to identify the information that is required to make an application for municipal planning approval.

(4) The Municipal Planning Registrar may not give advice on the merits of an application for municipal planning approval when it assists an applicant.

(5) A Municipal Planning Approval Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is necessary to enable it to decide an application for municipal planning approval.

Failure by an organ of state to comment on an application for municipal planning approval

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on an application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) The Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

- (a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;
- (b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or
- (c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

Lodging of application

5.(1) An application for municipal planning approval must be accompanied by –

- (a) an application form;
- (b) a written motivation by the applicant in support of the application;
- (c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;
- (d) written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;
- (e) written confirmation by the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act that the application complies with its design guidelines and rules for plan approval, if applicable;
- (f) written support of the traditional council for the application, if the land is located in a traditional authority area;
- (g) proof of circulation of an application to organs of state, including municipal departments;
- (h) if an application is an application for the subdivision or consolidation of land or township establishment –
 - (i) whether the Surveyor General must approve –
 - (aa) a diagram; or
 - (bb) a general plan,for the subdivision or consolidation of the land or establishment of a township;
 - (ii) whether the Surveyor-General must approve the land –
 - (aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;
 - (bb) as a subdivision of land that is not a farm;
 - (cc) as an erf in an existing township; or
 - (dd) as an erf in a new township;

- (i) the proposed property descriptions, and
 - (j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipal Planning Registrar may require.
- (2) An application for municipal planning approval must be lodged with –
- (a) the Municipal Planning Registrar;
 - (b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or
 - (c) the Municipal Manager, if a Municipality has not appointed the Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.
- (3) The Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

Records of receipt of application, request for additional information and confirmation that application is complete

6.(1) The Municipal Planning Registrar must –

- (a) record receipt of an application for municipal planning approval in writing on the day of receipt; and
 - (b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –
 - (i) that the application is complete; or
 - (ii) of any additional plans, documents other information or fees required.
- (2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or a further period as agreed upon with the applicant.

Provision of additional information

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply to additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A may refuse an application for municipal planning approval, if it does not contain information that is necessary or it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

Confirmation of lodging of complete application, if additional information was required

8.(1) The Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –

(a) that the application is complete; or (b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

(a) that the application is complete; or

(b) that the additional plans, documents or information do not meet the Municipality's requirements.

Referral of application affecting the national interest to the Minister of Rural Development and Land Reform

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and

(2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of

the application on the Minister –

(a) upon confirmation that the application is complete; or

(b) upon the application being regarded as complete.

Monitoring of application by the responsible Member of the Executive Council

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

- (a) upon confirmation that the application is complete; or
- (b) upon the application being regarded as complete.

Public consultation

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

- (a) 14 days of having been notified that the application is complete; or
- (b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

Applicant's right to respond

12.(1) The Municipal Planning Registrar must serve –

- (a) copies of all comments received in response to a notice of an application; and
- (b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments, on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

Referral of application to Municipal Planning Approval Authority

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Municipal Planning Authorised Officer or Municipal Planning Tribunal, which must include –

(a) the application for municipal planning approval;

(b) proof that the applicant gave notice of the application, if notice was required;

(c) comments received in response to the notice of the application, if any;

(d) the applicant's response to the comments, if any; and

(e) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Municipal Planning Authorised Officer to the Municipal Planning Authorised Officer;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3);

or

(v) upon receipt of conformation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right, if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5, whichever is the later.

(5) An application for municipal planning approval that has been referred to a Municipal Planning Authorised Officer or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

Site inspection

14.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer, he or she must

conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

(2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –

(a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;

(b) the Municipal Planning Registrar must in writing notify –

(i) the applicant; and

(ii) any other person identified by the Presiding Officer;

of the date and time for the site inspection; and

(c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Municipal Planning Authorised Officer or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

(a) was made for the purposes of deciding the appeal; or

(b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

Public hearing

15.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

(2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will –

(a) assist in resolving disputes of fact or of law;

(b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or

(c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

(4) The Municipal Planning Registrar must –

(a) in writing notify –

(i) the applicant; and

(ii) all parties who commented on an application for municipal planning approval, of the public hearing;

(b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and

(c) publish a notice in a newspaper circulating in the area of the land.

(5) A notice of a public hearing must –

(a) specify the place, date and time thereof;

(b) state the purpose thereof; and

(c) inform parties of their rights contemplated in this item –

(i) to be present or represented; and

(ii) to state their case or lead evidence in support thereof.

(6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally,

or through their representative –

(a) state their case;

(b) call witnesses to testify and to present other evidence to support their case;

(c) cross-examine any person called as a witness by any opposite party;

(d) have access to documents produced in evidence; and

(e) address on the merits of the application for municipal planning approval.

(7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.

(8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.

(9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.

Registered planner's report on an application

16.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer-

(a) he or she must assess merits of the application for municipal planning approval in writing; or

(b) refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

(2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –

(a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application; or

(b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –

(i) assess the merits of the application in writing; and

(ii) make a recommendation on the application.

Time in which a Municipal Planning Authorised Officer or a Municipal Planning Tribunal must decide an application.

17.(1) If the Municipal Planning Approval Authority is a Municipal Planning Authorised Officer or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Municipal Planning Authorised Officer, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal,

if the Municipal Planning Authorised Officer or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if Municipal Planning Authorised Officer or Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Municipal Planning Authorised Officer, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Municipal Planning Authorised Officer or a Municipal Planning Tribunal failed to decide the application within the specified period.

Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council

18. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

Referral of application that must be decided by the Municipal Council to the council

19.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

Time within which a Municipal Council must decide an application

20.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 50(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

SCHEDULE 5

PUBLIC NOTICE

(Section 53(1))

Methods of public notice

1.(1) Give notice of an application for municipal planning approval in a local newspaper that the Municipality has determined as its newspaper of record contemplated in section 21(1)(b) of the Municipal Systems Act, on a day of the week that the Municipality has determined as its day of the week for the publication of notices in terms of this

By-law, and in a language which it has determined in terms of section 21(2) of the Municipal Systems Act as its official language.

(2) Convene a public meeting to inform the public of an application for municipal planning approval.

(3) Make a copy of the application available for inspection at a prominent place at a local shopping mall together with a person who can answer question on the application.

(4) Display a notice on the land or at another other conspicuous and easily accessible place, the number and location of which must be determined by the Municipal Planning Registrar.

(5) Serve a notice on –

(a) the owner of adjacent land, if it is not governed by a body corporate or a land owners association;

(b) the Chairperson of a body corporate that governs adjacent properties who must serve the notice on the members of the body corporate who may be affected by the application;

(c) the Chairperson of a land owners association of adjacent properties who must serve the notice on the members of the land owners association who may be affected by the application;

(d) the holder of a servitude registered against the land that may be affected by the application;

(e) a person in whose favour a condition of title is registered against the land that may be affected by the application;

(f) the Municipal Councillor of the ward in which the land is situated;

(g) traditional leaders or other community leaders; or

(h) any other person who may in the opinion of the Municipality have an interest in an application for municipal planning approval.

Contents of public notice

2. A notice inviting the public or a person to comment on an application for municipal planning approval must –

(a) identify the land to which the application relates –

(i) by stating the physical address of the land, or, if the land has no physical address, by providing a description of its location; and

(ii) by giving the property description;

(b) state the purpose of the application;

(c) state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice;

(d) invite members of the public to cause written comments to be lodged with the contact person stated in the notice;

(e) state how the comments may be lodged;

(f) state the date by when the comments must be lodged, which date may not be earlier than 30 days, excluding public holidays, after the date that the notice is published, served or displayed;

(g) state that a person's failure so to submit comments in response to the notice or to include contact details, disqualifies the person from the right to receive personal notice of any public hearing and the right to appeal;

and

(h) state that persons who lodged comments before in response to the application do not have to do so again, if notice was given before of the same application.

Joint public notice for an application for municipal planning approval and an application for environmental authorisation

3.(1) An applicant may give notice of both an application for municipal planning approval and an application for environmental authorisation in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of this By-law and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulations 54 to 57 of the Environmental Impact Assessment Regulations.

Joint public notice for an application for municipal planning approval and an application for a mining right

4.(1) An applicant and a Regional Manager contemplated in section 8 or a designated agency contemplated in section 70 of the Mineral And Petroleum Resources Development Act may give notice of both an application for municipal planning approval and an application for a mining right in the same notice.

(2) A joint notice must state that it is a notice in terms of both item 11(1) of Schedule 4 of this By-law and regulation 3(3) of the Mineral and Petroleum Resources Development Regulations.

(3) A joint notice must comply with the provisions of item 2 of this Schedule and regulation 3 of the Mineral and Petroleum Resources Development Regulations.