

13.

IMPLEMENTATION OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, NO 16 OF 2013 (SPLUMA)

15/3/3/1

Riaan Kuchar
30 June 2015

(028) 313 8087

Corporate Head Office

1. Executive Summary

The purpose of this report is to obtain the necessary Council resolutions required in terms of the Spatial Planning and Land Use Management, No 16 of 2013 (SPLUMA), which is applicable from 1 July 2015. A number of decisions is required from Council in order to establish certain structures. A critical step is the establishment of a Municipal Planning Tribunal (and the associated decisions related thereto).

Therefore, the purpose of this item is for Council to resolve on the following:

- (a) to take note of the implementation date of SPLUMA on 1 July 2015;
- (b) to take note of the contents of the SPLUMA Regulations (attached hereto as Annexure A), published on 23 March 2015;
- (c) to consider a municipal capacity assessment in order to determine the type of Municipal Planning Tribunal (MPT) that should be established. Such assessment investigated the associated financial, administrative, professional and work load responsibilities that the municipality has to implement SPLUMA;
- (d) decide on the composition of the MPT, including the number of members, both internally and externally; and
- (e) to approve of the nomination process that needs to be followed in establishing the MPT, including agreeing on the members of the evaluation panel and in terms of what criteria the latter must assess potential applicants, where relevant.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment
The encouragement of structured community participation in the matters of the Municipality
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Spatial Planning and Land Use Management Act, No 16 of 2013 (SPLUMA)
- Regulations in terms of the Spatial Planning and Land Use Management Act, No 16 of 2013

6. Background/Discussion/Conclusion

Background

Regulations in terms of SPLUMA were published on 23 March 2015 (*the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015*) under Notice R239/2015 in Government Gazette 38594.

Discussion

A key action required before the implementation of SPLUMA, is the establishment of a Planning Tribunal (No political office bearer may be a member of the tribunal.)

In terms of Section 2 of the SPLUMA Regulations, three types of tribunals can be established, being a tribunal for its municipal area, joint tribunal with one or more Municipalities or a District Municipal Planning Tribunal.

An investigation was undertaken to establish if Planning and a Planning Tribunal could be a shared service in the Overberg Region. The outcome thereof was however that each Municipality should establish its own tribunal.

However, in order for Overstrand to confirm the establishment of a Municipal Planning Tribunal, Council has to consider the following points as per Regulation 2(a), (b), (c) and (d) in terms of SPLUMA.

Administrative and Professional capacity within the Municipality to implement SPLUMA

In terms of secretariat capacity for the MPT to keep record of all its proceedings in terms of Section 40(5) of SPLUMA, it is foreseen that the existing capacity within the Municipality (such as existing secretariat) will provide the services on a permanent basis. The Municipality therefore has the capacity to effectively render tribunal services and no new structure needs to be created.

The screening of land use / development applications submitted to the Municipality will be dealt with by the Planning Department and capacity exists.

Currently Overstrand has four SACPLAN Registered Planners and one in process of registration which will undertake certain report writing for the MPT and the Authorised Official. These planners may also serve as technical advisors to the MPT, but since they are part of the evaluation process they should not be tribunal members. It should be noted that a further vacant post for a planner exists in the Municipality, which will be filled in future.

Conclusion

The Overstrand Municipality has the administrative and professional capacity to implement the regulations regarding a Planning Tribunal.

Financial Capacity to implement SPLUMA

It is foreseen that the tribunal will consist of four Municipal officials and one external member, being a government official.

The Municipal officials in terms of legislation are not eligible for any additional or overtime remuneration.

The external member being a Government Official will only be reimbursed for travel and subsistence. As only 12 meetings per year are foreseen, the cost is estimated at approximately R30 000-00.

Further, the Tribunal- or Appeal Authority may make use of external professionals for advice on certain matters as and when required.

Sufficient funds are available on the 2015/2016 budget for this purpose.

Conclusion

The Overstrand Municipality has the financial capacity to fulfil its requirement in regard to SPLUMA.

Development pressures and average number of applications received

The Municipality has been identified as having a high growth potential, as per the Growth Potential of Towns Study.

Furthermore, the Municipality receives on average 381 land use applications per annum, translating into a high workload for the existing human resource capacity. It should be noted that SPLUMA does not, besides Removal of Restrictions applications, result in more land use applications. It is therefore not

anticipated that there will be a significantly greater workload for the Municipality. It is foreseen that the same number of applications will cross the officials' desks, however the difference now is that all decisions will be decided solely by the Municipality and not some by the provincial government anymore.

Based on the number of land use / development applications received by the Municipality and the proposed categorization of applications for consideration by the MPT and the Authorised Official, it is expected that the frequency of MPT meetings will be 12 per annum. This may vary due to operational requirements.

Conclusion

Overstrand Municipality is able to process its planning applications within prescribed time frames. It is concluded that Overstrand Municipality, with the current capacity and the current application ratio, can provide the service as required by SPLUMA.

Final Conclusion

In terms of the consideration of Regulation 2(a), (b), (c) and (d) of SPLUMA it is confirmed that Overstrand Municipality has the necessary administrative, professional and financial capacity to establish its own Municipal Planning Tribunal in terms of Section 35 of SPLUMA.

Composition of Municipal Planning Tribunals (MPT's) in terms of Section 36 & 37 SPLUMA

In terms of SPLUMA a MPT must consist of a minimum of five members, of which at least 1 must be an external member (could also be another organ of state/provincial government/national government/another Municipality or external consultant). The Municipality must identify the 'internal' members from its own officials to serve as Municipal Tribunal Members and either call for nominees to be appointed as external members of the MPT and/or invite officials from another organ of state to be external members. Council must decide on its preference in terms of composition, bearing in mind the financial and human resource implications thereof.

The Municipality must invite nominations or applications through the press for persons who are not governmental officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto. If the Municipality decides to invite nominations from Organisations as per Regulation 3(2)(a) it has to do so in the press or Provincial Gazette.

Conclusion

It is recommended that Overstrand appoints five members to its tribunal of which four are officials and one is an external member.

The following internal officials are proposed as MPT members: Municipal Manager; Director: Infrastructure and Planning; Director: Community Services and Director: Economic Development.

It is recommended that the Municipality approaches the following National/Provincial Departments to provide external members on the MPT: Department of Rural Development and Land Reform (National) and the Department of Environmental Affairs and Development and Planning (Provincial).

The latter members to be evaluated against the following criteria.

- at least 5 years experience in Spatial Planning and Land Use Management;
- registered with SACPLAN as professional planner; and
- extensive experience and knowledge of planning legislation.

In order to consider the nominations, an evaluation panel needs to be established to evaluate the candidates. It is recommended that the following Municipal officials constitute the evaluation panel that will evaluate all nominations for external members of the MPT: Municipal Manager; Director: Infrastructure and Planning and Senior Manager: Town- and Spatial Planning.

7. Financial Implications

Will be paid from Contracted Services: Infrastructure & Planning – Town Planner: Unique Code: 20150212023355 at approved rates.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: SPLUMA Regulations as Gazetted on 23 March 2015

RECOMMENDATION TO THE COUNCIL:

1. that, based on the requirements set out in the Spatial Planning and Land Use Management Act, No 16 of 2013, the associated implications thereof and the findings of the Municipality's administrative, professional and financial capacity, Overstrand Municipality be regarded as having the ability to implement Chapter 6 of SPLUMA (Land Development Management);
2. that the implementation date of SPLUMA, being 1 July 2015, be noted;
3. that the contents of the SPLUMA Regulations published on 23 March 2015, be noted;
4. that the municipal capacity assessment that has been undertaken, be noted and that the establishment of a single Municipal Planning Tribunal (MPT) for the Overstrand Municipality, be approved;
5. that the MPT comprises of five members of which four be internal officials and one an external member;
6. that the following municipal officials be appointed to serve on the MPT: Municipal Manager; Director: Infrastructure and Planning; Director: Economic Development and Director: Community Services;
7. that the Municipal Manager; Director: Infrastructure and Planning and Senior Manager: Town- and Spatial Planning be appointed to evaluate the external members to be nominated for the Planning Tribunal;
8. that the external MPT members be remunerated for travel and subsistence only;
9. that an invitation be extended to the National Department of Rural Development and Land Reform and the Provincial Department of Environmental Affairs and Development Planning to serve on the MPT as external members; and
10. that the evaluation panel considers the potential external MPT members in terms of the following criteria and report back with recommendations to Council, for the latter's approval -
 - at least 5 years' experience in Spatial Planning and Land Use Management;
 - registered with SACPLAN as professional planner; and
 - extensive experience and knowledge of planning legislation.

RESPONSIBLE OFFICIAL :**R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****9 SEPTEMBER 2015**

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

NO. R. 239

23 MARCH 2015

**SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 16
OF 2013****REGULATIONS IN TERMS OF THE SPATIAL PLANNING AND
LAND USE MANAGEMENT ACT, 16 OF 2013**

The Minister of Rural Development and Land Reform hereby publishes the regulations made in terms of section 54 of the Spatial Planning and Land Use Management Act, 16 of 2013.



NKWINTI, G E (MP)

MINISTER: RURAL DEVELOPMENT AND LAND REFORM

DATE: 18/03/2015

**REGULATIONS IN TERMS OF THE SPATIAL PLANNING AND LAND USE
MANAGEMENT ACT, 16 OF 2013**

The Minister of Rural Development and Land Reform has under section 54 of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), made the regulations set out in the Schedule.

SCHEDULE

ARRANGEMENT OF REGULATIONS

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Municipal Planning Tribunal for District Municipal Area

7. Agreement to establish Municipal Planning Tribunal for District Municipal Area
8. Monitoring and implementing decision of Municipal Planning Tribunal for district municipal area
9. Termination of Municipal Planning Tribunal for district municipal area

37. Short title and date of commencement

- Schedule 1: Norms and standards for the terms and conditions of service of members of Municipal Planning Tribunal
 Schedule 2: Standard Call for Nominations for Persons to be Appointed as Members to the Municipal Planning Tribunal
 Schedule 3: Code of Conduct for Members of the Municipal Planning Tribunal
 Schedule 4: Standard Agreement for the Establishment of a Joint Municipal Planning Tribunal
 Schedule 5: Standard Categories of Land Development and Land Use Applications

CHAPTER 1

INTRODUCTORY PROVISIONS

1 Definitions

In these Regulations, any word or expression defined in the Act has the same meaning in these Regulations, unless the context indicates otherwise, and -

“Act” means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

“appeal authority” means the appeal authority referred to in regulation 20;

“authorised official” means an official who may consider and determine applications as contemplated in section 35(2) of the Act;

“Department” means the national department responsible for spatial planning and land use management;

“district municipality” means the district municipality as defined in the Municipal Structures Act, 1998 (Act No. 117 of 1998);

“municipal manager” means a person appointed in terms of section 54A of the Municipal Systems Act;

“provincial legislation” means legislation contemplated in section 10 of the Act;

“Regulations” mean these Regulations and includes the Schedules attached hereto or referred to herein; and

“traditional council” means a traditional council that has been established and recognised for a traditional community in accordance with the provisions of section 3 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) or any corresponding provision in provincial legislation.

**CHAPTER 2
MUNICIPAL PLANNING TRIBUNALS**

Part A

Municipal Assessment

2 Municipal assessment prior to establishment of Municipal Planning Tribunal

- (1) The decision of a municipality to –
- (a) establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act; or
 - (b) agree to the establishment of a Municipal Planning Tribunal by a district municipality as contemplated in section 34(2) of the Act; or
 - (c) establish a Municipal Planning Tribunal for its municipal area.

may be preceded by an assessment of the factors referred to in subregulation (2).

(2) The assessment referred to in subregulation (1) includes, amongst others, the following factors as it relates to Chapter 6 of the Act –

- (a) the impact of the Act on the municipality's financial, administrative and professional capacity;
- (b) the ability of the municipality to effectively implement the provisions of Chapter 6 of the Act;
- (c) the average number of applications dealt with by the municipality annually in terms of existing planning legislation; and
- (d) the development pressures in the municipal area.

(3) If the municipality does not have capacity to implement the provisions of Chapter 6 of the Act, it is an indication that a joint Municipal Planning Tribunal contemplated in section 34(1) or (2) could be considered by the municipality.

(4) If a district municipality considers the establishment of a Municipal Planning Tribunal contemplated in section 34(2), it must ensure that it has sufficient financial, administrative and professional capacity to establish and administer that Municipal Planning Tribunal.

Part B

Municipal Planning Tribunal for Municipal Area

3 Institutional requirements for establishment of Municipal Planning Tribunal for municipal area

(1) A municipality, in establishing a Municipal Planning Tribunal for its municipal area in terms of section 35(1) of the Act, must, amongst others –

- (a) determine the number and designation of officials in the full-time service of the municipality to serve on the Municipal Planning Tribunal;

- (b) determine the number of members who are not officials of that municipality to be appointed to the Municipal Planning Tribunal, the knowledge and experience that they should represent and their term of office, if it is of the opinion that it should be less than five years as contemplated in section 37(1) of the Act;
 - (c) determine the terms and conditions of service of the members of the Municipal Planning Tribunal in accordance with the norms and standards referred to in Schedule 1;
 - (d) subject to the provisions of subregulation (5), determine procedures for the invitation and calling for nominations of persons contemplated in section 36(1)(b) of the Act to serve on the Municipal Planning Tribunal;
 - (e) identify any additional criteria that a person referred to in paragraph (b) must comply with;
 - (f) subject to the provisions of subregulation (10), determine the format of the call for nominations;
 - (g) convene an evaluation panel to evaluate the nominations received by the municipality and determine the terms of reference of that evaluation panel;
 - (h) consider the recommendations of the evaluation panel and make the appropriate appointments and designate the chairperson and deputy chairperson;
 - (i) inform the members in writing of their appointment;
 - (j) publish the names of the members of the Municipal Planning Tribunal and their term of office as contemplated in section 37(4) of the Act; and
 - (k) develop and approve operational procedures for the Municipal Planning Tribunal.
- (2) A member of the Municipal Planning Tribunal appointed in terms of section 36(1)(b) of the Act 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; and
 - (vii) any other organ of state not provided for in subparagraph (i) to (iv).
 - (b) an individual in his or her own capacity.
- (3) An invitation to nominate an official or employee referred to in subregulation (2)(a) to serve on the Municipal Planning Tribunal must be in writing and may be extended to the departments in the national and provincial sphere of government, other organs of state and

organisations referred to in subregulation (2)(a) and such an invitation does not have to be published.

(4) A nomination submitted in response to an invitation must comply with all the requirements for a nomination submitted in response to a call for nomination referred to in subregulation (6).

(5) Notice of the call for nominations for prospective members of the Municipal Planning Tribunal and the names of the members appointed by the municipality may be communicated by it in any format it approves but it must include the publication of the call for nominations in at least one newspaper circulated in the municipal area.

(6) The call for nominations must –

- (a) request sufficient information for the municipality to evaluate the knowledge and experience of the nominee;
- (b) permit self-nomination or provide for acceptance of the nomination by the nominee;
- (c) include a confirmation by the nominee that he or she is not disqualified from serving as a member as contemplated in section 38 of the Act;
- (d) include agreement by the nominee that the municipality may verify all the information provided by the nominee;
- (e) include a statement that the nominee will be obliged to commit to and uphold a code of conduct; and
- (f) provide for a closing date for nominations which date may be no less than 14 days from the date of publication and no nominations submitted after that date may be evaluated by the municipality.

(7) If no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and skills or comply with any additional criteria which may have been determined by the municipality, the municipality must invite and call for nominations for a second time and follow the process required for the invitation and calling for nominations prescribed by this regulation.

(8) If after the second invitation and calling for nomination no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and skills 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 skills and comply with any additional criteria which may have been determined by the municipality and appoint such person.

(9) A nomination must be in writing and submitted to the municipality in the manner and format determined by the municipality.

(10) A municipality may use the standard format for a call for nominations contained in Schedule 2, subject to any modifications and qualifications as the municipality deems necessary.

(11) The evaluation panel referred to in subregulation (1)(g) must --

- (a) consist of officials in the employ of the municipality; and
- (b) evaluate all nominations that complied with the requirements of this regulation which were received by the municipality in response to the invitations and call for nominations and make recommendations on the appointment of members to the municipality.

(12) The municipality may not appoint any person to the Municipal Planning Tribunal if that person -

- (a) was not nominated in accordance with the provisions of this regulation;
- (b) is disqualified from appointment as contemplated in section 38 of the Act; or
- (c) if he or she does not possess the knowledge or experience required in terms of section 36(1)(b) of the Act or the additional criteria determined in terms of subregulation (1)(e).

Part C

Joint Municipal Planning Tribunal

4 Agreement to establish joint Municipal Planning Tribunal

(1) An agreement between two or more municipalities to establish a joint Municipal Planning Tribunal as contemplated in section 34(1) of the Act must describe the rights, obligations and responsibilities of the participating municipalities and must provide for at least -

- (a) the name and demarcation code of each participating municipality;
- (b) the budgetary, funding and administrative arrangements for the joint Municipal Planning Tribunal and the legal obligations of each participating municipality;
- (c) the number and manner of designation of officials representing each of the participating municipalities to the joint Municipal Planning Tribunal, the filling of vacancies and the replacement and recall of the officials;
- (d) the number and manner of appointment of members contemplated in section 36(1)(b) of the Act and the filling of vacancies;
- (e) subject to regulation 3(1)(c), the terms and conditions applicable to the members of the joint Municipal Planning Tribunal;
- (f) the appointment of a chairperson and deputy chairperson;
- (g) the institutional requirements referred to in regulation 3;
- (h) the categories of applications it will consider and decide;

- (i) the administrative support arrangements and the manner in which the municipality must give effect to a decision of the joint Municipal Planning Tribunal;
- (j) the designation of an official in the employ of each participating municipality to inspect, at any time during normal business hours, the records and operations of the joint Municipal Planning Tribunal on behalf of the participating municipalities;
- (k) determine the conditions for, and consequences of the withdrawal from the agreement of a participating municipality;
- (l) determine the conditions for, and consequences of, the termination of the agreement, including the method and schedule for winding-up the operations of the joint Municipal Planning Tribunal; and
- (m) any other matter relating to the proper functioning of the joint Municipal Planning Tribunal.

(2) The municipalities establishing a joint Municipal Planning Tribunal may use the standard agreement contained in Schedule 4, subject to any modifications and qualifications as the municipalities deem necessary.

(3) An agreement to establish a joint Municipal Planning Tribunal must be approved by council resolution of each of the Municipal Councils in accordance with their rules and orders.

(4) The publication of an agreement contemplated in section 34(3) of the Act must precede the establishment of the joint Municipal Planning Tribunal agreed to in that agreement.

5 Monitoring of joint Municipal Planning Tribunal

A joint Municipal Planning Tribunal –

- (a) is accountable to each municipality which is a party to the agreement establishing it; and
- (b) must submit a quarterly report on its activities and performance to the participating municipalities in the manner and format determined by the participating municipalities.

6 Withdrawal from or termination of joint Municipal Planning Tribunal

(1) If a municipality, for whatever reason, decides to withdraw from a joint Municipal Planning Tribunal, it must –

- (a) in writing, give the other party to the agreement referred to in regulation 4, six months' notice of its intention to withdraw from the joint Municipal Planning Tribunal in accordance with the provisions of the agreement; and

- (b) ensure that all the legal, financial, practical and other consequences have been identified and addressed before such withdrawal, including the establishment of a Municipal Planning Tribunal for its municipal area or its participation in another joint Municipal Planning Tribunal or in a Municipal Planning Tribunal for a district municipal area.
- (2) A joint Municipal Planning Tribunal terminates --
- (a) automatically when there is only one remaining participating municipality;
 - (b) by written agreement among all of the participating municipalities; or
 - (c) upon the fulfilment of any condition for termination contained in the agreement.
- (3) If a municipality withdraws from a joint Municipal Planning Tribunal or if it is terminated, the withdrawal or termination must be published in the *Provincial Gazette* and a local newspaper distributed in the municipal area of each of the participating municipalities.

Part D

Municipal Planning Tribunal for District Municipal Area

7 Agreement to establish Municipal Planning Tribunal for District Municipal Area

(1) An agreement between a district municipality and the local municipalities within the area of such district municipality as contemplated in section 34(2) of the Act must describe the rights, obligations and responsibilities of the district municipality and the participating local municipalities and must provide, with the necessary changes, for at least those matters referred to in regulation 4.

(2) In addition to the matters referred to in regulation 4, the agreement must provide for the manner and format within which the district municipality must submit its quarterly report.

(3) The district municipality establishing a Municipal Planning Tribunal and the local municipalities may use the standard agreement contained in Schedule 4 subject to any modifications and qualifications as they deem necessary.

(4) An agreement to establish a Municipal Planning Tribunal for a district municipal area must be approved by a council resolution of each of the Municipal Councils in accordance with their rules and orders.

(5) The publication of an agreement contemplated in section 34(3) of the Act must precede the establishment of the type of Municipal Planning Tribunal agreed to in that agreement.

8 Monitoring and implementing decision of Municipal Planning Tribunal for district municipal area

A Municipal Planning Tribunal for a district municipal area --

- (a) is accountable to each municipality which is a party to the agreement;

- (b) must submit a quarterly report on its activities and performance to the district municipality and the constituent municipalities in the manner and format determined by the district municipality; and
- (c) inform the relevant municipality of its decision regarding an application relating to land located in that municipal area and the manner in which that municipality must give effect to that decision.

9 Termination of Municipal Planning Tribunal for district municipal area

- (1) If a municipality withdraws from a Municipal Planning Tribunal for a district municipal area, it must –
 - (a) in writing, give the parties to the agreement referred to in regulation 7, six months' notice of its intention to withdraw from the joint Municipal Planning Tribunal; and
 - (b) ensure that all the legal, financial, practical and other consequences have been identified and addressed before such withdrawal, including the establishment of a Municipal Planning Tribunal for its municipal area.
- (2) A Municipal Planning Tribunal for a district municipal area terminates –
 - (a) automatically when all but one of the participating municipalities withdraw from the agreement;
 - (b) by written agreement among the participating municipalities; or
 - (c) upon the fulfilment of any condition for termination contained in the agreement.
- (3) If a municipality withdraws from a Municipal Planning Tribunal for a district municipal area or if it is terminated, the withdrawal or termination must be published in the *Provincial Gazette* and a local newspaper distributed in the municipal area of each of the participating municipalities.

Part E

Adjustment of the Division of Functions and Powers of Local Municipality

10 Allocation of municipal planning function

If, in accordance with section 85 of the Municipal Structures Act –

- (a) the MEC for local government in a province adjusts the division of functions and powers of a local municipality and district municipality by way of an allocation of the municipal planning function which vests in a local municipality in terms of the Constitution to the district municipality; or
- (b) the national Minister responsible for local government, varies or withdraws any allocation of a function or power or adjusts the division of functions and powers of a local municipality and district municipality by virtue of the refusal by the MEC

for local government to make an adjustment in accordance with the assessment of the Demarcation Board,
the district municipality is deemed to be that local municipality for purposes of spatial planning and land use management and it must establish a Municipal Planning Tribunal as contemplated in the Act and the Regulations.

Part F
General Matters

11 Technical and other advisers to Municipal Planning Tribunal

(1) A Municipal Planning Tribunal may establish a database of persons it considers appropriate to serve as technical and other advisers to it.

(2) A technical and other adviser must be a person with knowledge and expertise specific to the land development and land use application and who is registered with the relevant professional body or voluntary association.

12 Proceedings of Municipal Planning Tribunal

The operational procedures contemplated in regulation 3(1)(k) must provide for the manner in which land development and land use applications must be considered and determined by a Municipal Planning Tribunal and if and how to allow for oral representations by parties to an application.

13 Legal indemnification

(1) Whenever a claim is made or legal proceedings are instituted against a member of the Municipal Planning Tribunal or appeal authority or an authorised official arising out of any act or any omission by a member or authorised official in the performance of his or her duties or the exercise of his or her powers, the municipality must, if it is of the opinion that the member or authorised official acted or omitted to act in good faith and without negligence -

- (a) in the case of a civil claim or civil proceedings, indemnify the member or authorised official in respect of such claim or proceedings; and
- (b) provide legal representation for such member or authorised official at the cost of the municipality or pay taxed party and party costs of legal representation.

(2) If a criminal prosecution is instituted against a member of the Municipal Planning Tribunal or appeal authority or authorised official, the municipality must, if it is of the opinion that the member or authorised official acted or omitted to act in good faith and without negligence or it is in the interests of the municipality to do so, provide for legal representation for such member or authorised official at the cost of the municipality.

(3) A member of a Municipal Planning Tribunal or appeal authority or an authorised official has no legal indemnification if he or she, with regard to the act or omission, is liable in law and -

- (a) intentionally exceeded his or her powers;
- (b) made use of alcohol or drugs;
- (c) did not act in the course and scope of his or her employment, designation or appointment;
- (d) acted recklessly or intentionally;
- (e) made an admission that was detrimental to the municipality; or
- (f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.

(4) The municipality may determine by means of a policy or by other means -

- (a) the terms and conditions of such indemnity and legal representation; and
- (b) in addition to the circumstances contemplated in subregulation (3), other circumstances in which such indemnity or legal representation may be withdrawn by the municipality.

(5) For the purposes of this regulation "indemnify" means an undertaking to pay any damages, claim or taxed costs awarded by a court against a member of the Municipal Planning Tribunal or agreed to by the municipality in terms of a formal settlement process.

CHAPTER 3

LAND DEVELOPMENT AND LAND USE APPLICATIONS

14 Submission of land development and land use applications

(1) A municipality must, at least, determine -

- (a) the manner and format in which a land development and land use application must be submitted
- (b) the fees payable for a land development and land use application;
- (c) subject to regulation 16, the timeframes applicable to each component of the phases referred to in that regulation;
- (d) the manner and extent of the public participation process for each type of land development and land use application;
- (e) the manner and extent of the intergovernmental participation process for each type of land development and land use application;
- (f) procedures for site inspections, if required;
- (g) procedures for an amendment to a land development and land use application;

- (h) the place where a land development and land use application must be submitted by the applicant; and
 - (i) a procedure that provides for a land development and land use application that is, on face value, when submitted to a municipality, incomplete and a land development and land use application that, after substantive scrutiny by a municipality, requires additional information from the applicant.
- (2) If the municipality does not determine a place as contemplated in subregulation (1)(h), a land development and land use application must be submitted to the municipal manager.

15 Categories of land development and land use applications

(1) If a municipality decides not to authorise an official to consider and determine certain land development and land use applications, the Municipal Planning Tribunal must consider and decide all land use and land development and land use applications that is submitted to the municipality.

(2) If a municipality authorises an official to consider and determine certain land development and land use applications as contemplated in section 35(2) of the Act, it must consider the following aspects in its categorisation of land development and land use applications:

- (a) type of land development or land use application;
- (b) scale and nature of the land development or land use application;
- (c) the potential impact of the right granted if the land development or land use application is approved;
- (d) the level of public participation required;
- (e) whether or not the land development or land use application is in line with the municipality's spatial development framework and other relevant policies;
- (f) any other aspect that the municipality considers appropriate; or
- (g) any combination of the aspects referred to in paragraph (a) to (f).

(3) If the municipality decides to categorise land development and land use applications according to the type of application referred to in subregulation 2(a), it may use the standard categorisation of land development and land use applications contained in provincial legislation or contemplated in Schedule 5, subject to any modifications and qualifications as the municipality deems necessary.

(4) The municipality must determine which category of land development and land use application must be considered and determined by the authorised official and which category must be considered and determined by the Municipal Planning Tribunal and may use the standard division of functions contained in Schedule 5.

16 Timeframes for land development and land use applications

(1) This regulation applies if no applicable provincial legislation or municipal by-laws have been promulgated that provide timeframes for land development and land use applications or a mechanism for regulating circumstances of apparent undue delay by the Municipal Planning Tribunal or authorised official.

(2) For the purpose of this regulation, a land development and land use application will be subjected to an administrative phase, a consideration phase and a decision phase.

(3) The administrative phase commences only after a complete land development and land use application is submitted to a municipality and the components of this phase contemplated in subregulation (6) for which the municipality is responsible, may not be longer than 12 months.

(4) The consideration phase may not be longer than 3 months.

(5) The decision must be made within 30 days from the last meeting of the Municipal Planning Tribunal or the authorised official.

(6) The administrative phase is the phase during which all public participation notices must be published and responded to, parties must be informed, public participation processes finalised, intergovernmental participation processes finalised and the application referred to the Municipal Planning Tribunal or authorised official for consideration and decision-making.

(7) The consideration phase is the phase during which the Municipal Planning Tribunal or authorised official must consider the application, whether it be a written or oral proceeding, and undertake investigations, if required.

(8) If no decision is made within the period referred to in subregulations (3), (4) or (5), it is considered undue delay for purposes of the Act and the applicant or interested person may report the non-performance of the Municipal Planning Tribunal or authorised official to the municipal manager, who must report it to the municipal council and mayor.

(9) If at any time during the administrative phase the applicant fails to act or provide the necessary information within the timeframe required by the municipality, the application is deemed to be refused by the Municipal Planning Tribunal or authorised official.

(10) If an organ of state which is requested to provide comment on an application does not provide comment in the timeframe permitted by the municipality or any further extension of the period granted by the municipality for that comment, it is deemed that the organ of state has no objection to the application and the granting of the right applied for in the application and the Municipal Planning Tribunal or authorised official may report that non-performance to the executive authority of that organ of state, the Minister and relevant MEC.

17 Alignment of authorisations

(1) If a municipality and an organ of state elect to exercise their powers jointly as contemplated in section 30 of the Act, they may enter into a written agreement that –

- (a) identifies the duplication in the submission of information to the municipality and organ of state;
- (b) identifies the duplication in the execution of a process, including a public participation process and an intergovernmental consultation process;
- (c) provides a framework for the coordination of the procedural requirements for applications submitted in terms of the municipal by-laws and other legislation;
- (d) determines the circumstances under which separate authorisations or an integrated authorisation will be issued; and
- (e) if the municipality and organ of state agree to an integrated authorisation, facilitates –
 - (i) the integrated submission, public participation and intergovernmental consultation process for a specific proposed development or utilisation of land;
 - (ii) assessment of applications by the municipality and the organ of state; and
 - (iii) the publication of one notice indicating the decision of the municipality and the organ of state for a specific proposed development or utilisation of land.

(2) A municipality may decide an application that, in addition to the approval required in terms of the Act, requires approval in terms of other legislation on the basis of a process prescribed under that legislation, but only if that process meets the requirements of the Act, applicable provincial legislation and municipal by-laws.

18 Application where no town planning scheme or land use scheme applies

(1) The owner of land located in a municipal area where no town planning scheme or land use scheme applies to that piece of land, if such owner wants to change the purpose of the land use from that which it is lawfully used for in terms of Schedule 2 of the Act to another purpose listed in that Schedule or formalise an existing lawful land use; the owner or such other person as referred to in section 45(1) of Act, must apply to the municipality in whose municipal area that land is located –

- (a) if there is a town planning scheme, for an incorporation of the land use in the town planning scheme; or
- (b) if there is no town planning scheme or land use scheme, for a change of the land use.

(2) An application referred to in subregulation (1) must, amongst others, contain the following information:

- (a) a description of the land to which the application relates;
 - (b) the land use requested and the reason therefor; and
 - (c) any other information that the municipality may require.
- (3) The municipality must, if an application is received as contemplated in subregulation (1), determine whether the land to which the application relates was lawfully used or could have lawfully been used for a purpose listed in Schedule 2 of the Act.
- (4) The public participation procedures and the intergovernmental participation procedures for an application in terms of this regulation are the same as determined by the municipality for a land development and land use application.
- (5) The municipality must refer an application contemplated in subregulation (1) to the Municipal Planning Tribunal or authorised official for consideration and decision.
- (6) The Municipal Planning Tribunal or authorised official must consider, amongst others, the following when deciding an application –
- (a) whether that application is in conflict with the municipal spatial development framework;
 - (b) whether or not the approval of the application is in conflict with or will impact negatively on the land uses of the pieces of land in the area surrounding the land to which the application relates;
 - (c) whether the land to which the application relates is or is part of high potential agricultural land; and
 - (d) whether granting the application will formalise an existing lawful land use.
- (7) The municipality must keep a record of decisions made by the Municipal Planning Tribunal and authorised official in terms of subregulation (1)(b) and the land use scheme, when developed, must reflect the land use approved by the Municipal Planning Tribunal and the authorised official.

19 Areas under traditional leadership

(1) A traditional council may conclude a service level agreement with the municipality in whose municipal area that traditional council is located, subject to the provisions of any relevant national or provincial legislation, in terms of which the traditional council may perform such functions as agreed to in the service level agreement, provided that the traditional council may not make a land development or land use decision.

(2) If a traditional council does not conclude a service level agreement with the municipality as contemplated in subregulation (1), that traditional council is responsible for providing proof of the allocation of land in terms of the customary law applicable in that traditional area to the applicant of a land development and land use application in order for that applicant to submit it in accordance with the provisions of these Regulations.

CHAPTER 4

APPEALS

20 Determination of appeal procedures

A municipality must determine appeal procedures for the lodging and consideration of appeals contemplated in section 51 of the Act in the following instances:

- (a) if the executive authority of the municipality serves as appeal authority;
- (b) if the municipality authorises a body or institution outside of the municipality to assume the obligations of an appeal authority, including a body or institution authorised in terms of an agreement to establish a joint Municipal Planning Tribunal;
- (c) if provincial legislation regulates the manner of appeals, but does not determine appeal procedures; and
- (d) if the executive authority delegates its authority to hear appeals to an official or a panel of officials as contemplated in section 56 of the Act.

21 Contents of appeal procedures

The appeal procedures determined by the municipality in terms of regulation 20, must include the following:

- (a) in the case where the municipality does not have an executive mayoral system, designation of the presiding officer and the powers and functions of the presiding officer;
- (b) duty of members of an appeal authority to disclose interest;
- (c) management of the administrative affairs of the appeal authority;
- (d) record keeping;
- (e) manner of submission and notice of appeal;
- (f) manner of submission and notice to oppose an appeal;
- (g) granting intervener status as contemplated in Chapter 5 of these Regulations;
- (h) fees payable on submission of notice of appeal or notice to oppose an appeal or a petition to be granted intervener status;
- (i) manner of obtaining all the necessary information from the Municipal Planning Tribunal or authorised official that made the decision which forms the subject matter of the appeal;
- (j) submission of additional information that could materially impact on the decision taken by the Municipal Planning Tribunal or authorised official during the appeal hearing;
- (k) giving effect to the decision of the appeal authority; and

- (l) any other procedure which may, in the opinion of the municipality, be necessary for the effective and efficient functioning of the appeal authority.

22 Jurisdiction of appeal authority

A municipality may provide for an appeal authority to consider an appeal on one or more of the following:

- (a) the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- (b) the merits of the land development or land use application.

23 Hearing by appeal authority

(1) An appeal may be heard by an appeal authority by means of -

- (a) a written hearing; or
- (b) an oral hearing.

(2) A written hearing may be held 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.

24 Representation before appeal authority

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.

25 Opportunity to make submissions and inspect documents

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 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 make submissions in relation to those documents.

26 Decision of appeal authority

(1) An appeal authority must -

- (a) consider and determine all appeals lawfully submitted to it;

- (b) confirm, vary or revoke the decision of the Municipal Planning Tribunal or authorised official;
- (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.

(2) If the appeal authority revokes a decision of the Municipal Planning Tribunal or authorised official it may remit the matter to the Municipal Planning Tribunal or authorised official or replace the decision with any decision it regards necessary.

(3) The appeal authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.

27 Body or institution outside of the municipality assumes obligations of appeal authority

(1) If the municipality authorises a body or institution to assume the obligations of the appeal authority, it must publish notice of the authorisation establishment in the *Provincial Gazette* and one newspaper in circulation in the municipal area.

(2) A party to an application, authorised official or a member of the Municipal Planning Tribunal that made a decision on the application that forms the subject matter of the appeal, may not be a member of the body or institution authorised in terms of this regulation.

28 Body or institution outside of the municipality assumes obligations of appeal authority in the manner determined by provincial legislation

If relevant provincial legislation regulates the manner in which the obligations of an appeal authority must be assumed the provincial legislation may not substitute the decision-making authority with its own authority.

29 Delegated authority to assume the obligations of appeal authority

The appeal authority may not delegate its power to hear an appeal to an official in the employ of the municipality who decided the application or who is a member of the Municipal Planning Tribunal that made a decision on the application that forms the subject matter of the appeal.

30 Timeframe for submission of appeal to appeal authority

(1) The municipal manager must, as soon as practicable, but no later than 14 days after completion of the pre-hearing process, submit the appeal to the appeal authority to hear the appeal.