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### 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.

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Schedule 1: Norms and standards for the terms and conditions of service of members of Municipal Planning Tribunal

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**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.

(2) The pre-hearing process must be completed within 150 days from the date of receipt of the notice of the appeal by the municipal manager.

(3) The pre-hearing process is the process during which all the necessary documentation must be obtained, the applicant and objectors must be informed and the appeal referred to the appeal authority.

## **CHAPTER 5**

### **INTERVENER STATUS**

#### **31 Petition to be granted intervener status**

(1) Where an application has been submitted to a Municipal Planning Tribunal, authorised official or an appeal has been lodged to the appeal authority, an interested person may, at any time during the proceedings, but within seven days of becoming aware of the proceedings, petition the Municipal Planning Tribunal, authorised official or appeal authority in writing in the form determined by the municipality, to be granted intervener status.

(2) The petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –

- (a) does not collude with any applicant, objector or appellant; and
- (b) is willing to deal with or act in regard to the application or appeal as the Municipal Planning Tribunal, authorised official or appeal authority may direct.

(3) The municipality must determine whether the requirements of this regulation have been complied with and must thereafter provide a copy of the form referred to in subregulation (1) to the parties to the application or appeal.

(4) If the Municipal Planning Tribunal, appeal authority or authorised official must determine whether a petitioner qualifies as an interested person as contemplated in section 45(4) of the Act, it may consider the following:

- (a) that his or her rights have been affected by the decision of the Municipal Planning Tribunal or authorised official or that his or her rights may be adversely affected by the decision of the Municipal Planning Tribunal or authorised official and might therefore be adversely affected by the decision of the appeal authority;
- (b) that the petitioner represents a group of people who have a direct concern in the proceedings;
- (c) the ability of the petitioner to protect his or her interest would be impeded by the decision of the Municipal Planning Tribunal, authorised official or appeal authority and that his or her interest is not adequately represented by the current parties to the proceedings;

(d) the petitioner will provide a different perspective on the issues before the Municipal Planning Tribunal, authorised official or appeal authority, without expanding those issues.

(5) A determination by the Municipal Planning Tribunal, appeal authority or authorised official whether a petitioner qualifies as an interested person is final and must be communicated to the petitioner and the parties to the proceedings.

## **CHAPTER 6**

### **EXEMPTIONS**

#### **32 Request for exemption in writing**

(1) As soon as practicable after a province or municipality identifies a piece of land or an area that requires an exemption from the provisions of the Act, the province or municipality must, in writing, request the Minister to exempt that piece of land or an area from one or all of the provisions of the Act.

(2) A request for exemption must contain the following information:

- (a) A cadastral description of the piece of land or area which is to be exempted, if available;
- (b) reasons for the exemption;
- (c) the relevant provisions of the Act that the piece of land or area must be exempted from.

#### **33 Deciding of request for exemption**

(1) Upon receipt of the request for exemption from a province or municipality as contemplated in regulation 32, the Minister must –

- (a) if the request is materially incomplete, advise the province or municipality of any further information required before the request will be considered; or
- (b) if the request does not duly identify the piece of land or area, require the province or municipality to more specifically identify the piece of land or area before the request will be considered.

(2) If the province or the municipality does not respond to the Minister within 30 days of receipt of the request for further particulars, the request will be deemed to have been abandoned by the province or the municipality.

(3) If the province or the municipality responds to the Minister, but does not, to the satisfaction of the Minister, provide sufficient information to enable the Minister to make a decision, the Minister may again request further particulars or clarification and the provisions of subregulation (1) apply to such new request for further particulars or clarification.

(4) If a request is deemed to have been abandoned in terms of subregulation (2), the

Minister may close the file on that request without making a decision contemplated in section 55 of the Act.

(5) Subject to subregulation (6), the Minister must, within 30 days after receiving a request for exemption or receiving adequate information for an exemption, publish in the *Gazette* a notice of the request for exemption received which notice must –

- (a) identify the piece of land or area for which an exemption is sought;
- (b) indicate the province and municipality in whose area of jurisdiction the piece of land or area is located;
- (c) indicate which organ of state is requesting the exemption;
- (d) give the reasons for the exemption as stated in the request for exemption; and
- (e) invite comment on the request for exemption in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.

(6) Notwithstanding subregulation (5), the Minister does not have to publish a notice of the request for exemption in the *Gazette* if –

- (a) the piece of land or an area has to be exempted due to an emergency or a natural disaster; or
- (b) the exemption is merely due to non-compliance with timeframes contained in the Act.

(7) In deciding whether a request for exemption is in the public interest as contemplated in section 55 of the Act, the Minister may consider:

- (a) the degree to which the objects of the Act referred to in section 3 of the Act will be undermined;
- (b) the degree to which the development principles, norms and standards referred to in Chapter 2 of the Act will be promoted or prejudiced by the exemption;
- (c) the degree of risk or potential risk posed by the exemption;
- (d) the impact on existing and surrounding land uses;
- (e) should the exemption not be granted, the effect would be extremely prejudicial to the interests of the community;
- (f) the type and extent of the emergency, if applicable;
- (g) if the Minister substitutes alternative provisions as contemplated in section 55(1)(b) of the Act, the capacity of the municipality to administer and implement the substituted provisions and regulate the development on the land; and
- (h) the inclusion of the piece of land or area in a strategic integrated project designated as such in terms of the Infrastructure Development Act, 2014 (Act No. 23 of 2014).

(8) The Minister must, within 30 days after the closing date referred to in subregulation

(5)(e), grant, grant in part, grant subject to conditions, grant for a specific period, substitute alternative provisions consistent with the Act or refuse a request for exemption.

(9) As soon as practicable after the decision of the Minister, he or she must –

- (a) inform the province or the municipality thereof and give reasons for his or her decision; and
- (b) publish a notice of his or her decision in the *Gazette*.

(10) At any time after refusing to grant an exemption in terms of subregulation (8), the Minister –

- (a) may withdraw his or her notice of refusal to grant the exemption; and
- (b) if the Minister does withdraw the notice of refusal, he or she must reconsider the request for exemption and the provisions of this part apply with the necessary changes to that request for exemption.

#### **34 Procedures related to withdrawal of exemption**

(1) The Minister may withdraw an exemption granted in terms of section 55 of the Act if –

- (a) the exemption was granted on the basis of false or incorrect information;
- (b) a condition, subject to which the exemption was granted, is not fulfilled; or
- (c) the reason for granting the exemption no longer exists.

(2) If the Minister is contemplating withdrawing an exemption granted in terms of section 55 of the Act, the Minister must advise the province or the municipality concerned, in writing, of the intention to do so, as well as publishing a notice to that effect in the *Gazette*.

(3) After considering any submissions or other information received in relation to the proposed withdrawal, the Minister must –

- (a) withdraw the exemption; or
- (b) confirm the exemption as previously granted, in writing to that province or municipality; or
- (c) substitute alternative provisions consistent with the Act; and
- (d) give written reasons for his or her decision; and
- (e) publish a notice in the *Gazette*.

### **CHAPTER 7**

#### **GENERAL**

#### **35 Electronic submissions**

(1) Where these Regulations –

- (a) require a person to –
  - (i) send a document, a copy of a document or any notice to another person,
  - (ii) notify another person of any matter; and

(b) that other person has an address for the purposes of electronic communications, the document, copy, notice or notification may be sent or made by way of electronic communications.

(2) Where these Regulations permit a person to make representations on any matter or document, those representations may be made—

- (a) in writing, or
- (b) by way of electronic communications

(3) If a municipality has or implements an electronic land use management system, any document, copy, notice, notification or record must be submitted and kept in accordance with that system.

(4) The provisions of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) apply to any electronic communication made in terms of this regulation.

### **36 National support and monitoring**

(1) If the Minister, after consultation with departments in the provincial and local sphere of government, deems it necessary to issue guidelines to municipalities to assist them in the exercising of any of their functions under the Act, the municipalities must have regard to those guidelines in the performance of their functions.

(2) Without prejudice to the generality of subregulation (1) and in order to monitor municipalities as required in section 9(1)(b) of the Act a municipality must, when preparing a spatial development framework and a land use scheme, append a statement to it which must include the information referred to in subregulation (3).

(3) The statement referred to in subregulation (2) must include information which demonstrates -

- (a) if the municipality implemented the policies and objectives contained in the guidelines, how and to what extent the municipality implemented it; or
- (b) if the municipality did not implement the policies and objectives contained in the guidelines, because of the nature and characteristics of the area or part of the area of the spatial development framework and land use scheme, it must give reasons for the for not implementing the policies and objectives contained in the guidelines.

(4) Where applicable, a Province must have regard to any guidelines issued to municipalities under subregulation (1) in the performance of its functions.

(5) The Minister may revoke or amend guidelines issued under this regulation.

(6) The Minister must publish in the *Gazette* a notice of any guidelines and of any amendment or revocation of those guidelines issued under this regulation.

**37 Short title and date of commencement**

These Regulations are called the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015 and comes into operation on the date determined by the Minister by publication of a notice thereof in the *Gazette*.

**SCHEDULE 1****Norms and standards for the terms and conditions of service of members of  
Municipal Planning Tribunal**

(1) An official of a municipality authorised by the municipality in terms of section 36(1)(a) of the Act as a member of the Municipal Planning Tribunal –

- (a) may only serve as member of the Municipal Planning Tribunal for as long as he or she is in the full-time employ of the municipality;
- (b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal.

(2) A person appointed by a municipality in terms of section 36(1)(b) of the Act as a member of the Municipal Planning Tribunal -

- (a) is not an employee on the staff establishment of that municipality;
- (b) in the case of a person referred to in regulation 3(2)(a), is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of his or her membership on the Municipal Planning Tribunal;
- (c) performs the specific tasks allocated by the chairperson of the Municipal Planning Tribunal to him or her for a decision hearing of the Municipal Planning Tribunal ;
- (d) sits at such meetings of the Municipal Planning Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Municipal Planning Tribunal;
- (e) in the case of a person referred to in regulation 3(2)(b), is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on as determined by provincial legislation or the municipality or, in the absence of such legislation or determination, the applicable treasury regulations and the rates as determined by the Department of Transport;
- (f) is not entitled to paid overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, performance bonus, medical scheme contribution by municipality, pension, motor vehicle or any other benefit which a municipal employee is entitled to.

(3) The seating allowance referred to in subregulation (2)(e) is subject to taxation in accordance with the normal tax rules that are issued by the South African Revenue Service.

(4) All the members of the Municipal Planning Tribunal must adhere to a code of conduct for members of a Municipal Planning Tribunal approved by the municipality and non-

compliance thereof is grounds for or a disciplinary hearing by the municipality if the member is designated or removal from office of a member appointed in terms of regulation 3(1)(b).

(5) A municipality may use the standard Code of Conduct for Members of a Municipal Planning Tribunal contained in Schedule 3, subject to any modifications and qualifications as the municipality deems necessary.

**SCHEDULE 2****Standard Call for Nominations for Persons to be Appointed as Members to the  
Municipal Planning Tribunal****CALL FOR NOMINATIONS FOR PERSONS TO BE APPOINTED AS MEMBERS TO THE  
\_\_\_\_\_ MUNICIPAL PLANNING TRIBUNAL****CLOSING DATE: (INSERT DATE)**

In terms of the Spatial Planning and Land Use Management Act, 16 of 2013, the \_\_\_\_\_ Municipality hereby invites nominations for members of the public to be appointed to the \_\_\_\_\_ Municipal Planning Tribunal for its first term of office.

The period of office of members will be (insert number of years) years calculated from the date of appointment of such members by the \_\_\_\_\_ Municipality.

Nominees must be persons with leadership qualities and must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

Each nomination must be in writing and must contain the following information:

- (a) The name and address of the nominator, who must be a natural person and a person may nominate himself or herself;
- (b) The name, address and identity number of the nominee;
- (d) Motivation by the nominator for the appointment of the nominee to the \_\_\_\_\_ Municipal Planning Tribunal (not exceeding one page);
- (e) A short curriculum vitae of the nominee (not exceeding two pages);
- (f) Certified copies of qualifications and registration certificates indicating registration with the relevant professional body or voluntary association.

Please note that failure to comply with the above requirements may result in the disqualification of the nomination.

Nominations must be sent to:

The Municipal Manager

\_\_\_\_\_ Municipality

P.O. Box \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

For Attention: \_\_\_\_\_

For Enquiries: \_\_\_\_\_

Tel \_\_\_\_\_

\_\_\_\_\_  
\* I, .....(full names of nominee),

ID No (of nominee) .....

hereby declare that –

- (a) I am available to serve on \_\_\_\_\_ Municipal Planning Tribunal.  
(b) there is no conflict of interest OR I have the following interests which may conflict with the \_\_\_\_\_ Municipal Planning Tribunal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (c) I am not disqualified in terms of section 38 of the Spatial Planning and Land Use Management Act, 16 of 2013 to serve on the \_\_\_\_\_ Municipal Planning Tribunal and I authorise the \_\_\_\_\_ Municipality to verify any record in relation to such disqualification or requirement.

- (d) I undertake to sign, commit to and uphold the Code of Conduct applicable to members of the \_\_\_\_\_ Municipal Planning Tribunal.

\_\_\_\_\_  
Signature of nominee

**SCHEDULE 3****Code of Conduct for Members of the Municipal Planning Tribunal****General conduct**

1. A member of the Municipal Planning Tribunal must at all times—
  - (a) act in accordance with the principles of accountability and transparency;
  - (b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve;
  - (c) abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the municipality has given written approval and has expressly authorised his or her participation.
2. A member of the Municipal Planning Tribunal may not—
  - (a) use the position or privileges of a member of the Municipal Planning Tribunal or confidential information obtained as a member of the Municipal Planning Tribunal for personal gain or to improperly benefit another person; and
  - (b) participate in a decision concerning a matter in which that member or that members' spouse, partner or business associate, has a direct or indirect personal interest or private business interest.

**Gifts**

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

**Undue influence**

4. A member of the Municipal Planning Tribunal may not—
  - (a) use the power of any office to seek or obtain special advantage for private gain or to improperly benefit another person that is not in the public interest;
  - (b) use confidential information acquired in the course of his or her duties to further a personal interest;
  - (c) disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons; and

- (d) commit a deliberately wrongful act that reflects adversely on the Municipal Planning Tribunal, the Municipality, the government or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions of the Municipal Planning Tribunal by improper means.

**SCHEDULE 4****Standard Agreement for the Establishment of a joint Municipal Planning Tribunal****AGREEMENT  
FOR THE ESTABLISHMENT OF A JOINT MUNICIPAL  
PLANNING TRIBUNAL**

Concluded by and between:

**MUNICIPALITY 1**

Demarcation Code .....

(Herein represented by ....., in his/her capacity as Executive Mayor of  
Municipality 1 and ....., in his/her capacity as Municipal  
Manager)

(Hereinafter referred to as ".....")

AND

**MUNICIPALITY 2**

Demarcation Code .....

(Herein represented by ....., in his/her capacity as Executive Mayor of  
Municipality 2 and ....., in his/her capacity as Municipal  
Manager)

(Hereinafter referred to as ".....")

WHEREAS the Spatial Planning and Land Use Management Act, 16 of 2013 makes provision in section 34(1) for the establishment of a joint Municipal Planning Tribunal to determine land development and land use applications;

AND WHEREAS the Parties have undertaken an assessment as contemplated in regulation 2 of the Regulations;

AND WHEREAS the Parties are desirous to conclude an agreement to establish a joint Municipal Planning Tribunal to jointly consider and decide the land development and land use applications submitted to their respective municipalities;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

The headings of the clauses in this Agreement are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.

In this Agreement, unless a contrary intention clearly appears:

**1.1 Words importing -**

1.1.1 any one gender includes the other gender;

1.1.2 the singular includes the plural and vice versa; and

1.1.3 natural persons include created entities (corporate or non-corporate) and vice versa.

1.2 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.

1.3 When any number of days is prescribed in this Agreement, it shall be reckoned exclusively of the first and inclusively of the last day.

1.4 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

1.4.1 **"commencement date"** means the date of publication of the notice referred to in clause 4.8 irrespective of the date of signature hereof;

1.4.2 **"notice"** means a written notice;

1.4.3 **"Parties"** mean the parties to this Agreement identified herein;

1.4.5 **"the Act"** means the Spatial Planning and Land Use Management Act, 16 of 2013 and the Regulations issued thereunder;

- 1.4.6 “the Regulations” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015.

## **2. FUNDING**

- 2.1 The Parties shall make provision in their respective budgets to jointly fund the cost of proceedings of the joint Municipal Planning Tribunal, the remuneration of members appointed to it and any other necessary operational costs, on an annual basis.
- 2.2 There will be no transfer of funds between the Parties.
- 2.3 Each Party shall be responsible to fund the extent of considering and deciding those categories of applications that shall be heard by an authorised official as contemplated in section 35(2) of the Act.
- 2.4 All funding is subject to the approval of the municipal councils of the Parties.
- 2.5 In the event of the one of the municipal councils not approving funding, it shall result in the termination of this Agreement.

## **3. DURATION**

- 3.1 This Agreement commences on the commencement date.
- 3.2 This Agreement shall terminate –
- (a) on the date that the term of office of the members of the joint Municipal Planning Tribunal expires as referred to in clause 4.7;
  - (b) when one of the municipal councils does not approve funding as contemplated in clause 2.5;
  - (c) when one of the Parties terminates the Agreement by giving six months' notice of its intention to withdraw from this Agreement.

## **4. ESTABLISHMENT OF THE JOINT MUNICIPAL PLANNING TRIBUNAL**

### **4.1 Composition of the joint Municipal Planning Tribunal**

- 4.1.1 The joint Municipal Planning Tribunal shall consist of at least 15 members made up as follows:
- (a) three officials in the full-time service of Municipality 1;
  - (b) three officials in the full-time service of Municipality 2;
  - (c) two persons registered as a professional with the South African Council for the Planning Profession in terms of the Planning Profession Act, 36 of 2002;
  - (d) two persons registered as a professional with the Engineering Council of South Africa in terms of the Engineering Profession Act, 46 of 2000;
  - (e) two persons registered as a chartered accountant with a recognised voluntary association or registered in terms of the Auditing Profession Act, 26 of 2005;
  - (f) two persons either admitted as an attorney in terms of the Attorneys Act, 53 of 1979 or admitted as advocate of the Supreme Court in terms of the Admission of Advocates Act, 74 of 1964; and

- (g) an environmental assessment practitioner registered with a voluntary association;
- (h) any other person who has knowledge and experience of spatial planning, land use management and land development or the law related thereto.

4.1.2 In addition to the criteria determined in subclause 4.1.1 the persons referred to in paragraphs (c) to (g) must have knowledge and experience of spatial planning, land use management and land development or the law related thereto.

#### **4.2 Invitations and nominations to serve on the joint Municipal Planning Tribunal**

The Parties shall jointly issue an invitation and a call for nominations for persons referred to in clause 4.1.1(c) – (g) to serve on the joint Municipal Planning Tribunal in the manner and form provided for in the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015.

#### **4.3 Joint evaluation panel**

4.3.1 The Parties shall constitute a joint evaluation panel from employees in the full time service of the Parties to evaluate all nominations received, whether due to an invitation or call for nominations.

4.3.2 The joint evaluation panel of the Parties shall evaluate all nominations received and make recommendations to the municipal councils of the Parties including a recommendation with regard to the chairperson and deputy chairperson.

#### **4.4 Appointment of members**

4.4.1 Each municipal council shall evaluate the recommendations of the joint evaluation panel referred to in clause 4.3 and appoint such persons who qualify for appointment as members of the joint Municipal Planning Tribunal subject to all the terms and conditions of appointment to and serving on the joint Municipal Planning Tribunal referred to in the Act and the Regulations.

4.4.2 The Parties shall jointly inform the successful nominees of their appointment to the joint Municipal Planning Tribunal.

#### **4.5 Officials in the full-time employ of the Parties to serve on joint Municipal Planning Tribunal**

4.5.1 The Parties shall designate three officials each to serve on the joint Municipal Planning Tribunal and shall delegate the necessary authority to these officials.

4.5.2 The Parties shall review and amend the contracts of service of the officials designated to serve on the joint Municipal Planning Tribunal.

#### **4.6 Appointment of the chairperson and deputy chairperson**

4.6.1 The chairperson and the deputy chairperson of the joint Municipal Planning Tribunal shall be appointed by the Parties from the ranks of the officials referred to in clause 4.1(a) and (b).

4.6.2 The term of office of the chairperson and the deputy chairperson shall be for a period of one year calculated from the commencement date of this Agreement.

4.6.3 For the first year of its existence, the chairperson shall be from Municipality 1 and the deputy chairperson shall be from Municipality 2.

4.6.4 For the second year of its existence, the chairperson shall be an official from Municipality 2 and the deputy chairperson shall be an official from Municipality 1 and for every year thereafter, the office of the chairperson and deputy chairperson shall so alternate.

#### **4.7 Term of office**

The term of office of members of the joint Municipal Planning Tribunal shall be five years calculated from the commencement date of this Agreement.

#### **4.8 Publication of notice**

When the joint Municipal Planning Tribunal is ready to commence operations, the municipal managers of the Parties, shall jointly publish the notice referred to in section 37(4) of Act.

### **5. APPLICATIONS TO BE CONSIDERED AND DECIDED BY THE JOINT MUNICIPAL PLANNING TRIBUNAL**

5.1 The Parties shall, in accordance with the criteria determined in the Regulations, categorise land development and land use applications in a corresponding manner.

5.2 The Parties shall refer such categories of applications determined by them to the joint Municipal Planning Tribunal.

5.3 The joint Municipal Planning Tribunal shall exercise and perform the powers, duties and functions of a Municipal Planning Tribunal referred to in the Act, the relevant provincial legislation and the by-laws of the Parties.

#### **OR IN THE ALTERNATIVE**

5.1 All land development and land use applications shall be heard by the joint Municipal Planning Tribunal.

5.2 The joint Municipal Planning Tribunal shall exercise and perform the powers, duties and functions of a Municipal Planning Tribunal referred to in the Act, the relevant provincial legislation and the by-laws of the Parties.

### **6. SEAT OF THE JOINT MUNICIPAL PLANNING TRIBUNAL**

6.1 The meetings of the joint Municipal Planning Tribunal shall be held at the offices of the Municipality in whose employ the chairperson is for that particular year.

#### **OR IN THE ALTERNATIVE**

6.2 The meetings of the joint Municipal Planning Tribunal shall be held at the offices of the \_\_\_\_\_ Municipality

## OR IN THE ALTERNATIVE

- 6.3 The meetings of the joint Municipal Planning Tribunal shall be held at the offices of the municipality in whose municipal area the land which the land development or land use application that must be considered and determined by the Municipal Planning Tribunal relates to, is located.

**7. SUBMISSION OF APPLICATIONS**

- 7.1 A land development and land use application referred to in clause 5.2 shall be submitted by an applicant to the municipality in whose municipal area the land to which the application relates, is located.
- 7.2 The municipality in whose municipal area the land to which the application relates, is located, shall undertake all the required public participation procedures, intergovernmental participation procedures and internal procedures.

**8. DESIGNATION OF MEMBERS TO CONSIDER AND DETERMINE AN APPLICATION**

- 8.1 On receipt of an application referred to in clause 7.3, the joint Municipal Planning Tribunal shall evaluate the application and decide on the knowledge and skills required to consider and determine the application and designate the necessary members to so consider and determine that application, including the presiding officer.
- 8.2 The joint Municipal Planning Tribunal shall nominate no less than three members to consider and decide an application.

**9. APPOINTMENT OF TECHNICAL AND OTHER ADVISERS**

- 9.1 The Parties shall establish and maintain-
- (a) a database of public sector technical and other advisers; and
  - (b) a database of private sector technical and other advisers.
- 9.2 The Parties shall before publication of the notice referred to in clause 4.8 –
- (a) in writing request the employer of an official or employee referred to in regulation 11(2)(a) to make that official or employee available on an *ad hoc* basis for technical and other support before that official or employee is placed on the database of public sector technical and other advisers; and
  - (b) publish an invitation in one newspaper circulating in the municipal areas of the Parties for persons referred to in regulation 11(2) to be registered on the database of private sector technical and other advisers and may determine conditions for incorporation into that database.
- 9.3 The chairperson shall appoint technical and other advisers to assist the joint Municipal Planning Tribunal per application that it has to consider and determine, if necessary.

9.4 The chairperson shall first consider appointing an adviser from the database of public sector technical and other advisers and only if there is no such adviser available or no adviser available with the requisite knowledge and skill, shall the chairperson consider an adviser from the database of private sector technical and other advisers.

9.5 The municipality in whose full-time service the chairperson is, is responsible to remunerate that technical or other adviser for services rendered to the joint Municipal Planning Tribunal, if that adviser is not a public service official.

#### **10 ASSETS**

10.1 The joint Municipal Planning Tribunal shall not acquire any assets or incur liabilities and shall not employ any staff.

10.2 The municipality in whose full-time service the chairperson is, shall provide the necessary assets and designate staff to assist the joint Municipal Planning Tribunal and shall be responsible for any other operational requirements of the joint Municipal Planning Tribunal.

#### **OR IN THE ALTERNATIVE**

10.2 The Parties shall jointly provide the necessary assets and designate staff to assist the joint Municipal Planning Tribunal and are jointly responsible for any other operational requirements of the joint Municipal Planning Tribunal.

#### **11. LIAISON BETWEEN THE PARTIES**

The Parties agree to liaise through the following persons or their successors, duly authorised by the Parties:

For Municipality 1: The Municipal Manager

Phone number: .....

Fax number: .....

For Municipality 2: The Municipal Manager

Phone number: .....

Fax number: .....

#### **12. DISPUTES**

12.1 Any dispute which arises between the Parties in connection with the interpretation of or giving effect to this Agreement shall be resolved amicably through consultation and negotiation.

12.2 Should a dispute remain unresolved, the provisions of the Intergovernmental Relations Framework Act, 13 of 2005 shall apply in the absence of specific dispute resolution measures prescribed by the Act.

#### **13. LIMITATION OF LIABILITY**

Notwithstanding anything contained in this Agreement, the Parties' maximum liability shall

be limited to –

- (a) an act or omission of the authorised official referred to in section 35(2) of the Act; and
- (b) the act or omission of a member of the joint Municipal Planning Tribunal in the year that the Party is responsible for the operational expenses of the joint Municipal Planning Tribunal as contemplated in clause 10.2.

**OR IN THE ALTERNATIVE**

Notwithstanding anything contained in this Agreement, the liability of Municipality 1 shall be limited to –

- (a) an act or omission of the authorised official referred to in section 35(2) of the Act; and
- (b) an act or omission of a member of the joint Municipal Planning Tribunal.

**14. ENTIRE AGREEMENT**

14.1.1 This Agreement constitutes the entire agreement and supersedes any and all previous agreements regarding this subject matter that may exist between the Parties.

14.1.2 No representations, either verbal or written, made by either party during the tenure of this Agreement shall be of any force or effect unless agreed to by both Parties, reduced to writing, and annexed hereto, as an addendum.

**15. NO WAIVER**

The failure of either Party to insist upon the strict performance of any provision of this Agreement or to exercise any right, power or remedy consequent upon a breach hereof shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Agreement.

**16. NOTICES AND DOMICILIUM**

16.1. The Parties choose as their *domicilia citandi et executandi* the following addresses:-

THE MUNICIPALITY

For the Municipality

Address

THE MUNICIPALITY

For the Municipality

Address

- 16.2 Either party hereto shall be entitled from time to time by written notice to the other party, to vary its *domicilium* to any other physical address.
- 16.3 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and if received or deemed to have been received by the addressee.
- 16.4 Any notice given by one party to the other, referred to as the addressee, which –
- (a) is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
  - (b) is posted by prepaid registered post from an address to the addressee at the addressee's *domicilium* for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the day after the date of posting;

#### 17. AUTHORITY

The Parties confirm that they have the necessary authorisation to sign this Agreement on behalf of the applicable Party.

**18. SIGNATURES**

THUS DONE AND SIGNED BY MUNICIPALITY 1 AT \_\_\_\_\_ ON  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015.

FOR MUNICIPALITY 1

WITNESS FOR MUNICIPALITY 1

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
FULL NAME OF SIGNATORY

\_\_\_\_\_  
FULL NAME OF SIGNATORY

THUS DONE AND SIGNED BY MUNICIPALITY 2 AT \_\_\_\_\_ ON  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015.

FOR MUNICIPALITY 1

WITNESS FOR MUNICIPALITY 1

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
FULL NAME OF SIGNATORY

\_\_\_\_\_  
FULL NAME OF SIGNATORY

**SCHEDULE 5****Standard Categories of Land Development and Land Use Applications**

- (1) Category 1 Applications are -
- (a) the establishment of a township or the extension of the boundaries of a township;
  - (b) the amendment of an existing scheme or land use scheme by the rezoning of land;
  - (c) subject to subitem (3), the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land;
  - (d) the amendment or cancellation in whole or in part of a general plan of a township;
  - (e) the subdivision and consolidation of any land other than a subdivision and consolidation which is provided for as a Category 2 application;
  - (f) permanent closure of any public place;
  - (g) any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme;
  - (h) any consent or approval provided for in a provincial law.
- (2) Category 2 Applications are:
- (a) the subdivision of any land where such subdivision is expressly provided for in a land use scheme;
  - (b) the consolidation of any land;
  - (c) the simultaneous subdivision, under circumstances contemplated in paragraph (a) and consolidation of land;
  - (d) the consent of the municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application;
  - (e) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a land use scheme in operation.
- (3) The division of functions between an authorised official and a Municipal Planning Tribunal can be made as follows:
- (a) All category 1 applications and all opposed category 2 applications must be referred to the Municipal Planning Tribunal.
  - (b) All category 2 applications that are not opposed must be considered and determined by the authorised official.

(4) For the purposes of this Schedule -

- (a) "consent" means a land use right that may be obtained by way of consent from the municipality and is specified as such in the land use scheme;
- (b) "consolidation" means the joining of two or more pieces of land into a single entity;  
and
- (c) "subdivision" means the division of a piece of land into two or more portions.