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MOSSSEL BAY MUNICIPALITY

ZONING SCHEME BY-LAW

Adopted by Resolution E250-09/2021 of the Municipal Council of Mossel Bay

The Municipality of Mossel Bay hereby publishes the Mossel Bay Municipality Zoning Scheme By-Law as set out below in terms of Section 156 of the Constitution of the Republic of South Africa, 1996, the Mossel Bay Municipality, enacts as follows: -

The Afrikaans and Xhosa version of this By-Law will be available upon request. In the event of an inconsistency between the English, Afrikaans or Xhosa text, the English text shall prevail.

Aangeneem deur Resolusie E250-09/2021 van die Munisipale Raad van Mosselbaai

Die Munisipaliteit van Mosselbaai, publiseer hiermee die Mosselbaai Munisipaliteit Soneringskema Verordening uiteengesit hieronder in terme van Artikel 156 van die Grondwet van die Republiek van Suid-Afrika, 1996, die Munisipaliteit van Mosselbaai, bepaal soos volg: -

Die Afrikaans en Xhosa-weergawe van hierdie Verordening sal beskikbaar wees op aanvraag. In die geval van 'n teenstrydigheid tussen die Engels, Afrikaans en Xhosa teks sal die Engelse teks aanvaar word.

IsiGqibo esiThatyathiweyo u E250-09/2021 seBhunga likaMasipala wase Mossel Bhayi

UMasipala wase Mossel Bhayi ngokwenjenje, upapasha uMthetho weSikimu soCando sikaMasipala wase Mossel Bhayi njengoko kuchaziwe phantsi kweSolotyia 156 loMgaqo-Siseko weRiphabliki yoMzantsi Afrika, 1996, uMasipala wase Mossel Bhayi, ukumiselo oku njengomthetho: -

Iinguqulelo zesiBhulu kunye nezesiXhosa zalo Mthetho ziyafumaneka ngesicelo. Kwiimeko apho kukho khona ukungaqiniseki phakathi kwenguqulelo yesiNgesi, isiBHulu nesiXhosa, inguqulelo yesiNgesi iyakuthabatha indima ephambili.

MOSSEL BAY MUNICIPALITY

ZONING SCHEME BY-LAW

To regulate and control municipal zoning.

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CHAPTER 1 INTERPRETATION

Definitions

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

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

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

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

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

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

“**balcony**” means a floor projecting outside a building at a level higher than that of the ground floor, enclosed only by low walls or railings or by containing walls of rooms abutting the projecting floor, and may include a roof over the projecting floor and pillars supporting the roof;

“**bar**” see definition of pub;

“**bar in an entertainment room**” means an area for preparing beverages with a single prep bowl with cold water only, refrigerator and items normally associated with a bar, provided that no meal preparation or appliances for meal preparation is allowed such as a microwave or stove;

“**base zone**” means the zone that determines the lawful land use and development parameters for a land unit in terms of this zoning scheme, before the application of any overlay zone;

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

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

“**boundary wall**” means any wall, fence or enclosing structure erected on or in the vicinity of a cadastral property boundary or an exclusive use boundary for the purpose of enclosing a property, including entrance gates and doors;

“**braai room**” means a room that is part of the main dwelling or outbuildings and that is used primarily for entertainment purposes and where food and drinks may be prepared, but excludes a kitchen;

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

- (a) a roofed structure;
- (b) an external stair, step or landing of a building and any gallery, canopy, balcony, stoep, verandah, terrace, porch or similar feature of a building;
- (c) a wall or railing enclosing any feature referred to in paragraph (b); and
- (d) any other portion of a building;

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

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

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

“CapeNature” means the Western Cape Nature Conservation Board established in terms of the Western Cape Nature Conservation Board Act, 1998 (Act 15 of 1998);

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

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

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

“coffee station” means an area for preparing hot beverages with a 1m² counterspace, a single prep bowl with cold water only, undercounter refrigerator, kettle, coffee machine and items normally associated with preparing hot beverages, excluding a microwave and stove;

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

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

“container” means a lockable steel prefabricated moveable unit structure originally designed for purposes of containing bulk goods in transit (on ships, trains and trucks). In the context of this By-law these shipping containers are no longer required for purposes of containing for which they were originally designed or customised for re-use in various circumstances; provided that a building plan, in terms of the National Building Regulations must be submitted and approved before the on-site placing of a container, except for container site;

“Council” means the municipal council of the Municipality;

“coverage” means the area of a land unit that is covered by buildings, expressed as a percentage of the total erf area of the land unit, and includes—

- (a) stairs, steps, landings, except entrance landings and steps, galleries, passages and similar features, whether internal or external; and
- (b) canopies, louvre roofs, verandahs, porches, balconies, terraces and similar features provided that the following portions of buildings must be disregarded in the calculation of coverage, namely—
 - (i) stoeps less than 1,5m above natural ground level, entrance steps and landings;
 - (ii) cornices, chimney breasts, pergolas, flower boxes, water pipes, drain pipes and minor decorative features not projecting more than 500 millimetres from the wall of the building;
 - (iii) eaves not projecting more than 1,0 metres from the wall of the building; and
 - (iv) a basement, provided that the basement ceiling does not project above the ground level; and
 - (v) any structure covered by shade cloth.

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

“dominant use” means the predominant or major lawful use of a property, and may consist of primary uses, consent uses or other lawful uses permitted on the property;

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

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

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

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

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

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

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

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

“erection” in relation to a building or structure includes—

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

“family” means—

- (a) one or more individuals occupying a dwelling who are related through marriage or common law, blood relationship, legal adoption, or legal guardianship and no more than 3 unrelated people; or
- (b) a group of not more than 5 unrelated persons, including domestic workers or boarders;

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

“floor area” the extent or measurement of the floor in a room or building and includes all external walls in cases where a single use is applicable, without any exclusions;

“floor factor” means the factor, expressed as a proportion of 1, which is prescribed for the calculation of the maximum floor space of a building or buildings permissible on a land unit; being the maximum floor space as a proportion of the total erf area;

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

- (a) any area, including a basement, which is reserved solely for parking or loading of vehicles is excluded;
- (b) external entrance steps and landings, a canopy, a stoep and an area required for external fire escapes are excluded;
- (c) a projection, including a projection of eaves, and a projection which acts as a sunscreen or an architectural feature, which projection does not exceed 1 metre beyond the exterior wall or similar support, is excluded;
- (d) any uncovered internal courtyard, light well or other uncovered shaft which has an area in excess of 10 m² is excluded;
- (e) any covered paved area outside and immediately adjoining a building at or below the ground floor level, where such paved area is part of a forecourt, yard, external courtyard, pedestrian walkway, parking area or vehicular access, and which is permanently open to the elements on at least the front or long side, is excluded;
- (f) any covered balcony, verandah or terrace which, apart from protective railings, is permanently open to the elements on at least the front or long side, and which does not exceed 2,5 metres in width, is excluded;
- (g) subject to paragraph (h), any stairs, stairwells and atriums that are covered by a roof are included;
- (h) in the case of multi-level buildings, any stairwells, lift wells, light wells or other wells, and any atrium, are only counted once; and provided further that—
 - (i) floor space is measured from the outer face of the exterior walls or similar supports of the multi-level building; and
 - (ii) the total floor space is the sum of the floor space of all the levels of the multi-level building, including that of any basement;

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

“GLA” means gross leasable area being the total floor space designed for, or capable of, occupancy or control by tenants, measured from the centre line of the joint partitions to the inside finished surface of the outside walls, but excludes public toilets, internal walkways, lift shafts, service ducts, interior parking and loading bays;

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

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

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

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

“gymnasium” means an establishment providing space or facility for physical exercise or for participation in sports activity;

“hazardous substance” has the same meaning as “grouped hazardous substance” as defined in section 1 of the Hazardous Substances Act, 1973 (Act 15 of 1973);

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

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

“inter-leading” means the interconnection of habitable rooms; specifically, through a door or passage which must be enclosed on both sides and covered with a solid roof, that leads into another room/s which forms part of the dwelling unit and interconnection through an outbuilding is not regarded as interleading;

“kitchen” means a room or part of a room equipped for preparing and cooking meals with items normally associated with a kitchen and excludes a braai room, separate coffee station and bar in an entertainment area and provided that –

If a dispute arises whether a proposed or an already constructed room or part of a room as shown on a building plan constitutes a kitchen, the final interpretation of the definition vests with the Municipality;

“kitchenette” means an area with a counterspace (including cupboards) not larger than 2m², equipped for mainly re-heating meals and preparing light meals, with a small undercounter refrigerator, a single prep bowl, microwave and kettle, provided that—

- (a) no oven or electrical connection for an oven is permitted;
- (b) kitchenettes may only be permitted in approved guest accommodation establishments excluding backpackers’ lodge and bed and breakfast establishments;
- (c) kitchenette may only be allowed in an outside bedroom as included with a dwelling house; and
- (d) kitchenettes are not permitted in rooms which are let to lodgers in a dwelling house;

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

“landscaping” means the placement of plants, contoured features, water features, paving, street furniture and other soft and hard elements for the purposes of enhancing the aesthetic appeal, environmental management, amenity and value of a property;

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

“lodger” means a person who utilises lodging services;

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

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

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

- (a) water, other than water taken from land or sea for the extraction of any mineral from such water;
- (b) petroleum; and
- (c) peat;

“motor vehicle” means a wheeled vehicle designed or used for propulsion by means of an internal combustion or electrical engine, and includes a motor cycle, trailer or caravan, but excludes a vehicle moving exclusively on rails;

“Municipality” means the Municipality of Mossel Bay established by Establishment Notice No. P.N. 500/2000 in Provincial Gazette 5592 of 22 September 2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and where the context so requires, includes—

- (a) the Council;
- (b) another political structure or a political office bearer of the Municipality, authorised or delegated to perform a function or exercise a power in terms of this By-law;
- (c) the Municipal Planning Tribunal, authorised or delegated to perform a function or exercise a power in terms of this By-law;
- (d) the Municipal Manager; and
- (e) any employee of the Municipality acting in terms of delegated or sub-delegated authority of the Municipality;

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

“natural ground level” means—

- (a) the level of the land in its unmodified state; or
- (b) when altered with the municipality’s approval for the purpose of development, the municipality may approve such altered ground level as the natural ground level, subject to Section 38;

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

“occupant” means any person who occupies a land unit;

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

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

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

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

- (a) stipulates development parameters or use rights that may be more or less restrictive; and
- (b) may include provisions and development parameters relating to—
 - (i) primary or consent uses;
 - (ii) subdivision and subdivisional areas;
 - (iii) development incentives;
 - (iv) density limitations;
 - (v) urban form or urban renewal;
 - (vi) heritage and environmental protection;
 - (vii) management of urban growth;
 - (viii) scenic drives; coastline setbacks;
 - (ix) any other purpose as set out in this zoning scheme;

“package of plans” means the hierarchy of plans specified in terms of this By-law;

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

“parking bay” means an area measuring not less than 5 metres x 2,5 metres with at least 7 metres manoeuvring space for perpendicular or angled parking and 6 metres x 2,5 metres for parallel parking that is clearly identified and demarcated for the parking of one motor vehicle and may be provided in the form of a garage or carport that is accessible for easy and safe vehicle movement and may include a self-service electrical charging point provided that the Municipality is of the opinion that the existing services infrastructure and capacity is adequate;

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

“Planning By-Law” means the Planning By-law adopted by the Municipality on 30 July 2015

“planning law” means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), Land Use Planning Act, Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the Planning By-law or succeeding legislation governing land use planning in the Western Cape, whichever is applicable;

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

“policy plan” means a policy adopted by the Municipality, structure plan, spatial development framework or other policy plan approved in terms of planning law;

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

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

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

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

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

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

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

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

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

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

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

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

“road” includes a public street or a private road;

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

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

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

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

“shade cloth” means material in the form of polyurethane or canvas that protects against the harmful uv radiation from the sun;

“shipping or transport container” means a large, weatherproof container used for the transport of goods by sea, rail or road and that is usually stored in the open when not in use;

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

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

“**spatial development framework**” refers to a provincial spatial development framework, a provincial regional spatial development framework, or a municipal spatial development framework or municipal local spatial development framework;

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

“**storey**” means that portion of a building between the surface of any floor and the surface of the next floor above; or, if there is no floor above the ceiling, then up to the ceiling; provided that, unless the contrary appears clearly from the provisions of this By-law—

- (a) a basement does not constitute a storey;
- (b) a roof, or dome forming part of a roof, does not constitute a separate storey unless the space within the roof or dome is designed for, or used for, human occupation or other living or entertainment purposes, in which case it is deemed to be a storey;
- (c) the utilisation of an open roof area does not constitute a separate storey; however, should any means of coverage or fixtures such as a Jacuzzi, swimming pool or built-in braai be added to the roof of a building in a single residential zone, the area is regarded as an additional storey;
- (d) any storey greater than 4 metres, measured from the finished floor level to the finished floor level of the storey above, or to the ceiling in the case of a top storey, but equal to or less than 6 metres in height is, for the purpose of the height measurement, regarded as two storeys, and every additional 4 metres in height or portion thereof, is regarded as an additional storey; and
- (e) in counting the number of storeys of a building, the ground floor is the first storey and the next floor above is the second storey;

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

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

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

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

“**structure**” without in any way limiting its ordinary meaning, includes any building, shade cloth, shelter, container, tool shed (e.g. wendy house), wall, fence, pillar, tower, pergola, steps, landing, terrace, sign, ornamental architectural feature, swimming pool, fuel pump or underground tank, any building ancillary to service infrastructure provision, and any portion of a structure;

“**tavern**” see definition of pub;

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

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

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

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

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

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

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

“zoning” includes base zoning and overlay zoning;

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

CHAPTER 2 ZONING SCHEME, USE ZONES AND USES

Application of zoning scheme

2. The zoning scheme applies to the entire municipal area.

Purpose of zoning scheme

3. The purpose of the zoning scheme is to—
 - (a) give effect to the municipal spatial development framework;
 - (b) make provision for orderly development and the welfare of the community; and
 - (c) determine use rights and development parameters, with due consideration of the principles referred to in the Land Use Planning Act.

Components of zoning scheme

4. The zoning scheme consists of the following components:
 - (a) this By-law;
 - (b) the zoning scheme map; and
 - (c) the register.

Use zones

5.
 - (1) The municipal area is divided into the use zones referred to in column 1 of the table set out in Schedule 1.
 - (2) The purpose of each use zone is set out in column 1 of the table set out in Schedule 1.
 - (3) The description of the primary and consent uses applicable to each use zone is set out in Schedule 2.
 - (4) The location, boundaries and extent of each use zone is depicted on the zoning scheme map.
 - (5) The primary and consent uses applicable to each use zone are subject to the development parameters specified for the land use applicable to each use zone as set out in Schedule 2.

Zoning scheme map

6.
 - (1) The zoning scheme map depicts—
 - (a) the zoning of land in accordance with the use zone in which the land is located; and
 - (b) overlay zones, if applicable to the land.
 - (2) The official version of the zoning scheme map must be kept on file at the Municipality and is available for inspection during normal office hours.
 - (3) The official version of the zoning scheme map as approved together with this By-law must be certified by the Municipal Manager.
 - (4) The official version of the zoning scheme map depicts the status of the current zoning classification of land in the Municipality and may only be amended as provided for in this By-law and the Planning By-law.

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

Transition to new use zones and savings

7. (1) Upon the date of commencement of this By-law, land that is zoned in terms of the previous zoning scheme is translated or reclassified to one of the use zones referred to in section 5.
- (2) The Zoning Transition Table in Schedule 4 summarises the translation or reclassification of the use zones used in the previous zoning scheme to the use zones used in this By-law.
- (3) Despite the translation or reclassification of the use zones used in the previous zoning scheme to the use zones used in this By-law—
 - (a) any condition of approval or validity period that is applicable to a land unit in terms of the previous zoning scheme immediately before the coming into effect of this By-law, remain applicable and is incorporated into this By-law in so far as it determines development parameters or restrictions that are different from the development parameters or restrictions applicable in terms of this By-law;
 - (b) the Municipality must record any development condition referred to in paragraph (a) in the register together with any applicable validity period applicable to the zoning in terms of the previous zoning scheme;
 - (c) a zoning that has been exercised prior to coming into effect of this By-law, cannot lapse, and is translated or reclassified as determined in this By-law;
 - (d) When an approval has been exercised, a land unit is regarded as having been allocated a corresponding zoning in this By-law as determined by the Municipality if—
 - (i) a rezoning application or substitution scheme was approved, but not yet exercised, before the commencement of this By-Law; or
 - (ii) a rezoning application or substitution scheme is approved after the commencement of this By-Law in accordance with the provisions of a previous zoning scheme (as contemplated in section 78(2) of LUPA).
 - (e) a zoning approved in terms of the previous zoning scheme that has not been exercised immediately before the coming into effect of this By-law, lapses after the expiry of the validity period applicable to that zoning in terms of the previous zoning scheme and is translated or reclassified as determined in this By-law; and
 - (f) in the event of the lapsing of a zoning as contemplated in paragraph (e), the land unit reverts back to the use zone applicable to it in terms of the previous regulations, before it was rezoned and is translated or reclassified as determined in Schedule 4.
 - (g) A building plan application that was formally submitted and accepted—
 - (i) immediately before the coming into effect of this By-law and which is still being processed; or
 - (ii) on or after the date of coming into effect of this By-law with the purpose to act on an approval in terms of a previous planning law, must be assessed in accordance with that approval.
 - (h) any rezoning or consent use application which was submitted prior to the date of coming into effect of this By-law, must be finalized in terms of the previous zoning scheme, and thereafter is translated or reclassified as determined in Schedule 4 and subject to subsection (3), or as determined by the municipality.

Rectification of errors on zoning scheme map

8. (1) If the zoning of a land unit is incorrectly indicated on the zoning scheme map, the owner of an affected land unit may submit an application to the Municipality to correct the error.
- (2) An owner contemplated in subsection (1) must apply to the Municipality in the form determined by the Municipality and must—
- (a) submit written proof of the lawful land use rights; and
 - (b) indicate the correct zoning that should be allocated.
- (3) The onus of proving that the zoning is incorrectly indicated on the zoning scheme map is on the owner.
- (4) The owner is exempted from paying application fees.
- (5) If the zoning of a land unit is incorrectly indicated on the zoning scheme map, the Municipality must amend the zoning scheme map to reflect the correct zoning.
- (6) If the correct zoning of a land unit cannot be ascertained from the information submitted to the Municipality or the records of the Municipality, the zoning must be determined in terms of the Planning By-law and the zoning as determined must be recorded on the zoning scheme map.

Zoning scheme register

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

Primary uses

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

Consent uses

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

Temporary departures for specific occasions

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

Non-conforming uses

13. (1) A non-conforming use does not constitute an offence in terms of this By-law.
- (2) A non-conforming use may continue as long as it remains otherwise lawful.
- (3) No additions or extensions to a non-conforming use is permitted.

Deemed zoning of closed public places

14. The zoning of land that was previously a public street or public open space, vested in or owned by the Municipality and that is closed, is determined as follows:
- (a) if the land is transferred to an abutting land owner, that portion of the land falls in the same zone as that of the abutting land belonging to the abutting owner; or
- (b) the Municipality must determine which zoning applies to the land if—
- (i) the land is transferred to an abutting land owner and that owner owns abutting properties falling into more than one zone; or
- (ii) in any other case not provided for in this section.

**CHAPTER 3
OVERLAY ZONES****Purpose of overlay zones**

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

Procedures for establishing, reviewing or amending overlay zones

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

**CHAPTER 4
DISTANCES, LEVELS AND BOUNDARIES****Measuring distances and levels**

17. The following provisions apply with regard to the method of measuring distances and levels:
- (a) when reference is made or implied to the distance between boundaries or between a building and a boundary, this distance must be measured in the following manner:
- (i) the boundary or boundaries and all points of the building must be projected onto a horizontal plane, and all measurements must be made in the plane; and
- (ii) the distance between a point on a building and a boundary must be measured at right angles to the erf boundary;
- (b) when reference is made to a portion of a boundary opposite a building, that portion must be defined by drawing lines in a manner described in paragraph (a) from points on the building, at right angles to the boundary;

- (c) when reference is made to natural ground level or of a roof wall plate, parapet or other things, the level must be calculated in accordance with recognised geometric principles; and
- (d) when the levels involved are so irregular that calculation in accordance with the principles in paragraphs (a) to (c) is impractical or leads to a result that is not in accordance with the intent of the zoning scheme, the Municipality must determine the level.

Determining boundaries of use zones

18. If uncertainty exists as to the boundaries of use zones, the following parameters apply in the order listed:
- (a) boundaries shown as following or approximately following any public street or road must be construed as following the street cadastral boundary;
 - (b) boundaries shown as following or approximately following any land unit boundary must be construed as following that boundary;
 - (c) boundaries shown as following or approximately following natural features must be construed as following those features; and
 - (d) in the event of further uncertainty as to the boundaries of a use zone, the Municipality must make a determination.

CHAPTER 5 ENFORCEMENT

Offences, penalties and enforcement of By-law

19. (1) Subject to section 13, no person may erect any building or structure or any part thereof—
- (a) except for a purpose permitted by this By-law and only in accordance with the applicable development parameters; or
 - (b) without first obtaining approval from the Municipality in terms of the Planning By-law.
- (2) A use not reflected as a primary or consent use for a particular use zone is not permitted in the use zone concerned, unless approved in terms of the Planning By-Law.
- (3) A person who contravenes this section and sections 21 to 50 is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.
- (4) A Municipality must enforce the zoning scheme through the measures for enforcement provided for in the Planning By-law.

CHAPTER 6 DEVELOPMENT OF LAND

Development parameters applicable to use rights

20. (1) The land use descriptions and development parameters applicable to each primary and consent use right depicted in the table in Schedule 1 are described in Schedule 2.
- (2) The development parameters as listed in Schedule 2 are applicable to use rights, except where multiple land uses are permitted as a primary right and/or approved as consent use(s) the development parameters of the primary use of the zoning of the erf as stipulated in Schedule 1 applies, provided that:
- (a) specified development parameters for approved land use planning applications, still applies;

- (b) in the scenario where multiple land uses are permitted any development parameters which is not stipulated in the development parameters of the primary use of the zoning of the erf, still applies;
 - (c) if it is stipulated as a development parameter that the development parameters of another land use apply, those development parameters will be applicable;
 - (d) in the scenario where multiple land uses are permitted the parking requirements is calculated per land use as stipulated in the Minimum off-street parking requirements table; and
 - (e) the Municipality may grant a departure from the development parameters in terms of the Planning By-law.
- (3) Consent uses listed in Column 3 of Schedule 1 is subject to the following conditions:
- (a) when a consent use is granted by the Municipality in a particular zone, the applicable land use must be supplementary to the primary use right allowed under the particular zone; and
 - (b) when land is intended to be utilised exclusively for a consent use in a particular zone and the consent use is a primary right in another zone, application must be made for rezoning to the zone where the applicable land use is a primary right.
- (4) No departure from the land use descriptions or definitions may be granted by the Municipality.
- (5) Despite subsections (1) and (2), the Municipality may determine any additional condition of approval in respect of a use right for a specific property as may be required in terms of any other applicable legislation.

CHAPTER 7 GENERAL PROVISIONS

This part contains general provisions and parameters that apply to all zones or to specific zones as may be provided for. It includes matters such as encroachments that may occur within building lines and requirements for site development plans. It refers to hazardous substances, owners' associations, screening, retaining structures, outdoor storage, antennae systems and other municipal by-laws. This part also contains requirements for parking, loading, access and infrastructure. There are also provisions relating to the subdivision of land.

Encroachment of building lines

21. (1) Despite the building line requirements set out in Chapter 6, the following structures or portions of structures may be erected within the prescribed building lines:
- (a) boundary walls, screen walls, fences and gates; not exceeding 2,1 metres in height above the natural ground level, excluding where any such wall will result in infilling higher than 0,5 metres above natural ground level;
 - (b) retaining structures;
 - (c) open and uncovered stoeps that are less than 500 millimetres in height from the natural level of the ground;
 - (d) entrance steps and entrance porches for access to a ground level, excluding *porte cochères*;
 - (e) driveways and landings;
 - (f) a covered entrance or gatehouse that has a roofed area not exceeding 5 m² and a roof height not exceeding 3 metres from the floor to the highest point;
 - (g) roof overhang, eaves and awnings projecting no more than 1 metre from the wall of a building;

- (h) carport overhang, shadenet overhang, canopy/afdak/veranda overhang projecting no more than 1 metre from the supporting pillar or any supporting structure.
 - (i) cornices, chimney breasts, flower boxes, water pipes, drain pipes and minor decorative features not projecting more than 500 millimetres from the wall of a building;
 - (j) swimming pools not closer than 1 metre from any boundary;
 - (k) a basement, provided that no part of such a basement projects above natural ground level;
 - (l) a refuse room required by the Municipality in terms of this By-law;
 - (m) two water storage tanks;
 - (n) pergola not closer than 1 metre from the side and rear boundaries and 2 metres from any street boundary;
 - (o) structures which were exempted from building plan submission as stipulated in Council Resolution 83/94 dated 8 March 1994, specifically temporary wooden structures with a size of 12m² and less not used for habitation and shade cloth structures which were erected between 8 March 1994 and 27 October 2016, on condition that these structures may not extend beyond the boundaries of a land unit.
- (2) For the purposes of determining street boundaries, a street centreline setback and site access requirements, the boundary of a pedestrian way or service lane that cannot or will never be used by motor vehicles may be regarded as a common boundary.

Street centreline setback

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

Site development plans

23. (1) In addition to the zones that specifically require a site development plan, the Municipality may require a site development plan in respect of the following development types:
- (a) shopping centres or shopping complexes;
 - (b) business or office park developments;
 - (c) industrial park developments;
 - (d) developments in conservation areas;
 - (e) developments that will be sectionalised;
 - (f) incremental residential developments; and
 - (g) major developments where there are concerns relating to urban form, heritage, traffic, the environment or planning.
- (2) The Municipality may require the following information to be depicted on a site development plan:
- (a) existing bio-physical characteristics of the property;
 - (b) existing and proposed cadastral boundaries;
 - (c) the layout of the property, indicating the use of different portions of the property;
 - (d) the massing, position, use and extent of buildings;
 - (e) sketch plans and elevations of proposed structures, including information about their external appearance;
 - (f) cross-sections of the site and buildings on site;
 - (g) the alignment and general specification of vehicle access, roads, parking areas, loading areas, pedestrian flow and footpaths;
 - (h) measures of access control to parking areas and reservation of parking areas;

- (i) the position and extent of private, public and communal space;
 - (j) typical details of fencing or walls around the perimeter of the land unit and within the property;
 - (k) electricity supply and external lighting proposals;
 - (l) provisions for the supply of water, management of storm water, and disposal of sewage and refuse;
 - (m) external signage details;
 - (n) general landscaping proposals, including vegetation to be preserved, removed or to be planted, external paving, and measures for stabilising outdoor areas where applicable;
 - (o) the phasing of a development;
 - (p) the proposed development in relation to existing and finished ground levels, including excavation, cut and fill;
 - (q) statistical information about the extent of the proposed development, floor area allocations and parking supply;
 - (r) relationship of the proposed development to the quality, safety and amenity of the surrounding public environment;
 - (s) relationship of the proposed development to adjacent sites, especially with respect to access, overshadowing and scale;
 - (t) illustrations in a three-dimensional form depicting visual impacts of the proposed development on the site and in relation to surrounding buildings;
 - (u) any other details as may reasonably be required by the Municipality.
- (3) The Municipality may require that the area covered by a site development plan must extend beyond the site under consideration if, in its opinion, the proposed development will have a wider impact.
- (4) The Municipality may determine the extent of the area covered by a site development plan.
- (5) An applicant must submit a site development plan to the Municipality if it is required in terms of this zoning scheme before any development on the relevant land unit may commence.
- (6) The Municipality may require amendments of detail to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban form, landscaping, environmental management, engineering services or similar concerns.
- (7) The following provisions apply with regard to site development plans:
- (a) the property must be developed generally in accordance with an approved site development plan;
 - (b) if the Municipality considers it necessary, a transport or traffic impact statement or assessment may be required in conjunction with a site development plan, the extent of which must be determined by the Municipality, depending on the size of the development;
 - (c) if the Municipality considers it necessary, a storm water impact assessment or storm water management plan or both may be required in conjunction with a site development plan, the extent of which must be determined by the Municipality, depending on the size of the development;
 - (d) if the Municipality considers it necessary, a visual impact assessment, which may include a landscape character analysis, may be required in conjunction with a site development plan, the extent of which must be determined by the Municipality, depending on the size of the development; and
 - (e) an approved site development plan must be considered as setting additional development parameters applicable to the base zone, and any application for amendment must comply with the Municipality's requirements for the amendments.

Hazardous substances

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

Screening

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

Earth banks and retaining structures

26. Unless the prior approval of the Municipality has been obtained—
- (a) no earth bank or retaining structure used for holding back earth or loose rock, whether associated with a building or not, may be constructed to a height of more than 2 metres above natural ground level; and
- (b) no series of earth banks or retaining structures may be constructed to a cumulative height of more than 2,5 metres above natural ground level, unless an approximately level area of at least 2 metres wide is incorporated between successive embankments or retaining structures for every 2 metres of cumulative height.

Boundary walls

27. In the absence of an approved site development plan, architectural guidelines or relevant policy, the following development parameter apply to boundary walls:
- Height:**
- (a) The maximum height is 2,1 metres for single residential zones.
- (b) The height of a boundary wall for other zones other than single residential zones will be determined with evaluation of building plans.
- (c) The 2,1 metres height restriction does not include electric fencing on top of the boundary wall.
- (d) Electric fencing can be added to a height/combined height of 2,8 metres.

Maintenance of property

28. Refer to Mossel Bay Municipality's By-law relating to Public Nuisances.

Parking of vehicles in residential zones

29. A motor vehicle of an occupant of a dwelling unit and used for commercial activities conducted away from the dwelling unit may be parked on the property where the occupant resides, provided that—
- (a) there is adequate space on the property concerned;
- (b) no more than one commercial vehicle per dwelling unit may be parked on the property; and
- (c) the gross weight of any such commercial vehicle may not exceed 3 500 kg.

Mobile homes and caravans

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

Rooftop base telecommunication stations, satellite dish and other antenna systems

- 31.** (1) A rooftop base telecommunication station may not extend more than 3 metres in height above the building that it is attached to without the prior approval of the Municipality.
- (2) No rooftop base telecommunication station or transmission tower granted as a consent use in terms of this By-law may be modified or have its radio-frequency emissions altered without prior written approval from the Municipality.
- (3) The following provisions apply with regard to decommissioned antennae or rooftop base telecommunication stations:
- (a) the owner or operator must remove all decommissioned infrastructure;
 - (b) if the site has been disturbed, the owner or operator must rehabilitate the site to its original state or to a state acceptable to the Municipality; and
 - (c) if the owner or operator fails to comply with paragraphs (a) or (b), the Municipality may remove that infrastructure, and rehabilitate the site at the expense of the owner or operator.
- (4) Any satellite dish antenna with a diameter in excess of 1,5 metres must be placed in a position that minimises the visual impact on the surrounding area, to the satisfaction of the Municipality.
- (5) Satellite dish antennas of 1,5 metres in diameter and smaller, and used solely for the purposes of television reception or telecommunication, do not require the Municipality's approval and are excluded from height restrictions.
- (6) Antenna on erven zoned as "Single Residential Zone I", "Single Residential Zone II", "General Residential Zone I" and "General Residential Zone II" do not require approval from the Municipality if it complies to the following:
- (a) it is a slimline monopole structure which is attached to the dwelling unit;
 - (b) it does not exceed a height of 1,5 metres above the highest point of the roof of a dwelling house; and
 - (c) it is used solely by the occupier(s) of the dwelling unit.

Geysers and solar panels or similar infrastructure affixed to roofs of buildings

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

Equipment on top of building

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

Parapet walls

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

Chimneys

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

Linear infrastructure

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

Utilisation of outbuildings

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

Determination of natural ground level

38. (1) The Municipality may request the submission of a registered land surveyor’s certificate to determine the natural ground level before any construction activities may commence.
- (2) Where the level of the land has been altered with the approval of the municipality—
- (a) any grading for the purpose of development must connect evenly with the existing levels of abutting land units; and
 - (b) the municipality may approve the altered ground level to be the natural ground level.
- (3) Where it is not possible to determine the natural ground level due to irregularities or disturbances of the land, the Municipality may—
- (a) determine the natural ground level from measurements supplied on a building plan;
 - (b) deem a level to be the natural ground level based on measurements interpolated from a contour plan, local height benchmark or other information held by the Municipality; or
 - (c) require the owner or applicant to commission a registered surveyor at the cost of the owner or applicant to measure levels of the ground or interpolate levels, in order to

provide the Municipality with sufficient information to determine the natural ground level for the purpose of administering this By-law.

- (4) Where a building site is elevated, filled or extended with excavated or any other material, the natural ground level is not altered unless approved by the Municipality in which case the Municipality must define a ground level for the purposes of administering the height restriction of the building.

Animals kept for commercial purposes

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

Hobbies in single and general residential zones

40. When exercising a hobby in all single and general residential zones, the dominant use of the dwelling house or dwelling unit must be for the living accommodation of a single family, provided that—
- (a) no portion of the dwelling, may be used for the purposes of a noxious trade, risk activity or sale of alcoholic beverages;
- (b) in addition to paragraph (a), the following uses are not classified as hobbies:
- (i) activities conforming to the definition of a shop;
 - (ii) animal care centres;
 - (iii) butcheries;
 - (iv) coal and wood merchants;
 - (v) escort agencies or adult entertainment;
 - (vi) fishmongers;
 - (vii) hospitals or clinics;
 - (viii) house shops;
 - (ix) taverns;
 - (x) manufacturing of concrete products;
 - (xi) motor vehicle repairs;
 - (xii) panel beating or spray painting;
 - (xiii) parcel delivery services;
 - (xiv) places of entertainment;
 - (xv) places of instruction
 - (xvi) shooting ranges;
 - (xvii) taxi businesses;
 - (xviii) tow-in services;
 - (xix) transport contractors;
 - (xx) undertakers;
 - (xxi) vehicle rental agencies; and
 - (xxii) any other activity that in the opinion of the Municipality does not fit in the particular environment or is of a nature that it must be located on a suitably zoned premises;
- (c) no goods may publicly be displayed and no external evidence of the hobby may be visible from the street;
- (d) no advertising may be displayed;
- (e) any public exhibition of hobby items or activities on the residential property must:
- (i) be preceded by a written consent from the Municipality; and
 - (ii) during the public exhibition, temporary parking must be provided on the land unit in accordance with the parking requirements of this By-law and appropriate traffic regulating measures must be put in place;
- (f) an activity associated with a hobby may not occupy more than 25% of the total floor area of the dwelling on the property or 60 m², whichever is more restrictive, including storage;
- (g) no activities that constitute a source of public nuisance, or generate waste material that may be harmful to the area or requires special waste removal processes, may be carried out; and

- (h) any new structure, or alteration to the existing dwelling or outbuilding, must conform to the residential character of the area concerned.

CHAPTER 8 PARKING AND LOADING

Off-street parking requirements

41. (1) If parking requirements are not stipulated for a particular use, or in terms of a specific condition imposed by the Municipality, parking must be provided at a minimum ratio in accordance with the table entitled “Minimum off-street parking requirements”.
- (2) The Municipality must determine off-street parking requirements for land uses not stipulated in the table “Minimum off-street parking requirements”.
- (3) The column in the table titled “Minimum off-street parking requirements” and with heading “Normal Areas” refers to standard requirements that apply to areas where public transport is not being specifically promoted.
- (4) The column with heading “PT1 Areas” refers to areas where the use of public transport is to be promoted, but where the Municipality considers the provision of public transport to be inadequate.
- (5) The column with heading “PT2 Areas” refers to areas where the use of public transport is to be promoted and the Municipality considers the provision of public transport sufficient enough to justify the reduced parking requirements.
- (6) Areas initially determined to be PT1 Areas may be changed to PT2 Areas once the Municipality is satisfied that the provision of public transport is adequate.
- (7) If an area has not been specifically identified by the Municipality as a PT1 or PT2 area, then the parking requirements for Normal areas apply.
- (8) Off-street parking space must be provided—
- (a) on the property for which parking is required;
 - (b) subject to the Municipality’s approval, in public parking facilities available in the vicinity; or
 - (c) in accordance with the table below;
- (9) Areas designated as “PT1” or “PT2” areas must be indicated on the zoning scheme map.

Minimum off-street parking requirements

Land Use		Normal Areas	PT1 Areas	PT2 Areas
Dwelling house / Double dwelling house		2 bays per dwelling Erven <350m ² : 1 bay per dwelling Erven < 100m ² : Nil per dwelling	1 bay per dwelling	1 bay per dwelling
Group housing/Town Housing		2 bays per dwelling unit	1 bay per dwelling unit plus 0.25 bays per unit for visitors	1 bay per dwelling unit plus 0.25 bays per unit for visitors
Retirement resort	Dwelling unit	2 bays per dwelling	1 bay per dwelling plus 0.25 bays per unit for visitors	1 bay per dwelling plus 0.25 bays per unit for visitors
	Home for the aged	0,5 bays per bedroom	0,5 bays per bedroom	0,5 bays per bedroom
	Frail Care	0,5 bays per bed	0,5 bays per bed	0,5 bays per bed
Orphanage		0,5 bays per bedroom	0,5 bays per bedroom	0,5 bays per bedroom
Flats		1 bay per dwelling plus 0,25 bay per unit for visitors	1.25 bays per dwelling plus 0.25 bays per unit for visitors	0.5 bays per dwelling plus 0.25 bays per unit for visitors
Second dwelling		1 additional bay	1 additional bay	Nil
Boarding house/ Guest House/ Guest Lodge/ Bed and Breakfast Establishment		1 bay per bedroom plus 2 bays per owner's home or manager's flat	1 bay per bedroom	1 bay per bedroom
Backpackers Lodge		1 bay per 3 beds plus 2 bays per owner's home or manager's flat	1 bay per 3 beds	1 bay per 3 beds
Hotel (excluding other facilities, specific ratios apply to each use)		1.25 bays per bedroom	1 bay per bedroom	0.75 bays per bedroom
Hospital (general and private)		1 bay per bed plus 4 bays per consulting room plus prescribed ratio for all ancillary uses	1 bay per bed plus 4 bays per consulting room plus prescribed ratio for all ancillary uses	1 bay per bed plus 3 bays per consulting room plus prescribed ratio for all ancillary uses
Frail care facility		1 bay per 2 beds	1 bay per 2 beds	1 bay per 2 beds
Home care facility		1 bay per 2 beds	1 bay per 2 beds or part thereof (e.g. 2 bays per 3 beds)	1 bay per 2 beds or part thereof (e.g. 2 bays per 3 beds)
Clinic/Medical consulting rooms		4 bays per consulting room	4 bays per consulting room	3 bays per consulting room
Funeral parlour		1 bay per 4 seats plus 4 bays per 100 m ² office GLA	1 bay per 4 seats plus 2 bays per 100 m ² office GLA	1 bay per 4 seats plus 1 bay per 100 m ² office GLA
Neighbourhood shop / Shops / Liquor store / Restaurant / Supermarket / Offices		4 bays per 100 m ² GLA	3 bays per 100 m ² GLA	2 bay per 100 m ² GLA
Shops / Liquor store / Restaurant / Supermarket / Offices (High intensity areas: Mossel Bay CBD, corridors and Mixed Zone II)		2 bays per 100 m ² GLA	2 bays per 100 m ² GLA	2 bays per 100 m ² GLA
Bulk retail / Shopping centres		6 per 100m ² plus a taxi drop off facility or as determined by the Municipality	As determined by the Municipality	As determined by the Municipality
Home occupation		2 bays per 60 m ² GLA	2 bays per 60 m ² GLA	2 bays per 60 m ² GLA
Tavern / bar		1 bay per 25 m ² GLA	1 bay per 25 m ² GLA	1 bay per 25 m ² GLA

Land Use	Normal Areas	PT1 Areas	PT2 Areas
Industry / Light industry / Warehouse / Scrap yard/ Builder's yard / Noxious trade / Risk activity	2 bays per 100 m ² GLA	2 bays per 100 m ² GLA	1.5 bays per 100 m ² GLA
Industrial hive / Service trade	2 bays per 100 m ² GLA	2 bays per 100 m ² GLA	1.5 bays per 100 m ² GLA
Storage facility	1 bay per 100m ² GLA	1 bay per 100m ² GLA	1 bay per 100m ² GLA
Service station/ Motor repair garage/ Motor vehicle sales or Vehicle hire premises	4 bays per 100 m ² GLA	4 bays per 100 m ² GLA	4 bays per 100 m ² GLA
Open air motor vehicle sales	4 bays per 100 m ² GLA	3 bays per 100 m ² GLA	2 bays per 100 m ² GLA
Place of assembly/Place of worship/ Place of Entertainment/ Place of leisure/Gambling place	1 bay per 8 seats	1 bay per 8 seats	1 bay per 15 seats
Motor fitment centre	1 bay per service bay	1 bay per service bay	1 bay per service bay
Sport stadium	1 bay per 8 seats or persons or as determined by the Municipality	1 bay per 8 seats or persons or as determined by the Municipality	1 bay per 8 seats or persons or as determined by the Municipality
Gymnasium, health club (not part of a shopping centre)	6 bays per 100m ² GLA	6 bays per 100m ² GLA	6 bays per 100m ² GLA
Schools	1.5 bay per classroom and 1 bay per office plus stop & drop facility or as per Site Development Plan	1.5 bays per classroom and 1 bay per office plus stop & drop facility or as per Site Development Plan	1.5 bays per classroom and 1 bay per office Plus stop & drop facility or as per Site Development Plan
Crèche	1 bay per 10 children plus 1 bay per classroom plus 1 bay per office or as per Site Development Plan	1 bay per 10 children plus 1 bay per classroom or as per Site Development Plan	1 bay per 10 children plus 1 bay per classroom or as per Site Development Plan
Library, Museum	2 bays per 100m ² GLA	1,5 bays per 100m ² GLA	1,5 bays per 100m ² GLA
Place of instruction (other than schools/day care centre/ crèche)	1.5 bay per classroom and 1 bay per office plus 1 bay per 6 students or as per Site Development Plan	1.5 bay per classroom and 1 bay per office plus 1 bay per 10 students or as per Site Development Plan	1.5 bay classroom or 1 bay per office plus 1 bay per 20 students or as per Site Development Plan
Conference facility/Function venue	6 bays per 10 seats	6 bays per 10 seats	4 bays per 10 seats
Mixed Zone I	1 bay per cadastral unit	Nil per cadastral unit	Nil per cadastral unit

Alternative parking supply

42. (1) As an alternative to compliance with the off-street parking requirements in terms of this zoning scheme, an owner may, with the approval of the Municipality—
- (a) acquire an area of land sufficient for the permanent parking requirements elsewhere, in a location approved by the Municipality; or
 - (b) acquire permanent rights to a parking facility or portion of a parking facility elsewhere, in a location approved by the Municipality, and must register a notarial tie or servitude against that land or parking facility to link the properties concerned for the purpose of parking, and the owner must cause the parking concerned to be constructed and maintained in accordance with the Municipality's requirements and approval; or
 - (c) in the case where the premises are located within a radius of 50 metres from a designated public parking area or as determined by the Municipality the owner/developer may, with the consent from the Council, pay a cash sum to the Council calculated with the following formula: land value (R\m²) as per present

valuation for property x parking area (21,25m²) + present cost to construct a parking bay x amount of parking bays to be bought out.

- (2) The cost of registration of the notarial tie or servitude referred to in paragraph (1)(a) and (b) must be borne by the owner/developer.

Combined parking requirements

43. If two or more uses combine to share a common parking area, the Municipality may approve parking requirements that provide less than the quantum of the parking required for individual uses provided that—
- (a) the Municipality is satisfied that the utilisation of the same parking area by the different use types or activities in the zones will not result in a concurrent use of the parking area; and
- (b) bays intended for combined uses may not subsequently be reallocated to other uses without the approval of the Municipality.

Site access and exits

44. (1) The Municipality may require compliance with standard municipal or provincial access spacing guidelines.
- (2) No access may be closer than 9 metres from the end of the bell-mouth curvature of an intersection, except for industrial-zoned properties, where the distance must be 15 metres from an intersection as defined by the prolongation of street boundaries.
- (3) The Municipality may restrict or prohibit access if a pedestrian or traffic hazard is created or is likely to be created.
- (4) Vehicle entrances and exit ways to and from a property must conform to the following requirements:
- (a) vehicle carriageway crossings must be limited to one per public street abutting the site, except for double dwelling houses and second dwelling units where direct access will be permitted for each unit if the additional access can be created safely;
- (b) despite paragraph (a), where the total length of any street boundary of a site exceeds 25 metres in length, one additional carriageway crossing may be permitted, provided that no two carriageway crossings are closer than 12 metres to each other if the additional access can be created safely;
- (c) the minimum and maximum widths of motor vehicle carriageway crossings must be in accordance with the table, titled “Width of motor vehicle carriageway crossings”;
- (d) the minimum width of a panhandle access may not be less than 3 metres wide; and
- (e) vehicle entrances and exit ways for Mixed Zone II, Industrial Zone I and Industrial Zone II properties to be evaluated via a Site Plan/Site Development Plan

Width of motor vehicle carriageway crossings

Type of carriageway crossing	Minimum width	Maximum width
Single entrance or exit way	3,0 metres	6,0 metres
Combined entrance and exit way	5,0 metres	8,0 metres

Parking layout requirements

45. (1) The following parking layout requirements apply unless otherwise stated in this zoning scheme:

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

Parking for physically disabled

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

Physically disabled accessible parking

Total no of parking bays	Required number of bays accessible to the physically disabled
1–50	1
51–75	2
76–100	3
101–125	4
125-150	5
For every additional 50 bays	1 additional parking bay

- (3) Parking for the physically disabled must comply with the following requirements:
- (a) parking bays must be a minimum of 3,7 metres in width and 5 metres in length;

- (b) parking and access aisles must be level;
 - (c) parking bays must be located as near as possible, however not more than 50 metres to accessible building or site entrances, and must be located to provide convenient access to kerb ramps;
 - (d) each parking bay reserved for physically disabled persons must be marked on the parking surface with the international symbol for disabled accessibility;
 - (e) additional signage indicating the parking bay as reserved for exclusive use by persons with physical disabilities may be required by the Municipality; and
 - (f) if five or fewer parking bays are provided, at least one bay must be 4 metres wide and marked to provide a parking bay of 2,5 metres with an access aisle of 1,5 metres, but the bay need not be reserved exclusively for persons with physical disabilities.
- (4) Parking for persons with physical disabilities must count towards fulfilling off-street parking requirements.

Motorcycle and bicycle parking spaces

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

Loading requirements

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

Minimum off-street loading bay requirements

Land use	Floor area (m ²)	Number of loading bays
Offices	0–5 000	0
	5 001–15 000	1
	15 001–30 000	2
	Every additional 30 000 or part thereof	1 additional bay
Business premises other than offices, supermarket, industry	0–1 000	0
	1 001–2 500	1
	2 501–5 000	2
	5 001–10 000	3
	Every additional 10 000 or part thereof	1 additional bay
Supermarket	0–500	1
	501–1 000	2
	1 001 and greater	3 x requirements for business premises other than offices, supermarket, industry

CHAPTER 9 REFUSE ROOMS AND SERVICE YARDS

Refuse rooms

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

Service yards

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

SCHEDULE 1
USE ZONES TABLE

1	2	3
Zoning	Primary use	Consent use
AGRICULTURAL ZONES		
Agricultural Zone I (AZI)		
<p><i>The objective of this zone is to promote and protect agriculture on farms as an important economic, environmental and cultural resource. Limited provision is made for non-agricultural uses to provide rural communities in more remote areas with the opportunity to increase the economic potential of their properties, provided these uses do not present a significant negative impact on the primary agricultural resource.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Agriculture 	<p>Consent uses</p> <ul style="list-style-type: none"> • Abattoir • Airfield • Agricultural industry (>2000m²) • Animal care centre • Aqua-culture • Camping site • Farm shop • Farm grave yard • Freestanding base telecommunication station • Function venue • Helicopter landing pad • Off-road trail • Plant nursery • Quarry • Renewable energy structure • Shooting range • Tourist facilities • Utility service
Agricultural Zone II (AZII)		
<p><i>The objective of this zone is to accommodate properties for people who seek a rural lifestyle with small scale agriculture activities and often found close to towns and villages, and new smallholding areas should only be permitted within an acknowledged, demarcated urban area.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Smallholding 	<p>Consent uses</p> <ul style="list-style-type: none"> • Commercial agricultural activity • Freestanding base telecommunication station • Halfway house • Home care facility • Plant nursery • Renewable energy structure • Riding school • Utility service
Agricultural Zone III (AZIII)		
<p><i>The purpose of this zone is to support the government's rural land development programme and provide for the establishment of worker accommodation outside conventional towns.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Agri-village 	<p>Consent uses</p> <ul style="list-style-type: none"> • Freestanding base telecommunication station • Rooftop base telecommunication station

1	2	3
Zoning	Primary use	Consent use
SINGLE RESIDENTIAL ZONES		
Single Residential Zone I (SRZI)		
<p><i>The objective of this zone is to provide for residential development where the predominant type of accommodation is a dwelling house for a single family, where each dwelling has its own land unit, and adequate outdoor space. Limited employment and additional accommodation opportunities are possible as primary or consent uses, provided that the dominant use of the property remains residential, and impacts of employment and additional accommodation uses do not adversely affect the quality and character of the surrounding residential environment.</i></p>	<p>Primary uses</p> <ul style="list-style-type: none"> • Dwelling house or • Dwelling house and second dwelling or • Double dwelling house 	<p>Consent uses</p> <ul style="list-style-type: none"> • Guest house • Halfway house • Home care facility • House shop • Place of instruction
Single Residential Zone II (SRZII)		
<p><i>The objective of this zone is to provide for upgrading and incremental housing from informal settlements to formal settlements and also to allow formal as well as informal housing types on a single erf. In recognition of the realities of poor and marginalised communities, development management provisions are not restrictive and local employment generation is encouraged within this zone.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Dwelling house or • Dwelling house and second dwelling 	<p>Consent uses</p> <ul style="list-style-type: none"> • Guest house • Halfway house • Home care facility • Shelter

1	2	3
Zoning	Primary use	Consent use
GENERAL RESIDENTIAL ZONES		
General Residential Zone I (GRZI)		
<p><i>The objective of this zone is to encourage residential development of a medium density, with a coordinated design, and to accommodate group housing where special attention is given to aesthetics, architectural form and the inter-relationship between components of the group housing scheme. Group housing may be located in single residential areas in places where an increased density is desirable, including along main roads, near local shopping centres and other activity nodes, and also preferably near to public open spaces.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Group housing 	<p>Consent uses</p> <ul style="list-style-type: none"> • Home occupation • Retirement resort
General Residential Zone II (GRZII)		
<p><i>The objective of this zone is to encourage residential development of a greater density than for General Residential Zone II, while retaining the emphasis on design coordination and a modest scale in terms of height. This zone has particular location requirements, including proximity to transport and amenities, and should not be randomly located without due consideration of the availability of open space and community facilities. Town housing may be located in and around central business areas, near high density nodes and along activity axis including railway lines and main traffic routes, where flats are often found.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Town housing 	<p>Consent uses</p> <ul style="list-style-type: none"> • Home occupation • Retirement resort

1	2	3
Zoning	Primary use	Consent use
General Residential Zone III (GRZIII)		
<p><i>The objective of this zone is to promote higher density residential development. The dominant use within this zone must be residential, but limited mixed-use development is possible with the Municipality's consent. This zone has particular location requirements, including proximity to transport and amenities, and should not be randomly located without due consideration of the availability of open space and community facilities.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Flats 	<p>Consent uses</p> <ul style="list-style-type: none"> • Backpackers' lodge • Boarding house • Convenience shop • Home occupation • Office • Renewable energy structure • Retirement resort
General Residential Zone IV (GRZIV)		
<p><i>The objective of this zone is to provide a temporary residence for transient guests in an appropriately scaled establishment that may include a small conference/ training facility that also caters for business meetings and where lodging and meals are provided.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Guest lodge 	<p>Consent uses</p> <ul style="list-style-type: none"> • Backpackers' lodge • Camping site • Restaurant • Tourist facilities • Wellness centre
General Residential Zone V (GRZV)		
<p><i>The objective of this zone is to provide a temporary residence for transient guests, where lodging and meals are provided, and may include a restaurant and conference facilities. Outside towns it should only be considered in identified tourism areas or within resorts.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Hotel 	<p>Consent uses</p> <ul style="list-style-type: none"> • Backpackers' lodge • Gambling place • Renewable energy structure • Shop

1	2	3
Zoning	Primary use	Consent use
BUSINESS ZONES		
Business Zone I (BZI)		
<p><i>The objective of this zone is to provide for intensive business and mixed-use development with relatively few restrictions in order to promote urban vitality and economic growth.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Business premises 	<p>Consent uses</p> <ul style="list-style-type: none"> • Adult entertainment • Adult services • Adult shop • Dwelling house • Flats • Freestanding base telecommunication station • Gambling place • Helicopter landing pad • Motor repair garage • Place of entertainment • Place of instruction • Place of worship • Renewable energy structure • Service station • Storage facility • Transport use • Warehouse
Business Zone II (BZII)		
<p><i>The objective of this zone is to provide for the retail sale of goods and services to the public.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Shop 	<p>Consent uses</p> <ul style="list-style-type: none"> • Adult shop • Dwelling house • Freestanding base telecommunication station • Liquor store • Place of assembly • Place of instruction • Place of leisure • Place of worship • Renewable energy structure • Restaurant • Service station

1	2	3
Zoning	Primary use	Consent use
Business Zone III (BZIII)		
<p><i>The objective of this zone is to provide for low intensity commercial and mixed-use development that serves local neighbourhood needs for convenience goods and personal services. The development should be limited in scale and nature and capable of integration into the adjacent residential neighbourhood, without adversely affecting the amenity of the residential neighbourhood. While mixed use development is encouraged, care must be taken not to compromise business operations.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Neighbourhood shop 	<p>Consent uses</p> <ul style="list-style-type: none"> • Dwelling house • Liquor store • Restaurant • Service trade
Business Zone IV (BZIV)		
<p><i>The objective of this zone is to provide an intermediate zone that may, if required, act as a buffer or interface between high- and medium-intensity business zones, and residential zones. Retail activities are limited to those which are ancillary to the dominant permitted uses, namely offices and flats. In order to protect the amenity of adjacent residential areas, appropriate levels of landscaping and environmental management are required.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Offices 	<p>Consent uses</p> <ul style="list-style-type: none"> • Dwelling house • Flats • Institution • Place of assembly • Place of instruction • Place of leisure • Renewable energy structure • Restaurant • Shop

1	2	3
Zoning	Primary use	Consent use
Business Zone V (BZV)		
<p><i>The objective of this zone is to provide for large-scale regional retail facilities that exceed the floor area of shops and supermarkets aimed at the local market in general. These facilities may offer a diverse range of products under one roof and supply products to individuals as well as wholesale trade. These facilities may be developed as a power centre. Specific consideration should be given to the locality and placement of these facilities with consideration of their regional significance and accessibility as well as possible impact on existing nodal areas.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Bulk retail 	<p>Consent uses</p> <ul style="list-style-type: none"> • Helicopter landing pad • Place of entertainment • Place of worship • Renewable energy structure • Service station • Warehouse
Business Zone VI (BZVI)		
<p><i>The objective of this zone is to provide opportunities in urban areas for service stations, motor repair garages and associated facilities that have specific vehicle access requirements and potential negative impacts on adjoining areas.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Service station 	<p>Consent uses</p> <ul style="list-style-type: none"> • Motor repair garage • Open air motor vehicle display • Shop • Truck stop • Truck stop accommodation

1	2	3
Zoning	Primary use	Consent use
MIXED ZONES		
Mixed Zone I (MZI)		
<p><i>The objective of this zone is to encourage the development of activity corridors along main roads in previously disadvantaged communities to create job opportunities and to strengthen the local economy.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Dwelling house • Second dwelling • Shop • Place of worship • Place of instruction 	<p>Consent uses</p> <ul style="list-style-type: none"> • Guest house • Halfway house • Liquor store • Pub • Restaurant • Shelter
Mixed Zone II (MZII)		
<p><i>The objective of this zone is to accommodate compatible land uses in previously light industrial areas situated along major corridors and activity nodes.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Light industry • Business premises 	<p>Consent uses</p> <ul style="list-style-type: none"> • Adult entertainment • Adult services • Adult shop • Aqua-culture • Freestanding base telecommunication station • Helicopter landing pad • Liquor store • Place of instruction • Place of entertainment • Place of worship • Renewable energy structure • Transport use • Truck stop

1	2	3
Zoning	Primary use	Consent use
INDUSTRIAL ZONES		
Industrial Zone I (IZI)		
<p><i>The objective of this zone is to accommodate industry uses and service trades that may be carried out without nuisance to other properties or the general public. These uses may be located next to business uses and in close proximity to residential areas, and do not present a potential negative impact on the character or amenity of such areas.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Light industry 	<p>Consent uses</p> <ul style="list-style-type: none"> • Adult entertainment • Adult services • Adult shop • Aqua-culture • Convenience shop • Freestanding base telecommunication station • Liquor store • Place of entertainment • Place of worship • Renewable energy structure • Truck stop
Industrial Zone II (IZII)		
<p><i>The objective of this zone is to accommodate all forms of industry, except noxious trade and risk activity, in order to promote the manufacturing sector of the economy. Some allowance is made for non-industrial activities, but these should not compromise the general use of the area zoned for industry. It is accepted that the intensive nature of the industrial activity or the scale of the operation could generate some negative impact on adjacent properties.</i></p>	<p>Primary uses</p> <ul style="list-style-type: none"> • Industry 	<p>Consent uses</p> <ul style="list-style-type: none"> • Abattoir • Aqua-culture • Animal care centre • Container site • Convenience shop • Crematorium • Helicopter landing pad • Place of entertainment • Place of leisure • Place of worship • Renewable energy structure • Restaurant • Scrap yard • Truck stop • Truck stop accommodation

1	2	3
Zoning	Primary use	Consent use
Industrial Zone III (IZIII)		
<p><i>The objective of this zone is to provide for industries that are noxious in respect of smell, product, waste or other objectionable consequence of their operation, or carry a high risk in the event of fire or accident. While other uses are permitted with consent, the Municipality must ensure there is sufficient capacity for noxious trade in the limited areas suitable for this zone. A noxious trade should not be located close to residential areas.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Noxious trade 	<p>Consent uses</p> <ul style="list-style-type: none"> • Container site • Convenience shop • Helicopter landing pad • Industry • Motor repair garage • Renewable energy structure • Scrap yard • Service station • Transport use
Industrial Zone IV (IZIV)		
<p><i>The objective of this zone is to provide for the use of land for the extraction of minerals and raw materials and, to a limited extent, associated business operations. This zone is intended for operations of a more permanent nature as opposed to temporary, short-term mining or prospecting activities.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Mine 	<p>Consent uses</p> <ul style="list-style-type: none"> • Industry

1	2	3
Zoning	Primary use	Consent use
COMMUNITY ZONES		
Community Zone I (CZI)		
<i>The objective of this zone is to provide for educational facilities of all kinds, but controlled provision is made for other compatible community uses.</i>	Primary uses <ul style="list-style-type: none"> • Place of instruction 	Consent uses <ul style="list-style-type: none"> • Conference facility • Freestanding base telecommunication station • Institution • Place of assembly
Community Zone II (CZII)		
<i>The objective of this zone is to provide for places where communities can congregate and worship according to the custom of their specific faith or religion.</i>	Primary uses <ul style="list-style-type: none"> • Place of worship 	Consent uses <ul style="list-style-type: none"> • Cemetery • Freestanding base telecommunication station • Institution • Place of instruction
Community Zone III (CZIII)		
<i>The objective of this zone is to provide for a wide range of health facilities.</i>	Primary use <ul style="list-style-type: none"> • Institution 	Consent uses <ul style="list-style-type: none"> • Freestanding base telecommunication station • Psychiatric hospital
Community Zone IV (CZIV)		
<i>The objective of this zone is to provide for a range of civic facilities.</i>	Primary use <ul style="list-style-type: none"> • Civic facilities 	Consent uses <ul style="list-style-type: none"> • Correctional facility • Freestanding base telecommunication station • Utility services

1	2	3
Zoning	Primary use	Consent use
RESORT ZONES		
Resort Zone I (RZI)		
<p><i>The objective of this zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes, and to encourage general public access to these facilities. At the same time, care should be exercised to minimise potential negative impacts of development on fragile environments. The guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases and is normally applicable to tourist developments outside established, built-up areas.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Tourist accommodation 	<p>Consent uses</p> <ul style="list-style-type: none"> • Conference facility • Freestanding base telecommunication station • Function venue • Gambling place • Hotel • Off-road trail • Place of leisure • Rooftop base telecommunication station • Sport and recreation centre • Tourist facilities • Wellness centre
Resort Zone II (RZII)		
<p><i>The objective of this zone is to reserve a zoning for existing resorts situated outside the urban edge, approved in terms of Section 8 of the Land Use Planning Ordinance, 1985 (before this Scheme By-Law came into effect) under the "Resort II".</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Holiday housing 	<p>Consent uses</p> <ul style="list-style-type: none"> • Freestanding base telecommunication station • Resort shop

1	2	3
Zoning	Primary use	Consent use
OPEN SPACE ZONES		
Open Space Zone I (OSZI)		
<p><i>The objective of this zone is to provide for active and passive recreational areas on public land, in order to promote recreation, and enhance the aesthetic appearance of an area.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Public open space 	<p>Consent uses</p> <ul style="list-style-type: none"> • Air and underground rights • Environmental facilities • Freestanding base telecommunication station • Informal trading • Tourist facilities • Urban agriculture • Utility service
Open Space Zone II (OSZII)		
<p><i>The objective of this zone is to provide for private active and passive recreational areas in order to promote recreation and enhance the aesthetic appearance of an area.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Private open space 	<p>Consent uses</p> <ul style="list-style-type: none"> • Cemetery • Environmental facilities • Freestanding base telecommunication station • Informal trading • Plant nursery • Restaurant • Shop • Sport and recreation centre • Tourist facilities • Urban agriculture • Utility service
Open Space Zone III (OSZIII)		
<p><i>The objective of this zone is to provide for the conservation of natural resources in areas that have not been proclaimed as nature areas (non-statutory conservation), in order to sustain flora and fauna and protect areas of undeveloped landscape including woodlands, ridges, wetlands and the coastline. A range of consent uses is provided to supplement and support the main objective of this zone.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Nature conservation area 	<p>Consent uses</p> <ul style="list-style-type: none"> • Conference facilities • Environmental facilities • Freestanding base telecommunication station • Harvesting of natural resources • Rooftop base telecommunication station • Tourist accommodation • Tourist facilities • Utility service • Wellness centre

1	2	3
Zoning	Primary use	Consent use
Open Space Zone IV (OSZIV)		
<p><i>The objective of this zone is to provide for the conservation of natural resources in areas that have been proclaimed as nature areas (statutory conservation), in order to sustain flora and fauna and protect areas of undeveloped landscape including woodlands, ridges, wetlands and the coastline. A range of consent uses is provided to supplement and support the main objective of this zone.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • Nature reserve 	<p>Consent uses</p> <ul style="list-style-type: none"> • Conference facility • Freestanding base telecommunication station • Function venue • Tourist accommodation • Tourist facilities • Utility service • Rooftop base telecommunication station • Wellness centre

1	2	3
Zoning	Primary use	Consent use
TRANSPORT AND UTILITY ZONES		
Transport Zone I (TZI)		
<i>The objective of this zone is to reserve land for transportation systems, excluding public streets, but including all other transport undertakings.</i>	Primary use <ul style="list-style-type: none"> • Transport use 	Consent uses <ul style="list-style-type: none"> • Air and underground rights • Airfield • Airport • Business premises • Conference facility • Container site • Freestanding base telecommunication station • Helicopter landing pad • Hotel • Industry • Informal trading • Motor repair garage • Restaurant • Service station • Warehouse
Transport Zone II (TZII)		
<i>The objective of this zone is to provide for public streets, whether constructed or still to be constructed, as well as infrastructure associated with public streets. Provision is also made for the temporary use of the land unit for other purposes as may be approved by the Municipality.</i>	Primary use <ul style="list-style-type: none"> • Public street 	Consent uses <ul style="list-style-type: none"> • Air and underground rights • Multiple parking garage • Transport use
Transport Zone III (TZIII)		
<i>The objective of this zone is to provide private roads that is privately owned and does not vest in the Municipality or any other public authority, for the passage or parking of motor vehicles.</i>	Primary use <ul style="list-style-type: none"> • Private road • Private parking 	Consent uses <ul style="list-style-type: none"> • None
Utility Zone (UZ)		
<i>The objective of this zone is to reserve land for uses that do not fall into another zoning category and that is normally undertaken by national, provincial and municipal government agencies including utility services and substations. Some flexibility for the use of land and development parameters is provided.</i>	Primary use <ul style="list-style-type: none"> • Utility service 	Consent uses <ul style="list-style-type: none"> • Authority use • Renewable energy structures

1	2	3
Zoning	Primary use	Consent use
UNDETERMINED ZONE		
Undetermined Zone (UNZ)		
<p><i>The objective of this zone is to enable the Municipality to defer a decision regarding a specific land use and development management provisions until the circumstances affecting the land unit have been properly investigated; or until the owner of the land makes an application for rezoning; or a zoning determination is made by the Municipality. The objective of this zone is furthermore to create a zone to which land could revert back to when rights under current zonings, other than Single Residential Zone I, were not exercised, especially in cases where changes in the planning context occurred since the current zoning was granted.</i></p>	<p>Primary use</p> <ul style="list-style-type: none"> • None 	<p>Consent uses</p> <ul style="list-style-type: none"> • None
SPECIAL ZONE		
Special Zone (SZ)		
<p><i>If special factors justify the creation of a new zone on the zoning map for a site without justifying the creation of a new zone.</i></p>	<p>Primary uses</p> <ul style="list-style-type: none"> • Any specified land use other than one of the uses specifically defined in the Scheme and/or mentioned in the definitions. 	<p>Consent uses</p> <ul style="list-style-type: none"> • None
SUBDIVISIONAL AREA ZONE		
Subdivisional Area Zone (SAZ)		
<p><i>The subdivisional area zoning designates land for future subdivision with development rights by providing development directives through specific conditions as approved in terms of this By-law. The SAZ confirms the principle of development and acceptance of future subdivision of land; but not the detailed layout that will be determined when an actual application for subdivision is approved.</i></p>	<p>Primary uses</p> <ul style="list-style-type: none"> • Subdivisional area 	<p>Consent uses</p> <ul style="list-style-type: none"> • Consent uses applicable to the primary use right

SCHEDULE 2

LAND USE DESCRIPTIONS AND DEVELOPMENT PARAMETERS

“abattoir”

Land use description: “*abattoir*” is a place where animals are slaughtered and prepared for distribution to butchery shops and food markets.

Development parameters:

The development parameters applicable to “industry” apply, as well as those applicable to “agricultural industry” when an abattoir is located on a farm.

“additional dwelling unit”

Land use description: “*additional dwelling unit*” is a dwelling unit that may be erected on an agricultural land unit in addition to a primary dwelling house or agricultural worker accommodation for *bona fide* agricultural workers, or both, provided that—

- (a) additional dwelling units are calculated at a ratio of one additional dwelling unit per 10 ha, with the exception that if the agricultural land unit is smaller than 10 ha one additional unit is permitted;
- (b) only a maximum of five (5) additional dwelling units are permitted per agricultural land unit;
- (c) only one additional dwelling unit may be erected within the 1km high water mark of the sea or a tidal river;
- (d) no alienation of additional dwelling units will be permitted whether by cadastral subdivision or sectional title; and
- (e) a site development plan of the proposed additional dwelling units must be submitted simultaneously with comments from the Department of Agriculture: Western Cape, relevant roads authority and the environmental section of the Department of Environmental Affairs and Development Planning, with the exemption that if only one additional dwelling is proposed this is not required.

Development parameters:

The development parameters applicable to “agriculture” apply, together with the following additional development parameters for “additional dwelling units”. Additional dwelling units may be erected with the consent of Municipality provided that—

- (a) a dwelling permanently occupied by a person engaged in *bona fide* agricultural activities on the land unit is not regarded as an additional dwelling unit;
- (b) the total floor area of an additional dwelling unit including the floor area in all ancillary buildings to the additional dwelling, may not exceed 175m²;
- (c) an additional dwelling unit must be constructed in a style that is similar to the architecture of the main dwelling house, unless otherwise permitted by the Municipality;
- (d) an additional dwelling unit that is a separate structure to a dwelling house may not exceed a height of 6,5 metres to the top of the roof;
- (e) an additional dwelling that is contained within the same building as a dwelling house must be designed so that the building appears to be a single dwelling house; provided that both units may have a ground floor, or one unit may be on the ground floor and the other unit above;
- (f) the existence of an additional dwelling unit may not in itself be sufficient reason for the Municipality to grant an application in terms of the Planning By-law to subdivide the land unit containing the dwelling units; and
- (g) the Municipality must certify that services are available for the construction of an additional dwelling.

“adult entertainment”

Land use description: “*adult entertainment*”—

- (a) means the use of property for adult film theatres or strip clubs where sexually explicit, live or recorded shows are displayed; and
- (b) does not include adult services or an adult shop.

Development parameters:

The development parameters applicable to “business premises” apply.

“adult services”

Land use description: “*adult services*”—

- (a) means the use of property for massage parlours or escort agencies where sexually orientated personal services are provided, unless the services form part of a medical or therapeutic service provided by a registered medical practitioner or similar registered professional person; and
- (b) does not include adult entertainment or an adult shop.

Development parameters:

The development parameters applicable to “business premises” apply.

“adult shop”

Land use description: “*adult shop*”—

- (a) means the use of property for the retail sale of pornographic, sexually explicit or erotic material, whether or not the material is displayed for sale, unless the material forms part of a medical or therapeutic service provided by a registered medical practitioner or similar registered professional person; and
- (b) does not include adult entertainment or adult services.

Development parameters:

The development parameters applicable to “business premises” apply.

“agricultural industry”

Land use description: “*agricultural industry*”—

- (a) means an enterprise for the processing of agricultural products of which the majority of the products is sourced from that land unit and if not produced on that land unit, then from the land units farmed by the owners of the enterprise with a minority of the products sourced from the surrounding or nearby farms;
- (b) includes a winery, dairy, distillery, the bottling of water, a saw mill;
- (c) includes livestock auctions; and
- (d) does not include an abattoir.

Development parameters:

Development parameters applicable to “agriculture” apply.

“agricultural worker accommodation”

Land use description: “*agricultural worker accommodation*” means accommodation provided for *bona fide* agricultural workers, including accommodation for labourers and farm managers, as determined by the Municipality based on the extent of the *bona fide* agricultural activities on the land unit.

Development parameters:

The development parameters applicable to “agriculture” apply with the following additional development parameters:

- (a) the number of units must be reasonably connected to the *bona fide* agricultural activities on the land unit;

- (b) no agricultural worker accommodation may be erected within 1 km of the high water mark of the sea or a tidal river;
- (c) the total floor area of a manager's dwelling house including the floor area in all ancillary buildings to the manager's dwelling house, may not exceed 250m²; and
- (d) the total floor area of a labourers unit may not exceed 70m² without a motivational report and comments from the Western Cape Department of Agriculture.

“agriculture”

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

- (a) includes—
 - (i) the harvesting, cooling, storing, sorting, packing and packaging of agricultural produce grown on that land unit and surrounding or nearby farms;
 - (ii) harvesting of natural resources limited to living organisms for delivery to the market;
 - (iii) agricultural buildings or infrastructure that are reasonably connected with the main farming activities, including a dwelling house, agricultural worker accommodation;
 - (iv) additional dwelling units;
 - (v) a camping site limited to a maximum of 10 tent or caravan stands subject to the development parameters applicable to “tourist accommodation”, provided further that a single communal ablution facility is provided and for more than 10 tent or caravan stands a consent use must be applied for;
 - (vi) guest house within the primary dwelling unit or within one additional dwelling unit;
 - (vii) linear infrastructure;
 - (viii) rooftop base telecommunication station;
 - (ix) fibre node container;
 - (x) occasional use;
 - (xi) renewable energy structures for household and farming purposes; and
 - (xii) agricultural industry.

Development parameters:

The following development parameters apply:

- (a) **Building lines**
The road or street and common boundary building lines are 30 metres. If smaller than 10 hectares and not located next to scenic routes 10m building lines will apply.
- (b) **Height**
 - (i) The height of a dwelling house may not exceed 8,5 metres.
 - (ii) Agricultural buildings other than dwelling houses may not exceed a height of 15 metres to the top of the roof.
 - (iii) Earth banks and retaining structures that are in the opinion of Municipality associated with *bona fide* agricultural activities are exempt from the general provisions in this regard in this By-law.
- (c) **Floor area**
The total floor area of a dwelling house including all ancillary buildings to the dwelling house, may not exceed 1500m²;
- (d) **Site development plan**
For any development in this zone, including any part of the land not zoned Agriculture, a site development plan must be submitted to the Municipality for its approval taking specific cognisance of visual impact given the size and scale of the agricultural buildings and facilities and their location in a rural landscape, and their proximity to tourist routes.
- (e) **Farm shop**
The floor area of the farm shop may not exceed 100m².

- (f) **Camping site and caravan stands**
The 10 camping sites or caravan stands allowed as a primary right must be located further than 1km from the high water mark of the sea and the land unit must be larger than 10ha.
- (g) **Agricultural Industry**
In addition to the above parameters the following apply:
- (i) the agricultural industry does not exceed a total floor area of 2 000m²; and
 - (ii) the parking requirements for “industry” apply.

“agri-village”

Land use description: “agri-village” means a private settlement of restricted size, established and managed by a legal institution that is situated within an agricultural area and where residence is restricted to bona fide agricultural workers and their dependents of the farms involved in the development. Security of tenure does not include right of ownership but can include a Trust, Communal Property Association or Sectional Title. The development of agri-villages represents a partnership between farmer, agricultural worker and state.

Development parameters:

- (a) The Municipality must require a site development plan for an agri-village.
- (b) The site development plan as approved by the Municipality constitutes the development parameters.
- (c) The provisions for a site development plan in this By-law apply.

“air and underground rights”

Land use description: “*air and underground rights*” means any use right that may be approved by the Municipality for the development of a defined space above or below a public street, open space, railway line or a public street, open space, railway line or any other land utilised for transport purposes.

Development parameters:

- (a) The Municipality must require a site development plan for air and underground rights.
- (b) The site development plan as approved by the Municipality constitutes the development parameters.
- (c) The provisions for a site development plan in this By-law apply.
- (d) The Municipality may approve a consent use for air or underground rights if—
 - (i) the consent use does not compromise the intended primary use of the land;
 - (ii) an agreement defining the extent of rights, time period, compensation, ownership and maintenance obligations relating to the property is concluded between the parties concerned and is approved by the Municipality;
 - (iii) a servitude in respect of the air or underground rights is registered over the land concerned; and
 - (iv) the Municipality is satisfied that structural components, clearance and operational characteristics are sufficient to ensure safe and efficient operation of the street, road or parking.

“airfield”

Land use description: “*airfield*” means runways and associated buildings for the take-off and landing of light aircraft.

Development parameters:

- (a) The Municipality must require a site development plan for an airfield.
- (b) The site development plan as approved by the Municipality constitutes the development parameters.
- (c) The provisions for a site development plan in this By-law apply.

“airport”

Land use description: “*airport*” means a complex comprising aircraft runways and associated buildings for the take-off and landing of civilian aircraft and facilities for the handling and storage of air freight and includes land uses ancillary to airports, and includes—

- (a) a restaurant;
- (b) car rental facility;
- (c) shop; and
- (d) hotel.

Development parameters:

The development parameters applicable to “transport use” and “business premises” apply, provided that a site development plan must be submitted to the Municipality for its approval.

“animal care centre”

Land use description: “*animal care centre*” means a place for the care of pets and animals, operated on either a commercial or a welfare basis, and includes—

- (a) boarding kennels; and
- (b) pet training centres.

Development parameters:

The development parameters applicable to “agriculture” apply.

“aqua-culture”

Land use description: “*aqua-culture*” means the breeding and/or cultivation, for commercial purposes, of water flora or fauna in artificially constructed dams or holding tanks, or suspended from floating supports in natural water bodies.

Development parameters:

The development parameters applicable to “agriculture” apply.

“authority use”

Land use description: “*authority use*” means a use which is practised by or on behalf of an organ of state and that cannot be classified or defined under other uses in this zoning scheme, and includes a use practised by—

- (a) the national government, including a military centre or installation, or police station;
- (b) the provincial government, including a road station or road camp;
- (c) the Municipality, including a fire service or a municipal depot with related uses, including limited accommodation for staff who are required to be on standby for emergencies; and
- (d) a foreign government including an embassy or consulate, but does not include a dwelling house when the dominant use is for living accommodation of foreign diplomatic personnel.

Development parameters:

The development parameters and additional provisions as approved by the Municipality according to the site development plan apply to every site, use and type of building.

“backpackers’ lodge”

Land use description: “*backpackers’ lodge*” means a building where lodging for backpackers is provided per bed and not per bedroom, and includes a youth hostel.

Development parameters:

The development parameters applicable to “guest lodge” apply.

“bed and breakfast establishment”

Land use description: “*bed and breakfast establishment*” means a dwelling house, second dwelling or additional dwelling unit—

- (a) in which the owner of the dwelling supplies lodging and meals for compensation to transient guests who have permanent residence elsewhere;
- (b) provided that the dominant use, structure and design of the dwelling house concerned remains for the living accommodation of a single family; and
- (c) the name of the establishment may vary and does not have to be advertised as a “bed and breakfast establishment” as long as the use of the property is in line with the land use description and development parameters for “bed and breakfast establishment”.

Development parameters:

The development parameters applicable to “dwelling house”, “second dwelling” and “additional dwelling unit” apply.

The following further parameters apply:

- (a) no more than two rooms per land unit may be used for bedroom accommodation for paying guests, and no more than four paying guests per land unit may be supplied with lodging or meals at any time;
- (b) the requirement in paragraph (a) is also applicable where a land unit contains both a bed and breakfast establishment and rooms that are available for letting to lodgers;
- (c) the owner of a bed and breakfast establishment must live on the property and inform the Municipality in writing before the establishment opens for business;
- (d) a register of guests must be kept, and completed when rooms are let; any new structure or alteration to the property related to its use as a “bed and breakfast establishment” must be compatible with the residential character of the area, particularly with regard to the streetscape or rural character on a farm, and must be capable of reverting to use as part of the dwelling house, second dwelling, additional dwelling unit or outbuilding concerned;
- (e) no more than three employees may be employed in activities related to the bed and breakfast establishment;
- (f) no alcoholic beverages may be served except to resident guests for consumption on the premises;
- (g) guest rooms may not be converted to, or used as, separate self-catering dwelling units;
- (h) meals may only be supplied to guests who have lodging on the property, employees, and the family residing in the dwelling;
- (i) in the absence of a Municipal policy or by-law on outdoor advertising and signage, no advertising sign may be displayed other than a single un-illuminated sign or notice not projecting over a public street and not exceeding 1 m² in area;
- (j) no weddings, receptions, conferences, training or similar activities are permitted in a bed and breakfast establishment;
- (k) no activities that constitute, or are likely to constitute, a source of public nuisance may be carried out; and
- (l) on-site parking must be provided in accordance with the provisions of this By-law; provided that the Municipality may at any stage require additional on-site parking if, in the opinion of the Municipality, the bed and breakfast establishment does not have enough parking.

“boarding hostel”

Land use description: “*hostel*” means a place which provides accommodation in rooms or dormitories for students attending a place of education or tertiary educational institution, and is managed by or on behalf of the particular educational institution with which it is associated and includes communal facilities directly associated with the main use.

Development parameters:

Development parameters applicable to “place of instruction” apply.

“boarding house”

Land use description: “*boarding house*” means a building where lodging is provided, and includes ancillary communal cooking, dining and other communal facilities for the use of lodgers, together with outbuildings that are normally used in connection with a boarding house and—

- (a) includes a building in which rooms are rented for residential purposes, a guest house or guest lodge, a home for the aged, a residential facility for handicapped persons or orphans; and
- (b) does not include a hotel, dwelling house, second dwelling, backpackers' lodge or group house.

Development parameters:

- (a) **Coverage**
The maximum coverage is 60%.
- (b) **Floor factor**
The floor factor may not exceed 1.
- (c) **Height**
 - (i) The highest point of a building may not exceed 12 metres to the top of the roof.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (d) **Building lines**
 - (i) The street building line is at least 5 metres.
 - (ii) Side and rear building lines are at least 4,5 metres.
 - (iii) The general building line encroachments in this By-law apply.
- (e) **Parking and access**
Parking and access must be provided in accordance with this By-law.
- (f) **Screening**
The Municipality may require screening in accordance with this By-law.
- (g) **Site development plan**
The Municipality may require a site development plan to be submitted for its approval.
- (h) **Open space**
 - (i) Every boarding house must have access on the land unit to an outdoor living area that may include private or communal open space, but excludes roads, service yards and parking areas.
 - (ii) An outdoor living area of at least 10% of the total erf area must be provided.
 - (iii) The outdoor living area(s) must be of reasonable proportions and location, to the satisfaction of the Municipality, to allow for leisure or recreational use by residents, and may include open courtyards within the complex.
- (i) **Service yard**
A service yard must be provided on the land unit in accordance with this By-law.
- (j) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.

“builder’s yard”

Land use description: “*builder’s yard*” means a property used for the storage of material and equipment that—

- (a) is required for or is normally used for construction work;
- (b) was obtained from demolitions of structures or excavations of ground; or
- (c) is necessary for, or is normally used for land development, including storage of material used for building roads, installing essential services, or for any other construction work, whether for public or private purposes.

Development parameters:

The development parameters applicable to “industry” apply.

“bulk retail”

Land use description: “*bulk retail*” means large buildings with at least one enterprise with a footprint larger than 2000m², with large floor space and high volume of sales, and includes large shopping centres, business premises and occasional use.

Development parameters:

- (a) **Coverage**
Coverage must be in accordance with the site development plan approved by the Municipality.
- (b) **Floor factor**
The maximum floor factor is 2.
- (c) **Height**
(i) The highest point of a building may not exceed 10 metres to the top of the roof.
(ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (d) **Building lines**
(i) The street building line is at least 10 metres.
(ii) Side and rear building lines are 0 metres or at least 10 metres if the site abuts any single residential zone or general residential zone.
(iii) The general building line encroachments in this By-law apply.
- (e) **Parking, access and loading space**
Parking, access and loading space must be provided on the land unit in accordance with this By-law.
- (f) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.

“business premises”

Land use description: “*business premises*” means a property from which business is conducted and—

- (a) includes a shop, supermarket, restaurant, sale of alcoholic beverages, liquor store, plant nursery, office, funeral parlour, financial institution and building for similar uses, place of assembly, place of leisure, hotel, conference facility, rooftop base telecommunication station, fibre node container; occasional use and multiple parking garage;
- (b) also includes the following land uses above ground floor with at least one use mentioned in (a) above on the ground floor:
(i) flats;
(ii) caretaker’s quarters;
(iii) backpackers’ lodge;
(iv) youth hostel;
(v) boarding houses;
- (c) also includes ancillary and subservient manufacturing, storage and distribution which is not hazardous, offensive or cause a nuisance;
- (d) does not include a noxious trade or risk activity.

Development parameters:

The following development parameters apply:

- (a) **Coverage**
The maximum coverage for all buildings on a land unit is 100%.
- (b) **Street centre line setback**
The Municipality may require a street centre line setback, in which case all buildings or structures on a land unit must be set back at least 8 metres from the centre line of the abutting public street or streets.
- (c) **Floor factor**
The maximum floor factor on the land unit is 3.
- (d) **Height**
(i) The highest point of a building may not exceed 12 metres to the top of the roof.
(ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (e) **Building line**
(i) The street building line is 0 metres.

- (ii) Side and rear building lines are 0 metres, provided that the Municipality may lay down common building lines in the interest of public health and safety or in order to enforce any other law or right.
 - (iii) Minor architectural and sunscreen features may project beyond the street boundary building line, provided that such features do not project more than 250 millimetres beyond the street boundary.
- (f) **Hotel floor space concession**
Where it is proposed to erect a hotel of at least 30 bedrooms in terms of this use right, the development parameters applicable to “hotel” apply.
- (g) **Canopy or balcony projection**
The Municipality may require, and may approve, a canopy or balcony projection over the street boundary in accordance with the following conditions:
- (i) the canopy or balcony may not project closer than 500 millimetres to a vertical plane through the kerb line or proposed kerb line;
 - (ii) no portion of a canopy or balcony projection may be less than 2,8 metres above the pavement;
 - (iii) the Municipality may lay down more restrictive requirements relating to the dimensions, design and materials of the canopy or balcony; and
 - (iv) the owner must enter into an encroachment agreement with the Municipality.
- (h) **Public pedestrian footway along street boundary**
If the owner provides on the land unit a public pedestrian footway that is accessible to the public at all times of at least 3 metres wide, next to a building situated alongside the street boundary, with a canopy and pavement that ties in with the street pavement, then, in recognition of the urban design contribution to the street environment, the floor factor of the building may be increased by twice the area of the public pedestrian footway.
- (i) **Street corners**
The Municipality may require the owner of a building to be situated at a public street corner, and where the Municipality considers the street corner to be significant, to incorporate in the building architectural features that focus visual interest on the corner and emphasise the importance of pedestrian movement around the corner. The architectural features may include building cut-offs, walkthrough covered arcades, plazas or other elements.
- (j) **Parking and access**
- (i) Parking and access must be provided on a land unit in accordance with this By-law, except in a case where the Municipality has approved alternative parking supply under section 43.(1).
 - (ii) Except with the approval of the Municipality, no parking bays at ground floor level on a land unit, either outside or within a building, may be located closer than 10 metres to a street boundary in order to enhance amenity at street level.
- (k) **Loading**
Loading bays must be provided on the land unit in accordance with this By-law.
- (l) **Screening**
The Municipality may require screening in accordance with this By-law.
- (m) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.
- (n) **Additional development parameters**
- (i) Development parameters for a business premises on Mixed Zone II (MZII) is the same as for light industry.
 - (ii) A maximum of 5 electronic or mechanical playing devices are permitted within a building.
- (o) **Exceptions and Additional provisions**
- (i) The following development parameters applies to the specific area indicated in the table entitled “Business Zone I: Exceptions”:

Business Zone I: Exceptions

Plan attached	Area description	Coverage	Height	Additional provisions
Schedule 7: Annexure D Zone 10	Vista Bonita, Diaz Beach	40%	12 levels	None
Schedule 7: Annexure D Zone 11	Beach Club, Diaz Beach	40%	12 levels	Subject to a setback line as indicated on General Plan Number 6914/1999.
Schedule 7: Annexure D Zone 12	Diaz Hotel, Diaz Beach	40%	12 levels	Subject to a setback line as indicated on General Plan Number 6914/1999.

- (ii) The following additional provisions applies to the specific area indicated in the table entitled “Business Zone I: Additional provisions”:

Business Zone I: Additional provisions

Plan attached	Area description	Additional provisions
Schedule 7: Annexure D Zone 13	Erf 5878, Diaz Beach	Subject to a setback line as indicated on General Plan Number 6914/1999.

“camping site”

Land use description: “*camping site*” means land set aside for camping where tents or caravans are used for short term accommodation of transient guests and may include facilities for use by guests including facilities for outdoor food preparation, resort shop, road access for vehicles, picnic facilities, raised platforms on which to set up tents or caravans, ablution facilities, communal scullery and laundry facilities and waste disposal facilities, and does not include permanent tents or caravans.

Development parameters:

The development parameters applicable to “tourist accommodation” apply, provided that a site development plan must be submitted to the Municipality for its approval.

“caretaker’s quarters”

Land use description: “*caretaker’s quarters*” means an outbuilding of not more than 60 m² in total floor area, including sanitary and cooking facilities used for the accommodation of a caretaker employed at an industrial site or business premises where the operation requires that somebody is on the land unit at all hours.

Development parameters:

As determined by the Municipality.

“cemetery”

Land use description: “*cemetery*” means a place for the burial of human or domestic animal remains, and—

- (a) includes—
- (i) ancillary buildings including an office and chapel;
 - (ii) a “garden of remembrance” or a “wall of remembrance”; and
- (b) does not include a crematorium.

Development parameters:

The development parameters applicable to “public open space” apply in the case of publicly owned land, and the parameters applicable to “private open space” apply in the case of land in private ownership.

“civic facility”

Land use description: “*civic facility*” means a property used as a facility that renders services to the community including—

- (a) a public library;
- (b) public art gallery;
- (c) museum;
- (d) community hall;
- (e) court of law;
- (f) Government services multi-purpose centres;
- (g) authority use;
- (h) rooftop base telecommunication station;
- (i) fibre node container;
- (j) occasional use;
- (k) ancillary place of instruction; and
- (l) ancillary sport and recreation centre.

Development parameters:

The development parameters and additional provisions as approved by the Municipality according to the site development plan apply to every site, use and type of building.

“clinic”

Land use description: “*clinic*” means a place that has limited facilities and an emphasis on outpatients for the diagnosis and treatment of human illness or the improvement of human health provided that—

- (a) a clinic may contain live-in facilities for no more than 20 persons, including patients and staff; and
- (b) a clinic may include medical consulting rooms, operating theatres, an outpatients centre, and a wellness centre with ancillary uses.

Development parameters:

The development parameters applicable to “place of instruction” apply.

“conference facility”

Land use description: “*conference facility*” means a place where information is presented and ideas or information exchanged among groups of people or delegates, and includes the supply of meals to delegates.

Development parameters:

The development parameters applicable to “business premises” apply.

“container site”

Land use description: “*container site*” means property used for the storage of shipping or transport containers.

Development parameters:

The development parameters applicable to “industry” apply.

“convenience shop”

Land use description: “*convenience shop*” means a small retail concern that is open long hours and that typically stocks a range of everyday items including groceries, snack foods, candy, toiletries, soft drinks, tobacco products, newspapers and magazines.

Development parameters:

- (a) The development parameters applicable to “service station” apply.
- (b) When approved as a consent use in another zone, the development parameters applicable to “shop” apply.

“correctional facility”

Land use description: “*correctional facility*” means a place where persons are housed and trained on instruction of a court of law and includes a reformatory, place of detention; industrial school and prison.

Development parameters:

Development parameters applicable to “authority use” apply.

“crematorium”

Land use description: “*crematorium*” means a place for incinerating corpses in a furnace, and includes—

- (a) ancillary facilities such as a chapel and offices; and
- (b) a “garden of remembrance” or a “wall of remembrance”.

Development parameters:

Development parameters applicable to “industry” apply.

“double dwelling house”

Land use description: “*double dwelling house*” means—

- (a) a building designed as a single architectural entity that appears as a single dwelling house, containing two dwelling units on one land unit;
- (b) may only be erected on erven greater than 800m², that a tolerance level limit of 3% be allowed;
- (c) may only be erected once development contributions have been paid to the Municipality over and above the normal connection fees and provided that the Municipality is of the opinion that the existing service infrastructure and capacity is adequate;
- (d) that separate electrical and water connections be provided to each residential unit and that separate accounts for services (water, electricity, refuse removal, sewerage) and property rates will be payable;
- (e) does not include a second dwelling;
- (f) that a double dwelling house may not be used for letting to lodgers, a bed and breakfast establishment or home child care;
- (g) that a double dwelling house may be used for home occupation;
- (h) that no consent uses may be applied for;
- (i) that the two units are to be constructed as one phase development and no clearance certificate shall be issued until both units are completed;
- (j) may be alienated by means of section title and if a sectional title is registered the owners must insure that it conforms to the prescriptions of the Sectional Title Act;
- (k) if additions are made it will imply an amendment of the participation quote which must be resolved by the owners; and
- (l) the adjoining co-owner must provide written approval for any additions.

Development parameters:

- (a) **Coverage**
As per “dwelling house”.

- (b) **Floor area**
- (i) The total floor area of each of the two units including the outbuildings of each unit may not exceed 300 m² per unit.
 - (ii) The calculation of the floor area of the dwelling unit includes garages and outbuildings.
- (c) **Height**
- (i) The height of a double dwelling house may not exceed 8 metres.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (d) **Building lines:**
- (i) As for dwelling house.
 - (ii) The general building line encroachments in this By-law apply.
- (e) **Window and door placement**
- Any portion of a building that contains an external window or door facing onto a common boundary must—
- (i) be set back at least 1,5 metres from such boundary; and
 - (ii) the portion of building to be set back from the boundary must include the door or window, together with the additional length of wall as is required to make up a total minimum length of 3 metres.
- (f) **Garages, carports and outbuildings**
- (i) A garage, carport and outbuildings are permitted within the common boundary building line with permission of the affected neighbours provided that the garage and carport do not—
 - (aa) extend higher than 3,5 metres to the top of the roof;
 - (bb) contain more than a double garage façade; and
 - (cc) exceed a width and length of 6,5 metres.
 - (ii) If permission is not obtained from the affected neighbours as stipulated in (i) above an application should be made in terms of Section 15(2)(b) of the Mossel Bay Municipality By-Law on Municipal Land Use Planning for a permanent departure.
 - (iii) The combined size of carports and any structures covered by shade cloth is restricted to 42m² per unit.
 - (iv) Detached outbuildings are restricted to a single storey with a height not exceeding 4,5 metres to the top of the roof, with the exception that in the case of steep sloped properties the height restriction and number of storeys of a detached outbuilding will be evaluated according to unique site characteristics if the main reasons are to allow for safe access and a structurally sound structure.
- (g) **Parking and access**
- Parking and access must be provided in accordance with the requirements of this By-law. Both dwelling units must obtain vehicle access from and to a street and each dwelling unit is limited to a maximum of two garages per dwelling unit.
- (h) **Refuse room or service yard**
- The Municipality may require a refuse room or service yard or both to be provided on the land unit(s) concerned, in accordance with this By-law.
- (i) **Connection**
- (i) The two units must be connected by means of a communal fire wall of the dwelling, and connected outside lapas and outside braai areas may not be used to satisfy this requirement; and
 - (ii) units may not be above or underneath each other.

“dwelling house”

Land use description: “*dwelling house*” means a building containing only one dwelling unit, together with such outbuildings as are ordinarily used with a dwelling house, including:

- (a) outside bedroom with or without an en-suite bathroom and with or without a kitchenette which is not interleading with the dwelling house and does not exceed 30m²;
- (b) a braai room;

- (c) a bar in an entertainment area;
- (d) a coffee station;
- (d) renewable energy structures for household purposes;
- (e) home occupation;
- (f) letting to lodgers;
- (g) a bed and breakfast establishment; and
- (h) home child care.

Additional use rights applicable to dwelling house on “Single Residential Zone II (SRZII)” and Mixed Zone I (MZI):

- (a) house shop;
- (b) informal trading; and
- (c) educational, religious or occupational business purposes, provided that:
 - (i) *The dominant use of the dwelling house shall remain residential;*
 - (ii) *No noxious trade, risk activity, adult entertainment business, adult services, adult shop, restaurant, pub, tavern or liquor store are permitted;*
 - (iii) *No activities shall be carried out which constitute or are likely to constitute a source of nuisance, including the use of equipment that generates excessive noise, or any activity which results in the generation of dust, fumes, smoke, or waste material which could be detrimental to health, or which requires special waste removal processes;*
 - (iv) *Council may, at any stage, call for a cessation of the land use activity, or impose conditions in order to minimise any potential nuisance to surrounding neighbours or the general public; and*
 - (v) *No advertising sign may be displayed other than a single un-illuminated sign or notice not projecting over a public street in accordance with the Municipality’s policy or By-law on outdoor advertising and signage.*

Development parameters:

- (a) **Height**
 - (i) The height of a dwelling house may not exceed 8 metres.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (b) **Coverage and building lines**
 - (i) Building lines are at least the distance indicated in the table entitled “Coverage and building lines” from the relevant erf boundary:

Coverage/floor area and building lines

Erf size	Coverage (%)/ Floor area (m ²)	* Building lines		
		Street	Side	Rear
Less than or equal to 250 m ²	80%	1 metre	1 metre	1,5 metres
Greater than 250 m ² , but not exceeding 500 m ²	65%	3 metres	1,5 metres	1,5 metres
Greater than 500 m ² , but not exceeding 1 000 m ²	50%	4 metres	2 metres	2 metres
Greater than 1000 m ² , but not exceeding 1 ha	50% or 1500m ² , whichever is more restrictive	5 metres	2 metres	2 metres
Greater than 1ha	1500 m ²	10 metres	10 metres	10 metres

* where municipal infrastructure is installed Technical Services Department must specify the building lines

- (ii) If a property is located adjacent to a Provincial Road a 5 metre building line applies.
- (iii) If a property abuts a private road of a group housing complex the side or rear building line will apply.

- (iv) The general building line encroachments in this By-law apply.
 - (v) The Municipality may permit a relaxation of the lateral and/or rear building lines in the case of a dwelling house in Single Residential Zone I, provided that an adequate means of access, at least 1 metre wide, is provided from a street to every un-built open portion of the property.
- (c) **Garages, carports and storeroom**
- (i) Garages, carports and storerooms are permitted within the common boundary building line(s) with permission of the affected neighbours provided that the garage and carport do not—
 - (aa) extend higher than 3,5 metres to the top of the roof;
 - (bb) contain more than a double garage façade; and
 - (cc) exceed a width and length of 6,5 metres.
 - (ii) For land units greater than 250 m² and less than 500 m², a garage is permitted with permission of the affected neighbours up to 1,5 metres from the street boundary and a carport is permitted with permission of the affected neighbours up to 0 meters from the street boundary provided the garage or carport—
 - (aa) is not higher than 3,5 metres to the top of the roof;
 - (bb) does not contain more than a double garage façade; and
 - (cc) does not exceed a width and length of 6,5 metres.
 - (iii) If permission is not obtained from the affected neighbours as stipulated in (i) and (ii) above an application should be made in terms of Section 15(2)(b) of the Mossel Bay Municipality By-Law on Municipal Land Use Planning for a permanent departure.
 - (iv) Garages attached to the second dwelling unit will be regarded as coverage/size of the second dwelling unit.
 - (v) The combined size of carports and any structures covered by shade cloth is restricted to 42m² per dwelling unit.
 - (vi) For single residential erven with a size greater than 1ha the combined size of the outbuildings is restricted to a maximum of 200m².
 - (vii) Detached outbuildings are restricted to a single storey with a height not exceeding 4,5 metres to the top of the roof, with the exception that in the case of steep sloped properties the height restriction and number of storeys of a detached outbuilding will be evaluated according to unique site characteristics if the main reasons are to allow for safe access and a structurally sound structure.
 - (viii) Garaging for only up to four vehicles is permitted on a cadastral unit or as determined by the Municipality after evaluating the aesthetical appearance of the proposal.
- (d) **Parking and access**
- (i) Parking and access must be provided on the land unit in accordance with this By-law.
 - (ii) Where a dwelling unit is occupied by unrelated persons as defined in paragraph (b) of the definition of “family” in section 1, provision must be made for parking in accordance with the parking requirements for a boarding house.
- (e) **General**
- (i) The minimum size of a dwelling shall be 70m² for erven above 500m² which does not include garage/outbuilding.
 - (ii) The maximum number of detached structures allowed is 4.
 - (iii) Renewable energy structures for household purposes which is connected to the dwelling house or outbuilding must not exceed 1 metre above the highest point of the dwelling house or outbuilding, to a maximum height of 9 metres.
 - (iv) Access to a flat roof above 6 metres is only permitted for maintenance purposes except if permission is obtained from affected neighbours for leisure purposes.
- (f) **Exceptions and Additional provisions**
- (i) The following development parameters applies to the specific area indicated in the table entitled “Single Residential Zone I: Exceptions”:

Single Residential Zone I: Exceptions

Plan attached	Area description	Coverage	Height	Building lines		
				Street	Side	Rear
Schedule 7: Annexure A Zone 1	Area 194, Hartenbos	66%	7,5 metres Also note: Erven located east of Saldanha Road: 4,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres
Schedule 7: Annexure A Zone 2	Karoodorp, Hartenbos	66%	7,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres
Schedule 7: Annexure A Zone 3	Nic Meyer Street, Hartenbos	66%	7,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres
Schedule 7: Annexure A Zone 4	Rivieroewer, Hartenbos	66%	7,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres
Schedule 7: Annexure A Zone 5	Pletthoek, Hartenbos	66%	7,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres
Schedule 7: Annexure A Zone 6	Radyn Street, Hartenbos	66%	7,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres
Schedule 7: Annexure A Zone 7	Strydomsoord, Hartenbos	66%	7,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres
Schedule 7: Annexure A Zone 8	Rivier Crescent, Hartenbos	66%	7,5 metres	Private road: 1,5 metres Public street: 2 metres	1,5 metres	1,5 metres

Plan attached	Area description	Coverage	Height	Building lines		
				Street	Side	Rear
Schedule 7: Annexure B	Pinnacle Point, Mossel Bay	40% Also note: Only 60% of the site can be disturbed and Annexure B indicates disturbance envelope for specific footprint erven.	8,5 metres (2 storeys)	5 metres	Minimum 1,5 metres with a total of 4,5 metres	3 metres
Schedule 7: Annexure E Zone 4	Hoekbaai, Vleesbaai	50%	8 metres	4 metres 5 metres for Erven adjacent to Fransmanshoek Road	2 metres	2 metres
Schedule 7: Annexure E Zone 5	Driehoek, Vleesbaai	50%	8,5 metres	3 metres	2 metres	2 metres
None	Eureka Park	50%	8 metres (2 storeys)	3 metres 5 metres: R102 Road	1,5 metres	1,5 metres

- (ii) The following additional provisions applies to the specific area indicated in the table entitled “Single Residential Zone I: Additional provisions”:

Single Residential Zone I: Additional provisions

Plan attached	Area description	Additional provisions
Schedule 7: Annexure C	Fishermans Village	Subject to a CSIR setback line of 25m at the seafront as indicated on attached Annexure C.
None	Mossel Bay Golf Estate	Setback line of 6 metres adjacent to the fairway.
Annexure L	Boggomsbaai (Subdivision of Erf 515, Boggomsbaai)	Height for Erven 570, 571, 574 and 575, Boggomsbaai: 7,8 metres (2 storeys) Height for all other Erven as depicted on attached Annexure L: 4,5 metres
None	Karmosyn	Variable in accordance with internal architectural guidelines.

“environmental facilities”

Land use description: “*environmental facilities*” means facilities for the management, study, interpretation, education, and public appreciation of a predominantly natural area or heritage site and may include hiking trails, but does not include tourist facilities or tourist accommodation.

Development parameters:

The Municipality must determine the land use restrictions and the development parameters for the property based on the objectives of this zoning and the specific circumstances including adherence with an approved environmental management plan, where applicable.

“factory”

Land use description: “*factory*” means property containing an industrial assembly plant used for the manufacture of goods.

Development parameters:

The development parameters applicable to “industry” apply.

“factory shop”

Land use description: “*factory shop*” means property used for the retail sale of goods that are completely or predominantly manufactured in a factory on the property concerned and may include a shop.

Development parameters:

The development parameters applicable to “industry” apply.

The occupant of an industry may operate a factory shop provided that—

- (a) the total floor space devoted to the sale of goods may not exceed 10% of the total floor space of all the buildings on the land unit; and
- (b) any goods that are offered for sale but have not been manufactured on the property, must be directly connected with the goods that are manufactured on the property.

“farm grave yard”

Land use description: “*farm grave yard*” means a place for the burial of human or domestic animal remains situated on a property zoned “Agricultural Zone I”, which is managed by the land owner where only the land owner’s family members and farm workers formerly employed by the land owner may be buried, and- includes

- (a) A garden of remembrance; and
- (b) does not include a crematorium.

Development parameters:

A site development plan must be submitted to the Municipality for its approval. The site development plan as approved constitutes the development parameters for such private parking.

“farm shop”

Land use description: “*farm shop*” means a building or structure not exceeding 100 m² in floor space located on a farm and from where the farmer sells produce grown on the farm and other goods to the general public, including storage facilities.

Development parameters:

The development parameters applicable to “agriculture” apply.

“farmers’ market”**Land use description:**

- (a) “*farmers’ market*” means a predominantly fresh food market where farmers and food producers sell, directly to consumers, farm-origin and associated value-added specialty foods and plant products including—
 - (i) primary food products;
 - (ii) seafood, game and foraged foods;
 - (iii) value-added foods;
 - (iv) speciality food products;
 - (v) garden inputs; and
 - (vi) small livestock;

- (b) A farmers' market–
 - (i) operates regularly within a community;
 - (ii) is located at a focal public location that provides a suitable environment for farmers to conduct trade;
 - (iii) typically consists of booths, tables or stands, outdoors or indoors, where farmers sell farm produce, meats, and sometimes prepared foods and beverages; and
 - (iv) may include:
 - (aa) a subservient component of stalls for the sale of locally produced handmade crafts and arts; and
 - (bb) live family entertainment, outdoor recreation activities and children's play area.

Development parameters:

The development parameters applicable to "agriculture", apply, together with the following additional parameters:

- (a) the Municipality may stipulate conditions with regard to the layout, building design, open space, landscaping, parking, access and environmental management; and
- (b) the development must occur in accordance with an approved site development plan.

"flats"

Land use description: "*flats*" means buildings containing dwelling units, together with such outbuildings, open space and private roads as are ordinarily associated with flats and includes a rooftop base telecommunication station and fibre node container.

Development parameters:

- (a) Building must contain three or more dwelling units with the exception where flats are a primary right in a zoning other than "General Residential Zone III" or approved as a consent use.
- (b) At least one dwelling unit must have a ground floor with the exception where flats are a primary right in a zoning other than "General Residential Zone III" or approved as a consent use.
- (c) **Coverage**
The maximum coverage is 60%.
- (d) **Floor factor**
The floor factor may not exceed 1.
- (e) **Height**
 - (i) The highest point of a building may not exceed 12 metres to the top of the roof.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (f) **Building lines**
 - (i) The street building line is at least 5 metres.
 - (ii) Side and rear building lines are at least 4,5 metres.
 - (iii) The general building line encroachments in this By-law apply.
- (g) **Parking and access**
Parking and access must be provided in accordance with this By-law.
- (h) **Screening**
The Municipality may require screening in accordance with this By-law.
- (i) **Site development plan**
The Municipality may require a site development plan to be submitted for its approval.
- (j) **Institution, place of instruction and place of assembly**
The development parameters that apply to "institution", "place of instruction" and "place of assembly" apply to this use; provided that where the institution, place of instruction or place of assembly is situated within a building which is also used for flats or a boarding house,

then the coverage, height and building line requirements for the flats or boarding house apply.

(k) **Open space**

- (i) Every block of flats must have access on the land unit to an outdoor living area, including private or communal open space, but excludes roads, service yards and parking areas.
- (ii) An outdoor living area of at least 10% of the total erf area must be provided and outdoor living area(s) must be of reasonable proportions and location to allow for leisure or recreational use by residents, and may include open courtyards within the complex.

(l) **Service yard**

A service yard must be provided on the land unit in accordance with this By-law.

(m) **Refuse room**

A refuse room must be provided on the land unit in accordance with this By-law.

(n) **Minimum erf size**

The minimum erf size for flats are 1500m².

(m) **Exceptions and Additional provisions**

- (i) The following development parameters applies to the specific area indicated in the table entitled "General Residential Zone III: Exceptions":

General Residential Zone III: Exceptions

Plan attached	Area description	Coverage	Height	Building lines		
				Street	Side	Rear
Schedule 7: Annexure D Zone 1	Portobello, Diaz Beach	66%	6 levels	3 metres	3 metres	3 metres
Schedule 7: Annexure D Zone 2	Estoril Villas, Diaz Beach	40%	6 levels	3 metres	3 metres	3 metres
Schedule 7: Annexure D Zone 3	De Valle, Diaz Beach	40%	6 levels	3 metres	3 metres	3 metres
Schedule 7: Annexure D Zone 4	Pansy Cove, Diaz Beach	40%	8 levels	3 metres	3 metres	3 metres
Schedule 7: Annexure D Zone 5	Te Waterkant, Diaz Beach:	40%	6 levels	3 metres	3 metres	3 metres Also note: Subject to a setback line as indicated on General Plan Number 6914/1999.
Schedule 7: Annexure D Zone 6	Oceans II, Diaz Beach	40%	6 levels	3 metres	3 metres	3 metres
Schedule 7: Annexure D Zone 7	La Palma, Diaz Beach	40%	6 levels	3 metres	3 metres	3 metres
Schedule 7: Annexure D Zone 8	Trio Towers, Diaz Beach	40%	6 levels	3 metres	3 metres	3 metres

- (ii) The following additional provisions applies to the specific area indicated in the table entitled “General Residential Zone III: Additional provisions”:

General Residential Zone III: Additional provisions

Plan attached	Area description	Height	Additional provisions
Schedule 7: Annexure D Zone 9	Brandersig, Diaz Beach	6,5 metres	Subject to a setback line as indicated on General Plan Number 6914/1999.

“freestanding base telecommunication station”

Land use description: “*freestanding base telecommunication station*” means a freestanding support structure on land or anchored to land and used for telecommunication infrastructure to transmit or receive electronic communication signals, and may include access roads to the structure, provided that –

- (a) no telecommunication infrastructure may be located so that a habitable structure is within 50 metres directly in front of the antennae, at the same height;
- (b) if telecommunication infrastructure is not a primary use in a particular zone the telecommunication infrastructure should be designed and sited to minimise any potential adverse visual impact on the character and amenity of the local environment, in particular, impacts on prominent landscape features, general views in the locality and individual significant views; and
- (c) if telecommunication infrastructure is not a primary use in a particular zone the telecommunication infrastructure must be designed and sited to minimise, mitigate or avoid adverse impact on the visual character and amenity of residential areas.
- (d) does not include a fibre node container.

Development parameters:

- (a) **Height**
 - (i) The highest point of the structure may not exceed 15 metres in urban areas.
 - (ii) The height of the structure will be determined as per Site Development Plan in rural areas.
- (b) **General**
 - (i) Other development parameters applicable to “utility service” apply.
 - (ii) Only monopoles, tree structures or similar may be erected in urban areas.
 - (iii) The Municipal policy or by-law on outdoor advertising and signage should be complied with.

“function venue”

Land use description: “*function venue*” means a building or structure used for functions, weddings and expos on what is mainly a rural property.

Development parameters:

Development parameters applicable to “agriculture” apply on a rural property, together with the limitation that any function venue in a rural area, including all components of the venue, may not exceed a total floor area of 500 m².

“funeral parlour”

Land use description: “*funeral parlour*” means property where the dead are prepared for burial or cremation and—

- (a) includes facilities for ancillary administrative and religious functions; and
- (b) does not include a crematorium.

Development parameters:

The development parameters applicable to “shop” and “industry” apply.

“gambling place”

Land use description: “*gambling place*” means a place where betting and gambling may be undertaken in accordance with a license issued under the relevant Act, and includes premises for totalisators, electronic payout devices and limited payout gambling machines.

Development parameters:

The following development parameters apply:

- (a) As determined by the Municipality.
- (b) The Municipality may require a site development plan to be submitted for its approval in accordance with this By-law.

“garden of remembrance”

Land use description: “*garden of remembrance*” is a section of a cemetery or crematorium set aside for the erection of memorial plaques or structures, placing or scattering of ashes.

Development parameters:

The development parameters applicable to “cemetery” and “crematorium” apply.

“group housing”

Land use description: “*group housing*” and “*group housing scheme*” means a group of separate or linked dwelling units where—

- (a) every dwelling unit has a ground floor;
- (b) the units shall be cadastrally subdivided;
- (c) the units are planned, designed and built as a harmonious architectural entity in an ordered way; and
- (d) the units are integrated with communal private open spaces, private roads and parking.
- (e) The establishment of a Home Owners Association in terms of Section 29 of the Mossel Bay Municipality: By-Law on Municipal Land Use Planning, 2015 is compulsory
- (f) No alienation of individual group housing sites will be allowed under Sectional Title.

Development parameters:

- (a) **Design principles**
All buildings and structures must be planned, designed and built as a harmonious architectural entity and special attention must be given to aesthetics, architectural coordination, urban design and landscaping.
- (b) **Density**
 - (i) The maximum gross density on a group housing site is 35 dwelling units per hectare.
 - (ii) The minimum erf size of a combined group housing site shall be 3000m².
- (c) **Coverage**
The maximum coverage on any individual cadastral group housing site will be 60%.
- (d) **Height**
 - (i) The height of dwelling units may not exceed 8 metres.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (e) **Building lines along the perimeter of a group housing site**
The following building lines apply along the perimeter of a group housing site:
 - (i) a street boundary building line of 4 metres applies where the group housing site abuts an external public street;
 - (ii) side and rear boundary building lines are 3 metres along the perimeter of the group housing development; and
 - (iii) the general building line encroachments in this By-law apply.

- (f) **Building lines within a group housing site**
The following building lines apply within a group housing site:
- (i) street boundary building lines on internal roads are 2 metres; provided that any garage door facing the road must be set back at least 5 metres from the kerb of such internal road; and
 - (ii) if no common boundaries/firewalls as indicated on an approved site development plan are applicable, the minimum side and rear building lines will be 1,0 meters, accept where service infrastructure is installed the minimum side and rear building line will be 1,5 meters.
- (g) **Roads, Parking and access**
- (i) Parking and access must be provided in accordance with the requirements of this By-law.
 - (ii) Parking may be provided in the form of communal parking.
 - (iii) The minimum road reserve will be 8 meters.
- (h) **Site development plan**
A site development plan of the proposed group housing scheme must be submitted to the Municipality for its approval, and, if approved, the development of the group housing site must be in accordance with the approved site development plan.
- (i) **Service yard**
Service yard(s) must be provided on the land unit in accordance with this By-law.
- (j) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.
- (k) **General**
- (i) No Bed and Breakfast or Guesthouse is allowed in this zoning.
 - (ii) No second dwelling units allowed in this zoning.
 - (iii) The establishment of a Home Owners Association in terms of Section 29 of the Mossel Bay Municipality: By-Law on Municipal Land Use Planning, 2015 is compulsory.
 - (iv) No alienation of individual group housing sites will be allowed under Sectional Title.
 - (v) The combined size of carports and any structures covered by shade cloth is restricted to 42m² per dwelling unit.
- (l) **Exceptions and Additional provisions**
- (i) The following development parameters applies to the specific area indicated in the table entitled "General Residential Zone I: Exceptions":

General Residential Zone I: Exceptions

Area description	Coverage	Height	Building lines		
			Street	Side	Rear
Sea Cottage, Diaz Beach	80% Also note: Total house size may not exceed 123m ² and a canopy/veranda on the decks of a maximum of 20m ² (5m x 4m) which may not be enclosed.	8,5 metres (2 storeys)	2 metres	0 metres	0 metres Also note: Subject to a setback line as indicated on General Plan Number 6914/1999.

Area description	Coverage	Height	Building lines		
			Street	Side	Rear
Twee Kuilen, Diaz Beach	62% Also note: Total floor area for erven smaller than 233m ² may not exceed 192m ² of which the ground floor is 112m ² and the first floor is 80m ² . Total floor area for erven larger than 233m ² may not exceed 228m ² of which the ground floor is 148m ² and the first floor is 80m ² .	8,5 metres (2 storeys)	1.5 metres	0 metres 1.5 metres for side which is not connected to another group housing unit.	0 metres 1.5 metres for side which is not connected to another group housing unit.
Fonteine Park Phase I, Hartenbos	80% Also note: Total floor area may not exceed 143m ² and floor factor: 1,0.	8,5 metres (2 storeys)	1 metre	0 metres	0 metres
Fonteine Park Phase II, Hartenbos	80% Also note: Total floor area may not exceed 114m ² and floor factor: 0,8.	8,5 metres (2 storeys)	1 metre 5 metres building line along Louis Fourie Road	0 metres	0 metres
Avonddans Phase II, Great Brak River	50%	8,5 metres (2 storeys)	4 metres	2 metres	2 metres
Rivierpark, Hartenbos: Annexure A, Zone 9	66%	4,5 metres	2 metres public street 1.5 metres internal road	1.5 metres and 0 metres for common boundaries	2 metres
Milkwood Park, Klein Brak River: Annexure J	66%	3 metres 2 metres only for Erven 965 and 966	1,5 metres	1,5 metres Also note: 8 metres from the centre of the railway line.	8,5 metres (2 storeys) 4,5 metres only for Erven 965 and 966
Kalahari Villas	66% Also note: Total floor area may not exceed 96m ² .	8 metres (2 storeys)	2 metres 5 metres: Louis Fourie Road	1 metre	1 metre

- (ii) The following additional provisions applies to the specific area indicated in the table entitled “General Residential Zone I: Additional provisions”:

General Residential Zone I: Additional provisions

Plan attached	Area description	Additional provisions
Schedule 7: Annexure D Zone 14	La Palma Villas, Diaz Beach	Subject to a setback line as indicated on General Plan Number 5235/2003.
Annexure K	Nurture Park, Mossel Bay	Height: 4,5 metres

“guest house”

Land use description: “*guest house*” means a dwelling unit that is used for the purpose of supplying lodging and meals to transient guests for compensation, in an establishment that exceeds the restrictions of a bed and breakfast establishment (more than 2 guest rooms or 4 guests), and—

- (a) includes business meetings or training sessions by and for guests on the property for up to 12 persons; and
- (b) does not include agricultural workers’ accommodation.

Development parameters:

The development parameters applicable to “dwelling house”, “second dwelling” and “additional dwelling unit” apply.

The following further parameters apply:

- (a) the Municipality may require a site development plan to be submitted for a proposed guest house and the guest house may not open for business until the plan is approved;
- (b) the owner of a proposed guest house establishment must live on the property and must have consent use approval from the Municipality before the guest house establishment may open for business;
- (c) a register of guests and lodgers must be kept and completed when rooms are let;
- (d) any new structure or alteration to the property related to its use as a guest house must be compatible with the residential character of the area, particularly with regard to the streetscape, and must be capable of reverting to use as part of the dwelling house, second dwelling, additional dwelling unit or outbuilding concerned;
- (e) no more than 6 rooms per land unit may be used for bedroom accommodation for paying guests or lodgers, and no more than 12 paying guests or lodgers may be supplied with lodging or meals at any time;
- (f) the requirement in paragraph (e) is also applicable where a land unit contains both a guest house and rooms which are available for letting to lodgers;
- (g) no alcoholic beverages may be served except to resident guests for consumption on the premises;
- (h) only kitchenettes are permitted in guest rooms and not kitchens;
- (i) meals may only be supplied to guests or lodgers who have lodging on the property, employees, and the family residing in the dwelling;
- (j) in the absence of a Municipal policy or by-law on outdoor advertising and signage, no advertising sign may be displayed other than a single un-illuminated sign or notice not projecting over a public street and not exceeding 1 m² in area;
- (k) no weddings, receptions, conferences, training or any similar activities are permitted in a guest house;
- (l) no activities that constitute, or are likely to constitute, a source of public nuisance may be carried out; and
- (m) on-site parking must be provided in accordance with the provisions of this By-law, provided that the Municipality may at any stage require additional on-site parking if, in the opinion of the Municipality, the guest house does not have enough parking.

“guest lodge”

Land use description: “*guest lodge*” means an appropriately scaled establishment that provides temporary residence and meals for transient guests and— includes a small conference or training facility, also caters for business meetings and also includes a rooftop base telecommunication station.

Development parameters:

- (a) **Coverage**
The maximum coverage is 60%.
- (b) **Floor factor**
The floor factor may not exceed 1.
- (c) **Height**
 - (i) The highest point of a building may not exceed 8,5 metres from natural ground level to the top of the roof.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (d) **Building lines**
 - (i) The street building line is at least 5 metres.
 - (ii) Side and rear building lines are at least 4,5 metres.
 - (iii) The general building line encroachments in this By-law apply.
- (e) **Parking and access**
Parking and access must be provided in accordance with this By-law.
- (f) **Screening**
The Municipality may require screening in accordance with this By-law.
- (g) **Site development plan**
The Municipality may require a site development plan to be submitted for its approval.
- (h) **Open space**
 - (i) Every guest lodge must have access to an outdoor living area on the land unit, and the outdoor living area may include private or communal open space, but excludes roads, service yards and parking areas.
 - (ii) An outdoor living area of at least 10% of the total erf area must be provided; the outdoor living area(s) must be of reasonable proportions and location to allow for leisure or recreational use by guests and lodgers, and may include open courtyards within the complex.
- (i) **Service yard**
A service yard must be provided on the land unit in accordance with this By-law.
- (j) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.
- (k) A register of guests and lodgers must be kept, and completed when rooms are let.
- (l) No more than 20 rooms per land unit may be used for bedroom accommodation for paying guests or lodgers, and no more than 40 paying guests or lodgers may be supplied with lodging or meals at any time.
- (m) No alcoholic beverages may be served except to resident guests for consumption on the premises.
- (n) Only kitchenettes are permitted in guest rooms and not kitchens.
- (o) Meals may only be supplied to guests or lodgers who have lodging on the property, employees, and the family residing in the guest lodge.
- (p) In the absence of a Municipal policy or by-law on outdoor advertising and signage, no advertising sign may be displayed other than a single un-illuminated sign or notice not projecting over a public street and not exceeding 1 m² in area;

“halfway house”

Land use description: “*halfway house*” means a facility that provides temporary accommodation for persons who have completed a formal treatment programme for substance abuse, but does not include inpatient treatment or similar facilities.

Development parameters:

The development parameters applicable to “dwelling house” apply.

“harvesting of natural resources”

Land use description: “*harvesting of natural resources*” means the gathering of flora or fauna (living organisms) within a conservation-worthy area, for sale or use by a person or agency other than a recognised environmental agency, provided that the harvesting—

- (a) is sustainable;
- (b) does not deplete the resources below acceptable levels;
- (c) is not detrimental to the ecosystem; and
- (d) is in accordance with any applicable law.

Development parameters:

The development parameters applicable to “agriculture” apply.

“helicopter landing pad”

Land use description: “*helicopter landing pad*” means any portion of land, building, structure or part thereof demarcated for the purposes of landing or take-off of helicopters or vertical lift-off aircraft.

Development parameters:

As determined by the Municipality.

“holiday housing”

Land use description: ‘*holiday housing*’ means a harmoniously designed and built holiday development with an informal clustered layout with private roads which may include the provision of a camping site, mobile homes, or dwelling units, and where the housing may be rented out or may be separately alienated by means of time sharing, sectional title division, the selling of block shares or the subdivision of the property on condition that a home owners association or body corporate be established, but does not include a hotel.

Development parameters:

The following further parameters apply:

- (a) the parameters of the existing lawful development shall apply as land use restrictions with regard to land which is deemed to be zoned as a resort zone II with effect from the date of commencement of LUPA.
- (b) with rezoning of land to resort zone II, conditions shall be laid down with regard to density, layout, landscaping, and building design and a site development plan shall be approved by and filed with the municipality, clearly indicating the position of all structures, stands, services and internal roads.
- (c) **Existing development parameters and Additional provisions**
 - (i) The following existing development parameters applies to the specific area indicated in the table entitled “Resort Zone II: Existing development parameters”:

Resort Zone II: Existing development parameters

Plan attached	Area description	Coverage	Height	Building lines		
				Street	Side	Rear
Schedule 7: Annexure E Zone 1	Vleesbaai Aandeleblok	60%	7,5 metres Also note: Existing single storey dwellings may not exceed 4,5 metres.	3 metres	1,5 metres	1,5 metres
Schedule 7: Annexure E Zone 2	Visbaai	66%	7,5 metres	3 metres Also note: Erven located in Elwe Avenue: 1,5 metres.	1,5 metres	1,5 metres
Schedule 7: Annexure E Zone 3	Keerom	Erven 300m ² and smaller: 70% Erven between 301m ² and 500m ² : 60% Erven 501m ² and larger: 50%	7,5 metres	3 metres	1,5 metres	1,5 metres
None	Springerbaai	Note: Maximum floor area: 205m ² (including 30m ² garage). Loft not calculated as floor area. Additional above ground open wooden deck of 45m ² allowed.	6,5 metres measured from the average natural ground level – the level averaged over the footprint of the house and measured vertically above this point to the top of the roof ridge.	4,5 metres	4,5 metres	4,5 metres
Schedule 7: Annexure F	Nautilus Bay	Note: Maximum floor area: 250m ² .	8,5 metres (2 storeys) Also note: Erven 1-4; 42-49; 61-74; 79 and 80: 6.5 metres, as indicated on Annexure F.	7,5 metres	5 metres	5 metres Also note: Southern seaside: 15 metres

Plan attached	Area description	Coverage	Height	Building lines		
				Street	Side	Rear
None	Tuscany@Sea, Tergniet	60%	8 metres	1,5 metres	0 metres	0 metres

- (ii) The following additional provisions applies to the specific area indicated in the table entitled “Resort Zone II: Additional provisions”:

Resort Zone II: Additional provisions

Plan attached	Area description	Additional provisions
Schedule 7: Annexure G and Annexure H	Moquini	Building lines, coverage and height as per dwelling house applies, except for the following: Only one storey above street level is permitted, however more than one storey may be constructed where erven is lower than street level, excluding erven 51 to 59, as indicated on Annexure G. Subject to a development setback line at the seafront as indicated on attached Annexure H.
None	Hartenbos Landgoed Phase I	The chalets are limited to a maximum floor space of 251m ² . The duet-type are limited to a maximum floor space of 251m ² . The quadruple-type are limited to a maximum floor space of 216m ² .
None	Gondwana	The footprint of the Resort Zone II units must not exceed 175m ² and the Erf sizes must not exceed 300m ² . Height must be restricted to single storey with lofts allowed in the roof space. The height of the Resort Zone II units may not be more than 6,5 metres measured from the average natural ground level to the highest point of the roof. The two Game Lodges are restricted to a maximum of 1000m ² each and a maximum height of 6,5 metres measured from the average natural ground level to the highest point of the roof.
None	Kanonstrand	If any redevelopment of the individual units takes place, it must take place within the exiting footprint, with the exception of an existing unit which is smaller than 120m ² , in which case it may be redeveloped as a single storey structure with a maximum height of 6,5m and a maximum floor area of 120m ² .
None	Kleinbos	Refer to Kleinbos Architectural and Building Regulations dated May 2021.

“home care facility”

Land use description: “*home care facility*” means the use of a dwelling house, second dwelling, double dwelling house or a portion thereof to provide permanent or temporary accommodation and care for the retired, or elderly persons in need of frail care, or people in need of health care to recuperate from a medical condition or procedure, provided that —

- (a) the scale of the dwelling house or second dwelling shall not exceed that of a normal dwelling unit which would ordinarily accommodate one family;
- (b) the primary use of the property shall remain a residence for the operator;
- (c) no more than 8 persons and 6 bedrooms be used for such facility; and
- (d) the operator of the enterprise shall permanently reside on the property.

Development parameters:

- (a) The development parameters applicable to the primary use apply.
- (b) The Municipality must require a site development plan for a home care facility.

“home child care”

Land use description: “*home child care*” means the use of a portion of a dwelling house or its outbuildings by the occupant to provide day care, after school care or instruction for a limited number of infants or children.

Development parameters:

- (a) The dominant use of the property must be for accommodation of a single family.
- (b) The owner of the home child care activity must live on the property.
- (c) Any new structure or alteration to the property to accommodate an additional use right must be compatible with the residential character of the area, particularly with regard to the streetscape, and must be capable of reverting to use as part of the dwelling house, second dwelling, outbuilding, or shelter concerned.
- (d) No more than 3 employees may be engaged by the owner for the home child care activity.
- (e) No more than 6 children may be enrolled at the home child care facility at a time.
- (f) The home child care services must primarily be day care or educational, not medical.
- (g) The home child care services may not operate outside the hours 6:00 to 18:00 from Monday to Friday, and from 8:00 to 13:00 on Saturday. No home child care services are permitted on public holidays or Sundays.
- (h) Areas for indoor play space and outdoor play space must be provided in accordance with any health requirement or a policy plan as might be approved by the Municipality from time to time, and outdoor play space must be fenced off from any public street or neighbouring property by a 1,8 metre-high fence or wall.
- (i) In the absence of a Municipal policy or by-law on outdoor advertising and signage, no advertising sign may be displayed other than a single un-illuminated sign or notice not projecting over a public street and not exceeding 0,2m² in area;
- (j) At least one off-street parking bay must be provided, plus one additional parking bay which is suitable for drop off and collection of children. The Municipality may at any stage require additional on-site parking where, in the opinion of the Municipality, the home child care service does not have enough parking for its operations.

“home for the aged”

Land use description: “*home for the aged*” means a building where permanent lodging is provided, with or without meals, to persons who are 50 years of age or older and–

- (a) includes–
 - (i) outbuildings as are normally used therewith; and
 - (ii) a frail care facility; and
- (b) does not include –
 - (i) a dwelling house;
 - (ii) a hotel;
 - (iii) a bed and breakfast establishment; or
 - (iv) flats.

Development parameters:

The development parameters applicable to “boarding house”, apply.

“home occupation”

Land use description: “*home occupation*” means the practising of an occupation or the conducting of an enterprise by one or more occupants who reside on the property, provided that the dominant use of the property concerned must remain for the living accommodation of the occupants and home occupation does not include a house shop.

Development parameters

- (a) The dominant use of the property must be for accommodation of a single family.
- (b) The proprietor of the home occupation concerned must live on the property.

- (c) Any new structure or alteration to the property to accommodate a home occupation must be compatible with the residential character of the area, particularly with regard to the streetscape, and must be capable of reverting to use as part of the dwelling house, second dwelling or outbuilding concerned.
- (d) Not more than three employees may be engaged by the occupant in the home occupation concerned.
- (e) No home occupation may include a noxious trade, risk activity, adult entertainment, adult services, adult shop, sale of alcoholic beverages, motor repair garage, funeral parlour or activities that are likely to generate a public nuisance, including but not limited to panel beating and spray painting, auto electrician, builder's yard, welding works or joinery.
- (f) No goods for sale may be publicly displayed and no external evidence of the home occupation may be visible from a public street, except for an advertising sign in accordance with paragraph (g).
- (g) In the absence of a Municipal policy or by-law on outdoor advertising and signage, no advertising sign may be displayed other than a single un-illuminated sign or notice not projecting over a public street and not exceeding 0,2 m² in area;
- (h) A "place of instruction" may be operated as a home occupation, provided that no more than six students may be accommodated at any given time.
- (i) No activities that constitute or are likely to constitute a source of public nuisance, or generate waste material that may be harmful to the area or requires special waste removal processes, may be carried out.
- (j) Off-street parking must be provided at a ratio of 1 parking bay per 25 m² area used for home occupation. The Municipality may at any stage require additional on-site parking where, in the opinion of the Municipality, there is not enough parking for the home occupation concerned.
- (k) The total area used for all home occupation activity on a land unit, including storage, may not consist of more than 25% of the total floor area of the dwelling units on the land unit or 60 m², whichever is smaller.
- (l) The storage of all goods and equipment connected with the home occupation concerned must be inside a building or screened from neighbours and the public street.
- (m) Not more than two vehicles may be used in connection with a home occupation, and no one vehicle may exceed 3 500 kg in gross weight.
- (n) The hours of operation of a home occupation may not extend beyond 8:00 to 18:00 from Monday to Friday, and 8:00 to 13:00 on Saturday. No home occupation operations are permitted on public holidays or Sundays.
- (o) The Municipality may, at any stage, call for a cessation of the home occupation activity or impose conditions in order to minimise any potential nuisance to surrounding neighbours or the general public.
- (p) When "home occupation" is approved as a consent use right in any zone, the development parameters of "home occupation" apply over and above the development parameters of the relevant land use allowed as a primary right in the zone.
- (q) In order to exercise the consent use right under paragraph (p), the owner must obtain the written consent, where applicable, of the relevant owners' association or Body Corporate, or all the owners within a housing scheme if the owners' association or Body Corporate is not functioning.

"hospital"

Land use description: "*hospital*" means a place for the diagnosis and treatment of human illness, with integrated facilities including operating theatres and live-in accommodation for patients and may include—

- (a) a clinic;
- (b) medical consulting rooms;
- (c) a pharmacy;
- (d) a subservient restaurant; and
- (e) a shop.

Development parameters:

The development parameters applicable to “place of instruction” apply.

“hotel”

Land use description: “*hotel*” means a property used as a temporary residence for transient guests, where lodging and meals are provided, and—

- (a) includes—
- (i) restaurants;
 - (ii) conference and entertainment facilities and a chapel that are subservient and ancillary to the dominant use of the property as a hotel;
 - (iii) premises that are licensed to sell alcoholic beverages for consumption on the property;
 - (iv) occasional use;
 - (v) flats;
 - (vi) a wellness centre;
 - (vii) backpackers’ lodge;
 - (viii) rooftop base telecommunication station; and
 - (ix) fibre node container.

Development parameters:

The development parameters applicable to “business premises” apply with the following concession:

- (a) Where it is proposed to erect a hotel of at least 30 bedrooms within this zone, the following portions of the hotel must be disregarded when calculating the total floor space of the building:
- (i) rooms that are used by residents and visitors as dining rooms, banqueting rooms, bars, restaurants, ballrooms, rooms for games and sports, lounges, sitting rooms, reading rooms, writing rooms and conference rooms;
 - (ii) public foyers and areas comprising public or communal stoeps, verandahs, balconies, terraces or sun decks used by hotel residents or visitors;
 - (iii) barber shops, hairdressing salons, florists and similar enterprises within the hotel for the exclusive use of hotel residents;
 - (iv) offices forming part of the hotel premises, used solely for the administration and management of the hotel;
 - (v) kitchens, sculleries, laundries and similar service facilities forming part of the hotel premises;
 - (vi) storerooms appurtenant to the hotel; and
 - (vii) staff quarters appurtenant to the hotel, including corridors, stairs and other means of access within such staff quarters, including all kitchens, dining rooms, recreation rooms, laundries and other similar rooms for the exclusive use of staff.
- (b) If, in the opinion of the Municipality, a room is primarily for the use of persons other than hotel residents, staff or visitors, the room must be included in the floor space calculation of the building notwithstanding that it may be referred to in paragraph (a)(i) to (vii), and any rooms that are not specifically referred to in paragraph (a)(i) to (vii) must also be included in the floor space calculation of the building.

“house shop”

Land use description: “*house shop*” means the conducting of a retail trade from a dwelling house, second dwelling or outbuilding by one or more occupants who must reside on the property; provided that the dominant use of the property must remain for the living accommodation of the occupants, provided that -

- (a) no products or goods may be displayed outside the dwelling or property;
- (b) house shops will be restricted to the sale of daily household needs and consumables and no inflammable substances or products such as paraffin, petrol, fireworks, gas etcetera shall be sold or stored on the property; and
- (c) no liquor sales, entertainment, industrial or noxious uses shall be permitted.

Development parameters:

The following development parameters apply:

- (a) Development parameters applicable to “dwelling house” and “second dwelling” apply;
- (b) The trading and store area of a house shop shall be limited to a maximum of 40% of the dwelling or a maximum floor area of 40m² whichever is more restrictive;
- (c) The hours of business/trade shall be limited between 06:00 – 22:00 daily;
- (d) The owner of a house shop will not be entitled to an indigent/poor household subsidy; and
- (e) The Municipal policy or by-law on outdoor advertising and signage should be complied with.

“industrial hive”

Land use description: “*industrial hive*” means a complex of uniformly designed buildings, containing a mix of retail and manufacturing activities arranged in an orderly manner around common spaces including—

- (a) common parking and access;
- (b) light industry;
- (c) service trade;
- (d) storage facilities;
- (e) service station;
- (f) restaurant; and
- (g) open air motor vehicle display.

Development parameters

The development parameters applicable to “light industry” apply.

“industry”

Land use description: “*industry*” means a property used as a factory and in which an article or part of the article is made, manufactured, produced, built, assembled, compiled, printed, ornamented, processed, treated, adapted, repaired, renovated, rebuilt, altered, painted (including spray painting), polished, finished, cleaned, dyed, washed, broken up, disassembled, sorted, packed, chilled, frozen or stored in cold storage; including offices, caretaker’s quarters, factory shop or other uses that are subservient and ancillary to the use of the property as a factory; and—

- (a) includes—
 - (i) an industrial hive;
 - (ii) builder’s yard
 - (iii) funeral parlour;
 - (iv) service station;
 - (v) transport usage;
 - (vi) rooftop base telecommunication station;
 - (vii) fibre node container;
 - (viii) freestanding base telecommunication station;
 - (ix) warehouse and agricultural industry;
 - (x) storage facility; and
- (b) does not include a noxious trade or risk activity.

Development parameters:**(a) Floor factor and coverage**

- (i) The floor factor may not exceed 1,5.
- (ii) The maximum coverage is 75%.

(b) Height

- (i) The highest point of a building may not exceed 12 metres to the top of the roof.
- (ii) The highest point of a stack of shipping or transport containers stored outside a building may not exceed 12 metres above average ground level.

- (iii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (c) **Street boundary building line**
The street boundary building line is 0 metres, with a street centreline setback of at least 8 metres.
- (d) **Side and rear boundary building lines**
Side and rear boundary building lines are 0 metres, provided that the Municipality may impose down side and rear building lines of up to 3 metres in the interest of public health and/or safety.
- (e) **Boundary walls**
Where a land unit has a common boundary with another land unit that is not zoned Industrial Zone II or Industrial Zone III, the Municipality may require a 1,8 metre-high wall to be erected, to the satisfaction of the Municipality, along the common boundary.
- (f) **Parking and access**
Parking and access must be provided on the land unit in accordance with this By-law.
- (g) **Loading**
Loading bays must be provided on the land unit in accordance with this By-law.
- (h) **Screening**
The Municipality may require screening in accordance with this By-law.
- (i) **Hazardous substances**
Despite the fact that an activity constitutes a primary use right in terms of this zone, no activity or use that includes the on-site storage of hazardous substances may be permitted unless a risk management and prevention plan has been submitted to the Municipality for its approval. The risk management and prevention plan must include guidelines approved by the Municipality to prevent or minimise danger to the environment or humans from a particular activity or series of activities, and to deal with the consequences of any dangerous event involving the hazardous substances.
- (j) **Industrial hive**
The same development management provisions that apply to an industrial hive under “light industry” apply to an industrial hive in this zone.
- (k) **Site development plan**
The Municipality may require a site development plan to be submitted for its approval in accordance with this By-law.
- (l) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.

“informal trading”

Land use description: “*informal trading*” means the legal selling of products in areas demarcated by the Municipality specifically for these purposes, including markets and other areas demarcated in accordance with the Municipality’s informal trading Policy or By-law.

Development parameters:

As determined by the Municipality.

“institution”

Land use description: “*institution*” means a property used as a facility that renders health related services to the community and also accommodates care centres including—

- (a) hospital;
- (b) clinic;
- (c) home for the aged, retired, indigent or handicapped, frail care facility;
- (d) a social facility including a counselling centre, orphanage, night shelter and rehabilitation centre;
- (e) ancillary accommodation, administrative, health care, training and support services and facilities;
- (f) fibre node container; and
- (g) rooftop base telecommunications station.

Development parameters:

Development parameters applicable to “place of instruction” apply.

“intensive animal farming”

Land use description: “*intensive animal farming*”—

- (a) means the breeding, feeding and keeping, on an intensive basis, of animals or poultry confined to buildings, or structures; and
- (b) does not include the breeding, feeding and keeping of wildlife.

Development parameters:

Development parameters applicable to “agriculture” apply.

“intensive horticulture”

Land use description: “*intensive horticulture*” means the culture of plants on an intensive scale, including—

- (a) the culture of plants under a roof or in greenhouses; and
- (b) the sale of self-produced plants on a property.

Development parameters:

Development parameters applicable to “agriculture” apply.

“light industry”

Land use description: “*light industry*”—

- (a) means an industry, not being a hazardous or offensive industry or involving use of hazardous or offensive storage establishment, and where the processes carried on, the transportation involved or the machinery or materials used do not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise;
- (b) involves manufacturing that is less capital-intensive and requires less machinery than other types of manufacturing; and
- (c) includes—
 - (i) the manufacturing of consumer products, including electronics and clothing;
 - (ii) warehousing;
 - (iii) industrial hive;
 - (iv) service trade;
 - (v) service station;
 - (vi) caretaker’s quarters;
 - (vii) restaurant;
 - (viii) rooftop base telecommunication station;
 - (ix) fibre node container;
 - (x) storage facility;
 - (xi) open air motor vehicle display; and
 - (xii) flats above ground floor only for Mixed Zone II (MZII) zoned properties.

Development parameters**(a) Floor factor**

The maximum floor factor on the land unit is 1,5.

(b) Coverage

The maximum coverage for all buildings on a land unit is 75%.

(c) Height

- (i) No building may exceed a height of 12 metres.
- (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.

(d) Street building line

The street building line is at least 5 metres.

- (e) **Side building line**
The side building line is at least 1,5 metres.
- (f) **Rear building line**
The rear building line is at least 1,5 metres.
- (g) **Boundary walls**
Where a land unit has a common boundary with another land unit that is not zoned for industrial purposes, the Municipality may require a 1.8 metre-high wall to be erected to the satisfaction of the Municipality, along the common boundary.
- (h) **Parking and access**
Parking and access must be provided in accordance with this By-law.
- (i) **Loading bays**
Loading bays must be provided in accordance with this By-law.
- (j) **Screening**
The Municipality may require screening in accordance with this By-law.
- (k) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.
- (l) **Hazardous substances**
No activity which includes storage of on-site hazardous substances may be permitted unless a risk management and prevention plan has been submitted to the Municipality for its approval. The risk management and prevention plan must include guidelines approved by the Municipality to prevent or minimise danger to the environment or humans from a particular activity or series of activities, and to deal with the consequences of any dangerous event involving the hazardous substances.
- (m) **Site development plan**
A site development plan must be submitted to the Municipality for its approval.
- (n) **Industrial hive**
The following additional development parameters apply for an industrial hive, namely:
 (i) the design principles which are reflected in the definition of “industrial hive” must be closely followed and implemented;
 (ii) special attention must be given to aesthetics, architectural coordination, urban design and landscaping; and
 (iii) the Municipality may impose conditions specifying limits on the mix of retail and manufacturing activities, and the industrial hive may not allocate more than 50% of the total floor space to retail activities, shops or associated uses.
- (o) **Additional provisions**
The following additional provisions applies to the specific area indicated in the table entitled “Mixed Zone II: Additional provisions”:

Mixed Zone II: Additional provisions

Plan attached	Area description	Additional provisions
Schedule 7: Annexure I	Voorbaai	5 metre building line along Louis Fourie Road, except for erven located on the east side of Louis Fourie Road which is subject to a 10 metre building line as indicated on Annexure I.

“liquor store”

Land use description: “*liquor store*” means an establishment where the dominant use is the retail sale of alcoholic beverages, for consumption off the property.

Development parameters:

The development parameters applicable to “shop” apply.

“medical consulting rooms”

Land use description: “*medical consulting rooms*” means an office or offices and ancillary rooms used by a registered medical professional for human medical or medical-related consultation, where the office is not attached to a hospital or clinic.

Development parameters:

The development parameters applicable to “office” apply.

“mine”

Land use description: “*mine*” means mine as defined in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) and includes extracting gas for market production purposes.

Development parameters:

The following development management provisions apply:

- (a) the owner must comply with national and provincial statutory requirements applicable to mining;
- (b) any application to rezone land to Industrial Zone IV must contain an explanation of the measures that will be implemented to address safety and environmental concerns that may be imposed as conditions of approval by the Municipality, including—
 - (i) control of drainage, sedimentation and erosion;
 - (ii) preservation of surface and substance water;
 - (iii) preservation of topsoil;
 - (iv) provision for restoration and the re-use of the site;
 - (v) provision for noise and visual buffering;
 - (vi) accommodation of heavy traffic and vehicles on roadways; and
 - (vii) a phased programme for rehabilitation; and
- (c) a site development plan must be submitted to the Municipality for its approval.

“mobile home”

Land use description: “*mobile home*” means a transportable structure that is designed so that it can be used as a permanent dwelling and that has the necessary service connections for a permanent dwelling.

Development parameters:

As determined by the Municipality.

“motor repair garage”

Land use description: “*motor repair garage*” means a commercial enterprise where motor vehicles are provided with fuel or major services including engine overhauling, spray-painting, panel beating, black-smithery, exhaust fitment, shock absorber fitment or body work, and includes a service station.

Development parameters:

The development parameters applicable to “shop” apply. The following additional development parameters apply:

- (a) a site development plan must be submitted to the Municipality for its approval;
- (b) any part of the property of a motor repair garage that is used for the repair of motor vehicles, the storage of inoperable motor vehicles or parts of motor vehicles, empty containers including oil drums and packing cases, or any other scrap, must be enclosed with a solid screen wall at least 2 metres high, or contained in a building; and
- (c) any motor repair garage that supplies fuel must comply with the following access requirements:
 - (i) the width of motor vehicle carriageway crossings over the street boundary, whether one-way or two-way, may not exceed 8 metres;

- (ii) a wall, at least 100 millimetres thick and 350 millimetres high, must be erected on the street boundary between different motor vehicle carriageway crossings, and the wall must continue along the boundary unless the property is otherwise enclosed;
- (iii) the motor vehicle carriageway crossings must be limited to two per site unless the total length of a street boundary exceeds 30 metres, in which case one additional motor vehicle carriageway crossing may be permitted;
- (iv) at the point where it crosses the street boundary, a motor vehicle carriageway crossing may not be closer than:
 - (aa) 30 metres to the intersection of a provincial road and with any other road of a similar status;
 - (bb) 30 metres to the nearest point of an intersection where traffic is controlled, or is proposed to be controlled, by a traffic signal or traffic island;
 - (cc) 10 metres from the corner of an intersection not described in items (aa) and (bb), if the intersection is not splayed, or 5 metres from the point where the splay meets the road boundary if the intersection is splayed; and
 - (dd) 1,5 metres from a side boundary; and
- (v) no fuel pump may be erected so that the base or island on which the pump stands is less than 3,5 metres from the nearest street boundary.

“multiple parking garage”

Land use description: “*multiple parking garage*” means a place, excluding a road, street and on-site parking associated with a primary or consent use, that is used for parking of motor vehicles by the public, with or without a fee, and may include parking within a building.

Development parameters

Development parameters applicable to “business premises” apply.

“nature conservation area”

Land use description: “*nature conservation area*” means the use and management of land with the objective of preserving the natural biophysical characteristics of that land, including the fauna and flora and includes occasional use, but does not include tourist accommodation or agriculture.

Development parameters:

- (a) The Municipality may require an environmental conservation plan to be submitted for its approval.
- (b) The Municipality must determine the land use restrictions and the development parameters for the property based on the objectives of this zoning, the particular circumstances of the property and, where applicable, in accordance with an approved environmental management plan.
- (c) One dwelling house is allowed if no dwelling house exists on another portion of the land unit zoned for agriculture purposes or if the full extent of the land unit is zoned Open Space III.
- (d) When a consent use to provide tourist facilities in a “nature conservation area” is approved, it is subject to conditions imposed by the Municipality with regard to layout, landscaping and building design.
- (e) A site development plan must be submitted to the Municipality for its approval, clearly indicating the position of all structures, services and internal roads.

“nature reserve”

Land use description: “*nature reserve*” means a national park or some other nature area that is owned by an organ of state or remains in private ownership and has been declared as a nature reserve or has a similar status in terms of legislation; it consists of an area that is utilised as a game park or reserve for fauna and flora in their natural habitat and— includes environmental facilities, occasional use and worker accommodation.

Development parameters:

- (a) An environmental management plan must be submitted to the Municipality, SANParks or CapeNature for their approval or to all of them for approval.
- (b) SANParks or CapeNature or both must, in consultation with the Municipality, determine the land use restrictions and the development parameters for the property based on the objectives of this zoning, the particular circumstances of the property, and in accordance with an approved environmental management plan.
- (c) When consent is used to provide tourist facilities or tourist accommodation in a “nature reserve” are approved, conditions must be imposed with regard to density, layout, landscaping, and building design.
- (d) A site development plan must be submitted to the Municipality for its approval, clearly indicating the position of all structures, stands, services and internal roads.

“neighbourhood shop”

Land use description: “*neighbourhood shop*” means a property used for the retail sale, principally, of convenience goods to the public and providing service almost exclusively to the inhabitants of a specific neighbourhood and its surrounding area, and— includes laundrette, hair salon, medical practitioner, rooftop base telecommunication station, fibre node container; flats above ground floor and clinic.

Development parameters

The development parameters applicable to “shop” apply.

“noxious trade”

Land use description: “*noxious trade*” means an industry that is offensive, poisonous or a harmful use or activity that, because of the fumes, emissions, smell, vibration, noise, waste products, nature of material used, processes employed, or other cause, is considered by the Municipality to be a source of danger, nuisance or offence to the general public or persons in the surrounding area and includes the following primary land uses which are not regarded as a noxious trade—

- (a) rooftop base telecommunication station;
- (b) fibre node container; and
- (b) freestanding base telecommunication station.

Development parameters

The following development parameters apply:

- (a) **Floor factor**
The maximum floor factor on the land unit is 2.
- (b) **Coverage**
The maximum coverage for all buildings on the land unit is 75%.
- (c) **Height**
 - (i) No height restriction applies to buildings used for a noxious trade, risk activity or manufacturing in this zone.
 - (ii) Buildings not used for noxious trade, risk activity or manufacturing purposes may not exceed a height of 18 metres to the top of the roof.
 - (iii) The general provisions regarding earth banks and retaining structures in this By-law apply.
 - (iv) The highest point of shipping or transport containers, when stored or stacked outside a building connected with a noxious trade, may not exceed 15 metres above average ground level.
- (d) **Building lines**
 - (i) The street boundary building line is at least 5 metres.
 - (ii) The side and rear boundary building lines are at least 5 metres.
- (e) **Parking and access**
Parking and access must be provided on the land unit in accordance with this By-law.
- (f) **Loading**
Loading bays must be provided on the land unit in accordance with this By-law.

- (g) **Screening**
The Municipality may require screening on the land unit in accordance with this By-law.
- (h) **Boundary walls**
Where a land unit has a common boundary with another land unit that is not zoned Industrial Zone II or Industrial Zone III, the Municipality may require a 1,8 metre-high wall, of the quality and with finishings to the satisfaction of the Municipality, to be erected along the common boundary.
- (i) **Hazardous substances**
Despite the fact that an activity constitutes a primary use right in terms of this zone, no activity or use that includes the on-site storage of hazardous substances is permitted unless a risk management and prevention plan has been submitted to the Municipality for its approval. The risk management and prevention plan must include guidelines approved by the Municipality to prevent or minimise danger to the environment or humans from a particular activity or series of activities, and to deal with the consequences of any dangerous event involving the hazardous substances.
- (j) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.
- (k) **Site development plan**
The Municipality may require a site development plan to be submitted for its approval.

“occasional use”

Land use description: “*occasional use*” means a specific occasion or event including—

- (a) seasonal craft markets;
- (b) circuses;
- (c) religious gatherings;
- (d) film shoots;
- (e) builder’s yards;
- (f) festivals;
- (g) seasonal camping sites; and
- (h) other outdoor events.

Development parameters:

The following development parameters apply:

- (a) depending on the scale and nature of an occasional use, permission from relevant department(s) within the Municipality will still be required by submitting an events or film shoot application even though the occasional use is a primary use right under a particular zone; and
- (b) the Municipality may withdraw the permission for the occasional use by written notice to the applicant if any stipulated conditions are not complied with.

“office”

Land use description: “*office*” means property used for the conducting of an enterprise primarily concerned with administrative, clerical, financial or professional duties, and includes—

- (a) medical consulting rooms;
- (b) a clinic;
- (c) rooftop base telecommunication station; and
- (d) fibre node container.

Development parameters

The following development parameters apply:

- (a) **Floor factor**
The floor factor may not exceed 1.
- (b) **Coverage**
Coverage may not exceed 60%

- (c) **Street centre line setback**
The municipality may require that all buildings or structures on the land unit are set back at least 6,5 metres from the centre line of the abutting street or streets.
- (d) **Height**
(i) The highest point of a building may not exceed 11 metres from average ground level to the top of the roof.
(ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (e) **Building lines**
(i) The street building line is at least 5 metres.
(ii) The side and rear building lines are at least 3 metres.
(iii) The general building line encroachments in this By-law apply.
- (f) **Parking and access**
Parking and access must be provided on the land unit in accordance with this By-law, except in a case where the Municipality has approved alternative parking supply under section 43.(1).
- (g) **Loading**
Loading bays must be provided on the land unit in accordance with this By-law.
- (h) **Screening**
The Municipality may require screening in accordance with this By-law.
- (i) **Canopy or balcony projection**
Canopy and balcony projections for “business premises” apply.
- (j) **Refuse room**
The Municipality may require a refuse room to be provided on the land unit in accordance with this By-law.

“off-road trail”

Land use description: “*off-road trail*” means a series of roads, tracks and routes designed for recreational use and—

- (a) includes buildings and facilities normally required for the administration and maintenance of the trail; and
(b) does not include tourist accommodation or tourist facilities.

Development parameters:

The development parameters applicable to “agriculture” apply.

“open air motor vehicle display”

Land use description: “*open air motor vehicle display*” means the display of motor vehicles for the purpose of trading under open air where the open air area does not form part of a covered showroom and where shade cloth may not be construed as a permanent method of covering.

Development parameters:

The development parameters of “shop”, apply.

“place of assembly”

Land use description: “*place of assembly*”—

- (a) means a place that has a civic function to serve the social and community needs of an area, may attract people in relatively large numbers;
(b) includes a civic hall, concert hall, indoor sports centre, gymnasium, sport stadium, and club house; and
(c) does not include a place of entertainment, or conference facility.

Development parameters:

- (a) Development parameters applicable to “place of instruction” apply.
(b) A maximum of 5 electronic or mechanical playing devices are permitted within a building.

“place of entertainment”

Land use description: “*place of entertainment*” means a place used predominantly for commercial entertainment with bar facilities or where alcoholic beverages are served, which may include a stage for live music, one or more dance floor areas, a DJ booth where recorded music is played, and which may attract relatively large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis, including—

- (a) a nightclub;
- (b) disco;
- (c) dance club; and
- (d) club; and
- (e) a place of leisure where noise from amplified music/sound is generated after 22:00 or as determined in consultation with the Director: Community Services.

Development parameters:

The following development parameters apply:

- (a) As determined by the Municipality.
- (b) The Municipality may require a site development plan to be submitted for its approval in accordance with this By-law.

“place of instruction”:

Land use description: “*place of instruction*”—

- (a) means a place for education or training at pre-school, school or post-school levels;
- (b) includes a crèche, nursery school, primary school, secondary school, college, university or research institute, e-learning centres, tutor centres, fibre node container and rooftop base telecommunication station;
- (c) includes ancillary uses including—
 - (i) a boarding hostel,
 - (ii) a sport and recreation centre,
 - (iii) place of instruction in sport where the main objective is instruction rather than participation of the public as competitors or spectators;
 - (iv) place of worship, and
 - (v) occasional use.
- (d) does not include a reformatory or a conference facility.
- (e) if a place of instruction is approved as a consent use under “Single Residential Zone I” the following development parameters apply:
 - (i) The services provided must primarily be day care and educational, and not medical services.
 - (ii) The services may not operate outside the hours 6:00 to 18:00.
 - (iii) The dominant use of the dwelling house must remain for the living accommodation of a single family.
 - (iv) Not more than 20 children/students may be registered at a time, or on the property at any time.
 - (v) Parking and access must be provided in accordance with this By-law.

Development parameters:

- (a) **Floor factor**
The maximum floor factor is 1,2.
- (b) **Coverage**
The maximum coverage is 60%.
- (c) **Height**
 - (i) The highest point of a building to the top of the roof may not exceed 12 metres, provided that there is no height limit for a bell tower, steeple, minaret or similar architectural feature designed to accentuate the significance of a building.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.

- (d) **Building lines**
 - (i) The street building line is at least 5 metres.
 - (ii) Side and rear building lines are at least 5 metres.
 - (iii) The general building line encroachments in this By-law apply.
- (e) **Parking and access**
Parking and access must be provided on the land unit in accordance with this By-law.
- (f) **Loading bays**
Loading bays must be provided on the land unit in accordance with this By-law.
- (g) **Screening**
The Municipality may require screening in accordance with this By-law.
- (h) **Noise mitigation**
The Municipality may require the owner to install noise mitigation measures if excessive noise is created or likely to be created.
- (i) **Refuse room**
A refuse room must be provided on the land unit in accordance with this By-law.
- (j) Development parameters for a place of instruction in Mixed Zone I (MZI) is the same as for dwelling house.

“place of leisure”

Land use description: “*place of leisure*” means a place used predominantly for commercial leisure activities that may attract relatively large numbers of people, operate outside normal business hours or generate noise from such activities on a regular basis, including—

- (a) a cinema;
- (b) theatre;
- (c) amusement park/ centre;
- (d) dance hall;
- (e) ball room hall;
- (f) gymnasium;
- (g) sport centre;
- (h) skating rink;
- (i) pool room;
- (j) pub;
- (k) live entertainment;
- (l) indoor sport or recreation; and
- (m) outdoor sport and recreation.

Development parameters:

The following development parameters apply:

- (a) As determined by the Municipality.
- (b) The Municipality may require a site development plan to be submitted for its approval in accordance with this By-law.

“place of worship”

Land use description: “*place of worship*” —

- (a) means a church, synagogue, mosque, temple, chapel or other place for practising a faith or religion, provided that a dwelling where the occupants engage in worship does not constitute a place of worship;
- (b) includes ancillary uses such as a religious leader’s dwelling, office, crèche, function hall, or place for religious instruction,
- (c) includes rooftop base telecommunications station, fibre node container and occasional use; and
- (d) does not include a funeral parlour or crematorium.

Development parameters:

- (a) Development parameters applicable to “place of instruction” apply.

- (b) Development parameters for a place of worship in Mixed Zone I (MZI) is the same as for dwelling house.

“plant nursery”

Land use description: “*plant nursery*” means a property used for one or more of the following uses as a commercial enterprise:

- (a) cultivation of plants;
(b) sale of plants; and
(c) sale of gardening products and gardening equipment.

Development parameters:

Development parameters applicable to “agriculture” apply.

“private open space”

Land use description: “*private open space*”—

- (a) means land not designated as public open space and that is used primarily as a private site for sport, play, rest or recreation, or as a park, botanical garden or nature conservation area;
(b) includes ancillary buildings, infrastructure, fibre node container; rooftop base telecommunications station, public land that is or will be leased on a long term basis and occasional use; and
(c) does not include shops, restaurants and gymnasiums.

Development parameters:

The following development parameters apply:

- (a) the Municipality must require a site development plan to be submitted for its approval; and
(b) the site development plan as approved by the Municipality constitutes the development parameters for a primary use and, if applicable, a consent use.

“private parking”

Land use description: “*private parking*” means property reserved exclusively for parking purposes and that is not normally accessible to the general public and includes occasional use.

Development parameters:

A site development plan must be submitted to the Municipality for its approval. The site development plan as approved constitutes the development parameters for such private parking.

“private road”

Land use description: “*private road*”—

- (a) means land designated as a private road that provides vehicle access to a separate cadastral property or properties;
(b) includes utility services and ancillary access control infrastructure, including a gatehouse, guardhouse, refuse room, utility room and occasional use; and
(c) does not include a driveway on a property, or a servitude right of way over a property as these do not constitute private roads for the purpose of this zoning scheme.

Development parameters:

As determined by the Municipality.

“prospecting”

Land use description: “*prospecting*” means the first stage of physical search for minerals, fossils, precious metals or mineral specimens and may be granted as a temporary departure from this By-law by the Municipality since it does not constitute a primary, consent or occasional use right in terms of this By-law.

Development parameters:

As determined by the Municipality.

“psychiatric hospital”

Land use description: *“psychiatric hospital”* means a hospital or institution for people who are suffering from mental illness.

Development parameters:

The development parameters applicable to “place of instruction” apply.

“public open space”

Land use description: *“public open space”*—

- (a) means land, with or without access control —
 - (i) owned by the Municipality or other organ of state;
 - (ii) not leased out by the Municipality or that other authority on a long-term basis,
 - (ii) set aside for the public as an open space for recreation or outdoor sport and designated as public open space; and
- (b) includes a park, playground, public or urban square, picnic area; public garden, fibre node container, rooftop base telecommunications station, nature area, ancillary buildings and infrastructure and occasional use.

Development parameters:

The following development parameters apply:

- (a) the Municipality must require a site development plan to be submitted for its approval; and
- (b) the site development plan as approved by the Municipality constitutes the development parameters for a primary use, if applicable, and a consent use.

“public parking”

Land use description: *“public parking”* means property that is accessible to the general public for parking purposes with or without a fee and/or access control and includes occasional use.

Development parameters:

A site development plan must be submitted to the Municipality for its approval. The site development plan as approved constitutes the development parameters for the public parking.

“public street”

Land use description: *“public street”* means any land, owned by or vesting in the Municipality or owned by a government institution, indicated on an approved plan, diagram or map as having been set aside as a public thorough way for vehicles and pedestrians and includes—

- (a) open public parking areas;
- (b) sidewalks;
- (c) those parts of a public place that are travelled parts;
- (d) informal trading with permission of the Municipality;
- (e) appropriate and necessary street furniture and infrastructure, including reticulation networks that does not present any threat to the safety or obstruct or inhibit free movement of pedestrians; and
- (f) occasional use.

Development parameters:

A site development plan must be submitted to the Municipality for its approval. The site development plan as approved constitutes the development parameters for the public street.

“quarry”

Land use description: *“quarry”* means a place from which dimension stone, rock, construction aggregate, riprap, sand, gravel or slate is excavated from the ground. A quarry is a type of open-pit mine that produces building materials and dimension stone.

Development parameters:

- (a) Development parameters applicable to “agriculture” together with additional parameters determined by the Municipality apply.
- (b) If a quarry is approved as a consent use in Agricultural Zone I, the consent may only be granted for the number of years equal to the expected lifetime of the quarry concerned.
- (c) The owner must comply with national and provincial statutory requirements applicable to mining.
- (d) Any application to rezone land to Industrial Zone IV must set out the measures that will be implemented to address safety and environmental concerns including—
 - (i) control of drainage, sedimentation and erosion;
 - (ii) preservation of surface and substance water;
 - (iii) preservation of topsoil;
 - (iv) provision for restoration and the re-use of the site;
 - (v) provision for noise and visual buffering;
 - (vi) accommodation of heavy traffic and vehicles on roadways; and
 - (vii) a phased programme for rehabilitation.
- (e) The Municipality may impose the measures to address safety and environmental concerns as conditions of approval.
- (f) A site development plan must be submitted to the Municipality for its approval.

“rehabilitation centre”

Land use description: “*rehabilitation centre*” means a facility providing treatment for substance abuse.

Development parameters:

Development parameters applicable to “place of instruction” apply.

“renewable energy structure”

Land use description: “*renewable energy structure*”—

- (a) means any wind turbine, solar energy generating apparatus, including solar photo-voltaic and concentrated solar thermal, hydro turbines or bio mass facility or any grouping thereof, that captures and converts wind, solar radiation or bio mass into energy for commercial gain; and
- (b) includes any appurtenant structure necessary for, or directly associated with, generation of renewable energy, or any test facility or structure that may lead to the generation of energy on a commercial basis, excluding electrical grid connections.

Development parameters:**(a) Height**

- (i) The maximum height of a renewable energy structure is technology dependent.
- (ii) The height of buildings may not exceed 8,5 metres from natural ground level to the top of the roof.

(b) Setback

In the case of a wind turbine the setback is—

- (i) a distance equal to 1,5 times the overall blade tip height of the turbine, measured from the nearest residential, commercial or critical agricultural structures including animal housing, outbuildings, store rooms, excluding structures such as water troughs, feed dispensers, and windmills;
- (ii) a distance of 100m from the cadastral boundary of the land unit, unless the renewable energy structure straddles two or more cadastral boundaries, in which case no setback applies;
- (iii) a distance of 100m from any public road or private or public right of way, unless it provides access to the turbine;
- (iv) a distance of 100m from any electrical infrastructure; and
- (v) a distance of 1000m from towns, settlements or urban areas.

- (c) **Site development plan**
- (i) A site development plan must be submitted to the Municipality for its approval.
 - (ii) The site must be surveyed and the exact delineation of the construction footprint must be shown in the site development plan.
 - (iii) To the extent necessary, any relevant measures contained in these regulations must be incorporated into the site development plan submitted to the Municipality for approval.
- (d) **Land clearing, soil erosion and habitat impact**
- (i) The clearing of natural vegetation is limited to that which is necessary for the construction, operation and maintenance of the renewable energy structure as regulated by applicable environmental legislation.
 - (ii) Wind turbines, solar structures, access roads and other infrastructure must be located to minimise damage to natural vegetation, water courses and wetlands.
 - (iii) All land cleared that does not form part of the footprint of a renewable energy structure must be rehabilitated according to a rehabilitation plan for the land concerned, approved by the Municipality.
 - (iv) Constructing or operating the renewable energy structure may not cause soil erosion, and any high-risk erosion areas must be rehabilitated by the operator, to the satisfaction of the Municipality.
 - (v) The applicant must prove, to the satisfaction of the Municipality, that planning for the renewable energy structure concerned has taken into account and mitigated the risk of all impacts on, and necessary distances that should be maintained from, wetlands, water bodies, threatened ecosystems, mountains, ridges, hills, coastal buffers, settlements, telecommunication towers, transmission towers and power lines.
 - (vi) The applicant must provide exact coordinates relevant to land clearing, soil erosion and habitat impact to assist the Municipality to evaluate the risk of possible negative environmental impacts of the renewable energy structure concerned.
- (e) **Noise, air quality and nuisance**
- The renewable energy structure may not exceed a noise limit of 45 dB(A) during the night and 55 dB(A) during the day at the nearest dwelling.
- (f) **Finishing, colour and design**
- (i) A wind turbine structure must be treated with a neutral, non-reflective exterior colour and designed to blend in with the surrounding natural environment, to the satisfaction of the Municipality.
 - (ii) A solar structure must minimise any adverse effects related to its reflective surfaces and must be designed and built in a way that mitigates this impact, as required by the Municipality.
- (g) **Appurtenant structures**
- (i) All appurtenant structures to a renewable energy structure prescribed by the Municipality concerning bulk, height, yard sizes, building lines, open space, parking and building coverage requirements are subject to applicable by-laws.
 - (ii) Appurtenant structures, including equipment shelters, storage facilities, transformers and sub-stations must be architecturally compatible with the receiving environment as required by the Municipality, and contained within a renewable energy structure site development plan submitted for approval by the Municipality.
 - (iii) Appurtenant structures may only be used for the storage of equipment or other uses directly related to the operation of the particular facility that they are associated with.
 - (iv) Appurtenant structures must be screened from view by indigenous vegetation or be joined and clustered to minimise adverse visual impacts.
- (h) **Lighting**
- (i) A renewable energy structure or any part of such a structure may only be lit for safety and operational purposes and the lighting must be appropriately screened from abutting land units.

- (ii) A renewable energy structure must comply with the lighting air safety requirements of the South African Civil Aviation Authority in terms of the Civil Aviation Act, 2009 (Act 13 of 2009).

(i) **Signage and advertising**

Signs on renewable energy structures must comply with the laws regulating signage and be limited to signage necessary to—

- (i) identify the operator;
- (ii) provide 24-hour emergency contact numbers; and
- (iii) provide warning of any dangers associated with the structure.

No commercial advertising, including advertising for the provider or operator, may be displayed on any renewable energy structure.

(j) **Maintenance**

The owner is responsible for maintaining a renewable energy structure in good condition, including any access road, unless deemed a public way, and for paying the cost of repairing any damage resulting from construction or operation. Maintenance includes—

- (i) painting;
- (ii) structural repairs;
- (iii) rehabilitation measures; and
- (iv) the upkeep of security and safety measures.

(k) **Modification**

Any modification to a renewable energy structure, excluding inconsequential *in situ* technical improvements, made after approval and that is not in accordance with the approval and conditions of approval, requires authorisation from the Municipality within the parameters of these regulations by means of—

- (i) the amendment of approved conditions;
- (ii) a new consent use approval;
- (iii) amendment of the approved site development plan; or
- (iv) amendment of the approved building plan.

(l) **Decommissioning**

- (i) Any renewable energy structure and associated infrastructure that has reached the end of its productive life or has been abandoned, including buildings, cables and roads, must be removed by the owner.
- (ii) A renewable energy structure is considered abandoned when the structure fails to continuously operate for more than two years.
- (iii) When a renewable energy structure is scheduled to be decommissioned or operations have been discontinued or it has been abandoned, the land owner must, by registered mail, notify the Municipality within 30 days after the operation ceased, and of plans for removal of the structure and infrastructure referred to in subparagraph (i).
- (iv) The owner is responsible for the removal of the structure in all its parts, within 150 days after the date of discontinued operation, or as agreed upon by the Municipality after submission of a plan for decommissioning. The Municipality may grant an extension of the deadline for removing the structure and its parts. The land must then be rehabilitated by the owner, to the satisfaction of the Municipality, to the condition prescribed in the approved environmental management plan and the approved decommissioning plan.
- (v) Decommissioning must include—
 - (aa) the removal of all renewable energy structures and appurtenant structures, including equipment, bases, foundations, security barriers and transmission lines directly related to the renewable energy;
 - (bb) disposal of all solid and hazardous waste in accordance with provincial and local waste disposal regulations; and
 - (cc) the stabilisation and re-vegetation of the site with indigenous vegetation to minimise erosion.

- (vi) The Municipality may, in order to minimise erosion and disruption to natural vegetation and habitats, grant permission to the owner to depart from the decommissioning plan in respect of removing landscaping, underground foundations or other underground components, provided these do not cause any pollution.
- (vii) Before the construction of the renewable energy structure commences, the owner must make financial provision or an alternative reasonable arrangement, to the satisfaction of the Municipality, for protection against failure by the owner to comply with the obligations in terms of this By-law and in the event of the owner being unable to fulfil the necessary financial obligations for the rehabilitation or management of the negative environmental impact of decommissioning or of abandonment.
- (viii) If the owner fails to remove the structure or its parts in accordance with the requirements of these regulations within 150 days of abandonment or the date of decommissioning or an approved extension date, the Municipality may enter the property and remove the structure and its parts, and recover all removal costs incurred from the owner.
- (ix) If the owner fails to meet the requirements of subitem (i), the Municipality may, after written notice to the owner, use all or part of the financial provision or other provision referred to in subitem (vii) to rehabilitate or manage the negative environmental impact concerned, or to remove the facility.

“resort shop”

Land use description: “*resort shop*” means a shop that provides for the daily needs of the inhabitants or transient guests of a holiday resort or camping site.

Development parameters:

The floor space of a resort shop may not exceed 100 m².

“restaurant”

Land use description: “*restaurant*” means a commercial establishment where meals and liquid refreshments are prepared or served or prepared and served to paying customers primarily for consumption on the property, and may include licensed provision of alcoholic beverages for consumption on the property, and the option for customers to purchase food for consumption off the property.

Development parameters:

Development parameters applicable to “business premises” apply.

“retirement resort”

Land use description: “*retirement resort*” means flats, group housing or town housing that conforms to the following additional conditions:

- (a) each dwelling unit must be occupied by a retiree or pensioner or by a family of which at least one member is a retiree or pensioner; and
- (b) a full spectrum of frail care and other facilities reasonably associated with a retirement resort may be provided at a retirement resort.

Development parameters:

Development parameters applicable to the primary use apply.

“riding school”

Land use description: “*riding school*” means a place or undertaking for the leasing of horses and riding instructions against payment, and includes the care and stabling of the horses.

Development parameters:

Development parameters as applicable to “agriculture” apply.

“risk activity”

Land use description: “*risk activity*” means an undertaking where the material handled or the process carried out is liable to cause extremely rapid combustion, give rise to poisonous fumes, or cause explosion, and includes major hazardous installations and activities involving dangerous and hazardous substances that are controlled in terms of national legislation.

Development parameters:

Development parameters applicable to “agriculture” apply.

“rooftop base telecommunication station”

Land use description: “*rooftop base telecommunication station*” means a support structure attached to the roof, side or any part of a building and used to accommodate telecommunication infrastructure for the transmitting or receiving of electronic communication signals, provided that –

- (a) the design and siting of telecommunication infrastructure should be integrated as far as possible with the building or support structure to which it relates; and
- (b) for heritage areas, buildings older than 60 years and other heritage sites, the integrity of the heritage must prevail in the design and siting of telecommunication station.

Development parameters:

The general provisions of section 31 of this By-law apply.

“scrap yard”

Land use description: “*scrap yard*” means a property that is utilised for one or more of the following purposes:

- (a) storing, depositing or collecting of junk, scrap material or articles that have value depending mainly or entirely on the material used during their manufacture, which is left in the open in an unsightly manner; and
- (b) the dismantling of second-hand vehicles or machines to recover components or material; and may include the storage or sale of second-hand parts, poles, steel, wire, lumber yards, tyres, bricks, containers or other articles suited to being left in the open.

Development parameters:

Development parameters applicable to “industry” apply.

“second dwelling”

Land use description: “*second dwelling*” means another dwelling that may, in terms of this By-law, be erected on a land unit where a dwelling house is also permitted; and the second dwelling may be a separate structure or attached to an outbuilding or may be contained in the same structure as the dwelling house; provided that–

- (a) a second dwelling may only be erected once development contributions have been paid to the Municipality, if applicable in terms of the relevant policy over and above the normal connection fees and provided that the Municipality is of the opinion that the existing service infrastructure and capacity is adequate; and
- (b) the second dwelling must remain on the same land unit as the dwelling house and not be alienated separately.
- (c) second dwelling also includes a renewable energy structures for household purposes which is connected to the second dwelling house and not exceed 1,5 metres above the highest point of the second dwelling house.

Development parameters:

The development parameters applicable to “dwelling house” apply, together with the following additional parameters:

- (a) the total floor area of a second dwelling may not exceed 120 m² including the floor area of all ancillary buildings;
- (b) a second dwelling must be constructed in a style that is similar to the architecture of the main dwelling house;
- (c) a second dwelling that is a separate structure to a dwelling house may not exceed a height of 4,5 metres to the top of the roof calculated from the natural ground level;
- (d) a second dwelling that is contained within the same building as a dwelling house must be designed so that the building appears to be a single dwelling house; both units may have a ground floor, or one unit may be on the ground floor and the other unit above;
- (e) the existence of a second dwelling may not in itself be sufficient reason for the Municipality to grant an application in terms of planning law to subdivide the land unit containing the dwelling units; and
- (f) the construction of a second dwelling is subject to the Municipality's municipal services department certifying that adequate services network capacity is available to serve the needs of the second dwelling.

“service station”

Land use description: “*service station*” means property for the retail supply of fuel, and— may include ancillary land uses including washing of vehicles, fibre node container, rooftop base telecommunication station, convenience shops and restaurants.

Development parameters:

The development parameters applicable to “shop” apply. The following additional development parameters apply:

- (a) A site development plan must be submitted to the Municipality for its approval. The site development plan must at least address matters pertaining to vehicle access, risk management of fuel pumps and fuel storage areas, screening and minimising any visual intrusion or operational disturbance with adjoining properties.
- (b) Any part of the property of a service station that is used for the repair of motor vehicles, the storage of inoperable motor vehicles or parts of motor vehicles, empty containers including oil drums and packing cases, or any other scrap, must be enclosed by a solid screen wall at least 2 metres high, or contained within a building.
- (c) Any service station must comply with the following access requirements:
 - (i) the width of motor vehicle carriageway crossings over the street boundary, whether one-way or two-way, may not exceed 8 metres;
 - (ii) a wall, at least 100 millimetres thick and 350 millimetres high, must be erected on the street boundary between different motor vehicle carriageway crossings, and the wall must continue along the boundary unless the property is otherwise enclosed;
 - (iii) the motor vehicle carriageway crossings must be limited to two per site unless the total length of a street boundary exceeds 30 metres, in which case one additional motor vehicle carriageway crossing may be permitted; and
 - (iv) at the point where it crosses the street boundary, a motor vehicle carriageway crossing may not be closer than—
 - (aa) 30 metres to the intersection of a provincial road and with any other road of a similar status;
 - (bb) 30 metres to the nearest point of an intersection where traffic is controlled, or is proposed to be controlled, by a traffic signal or traffic island;
 - (cc) 10 metres from the corner of an intersection not referred to in subitems (aa) or (bb) if such intersection is not splayed, or 5 metres from the point where the splay meets the road boundary if such intersection is splayed; and
 - (dd) 1,5 metres from a side boundary.
- (d) No fuel pump may be erected so that the base or island on which the pump stands is less than 3,5 metres from the nearest street boundary.

“service trade”

Land use description: “*service trade*” means an enterprise—

- (a) primarily involved in the rendering of a service for the local community including the repair of household appliances or the supply of household services;
- (b) not likely to be a source of disturbance to surrounding properties;
- (c) that employs at most 10 people;
- (d) not likely, in the event of fire, to cause extremely rapid combustion, give rise to poisonous fumes or cause explosions;
- (e) that includes laundry, bakery, dairy depot, and similar types of uses; and
- (f) that does not include an abattoir, brick-making site, builder’s yard, sewage works, service station, open air motor vehicle display or motor repair garage.

Development parameters

The development parameters applicable to “shop” apply.

“shelter”

Land use description: “*shelter*” means a unit of accommodation, intended for human occupation with outbuildings as are ordinarily used with a dwelling unit, constructed of any material whatsoever.

Development parameters:

- (a) It is the sole responsibility of the occupant or owner of the shelter to ensure the structural, habitability, fire resistance or other standards of a shelter.
- (b) The Municipality may instruct any occupant or owner of a shelter to take action to remedy a public safety, health or fire risk.
- (c) The use of the unit must remain residential and no consent uses or temporary departures may be applied for.
- (d) No noxious trade, risk activity, adult entertainment, adult services or adult shop is permitted in a shelter.
- (e) No activities may be carried out in a shelter that constitute or are likely to constitute a source of nuisance, including the use of equipment that generates excessive noise, or any activity that results in the generation of dust, fumes, smoke, or waste material that could be detrimental to health, or requires special waste removal processes.
- (f) **Coverage**
There is no restriction on coverage.
- (g) **Height**
A shelter structure may not exceed a height of 6 meters.
- (h) **Building lines**
 - (i) Side building lines are at least 1 metre on one side or 1,5 metres in the case where the shelter has windows or doors.
 - (ii) If a midblock sewage system is present, a rear building line of up to 2 metres may be required by the Municipality.
 - (iii) The street building line is 1 metre, if required by the Municipality.

“shooting range”

Land use description: “*shooting range*” means an enclosed indoor facility or demarcated outdoor area designed, built or constructed and utilised by a person as a firing range with targets for the usual, regular, and primary activity of controlled firearm practice, shooting competitions, or firearm training on a commercial basis, and—

- (a) may be restricted to certain types of arms, handguns or rifles, or can specialize in certain shooting sports;
- (b) must be constructed or designed in such a way, or where the improvements, size, geography, and vegetation of the area are such that any misdirected shot, that can reasonably be expected to be fired towards the targets, would not reasonably be expected to leave the range or otherwise pose a threat to live or property; and
- (c) may include ancillary activities, buildings and structures.

Development parameters:

- (a) The Municipality must require a site development plan for a shooting range.
- (b) The site development plan as approved by the Municipality constitutes the development parameters.
- (c) The provisions for a site development plan in this By-law apply.

“shop”

Land use description: “*shop*” means property used for the retail sale of goods and services to the public, and—

- (a) includes a retail concern where goods that are sold in the concern are manufactured or repaired, a funeral parlour, ancillary sale of alcoholic beverages, service trade and the sale of motor vehicles, flats above ground floor, fibre node container, rooftop base telecommunication station, open air motor vehicle display, offices; and
- (b) does not include a hotel, industry, motor repair garage, adult entertainment, adult services.

Development parameters:

The following development parameters apply:

- (a) **Floor factor**
The maximum floor factor on the land unit is 1.
- (b) **Coverage**
The maximum coverage of all buildings on a land unit is 100%.
- (c) **Height**
 - (i) The maximum height of a building is 9 metres to the top of the roof.
 - (ii) The general provisions regarding earth banks and retaining structures in this By-law apply.
- (d) **Street centreline setback**
The Municipality may require a street centreline setback, in which case all buildings or structures on the land unit must be set back 8 metres from the centre line of the abutting public street or streets.
- (e) **Street boundary building line**
The street boundary building line is 0 metres, subject to the following conditions:
 - (i) the street centreline setback restriction in subparagraph (d);
 - (ii) minor architectural and sunscreen features may project beyond the street boundary building line provided that such features do not project more than 250 millimetres beyond the street boundary; and
 - (iii) for service stations, the street boundary building line is 5 metres subject to the general building line encroachments in this By-law.
- (f) **Side and rear boundary building lines**
 - (i) The side and rear boundary building lines are 0 metres.
 - (ii) Despite the zero side and rear building lines, a 1,5-metre side or rear building line applies where a land unit abuts on a single or general residential zone.

- (g) **Canopy projection**
The Municipality may approve a canopy projection over the street boundary in accordance with the following conditions:
- (i) the canopy may not project nearer than 500 millimetres to a vertical plane through the kerb line or proposed kerb line;
 - (ii) no portion of a canopy projection may be less than 2,8 metres above the pavement;
 - (iii) the Municipality may lay down more restrictive requirements relating to the dimensions, design and materials of the canopy; and
 - (iv) the owner must enter into an encroachment agreement with the Municipality in the case of a canopy projection.
- (h) **Street corners**
(i) The Municipality may require the owner of a building to be situated at a public street corner, and where the Municipality considers the street corner to be significant, to incorporate in the building, architectural features that focus visual interest on the corner and emphasise the importance of pedestrian movement around the corner. The architectural features may include building cut-offs, walk-through covered arcades, plazas or other elements.
- (j) **Parking and access**
Parking and access must be provided on the land unit in accordance with this By-law, except in a case where the Municipality has approved alternative parking supply under subsection 43.(1).
- (k) **Loading**
Loading bays must be provided on the land unit in accordance with this By-law.
- (l) **Screening**
The Municipality may require screening in accordance with this By-law.
- (m) **Repair or manufacturing concern in a shop**
The floor space relating to any manufacturing or repair concern in a shop may not comprise more than 40% of the floor space of the shop.
- (n) **Refuse room**
The Municipality may require a refuse room to be provided on the land unit in accordance with this By-law.
- (o) **General**
(i) Development parameters for a shop in Mixed Zone I (MZI) is the same as for dwelling house.

“smallholding”

Land use description: “*smallholding*” means an extensive landholding, including a dwelling house on which small scale agricultural activities may take place with associated outbuildings and includes one second dwelling unit, a guest house within the dwelling house and a rooftop base telecommunication station.

Development parameters:

- (a) Development parameters applicable to “agriculture” apply, except for the following:
- (i) 10 metres building lines apply from any boundary;
 - (ii) The height of the dwelling house and agricultural associated outbuildings may not exceed 8,5 metres;
 - (iii) The height of detached outbuildings associated with the dwelling house and second dwelling may not exceed a height of 4,5 metres;
 - (iv) The floor area of all structures on the land unit may not exceed 1500m²;
 - (v) The floor area of the second dwelling may not exceed 150m²;
 - (vi) The combined size of outbuildings is restricted to 250m²;
 - (vii) The maximum number of detached buildings allowed is 4; and
 - (viii) A dwelling house of at least 70m², size does not include a garage/outbuilding, must be established on the property before any other structures are established on the property.

“storage facility”

Land use description: “*storage facility*” means an enterprise in which storage space also known as storage units are rented to tenants on a temporary basis.

Development parameters:

- (a) The Municipality must require a site development plan for a storage facility;
- (b) The site development plan as approved by the Municipality constitutes the development parameters in addition to the parking and accesses which must be provided on the land unit in accordance with this By-law apply.

"sport and recreation centre"

Land use description: “*sport and recreation centre*” means an outdoor or indoor sport and/ or recreation facility which may be public or privately owned and which may include sports grounds and fields, golf courses, a sports stadium, as well as ancillary and subservient facilities and amenities like a clubhouse with a restaurant and shop, gymnasium, ablution facilities, stores, and related administrative buildings.

Development parameters:

- (a) The Municipality must require a site development plan for a sport and recreation centre.
- (b) The site development plan as approved by the Municipality constitutes the development parameters.
- (c) The provisions for a site development plan in this By-law apply.

"Subdivisional area"

Land use description: “*Subdivisional area*” means land zoned as a subdivisional area which must be subdivided as contemplated in the Planning By-law and until such time the primary rights together with applicable development parameters of the original zoning will apply.

Development parameters:

When the municipality approves a subdivisional area zone, it must impose conditions making provision for at least—

- (a) density requirements;
- (b) main land uses and the extent of the uses; and
- (c) a detailed phasing plan or a framework including—
 - (i) main transport routes;
 - (ii) main land uses;
 - (iii) bulk infrastructure;
 - (iv) requirements of organs of state;
 - (v) public open space requirements; and
 - (vi) physical development constraints.

“supermarket”

Land use description: “*supermarket*” means a shop having a total floor space in excess of 400 m², where a range of goods, including foodstuff and household goods, is offered for sale on a predominantly self-service basis.

Development parameters:

Development parameters applicable to “shop” apply.

“telecommunication infrastructure”**Land use description:** “*telecommunication infrastructure*”—

- (a) means any part of the infrastructure of a telecommunication network for radio or wireless communication;
- (b) includes voice, data and video telecommunications, including antennae, any support structure, equipment room, radio equipment or optical communications equipment (laser or infra-red);
- (c) includes ancillary structures needed for the operation of telecommunication infrastructure; and
- (d) does not include fibre optic installations and point-to-point copper (cable) installation.

Development parameters:

As determined by the Municipality.

“tourist accommodation”**Land use description:** “*tourist accommodation*” means a harmoniously designed and built holiday development, used for holiday or recreational purposes, whether in private or public ownership, that—

- (a) consists of a single enterprise that provides overnight accommodation by means of short-term rental or time sharing only; and
- (b) may include the provision of a camping site, caravan park, chalets or mobile home park, resort shop, rooftop base telecommunications station, private or public roads and occasional use.

Development parameters:

- (a) When land is rezoned to Resort Zone I, the Municipality must impose conditions with regard to density, layout, landscaping, and building design.
- (b) A site development plan must be submitted to the Municipality for its approval, clearly indicating the position of all structures, stands, services and internal roads.
- (c) Provided that if a hotel or wellness centre is approved as a consent use within Resort Zone I, the following additional conditions apply:
 - (i) rooms may not be alienated by means of sectional title;
 - (ii) the hotel may not accommodate more than 50% of the number of accommodation units;
 - (iii) the architectural design of the hotel or wellness centre must conform to that of the rest of the resort; and
 - (iv) the maximum height for the hotel or wellness centre is 8,5 metres.

“tourist facilities”**Land use description:** “*tourist facilities*” means amenities for tourists or visitors and—

- (a) includes lecture rooms, restaurants, gift shops, restrooms, farmers’ market and recreational facilities; and
- (b) does not include an off-road trail, a hotel, wellness centre; or tourist accommodation.

Development parameters:

- (a) Development parameters applicable to “agriculture” apply;
- (b) The Municipality may also require a site development plan for tourist facilities; and
- (c) The site development plan as approved by the Municipality constitutes the development parameters.

“town housing”**Land use description:** “*town housing*” means a row or group of linked or attached dwelling units, planned, designed and built as a harmonious architectural entity where every dwelling unit has a ground floor and dwelling units may be cadastrally subdivided.

Development parameters:

The development parameters of “group housing” apply, provided that:

- (a) **Density**
The maximum gross density on a town housing site is 60 dwelling units/hectare.
- (b) **Open space**
The open space requirements for group housing do not apply to town housing.
- (c) **Coverage**
The maximum coverage for all buildings on a land unit is 60%.

“transport use”

Land use description: “*transport use*” means the use of land, a building or structure for the operation of a service for the transportation of goods (including liquids and gases) or passengers by means of rail, road, sea or pipeline and—

- (a) includes the use of that land, building or structure for the purpose of a harbour, railway station, bus depot or taxi interchange, and a transport undertaking; and
- (b) includes a public-private undertaking including a railway station, bus depot, multiple parking garage, taxi rank, public transport interchange, harbour and ancillary purposes, rooftop base telecommunication station, fibre node container and occasional use.

Development parameters:

Development parameters applicable to “business premises” apply.

“truck stop”

Land use description: “*truck stop*” means a facility with direct access from a freeway, inner city road or major transport route that—

- (a) provides a range of rest, service and fuelling facilities for heavy duty, long haul vehicles and trucks; and
- (b) does not include accommodation.

Development parameters:

Development parameters are determined by the Municipality by means of conditions of approval for a truck stop as a consent use, provided that—

- (a) the Municipality must require a site development plan to be submitted for its approval; and
- (b) the site development plan must at least address matters pertaining to vehicle access, placement of overnight parking and ablution facilities or rest rooms, screening and minimising any visual intrusion or operational disturbance to adjoining properties.

“truck stop accommodation”

Land use description: “*truck stop accommodation*” means overnight accommodation by means of short term rental that specifically caters for the needs of truck drivers and may include rooms, ablution facilities, basic food preparation facilities and communal areas for relaxation and is ancillary to a truck stop.

Development parameters:

- (a) The Municipality must require a site development plan to be submitted for its approval.
- (b) The height of the accommodation facility may not exceed 6,5 metres to the top of the roof.

“urban agriculture”

Land use description: “*urban agriculture*” means the cultivation of crops, on relatively small areas within the urban area or edge, for own consumption or sale in neighbouring markets; provided that cultivation of a garden by an occupant is not regarded as urban agriculture for the purpose of this By-law.

Development parameters:

As determined by the Municipality.

“utility service”

Land use description: “*utility service*” means a use or infrastructure that is required to provide engineering and associated services for the proper functioning of urban development and—

- (a) includes a water reservoir and purification works, electricity substation, storm water retention facilities, waste-water pump station and treatment works, landfill site, recycling plant and ancillary uses, renewable energy structure not for commercial gain, fibre node container, rooftop base telecommunication station and freestanding base telecommunication station; and
- (b) does not include transport use; and
- (c) provided that a road is not regarded as a utility service.

Development parameters:

As determined by the Municipality.

“wall of remembrance”

Land use description: “*wall of remembrance*” is a wall in a cemetery or crematorium provided for the placement of inscribed tablets commemorating deceased persons.

Development parameters:

Development parameters applicable to “cemetery” and “crematorium” apply.

“warehouse”

Land use description: “*warehouse*” means a building used primarily for the storage of goods, except for goods that are offensive or dangerous and—

- (a) includes property used for business of a predominantly wholesale nature, and
- (b) does not include property used for business of a predominantly retail nature.

Development parameters:

Development parameters applicable to “industry” apply.

“wellness centre”

Land use description: “*wellness centre*” means a business that provides a variety of services for the purpose of improving health, beauty and relaxation through personal care treatments including massages, rehabilitation, exercise programmes, diet, instruction on wellness, life coaching, and facials and includes—

- (a) facilities like saunas, pools, steam rooms, gymnasiums, treatment rooms, relaxation areas and whirlpools; and
- (b) the provision of meals to guests.

Development parameters:

Development parameters applicable to “tourist accommodation” apply.

“winery”

Land use description: “*winery*” means a place where wine is made, and may include a selling point to the general public and wine-tasting area.

Development parameters:

Development parameters applicable to “agriculture” apply.

SCHEDULE 3

OVERLAY ZONES APPROVED IN TERMS OF SECTION 16

1. DA NOVA MEDICAL PRECINCT OVERLAY ZONE

1.1 General purpose of the Da Nova Medical Precinct Overlay Zone

The general purpose of the Da Nova Medical Precinct Overlay Zone is to provide a framework and detailed parameters to promote the development of a Medical Precinct in Da Nova in order to accommodate a spatial structure for medical and health services that can cope with the requirements of the day. It endeavours to build on the growing strength and capacity of the existing medical facilities to create a strong cluster of health services and to create effective linkages and access between the Da Nova medical facilities and the provincial hospital with the view on future legislative requirements and policies. It aims to meet the spatial policies of mixed uses, densification, urban renewal, job creating and to increase access to healthcare and adding value and vibrancy to the area. The purpose of the Overlay Zone is furthermore to attract investment to the town that could contribute to Mossel Bay being recognized as a leading medical destination, boosting the local economy.

1.2 Area designated as Da Nova Medical Precinct Overlay Zone

The area designated as the Da Nova Medical Precinct is shown on Plan A .1 in Annexure M to this By-law.

1.3 Use of the precinct

The following land uses are permitted in this overlay zone is shown on Plan 04 in Annexure N, including uses over and above those permitted in the base zones:

Precinct Plan Reference	Zoning	Primary uses	Additional uses permitted	Consent uses	Prohibited
Medical uses	All existing base Zonings	As per base zone	Uses included under 'Institution' excluding rehabilitation centre, night shelter and orphanage; Medical consulting rooms; Medical laboratories; Medical research facilities; Medical testing centres; Medical related education facilities; Guest House; Home care facility.	As per base zone; Rehabilitation Centre; Orphanage	Animal health clinic; Veterinary surgeon consulting rooms; Night Shelter.
Retail and commercial	All existing base Zonings	As per base zone	Shop; Medical consulting rooms above ground floor	As per base zone	Sale and display of motor

			only; Business Premises where base zone is Community Zone IV.		vehicles
High density residential	All existing base Zonings	As per base zone	Flats	As per base zone	
Mixed uses	All existing base Zonings	As per base zone	Uses included under 'Institution' excluding rehabilitation centre, orphanage and night shelter; Medical consulting rooms; Medical laboratories; Medical research facilities; Medical testing centres; Medical related education facilities; Guest House; Home care facility; Shop; Restaurant; Flats; Dwelling Units and Rehabilitation Centre where base zone is Community Zone IV.	Rehabilitation Centre, Orphanage	Animal health clinic Veterinary surgeon consulting rooms; Sale and display of motor Vehicles; Night Shelter
Open Space	All existing base Zonings	As per base zone	Private open Space	As for base zone	
Medium Density Residential	All existing base Zonings	As per base zone	Group Housing	As per base zone	

1.4 Development parameters

1.4.1 Package of plans

The Da Nova Medical Precinct Plan must be used as a point of departure when detail designs for the development of facilities in the applicable area starts. The Municipality may require a package of plans during the evaluation of the development phase to enable an informed decision.

1.4.2 General parameters

The scheme development parameters of the base zones shall apply for primary rights and the scheme development parameters for proposed additional uses permitted will apply unless stated otherwise below:

Medical Uses	
Street building line	5 metres Parking, landscaping and walkway related infrastructure is allowed as per Site Development Plan within the 5 metres building line. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Side building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for up to two storey buildings. 3 metres for building more than 2 storeys or up to 0 metres with consent of adjacent owners and the Municipality. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Rear building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for up to two storey buildings. 3 metres for building more than 2 storeys or up to 0 metres with consent of adjacent owners and the Municipality. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Coverage	70%
Parking	The number of parking bays required is determined as per scheme. Parking can be provided on-street or as per section 42 of the scheme or contributions can be made to communal parking facilities with the approval of the Municipality. Sections 44 and 45 of the Scheme will not apply. Parking provision and location will be evaluated via a provided Site Development Plan which shows parking provision within the larger context.
Height	9 metres
General	All other scheme development parameters will be evaluated via a Site Development Plan application and will be applicable as determined by the Municipality.
Retail and Commercial	
Street building line	5 metres Parking, landscaping and walkway related infrastructure is allowed as per Site Development Plan within the 5 metres building line. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Side building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for up to two storey buildings. 3 metres for building more than 2 storeys or up to 0 metres with consent of adjacent owners and the Municipality. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Rear building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for up to two storey buildings.

	3 metres for building more than 2 storeys or up to 0 metres with consent of adjacent owners and the Municipality. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Coverage	70%
Parking	The number of parking bays required is determined as per scheme. Parking can be provided on-street or as per section 42 of the scheme or contributions can be made to communal parking facilities with the approval of the Municipality. Sections 44 and 45 of the Scheme will not apply. Parking provision and location will be evaluated via a provided Site Development Plan which shows parking provision within the larger context.
Height	9 metres
General	All other scheme development parameters will be evaluated via a Site Development Plan application and will be applicable to as determined by the Municipality.
High Density Residential	
Street building line	5 metres
Side building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for 2 storey buildings. 3 metres or up to 0 metres with consent of adjacent owners and the Municipality for building more than 2 storeys. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Rear building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for 2 storey buildings. 3 metres or up to 0 metres with consent of adjacent owners and the Municipality for building more than 2 storeys. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Coverage	70%
Parking	Off-street parking to be provided at 1 parking bay per unit. Parking provision and location will be evaluated via a provided Site Development Plan which shows parking provision within the larger context.
Height	9 metres
General	Minimum erf size does not apply. All other scheme development parameters will be evaluated via a Site Development Plan application and will be applicable to as determined by the Municipality.
Mixed Uses	
Street building line	5metres Parking, landscaping and walkway related infrastructure is allowed as per Site Development Plan within the 5 metres building line. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Side building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for 2 storey buildings. 3 metres or up to 0 metres with consent of adjacent owners and the Municipality for building more than 2 storeys. Scheme building lines apply where services are located within building

	lines and all services servitudes remains applicable.
Rear building line	1.5 metres or up to 0 metres with consent of adjacent owners and the Municipality for 2 storey buildings. 3 metres or up to 0 metres with consent of adjacent owners and the Municipality for building more than 2 storeys. Scheme building lines apply where services are located within building lines and all services servitudes remains applicable.
Coverage	70%
Parking	The number of parking bays required is determined as per scheme. Parking can be provided on-street (except for flats) or as per section 42 of the scheme or contributions can be made to communal parking facilities with the approval of the Municipality. Sections 44 and 45 of the Scheme will not apply. Flats: Off-street parking to be provided at 1 parking bay per unit or as determined via a Site development Plan. Parking provision and location will be evaluated via a provided Site Development Plan which shows parking provision within the larger context.
Height	9 metres
General	All other scheme development parameters will be evaluated via a Site Development Plan application and will be applicable to as determined by the Municipality.
Medium Residential	
Street building line	As per scheme
Side building line	As per Scheme
Rear building line	As per Scheme
Coverage	As per Scheme
Parking	As per Scheme
Height	4.5 metres
General	As per scheme
Open Spaces	
Street building line	As per scheme
Side building line	As per Scheme
Rear building line	As per Scheme
Coverage	As per Scheme
Parking	As per Scheme
Height	As per Scheme
General	As per scheme
Streets	
General	Alternative modes of transport can be approved by the Municipality to ensure proper patient and pedestrian mobility.

1.4.3 Aesthetic design guidelines

The objective with the design of buildings in this Overlay zone should be to avoid a continuous wall of buildings and at the same time to promote off-street parking aspects in between adjacent buildings. In this way a varying street space could be activated, and security improved by the visibility on the streets.

The following guidelines apply:

- A street set back facade must be applied which should be 33% or more of the street boundary of a property (excluding existing buildings).
- On the side boundary a similar 33% set back must be continued (excluding existing buildings).
- The set back distances may vary according to the type of land use that may require more or less outside public space.
- Landscaping and paving of sites and adjacent public areas, including side walk paving, tactile paving, sidewalk paving and street border paving, where required, must be in accordance with the design approach and the materials required and approved by the municipality. Similar design approaches that achieve the same objectives may be considered by the Municipality.

1.5 Development contributions

The standard municipal bulk contributions are applicable. The developer of a property must negotiate with the municipality on the contributions towards communal public parking and may be considered as off-sets against on-site parking requirements.

1.6 Implementation of the Additional Land uses.

No additional Land use rights can be exercised without the following process being concluded and approvals received:

Step 1: Pre-consultation meeting with the Municipality.

Step 2: Submit the building Plan with all documents mentioned in section 1.7.

Step 3: Municipality evaluate the documents provided and respond if more information is needed to take an informed decision.

Step 4: Approval/disapproval of the Site Development Plan with a schedule of Conditions to be met before the building plan will be approved. (parking arrangements, bulk contributions, Parking contributions, pre-utilisation external construction to be done for parking and services upgrading, draft service level agreement, etc.)

Step 5: The applicant accepts the conditions and the service level agreement is signed.

Step 6: Payment of applicable contributions and Building Plan/SDP/other construction plan approvals.

Step 7: On and Off-site Construction

Step 8: Occupation certificate. The new additional land use rights will only become usable after an occupation certificate has been issued by the Municipality.

1.7 Minimum documents to be submitted for evaluation:

- Site Development Plan as per Section 23 of the Scheme
- Building Plan as required by the National Building Regulations
- Structural Engineering Report/Statement
- Services Report or Statement
- Traffic Impact Report or Statement
- Parking Impact Report or Statement
- Alternative Parking proposals if applicable

- Implementation Plan of all construction needed on and off-site
- Draft Service Level Agreement
- Any additional information needed by the Municipality to make an informed decision.

2. SPECIAL PLANNING AREA OVERLAY ZONE

2.1. General purpose of special planning area overlay zone

The general purpose of the special planning overlay zone is to provide for a package of plans mechanism to plan and manage the development of large or strategic urban development areas with a greater degree of flexibility. The package of plans mechanism is a phased process of negotiation, planning and approvals, where appropriate levels of planning detail are approved together with conditions for those approvals.

A special planning area overlay zone is generally created in respect of an application that involves a mixed use development proposal or where the development does not generally comply with the development parameters of the applicable land uses of this zoning scheme.

2.2. Use of the property

- 2.2.1 Primary uses are as stipulated in the conditions of approval imposed in terms of the Planning By-Law.
- 2.2.2 Consent uses are as stipulated in the conditions of approval imposed in terms of the Planning By-Law.

2.3. Development parameters

- 2.3.1 The Municipality must require a package of plans as set out in section 2.3.4 of Schedule 3 to be submitted for areas zoned as special planning area overlay zones.
- 2.3.2 The applicant must, during pre-application discussions with the Municipality, ascertain whether a package of plans procedure has to be followed.
- 2.3.3 The development parameters of the lowest order package of plans as contemplated in section 2.3.2 of Schedule 3 and as approved by the Municipality are the development parameters of the special planning overlay zone applicable to the property concerned.
- 2.3.4 The package of plans consists of all of the following components that are listed in a hierarchy from higher-order to lower-order plans, and the lower-order plans must be in compliance with the higher-order plan:

(a) **Contextual framework**

- (i) The contextual framework lays down broad land use policy for the development and the surrounding area.
- (ii) It may include principles or heads of agreement summarising the general obligations of the Municipality and the developer in relation to the development.
- (iii) The contextual framework may be prepared by the Municipality, or by a land owner or development agency under supervision of the Municipality, and may not be in conflict with a spatial development framework or structure plan approved by the Municipality.

(b) **Development framework**

- (i) The development framework must identify overall policy, broad goals, and principles for development within the development.

- (ii) The development framework must identify the range of uses, general spatial distribution of uses, major transport and pedestrian linkages, infrastructure and any limits to development within the development, including but not limited to density and floor space.
 - (c) **Precinct plans**
 - (i) Precinct plans apply to specific areas within the development framework that have common features, functional relationships or phasing requirements.
 - (ii) There may be several precinct plans that make up a development area.
 - (iii) A precinct plan must describe in more detail the development objectives and intentions for a specific area in the development, as well as principles for urban form, land use, pedestrian links, traffic movement, floor space and environmental management.
 - (d) **Subdivision plans**
 - (i) Subdivision plans, if required, must be processed in terms of planning law to establish new cadastral boundaries and to facilitate the transfer of land units.
 - (ii) Subdivision plans may be approved at any stage after the development framework has been approved, and the provisions of section 16.2 apply to such plans.
 - (e) **Site development plans**
 - (i) Site development plans depict more detailed design and development provisions for one or more land units within a development.
 - (ii) These provisions may include details relating to land use, floor space, building lines, height, parking requirements, municipal services and landscaping, as well as details relating to the position and appearance of buildings, open space, pedestrian links and traffic movement.
 - (iii) A site development plan may be required before or after a subdivision plan, and must provide for the information as required for a site development plan in terms of this By-law.
 - (f) **Building plans**
 - (i) Building plans contain detailed specifications as required by the National Building Regulations.
 - (ii) Building work may only commence once building plans have been approved by the Municipality.
- 2.3.5 The Municipality may require all or only some of the components of the package of plans to be applied in respect of a particular development.
- 2.3.6 The Municipality may require that the area covered by a contextual framework must extend beyond the land under consideration if, in its opinion, the proposed development will have a wider impact, and the Municipality may determine the extent of that area.
- 2.3.7 In approving a special planning area overlay zone, the Municipality must determine the total floor space or density permitted within the development as a condition of approval.
- 2.3.8 The allocation of floor space must take into account the carrying capacity of internal and external infrastructure including roads and utility services, and any urban design principles approved by the Municipality as part of a rezoning or contextual framework.

- 2.3.9 The approved floor space may remain as “floating floor space” assigned to the overall development for later allocation, or may be assigned to particular precincts when a precinct plan is approved; and in either case must be allocated to individual subdivisions or site development plans.
- 2.3.10 When a special planning area overlay zone and a package of plans is required in terms of this By-law, the relevant components must be submitted to the Municipality for its approval before any development on a land unit can commence, provided that—
- (a) the development may not be refused if it is consistent with the development parameters of a base zone, overlay zone, or condition of approval; and
 - (b) the Municipality may require amendments to the detail of the site development plan to address reasonable concerns relating to access, parking, architectural form, urban form, landscaping, environmental management, engineering services or similar concerns.
- 2.3.11 The general provisions contained in this By-law apply with regard to site development plans.

3. PINNACLE POINT HERITAGE BUFFER OVERLAY ZONE

3.1 Background and General purpose of the Pinnacle Point Heritage Buffer Overlay Zone

The Pinnacle Point cave complex is formally protected as a Provincial Heritage Site. Heritage Western Cape nominated the Pinnacle Point cave complex for World Heritage Site status. In order for the Pinnacle Point Cave Complex to be considered as a World Heritage site it must be protected by a Heritage Buffer Zone. This Overlay zone facilitates the mentioned Heritage Buffer Zone.

The Pinnacle Point Cave Complex consists of numerous sites, which are made up of Archaeological, Palaeontological and Geological sites. The complex has tremendous historic value and since damage to the scientific value of the cave complex has already occurred in the past, it must be protected. Scientists are still working in the complex and the excavation of a site can take years to finish. Therefore, a long-term solution to protect the cave complex for future generations is established.

The purpose of the Buffer Zone is to formally put in place a defined area in which all new land use development applications must also be processed in terms of the National Heritage Resources Act, 1999. All existing land use development rights will not be influenced by the Buffer Zone.

The Buffer zone is established specifically to ensure that all new development rights applied for within the Buffer Zone will be processed in term of all existing land use management legislation and the National Heritage Resources Act, 1999.

The Buffer Zone does not restrict the existing development rights or restrict proposed development rights, but ensure that new rights must also be processed in terms of the National Heritage Resources Act, which will ensure all new development around the Pinnacle Point cave complex will not have any negative impact on the existing heritage resources.

3.2 Already established Pinnacle Point Golf Estate

The Pinnacle Point development was approved conditionally on 17 November 2000 by the Mossel Bay Town Council. The following is approved:

- Golf Course component

- Residential component (max 500 units)
- Hotel/Casino Component (max 300 rooms)
- Other facilities

The layout of the estate was amended various times during the last ten years to accommodate especially environmental and property market related issues. Due to the sensitivity of the cave complex the amendment of the layout and uses within the estate become a matter of concern.

3.3 The Buffer Zone Area

The Buffer Zone will be established on the following properties of the Pinnacle Point Golf Estate:

Erf 15391,
 Erven 17563 – 17647,
 Erven 17651 – 17712,
 Erf 17798,
 Erven 17801 – 17887,
 Erven 17889 – 17901,
 Erven 17906 – 17910,
 Erven 17912 – 17983,
 Erven 17987 – 17995,
 Erven 18073 – 18172,
 Erven 19190 – 19192,
 Erven 19196 – 19200,
 Erven 19205 – 19206,
 Erven 19308 – 19327, and
 Erf 19493.

Also refer to the Heritage Buffer Zone Map attached to this By-law as Annexure N.

3.4 Establishment of the Pinnacle Point Heritage Buffer Overlay Zone

The conditions relating to the Buffer Zone will be attached to the Existing Zoning of the mentioned erven as additional development parameters.

3.5 Pinnacle Point Heritage Buffer Overlay Zone Conditions

The conditions as mentioned hereunder will be added to the existing land development parameters of all the erven mentioned above.

Parameters to be added to the existing Parameters:

- 3.5.1 Any application in relation to the change in land use, subdivision, consolidation, consent use, removal of restrictive conditions or relaxation of land use conditions, excluding building lines or building height restrictions, must be processed in terms of the applicable land use planning legislation and Section 38 of the National Heritage Resources Act, 1999. Heritage Western Cape will evaluate the applications in terms of the Approved Conservation Management Plan for the Pinnacle Point Golf Estate and the possible impact on the Pinnacle Point Cave Complex.
- 3.5.2 Heritage Western Cape and all relevant individuals working on Heritage Western Cape approved projects regarding the Pinnacle Point Cave Complex will be given access to the cave complex through the existing road infrastructure within the

Pinnacle Point Golf Estate, on arrangement with the Pinnacle Point Golf Estate Home Owners Association.

3.6 Implementation of the Pinnacle Point Heritage Buffer Overlay Zone

If an application for the approval of a building plan or a land use application is received by council the following process will be followed:

- 3.6.1 Confirm if the erf falls within the buffer zone area.
- 3.6.2 If it does, check whether the application falls within the parameters set in condition 3.5.1 above.
- 3.6.3
 - A) **If it does not:** Continue with the application as if the property is outside the Heritage Buffer Zone;
 - B) **If it does:** Inform the applicant that he/she must lodge an application in terms of Section 38 of the National Heritage Resources Act, 1999, with Heritage Western Cape, which will evaluate the applications in terms of the Approved Conservation Management Plan for the Pinnacle Point Golf Estate and the possible impact on the Pinnacle Point Cave Complex.
- 3.6.4 Wait for the outcome of the Section 38 of the National Heritage Resources Act, 1999 application. The decision, recommendation, comments, reasons for decisions and mitigating conditions must be taken into account during the planning decision making process to ensure the Pinnacle Point Cave Complex is protected.

SCHEDULE 4
ZONING TRANSITION

SUBDIVISIONAL AREA ZONE TRANSITION NOTE:

Land Use Planning approvals which contained a rezoning to “Subdivisional Area” that are still valid be given a “Subdivisional Area Zone” in terms of the Mossel Bay Zoning Scheme By-Law.

SCHEDULE 5

ZONING SCHEME FORMULATION AND FINALISATION PROCESS

INCEPTION AND INITIAL PUBLIC PARTICIPATION

The revision of the planning legislation, specifically for Municipalities, started almost four years back with the promulgation of the Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013. Since then the Regulations for this Act was published as well as Western Cape Land Use Planning Act (LUPA), Act 3 of 2014 and its Regulations. As part of the National Planning Legislation Revision, Mossel Bay Municipality initiated a process of reviewing its respective Zoning Schemes. This took place in conjunction with the development of the Standard Draft Zoning Scheme By-Law (SZSB) by Western Cape Provincial Government (WCPG), Department of Environmental Affairs and Development Planning (DEA&DP). The SZSB was taken through an elaborate public consultation process both by WCPG and Mossel Bay Municipality.

MODEL STANDARD ZONING SCHEME BY-LAW

DEA&DP embarked on a process to develop the Standard Draft Zoning Scheme By-Law (SZSB). During this process many professionals from across the Provincial, Local Government and private sector spheres have participated to develop such model SZSB, which was also fully vetted by a legal team of the PGWC. Mossel Bay Municipality also worked in collaboration with the Western Cape Provincial Government throughout the process of drafting a Standard Zoning Scheme By-Law (SZSB) that Municipalities had to adjust to suit their municipal specific town planning needs. Subsequently amendments were done to the Draft By-Law to cater for Mossel Bay Municipality Municipal Area specific town planning needs.

THE MOSSEL BAY MUNICIPALITY: INTEGRATED ZONING SCHEME BY-LAW, 2018 (AS AMENDED IN 2019) IS REPEALED AND REPLACED WITH THIS BY-LAW

PUBLIC PARTICIPATION PROCESS:

The proposed amendments to the By-Law was published for comments in the Mossel Bay Advertiser on 7 May 2021 with the closing date for comments being 7 June 2021. Public Participation Meetings were also arranged during this period on the following dates, venues and times:

1. Kwanonqaba Community Hall – 11 May 2021 at 17:30.
2. Greenhaven Community Hall, Great Brak River – 12 May 2021 at 17:30.
3. Mossel Bay Town Hall, Mossel Bay – 13 May 2021 at 17:30.

The proposed amendments to the By-Law was also sent to the Provincial Minister on 7 May 2021 for comments in terms of Section 27 of the Western Cape Land Use Planning Act (LUPA), Act 3 of 2014.

ADOPTION OF BY-LAW

The Mossel Bay Municipality: Zoning Scheme By-Law was adopted in terms Section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) at a Council Meeting on 30 September 2021 in terms of Resolution E250-09/2021.

Short title and commencement

This By-law shall be known as the Mossel Bay Municipality Zoning Scheme By-Law, 2021 and shall come into operation on the date of promulgation in the provincial gazette.

SCHEDULE 6

REPEAL AND TRANSITIONAL ARRANGEMENTS, TOWN PLANNING AND ZONING SCHEMES REPEALED BY SECTION 33(4) OF THE LAND USE PLANNING ACT, 2014 AND ZONING SCHEMES AMENDED IN ACCORDANCE WITH SECTION 25 OF THE LAND USE PLANNING ACT, 2014

The following Zoning Scheme By-law is repealed: Mossel Bay Municipality: Integrated Zoning Scheme By-Law, 2018 (as amended in 2019) **with the following Transitional Arrangement:** A land use planning application, building plan or Site Development Plan that has already been accepted by the Mossel Bay Municipality before this By-law become effective, will be processed and considered in terms of the legislation as it existed at the time of acceptance.

The following Town Planning and Zoning Schemes were repealed by Section 33(4) of the Land Use Planning Act, 2014:

Title of the Scheme	Year
Mossel Bay Zoning Scheme Regulations	1984
Hartenbos Zoning Scheme Regulations	1987
Town Planning Scheme of Kwanongaba	1992
Section 8 Zoning Scheme Regulations	1986

The following Zoning Scheme was amended in accordance with Section 25 of the Land Use Planning Act, 2014:

Version	Title of the Scheme	Resolution	Date Gazetted
1	Mossel Bay Municipality: Integrated Zoning Scheme By-Law, 2015	E199-11/2017	19 January 2018

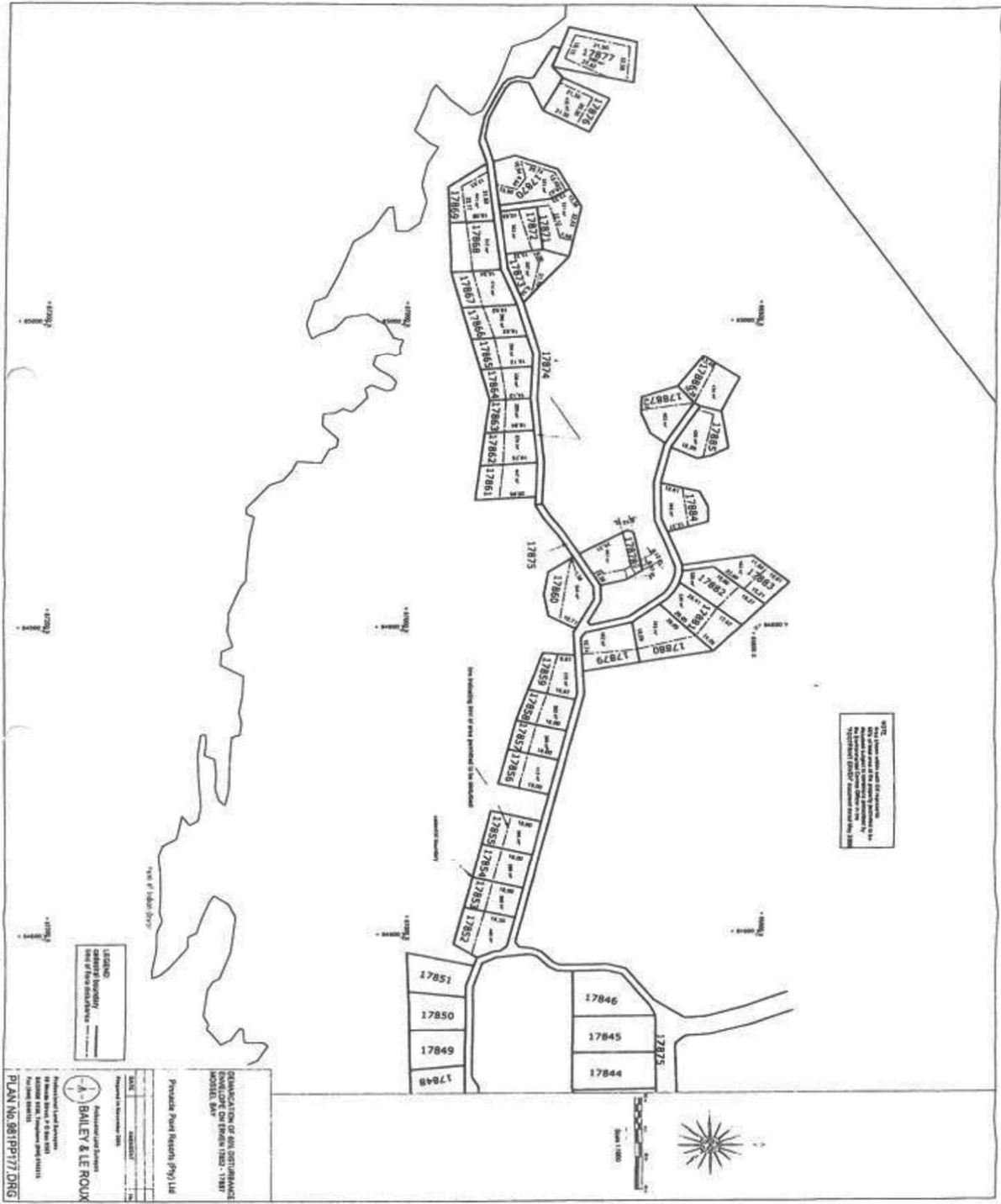
RECORD OF AMENDMENTS:

None

SCHEDULE 7**ANNEXURES**

- Annexure A: HARTENBOS AREA
- Annexure B: PINNACLE POINT, MOSSEL BAY
- Annexure C: FISHERMANS VILLAGE
- Annexure D: DIAZ BEACH
- Annexure E: VLEESBAAI AREA
- Annexure F: NAUTILUS BAY
- Annexure G: MOQUINI
- Annexure H: MOQUINI: DEVELOPMENT SETBACK LINE
- Annexure I: VOORBAAI
- Annexure J: MILKWOOD PARK
- Annexure K: NURTURE PARK
- Annexure L: BOGGOMSBAAI
- Annexure M: AREA DESIGNATED AS DA NOVA MEDICAL PRECINCT OVERLAY ZONE
- Annexure N: DA NOVA MEDICAL PRECINCT OVERLAY ZONE: USE OF THE PRECINCT
- Annexure O: PINNACLE POINT HERITAGE BUFFER OVERLAY ZONE PLAN

ANNEXURE B



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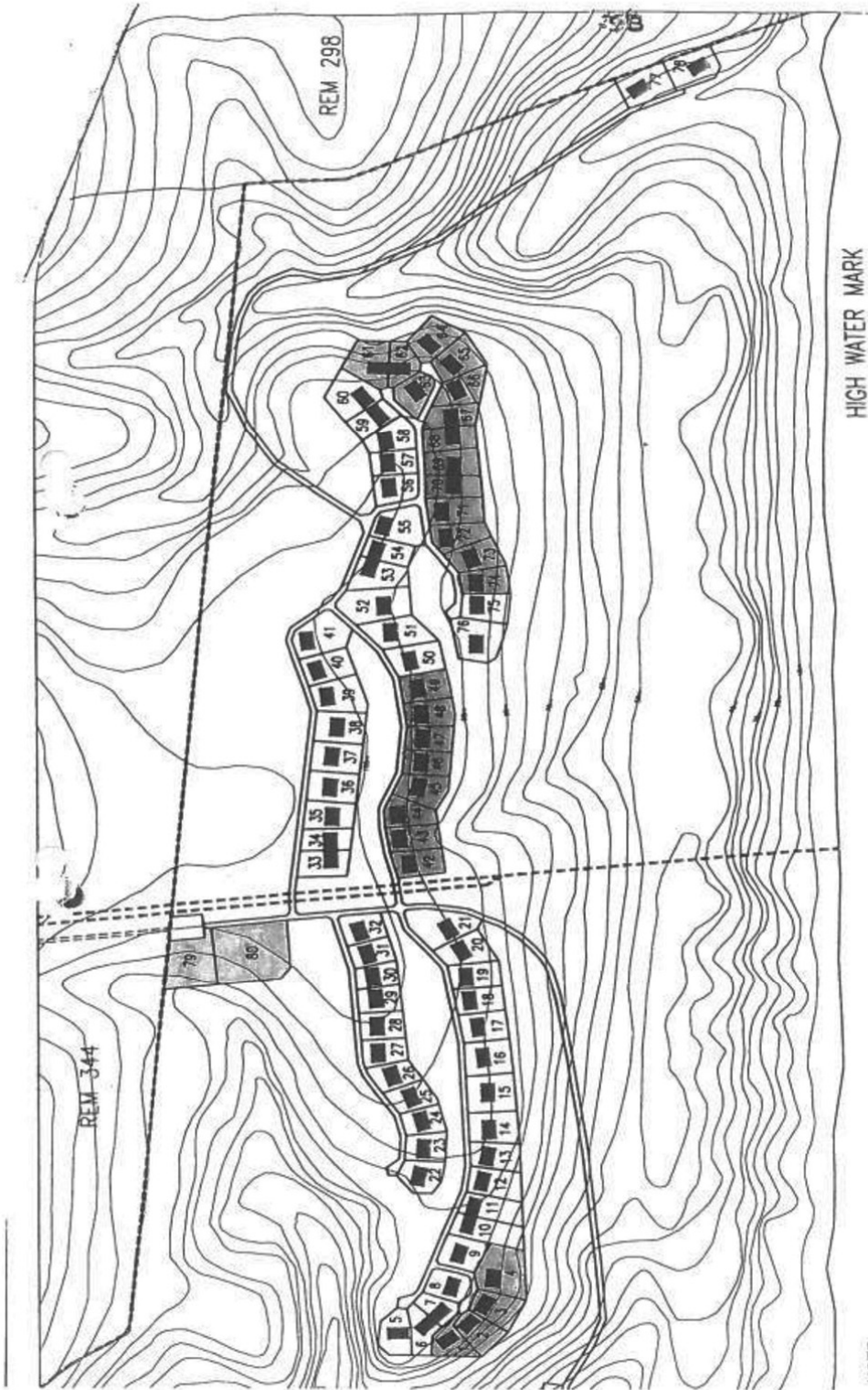
DEMARCATION OF AN DISTANCE
 DIVISION OF THE PROPERTY
 MODEL: 2017

Prepared by: **BAILEY & LE ROUX**
 Professional Land Surveyors
 10 Bona Vista, 6101 Bellville
 Tel: 021 959 1111
 Fax: 021 959 1112
 Email: info@baleyle.com

Project No: 2017/001
 Date: 2017/001

PLAN NO. 981P177 DRG





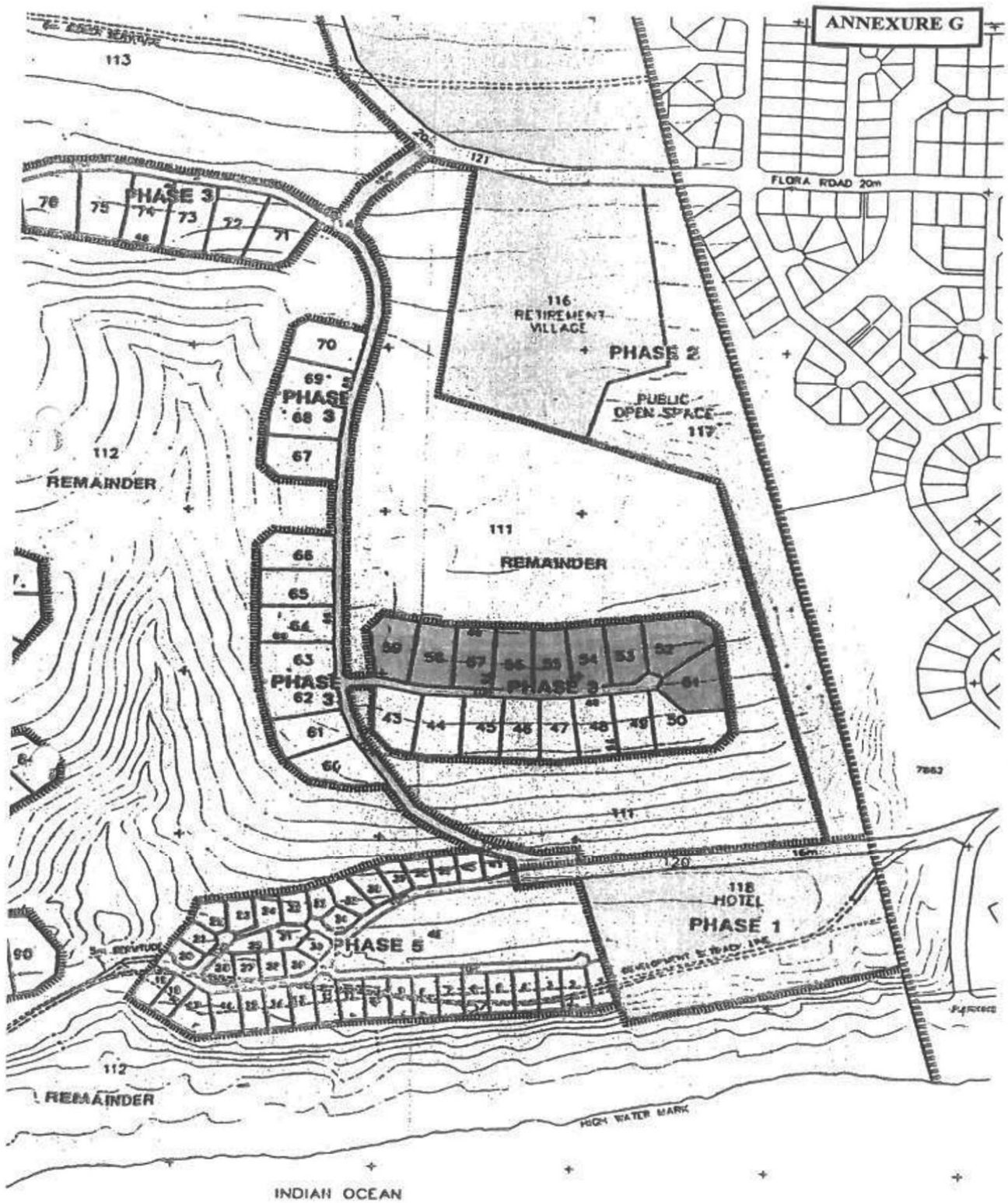
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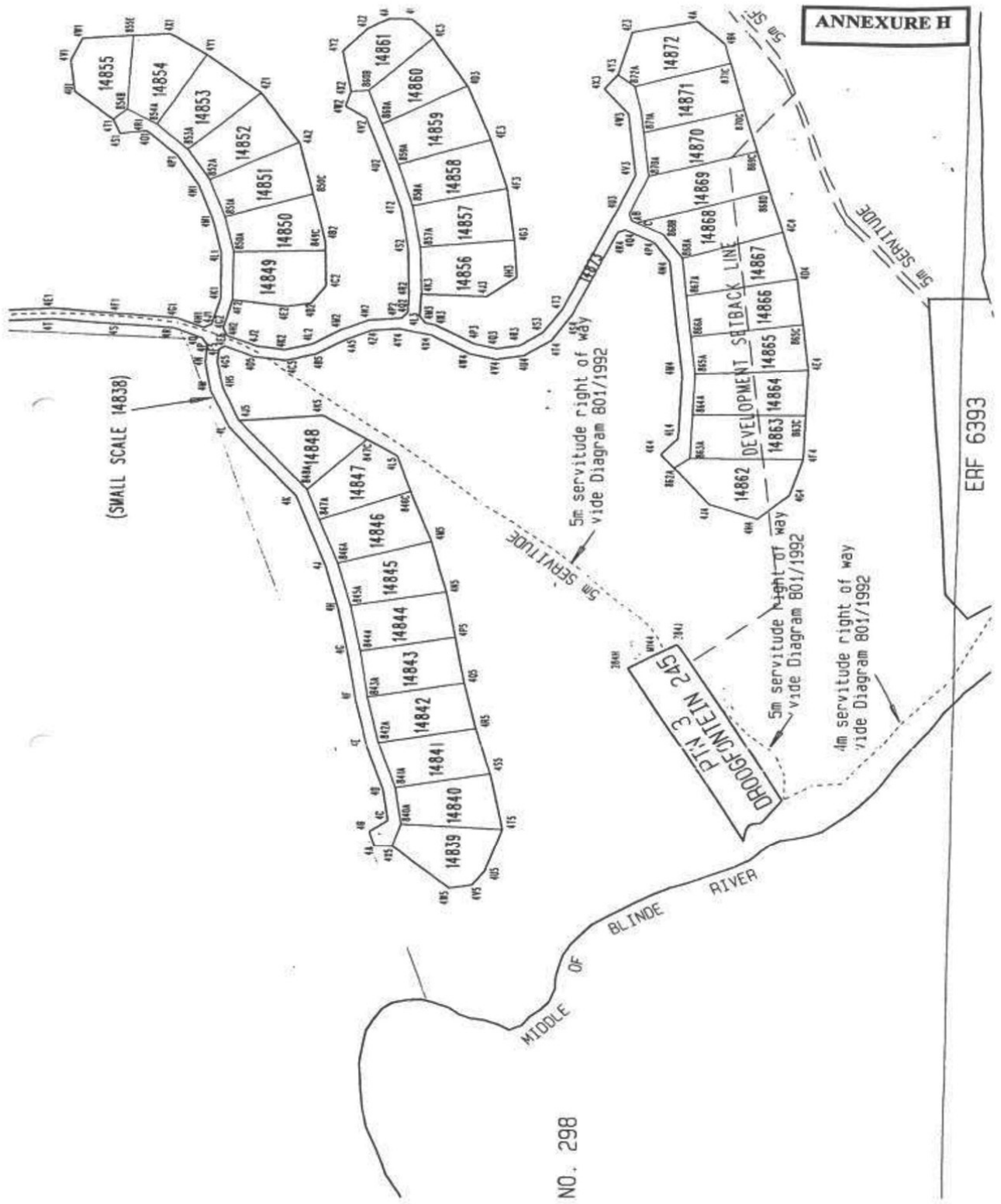
PLEASE NOTE THAT A 6,5m HEIGHT RESTRICTION APPLIES TO THE FOLLOWING SITES :
 1 TO 4, 42 TO 49, 61 TO 74, 79 AND 80.
 ALL OTHER ERVEN HAVE A 8,5m HEIGHT RESTRICTION

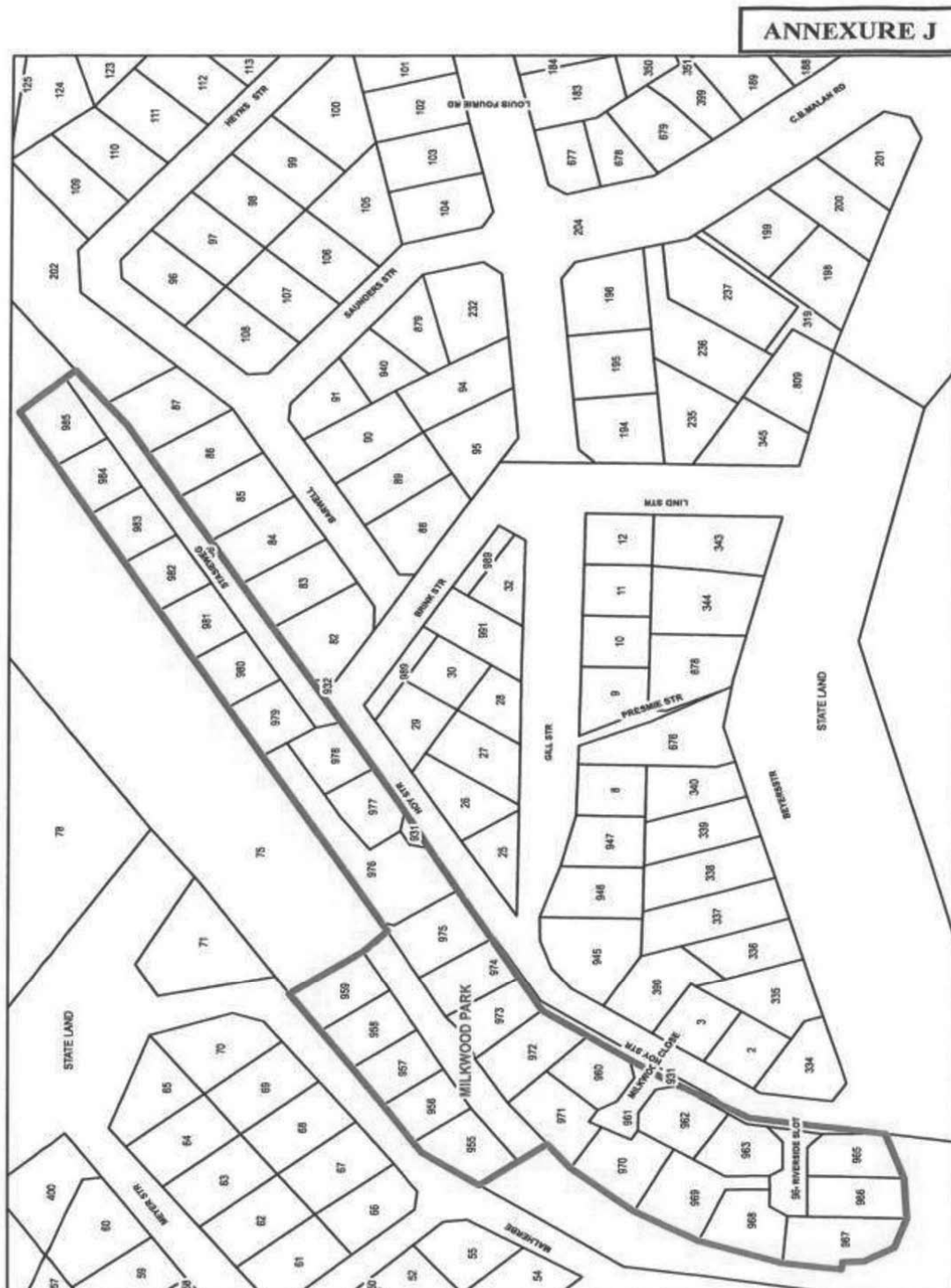
INDIAN OCEAN

HIGH WATER MARK

DIAGRAM 1 : SITE LAYOUT PLAN







1. A Die Raad se aandag, word ook daarop gevestig dat die Maister die appel teen die voorwaarde dat slegs enkelverdiepingwoning op die erwe toegelate sal word, gedeeltelik gehandhaaf het. Dubbelverdiepingwoning tot 'n maksimum hoogte van 7,8 m op erwe 570, 571, 574 en 575 sal toegelaate word.

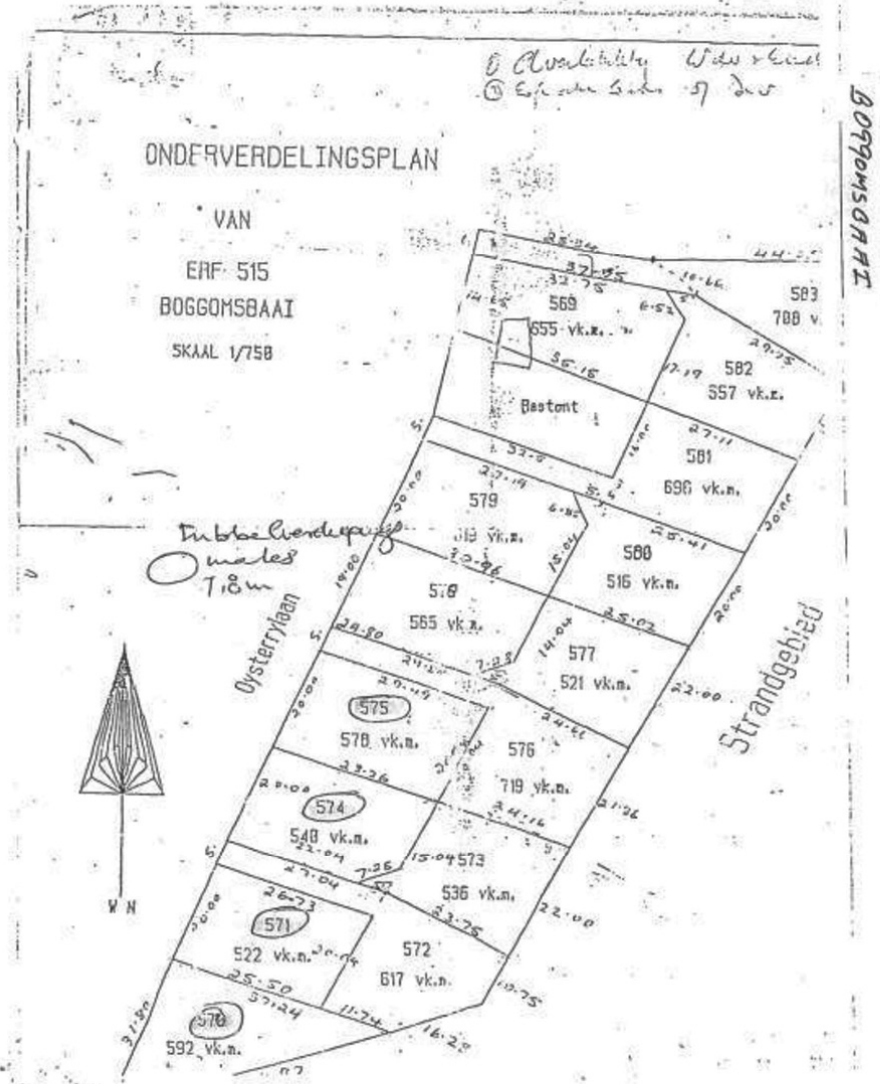
4,5

Die uwe

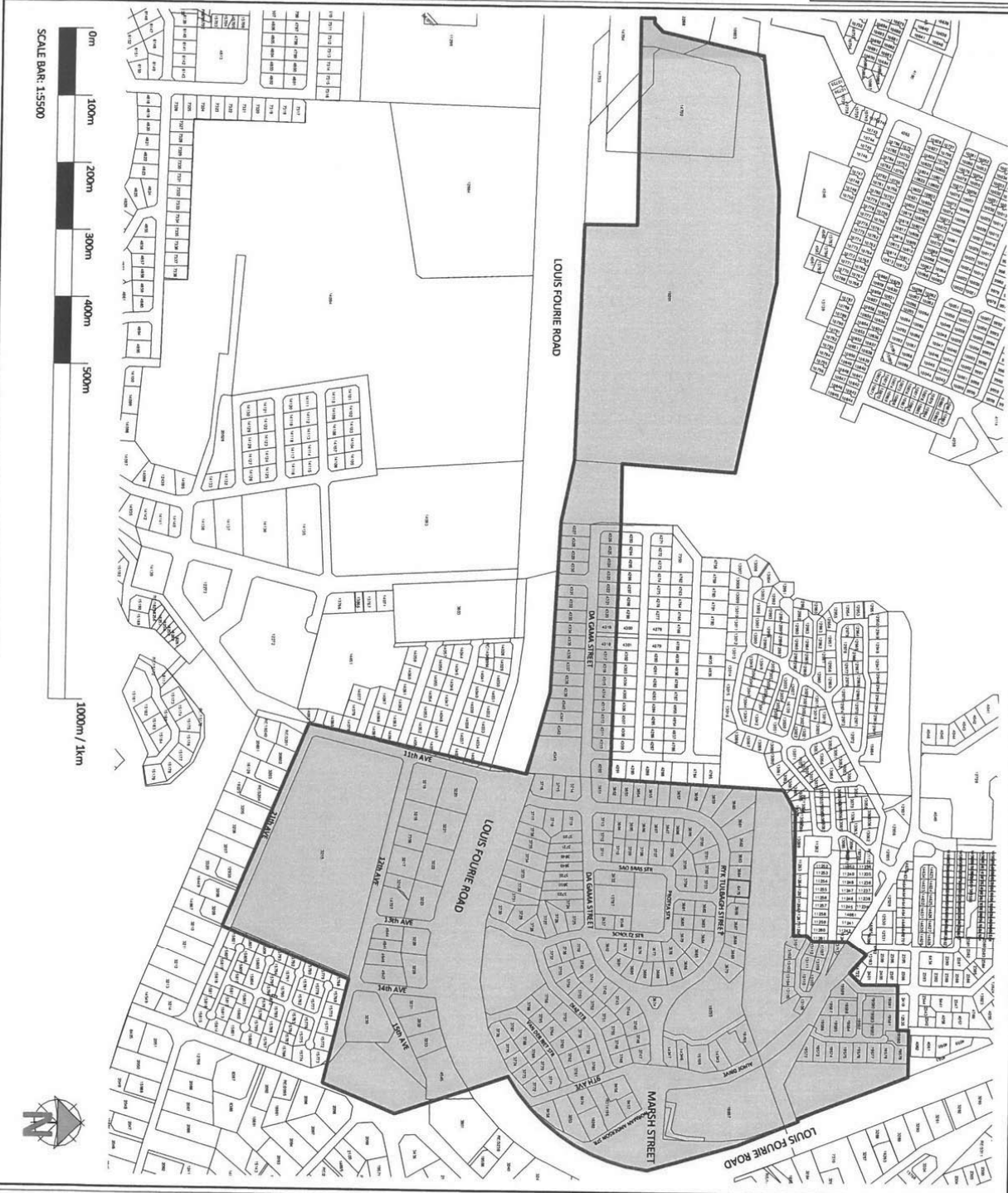
[Handwritten signature]
 HOOF STADS- EN STREEKBLPLANNER
 CSy515

JL LG-021-454711
 FAX - 021-465 7358
 T - 021-465 3008

ANNEXURE L



ANNEXURE M

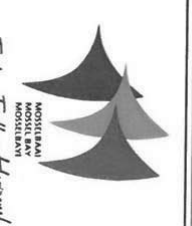
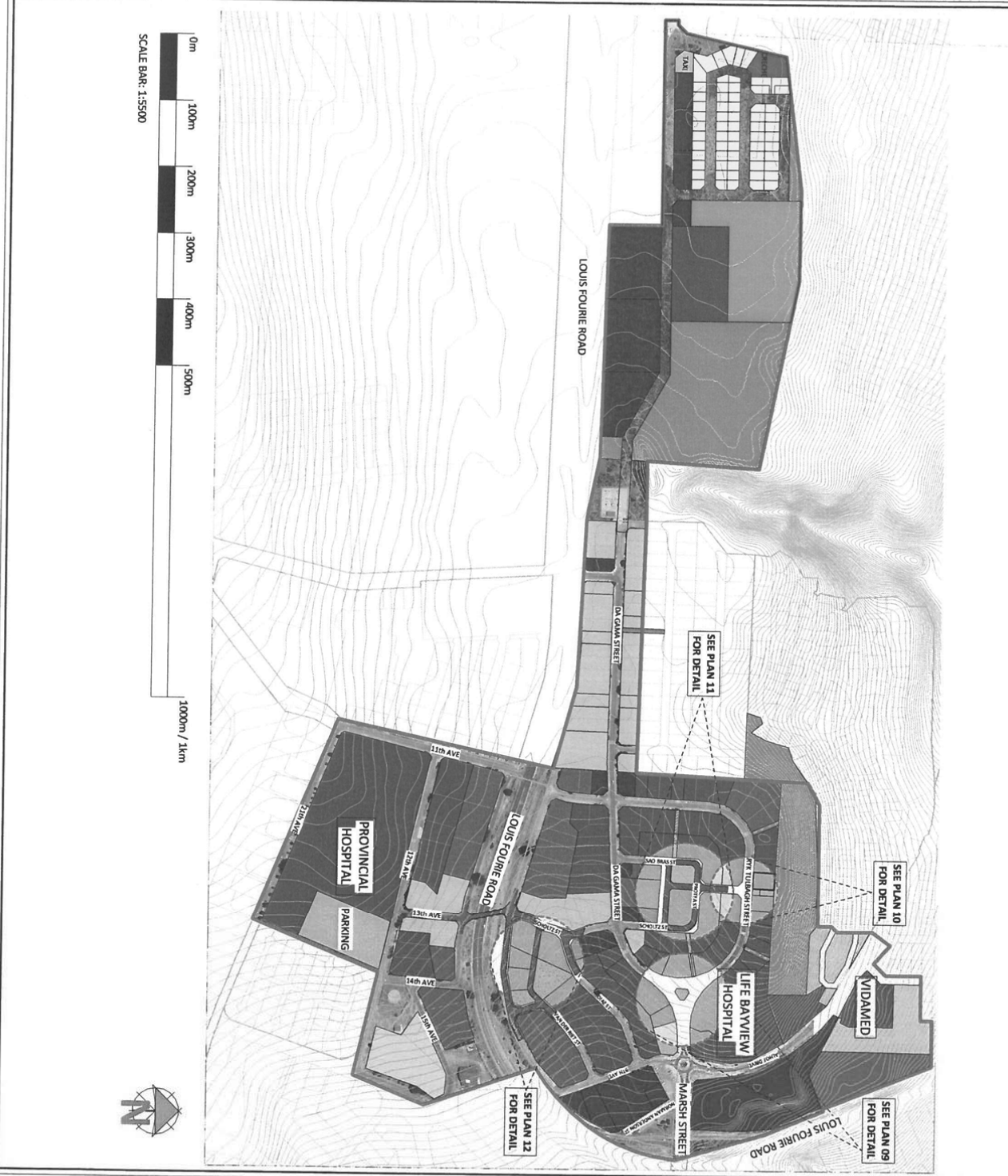


SCALE BAR: 1:5500

0m 100m 200m 300m 400m 500m 1000m / 1km

<p>MOSSEL BAY MUNICIPALITY</p> <p><i>Eyona Eadla Hosiwa!</i></p>	<p>AREA/TOWN: MOSSEL BAY</p>	<p>THE ESTABLISHMENT OF AN OVERLAY ZONE FOR THE DA NOVA MEDICAL PRESENT</p>	<p>DATE: 2020/12/11</p> <p>AS ORDERED:</p> <p>PLAN A.1</p>
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ANNEXURE N



TITLE
THE ESTABLISHMENT OF AN OVERLAY ZONE FOR THE NOVIA MEDICAL PRECINCT

AREA / TOWN
MOSSEL BAY

PROPOSED LANDUSES

■	MEDICAL USES (HOSPITAL / DOCTOR'S OFFICES / SPECIALIZED CLINICAL SERVICES)
■	RETAIL AND COMMERCIAL USES
■	MEDICAL/HEALTHY MEDICAL, APARTMENT BLOCK
■	RECREATION
■	HIGH-DENSITY RESIDENTIAL (APARTMENT BLOCKS)
■	SOCIAL HOUSING
■	HOUSING / CAR HOUSING
■	RECREATION / RESIDENTIAL COMBINED WITH COMMERCIAL, SOCIAL AND CULTURAL USES
■	PARKS
■	PARKING



SCALE REG. NR. 7704 & P/ACH-20875
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NOTES

1. THIS DRAWING IS PART OF AN OVERLAY ZONE CONCEPT FOR THE NOVIA MEDICAL PRECINCT.
2. THE AREA AND THE OVERLAY ZONE CONCEPT ARE SUBJECT TO THE APPROVAL OF THE MUNICIPAL ENGINEER AND THE MUNICIPAL COUNCIL.
3. THE RESOURCES AND INFORMATION ON WHICH THIS DRAWING IS BASED ARE AS STATED.
4. THE ENGINEER AND ARCHITECTS ACCEPT NO LIABILITY FOR ANY DAMAGE OR LOSS OF ANY KIND ARISING FROM THE USE OF THIS DRAWING.
5. THE FINAL PLAN OF THE ESTABLISHMENT OF THE OVERLAY ZONE CONCEPT.

PLAN 04

Scale: 1:5000
 Date: 2020/12/10



MOSSEL BAY MUNICIPALITY
BY-LAW ON MUNICIPAL LAND USE PLANNING
To regulate and control Municipal Land Use Planning

Adopted by Resolution E250-09/2021 of the Municipal Council of Mossel Bay

The Municipality of Mossel Bay hereby publishes the Mossel Bay Municipality By-Law on Municipal Land Use Planning as set out below in terms of section 156 of the Constitution of the Republic of South Africa, 1996, the Mossel Bay Municipality, enacts as follows:-

The Afrikaans and Xhosa version of this By-Law will be available upon request. In the event of an inconsistency between the English, Afrikaans or Xhosa text, the English text shall prevail.

Aangeneem deur Resolusie E250-09/2021 van die Munisipale Raad van Mosselbaai

Die Munisipaliteit van Mosselbaai, publiseer hiermee die Mosselbaai Munisipaliteit Verordening op Munisipale Grondgebruiksbeplanning uiteengesit hieronder in terme van artikel 156 van die Grondwet van die Republiek van Suid-Afrika, 1996, die Munisipaliteit van Mosselbaai, bepaal soos volg: -

Die Afrikaanse en Xhosa-weergawe van hierdie Verordening sal beskikbaar wees op aanvraag. In die geval van 'n teenstrydigheid tussen die Engels, Afrikaans en Xhosa teks sal die Engelse teks aanvaar word.

IsiGqibo esiThatyathiweyo u E250-09/2021 seBhunga likaMasipala wase Mossel Bhayi

UMasipala wase Mossel Bhayi ngokwenjenje, upapasha uMthetho weSikimu soCando sikaMasipala wase Mossel Bhayi njengoko kuchaziwe phantsi kweSoloty 156 loMgaqo-Siseko weRiphabliki yoMzantsi Afrika, 1996, uMasipala wase Mossel Bhayi, ukumiselo oku njengomthetho: -

Iinguqulelo zesiBhulu kunye nezesiXhosa zalo Mthetho ziyafumaneka ngesicelo.Kwiimeko apho kukho khona ukungaqiniseki phakathi kwenguqulelo yesiNgesi, isiBHulu nesiXhosa, inguqulelo yesiNgesi iyakuthabatha indima ephambili.

MOSSEL BAY MUNICIPALITY
BY-LAW ON MUNICIPAL LAND USE PLANNING
To regulate and control Municipal Land Use Planning

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CHAPTER I

INTERPRETATION AND APPLICATION

Definitions

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

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

“**agent**” means a registered planner or other person authorised in terms of a power of attorney to make an application on behalf of the owner;

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

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

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

“**application**” means an application to the Municipality referred to in Section 15(2);

“**authorised employee**” means a municipal employee who is authorised in terms of delegated or sub-delegated authority by the Municipality to exercise a power or perform a duty in terms of this By-Law or to inspect land and buildings in order to enforce compliance with this By-Law or the zoning scheme;

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

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

“**comments**”, in relation to comments submitted by the public, municipal departments and other organs of state and service providers on an application or appeal, includes objections, representations and petitions;

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

“**Council**” means the Municipal Council of the Municipality;

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

“**development charge**” means a development charge contemplated in Section 83 as levied by the Municipality;

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

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

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

“**Local Spatial Development Framework**” means a Local Spatial Development Framework contemplated in Section 9;

“**Municipal Manager**” means the Municipal Manager of the Municipality;

“**Municipal Spatial Development Framework**” means a municipal Spatial Development Framework adopted by the Municipality in terms of Chapter 5 of the Municipal Systems Act;

“**Municipality**” means the Municipality of Mossel Bay established by Establishment Notice P.N. 500/2000 in *Provincial Gazette* 5592 of 22 September 2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and where the context so requires, includes—

- (a) the Council;
- (b) another political structure or a political office bearer of the Municipality, authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (c) the Tribunal authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (d) the Municipal Manager; and
- (e) an authorised employee.

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

“**occasional use**”, in relation to departure, means a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event;

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

- (a) stipulates additional development parameters or use rights that may be more or less restrictive than the base zoning; and
- (b) may include provisions and development parameters relating to—
 - (i) primary or consent uses;
 - (ii) subdivision or subdivisonal areas;
 - (iii) development incentives;
 - (iv) density limitations;
 - (v) urban form or urban renewal;
 - (vi) heritage or environmental protection;
 - (vii) management of the urban edge;
 - (viii) scenic drives;
 - (ix) coastal setbacks; or
 - (x) any other purpose as set out in the zoning scheme;

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

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

“**registered planner**” means a professional or technical planner registered in terms of the Planning Professions Act, 2002 (Act 36 of 2002), unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of this Act for a particular category of registered persons in terms of section 16(2) of the Planning Profession Act, 2002, in which case a registered planner means that category of registered persons for whom has been reserved;

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

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

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

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

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

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

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

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

Application of By-Law

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

CHAPTER II

SPATIAL PLANNING

Compilation or amendment of Municipal Spatial Development Framework

3. (1) When the Council compiles or amends its Municipal Spatial Development Framework in accordance with the Municipal Systems Act, the Council must, as contemplated in Section 11 of the Land Use Planning Act—
 - (a) establish an intergovernmental steering committee to compile a draft municipal spatial development framework or a draft amendment of its municipal spatial development framework; or
 - (b) refer its Draft Municipal Spatial Development Framework or Draft Amendment of its Municipal Spatial Development Framework to the Provincial Minister for comment.
- (2) The Municipality must—
 - (a) publish a notice in three of the official languages of the Province most spoken in the area in a newspaper circulating in the area concerned of—
 - (i) the intention to compile or amend the Municipal Spatial Development Framework; and
 - (ii) the process to be followed, in accordance with Section 28(3) and 29 of the Municipal Systems Act;
 - (b) inform the Provincial Minister in writing of—
 - (i) the intention to compile or amend the municipal spatial development framework;

- (ii) its decision in terms of Subsection (1)(a) or (b); and the process contemplated in Subsection (2)(a)(ii); and
- (c) register relevant stakeholders, who must be invited to comment on the Draft Municipal Spatial Development Framework or Draft Amendment of the Municipal Spatial Development Framework as part of the process contemplated in Subsection (2)(a)(ii).

Establishment of project committee

4. (1) The Municipality may establish a project committee to assist to compile or amend its municipal spatial development framework and to perform the duties of the Municipality referred to in sections 6 to 8.
- (2) The project committee must consist of—
 - (a) the Municipal Manager or a municipal employee designated by the Municipal Manager; and
 - (b) municipal employees appointed by the Municipal Manager from the following municipal departments, where relevant:
 - (i) the Integrated Development Planning Office;
 - (ii) the Spatial Planning Department;
 - (iii) the Engineering Department;
 - (iv) the Local Economic Development Department; and
 - (v) the Housing Department.

Establishment of intergovernmental steering committee

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

Procedure with intergovernmental steering committee

6. (1) If the Council establishes an intergovernmental steering committee, the Municipality must compile a draft *status quo* report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and must submit it to the intergovernmental steering committee for comment.

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

Procedure without intergovernmental steering committee

7. (1) If the Council does not establish an intergovernmental steering committee to compile or amend its municipal spatial development framework, the Municipality must—
 - (a) compile a draft *status quo* report setting out an assessment of the existing levels of development and development challenges in the municipal area or relevant area in the municipal area and submit it to the Council for adoption;
 - (b) after adoption of the *status quo* report, compile a first draft of the Municipal Spatial Development Framework or first draft of the Amendment of the Municipal Spatial Development Framework and submit it to the Council to approve the publication thereof for public comment;
 - (c) after approval of the first draft of the Municipal Spatial Development Framework or first draft of the Amendment of the Municipal Spatial Development Framework for publication contemplated in Paragraph (b), submit the first draft of the Municipal Spatial Development Framework or first draft of the Amendment of the Municipal

- Spatial Development Framework to the Provincial Minister for comment in terms of Section 13 of the Land Use Planning Act; and
- (d) after consideration of the comments received from the public and the Provincial Minister, submit the final draft of the Municipal Spatial Development Framework or final draft of the Amendment of the Municipal Spatial Development Framework, with any further amendments, to the Council for adoption.
- (2) If the final draft of the Municipal Spatial Development Framework or final draft of the Amendment of the Municipal Spatial Development Framework contemplated in Subsection (1)(d) is materially different to what was published in terms of Subsection (1)(b), the Municipality must follow a further consultation and public participation process before the Municipal Spatial Development Framework or Amendment of the Municipal Spatial Development Framework is adopted by the Council.
- (3) The Council must adopt the final draft of the Municipal Spatial Development Framework or final draft of the Amendment of the Municipal Spatial Development Framework, with or without amendments, and must within 14 days of its decision give notice of its decision in the media and the *Provincial Gazette*.

Functions and duties

8. (1) The Municipality must, in accordance with the directions of the [*executive committee/executive mayor/committee of councillors*][—]
- (a) ensure the compilation of the Municipal Spatial Development Framework or drafting of an Amendment of the Municipal Spatial Development Framework for adoption by the Council;
- (b) provide technical knowledge and expertise to the Council;
- (c) ensure that the compilation of the Municipal Spatial Development Framework or drafting of the Amendment of the municipal Spatial Development Framework is progressing according to the process contemplated in section 3(2)(a)(ii);
- (d) guide the public participation process and ensure that the registered stakeholders remain informed;
- (e) ensure the incorporation of amendments to the Draft Municipal Spatial Development Framework or Draft Amendment of the Municipal Spatial Development Framework based on the consideration of the comments received during the process of drafting thereof;
- (f) ensure the drafting of—
- (i) a report in terms of Section 14(c) of the Land Use Planning Act setting out the response of the Municipality to the provincial comments issued in terms of section 12(4) or 13(2) of that Act; and
- (ii) a statement setting out—
- (aa) whether the Municipality has implemented the policies and objectives issued by the National Minister responsible for Spatial Planning and Land Use Management and if so, how and to what extent the Municipality has implemented it; or
- (bb) if the Municipality has not implemented the policies and objectives, the reasons for not implementing it.
- (g) ensure alignment of the Municipal Spatial Development Framework with the development plans and strategies of other affected Municipalities and other organs of state as contemplated in Section 24(1) of the Municipal Systems Act;
- (h) facilitate the integration of other sector plans into the Municipal Spatial Development Framework; and
- (i) if the Council establishes an Intergovernmental Steering Committee—
- (i) assist the Council in establishing the Intergovernmental Steering Committee and adhering to timeframes; and

- (ii) ensure the flow of information between the Project Committee and the Intergovernmental Steering Committee.
- (2) The members of the Intergovernmental Steering Committee must—
- (a) provide the Intergovernmental Steering Committee with the following:
 - (i) technical knowledge and expertise;
 - (ii) input on outstanding information that is required to compile the Municipal Spatial Development Framework or draft an amendment thereof;
 - (iii) information on budgetary allocations;
 - (iv) information on and the locality of any current or planned projects that have an impact on the municipal area; and
 - (v) written comments in terms of Section 6; and
 - (b) provide the project committee, if established, or the Municipality with written comments in terms of section 6.

Local spatial development frameworks

9. (1) The Municipality may adopt a Local Spatial Development Framework for a specific geographical area in a part of the municipal area.
- (2) The purpose of a Local Spatial Development Framework is to, for a specific geographical area—
- (a) provide detailed spatial planning guidelines;
 - (b) provide more detail in respect of a proposal provided for in the Municipal Spatial Development Framework;
 - (c) meet specific land use planning needs;
 - (d) provide detailed policy and recommended development parameters for land use planning;
 - (e) provide detailed priorities in relation to land use planning and, in so far as they are linked to land use planning, biodiversity and environmental issues; and
 - (f) guide decision-making on land use applications.

Compilation, adoption, amendment or review of Local Spatial Development Frameworks

10. (1) If the Municipality compiles, amends or reviews a Local Spatial Development Framework, it must adopt a process plan, including the public participation processes to be followed for the compilation, amendment, review or adoption of a Local Spatial Development Framework.
- (2) The Municipality must, within 21 days of adopting a Local Spatial Development Framework or an amendment of a Local Spatial Development Framework, publish a notice of the decision in the media and the *Provincial Gazette*.

Status of Local Spatial Development Frameworks

11. (1) A Local Spatial Development Framework or an amendment thereof comes into operation on the date of publication of the notice contemplated in Section 10(2).
- (2) A Local Spatial Development Framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights.

Structure plans

12. (1) If the Municipality intends to convert a structure plan to a local Spatial Development Framework, the Municipality must comply with Sections 9 to 11 and must—
- (a) review that structure plan and make it consistent with the purpose of a Local Spatial Development Framework contemplated in Section 9(2); and
 - (b) incorporate the provisions of the structure plan that are consistent with that purpose in the Local Spatial Development Framework.
- (2) The Municipality must, in terms of Section 16(4) of the Land Use Planning Act, withdraw the relevant structure plan by notice in the *Provincial Gazette* when it adopts a Local Spatial Development Framework contemplated in Subsection (1).

CHAPTER III

DEVELOPMENT MANAGEMENT

Determination of zoning

13. (1) The owner or his or her agent may apply in terms of Section 15(2) to the Municipality for the determination of a zoning for land referred to in Section 34(1), (2) or (3) of the Land Use Planning Act.
- (2) When the Municipality considers an application in terms of Subsection (1), it must have regard to the following:
- (a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of the Land Use Planning Act if it can be determined;
 - (b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;
 - (c) any departure or consent use that may be required in conjunction with that zoning;
 - (d) in the case of land that was vacant immediately before the commencement of the Land Use Planning Act, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the Municipality; and
 - (e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of the Land Use Planning Act cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required.
- (3) If subsection (2)(e) is applicable, the Municipality must rezone the land concerned in terms of section 15(2)(a).
- (4) A land use that commenced unlawfully, whether before or after the commencement of this By-Law, may not be considered to be lawful.

Non-conforming uses

14. (1) A non-conforming use does not constitute an offence in terms of this By-Law.
- (2) A non-conforming use may continue as long as it remains otherwise lawful, subject to the following:
- (a) if the non-conforming use is ceased for any reason for a period of more than twenty-four consecutive months, any subsequent utilisation of the property must comply with this By-Law and the zoning scheme, with or without departures;

- (b) an appropriate application contemplated in Section 15(2) must be made for the alteration or extension of buildings or structures in respect of the non-conforming use;
 - (c) the owner bears the onus of proving that the non-conforming use right exists; and
 - (d) the use right is limited to the area of the building or land in respect of which the proven use right exists.
- (3) Subject to Subsection (2)(a) and (b), if an existing building that constitutes a non-conforming use is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building, the Municipality may grant permission for the reconstruction of such building subject to conditions.

Land development requiring approval and other approvals

15. (1) No person may commence, continue, or cause the commencement or continuation of, land development, other than the subdivision or consolidation of land referred to in Section 24, without the approval of the Municipality in terms of Subsection (2).
- (2) The owner or his or her agent may apply to the Municipality in terms of this Chapter and Chapter IV for the following in relation to the development of the land concerned, subject to Section 15(8):
- (a) a rezoning of land;
 - (b) a permanent departure from the development parameters of the zoning scheme;
 - (c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;
 - (d) a subdivision of land that is not exempted in terms of Section 24, including the registration of a servitude or lease agreement;
 - (e) a consolidation of land that is not exempted in terms of Section 24;
 - (f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;
 - (g) a permission required in terms of the zoning scheme;
 - (h) an amendment of an existing approval or the amendment, deletion or imposition of conditions in respect of an existing approval;
 - (i) an extension of the validity period of an approval;
 - (j) a permission required in terms of a condition of approval;
 - (k) a determination of a zoning;
 - (l) a closure of a public place or part thereof;
 - (m) a consent use contemplated in the zoning scheme;
 - (n) an occasional use of land;
 - (o) to disestablish an owner's association;
 - (p) to rectify a failure by an owner's association to meet its obligations in respect of the control over or maintenance of services;
 - (q) a permission required for the reconstruction of an existing building that constitutes a nonconforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.
- (3) If section 53 of the Land Use Planning Act is applicable to the land development, the owner or agent must also apply for approval of the land development in terms of that Act.
- (4) When an applicant or owner exercises a use right granted in terms of an approval, he or she must comply with the conditions of the approval and the applicable provisions of the zoning scheme.
- (5) The Municipality may, subject to subsection (7), on its own initiative rezone land of which it is not the owner for a purpose contemplated in sections 13(3) and 17(1).

- (6) The Municipality may, subject to subsection (7), on its own initiative conduct land development or an activity contemplated in subsections (2)(b), (c) and (f) to (q) in respect of land which is not owned by the Municipality.
- (7) When the Municipality on its own initiative acts in terms of subsection (2), (5) or (6)—
 - (a) the Municipality is regarded for purposes of this Chapter and Chapter IV as an applicant and must comply with this Chapter and Chapter IV, including the publication and notice requirements; and
 - (b) the decision must be made by the Tribunal.
- (8) When an application is made in terms of Section 15(2) in which the Municipality must cause public notice to be given in terms of Section 45(1) the agent must be a registered planner with the exception for applications made in terms of Section 15(2)(f) and (l).

Continuation of application after change of ownership

16. If land that is the subject of an application is transferred to a new owner, the new owner may continue with the application as the successor in title to the previous owner and the new owner is regarded as the applicant for the purposes of this By-law.

Rezoning of land

17. (1) The Municipality may, on its own initiative, rezone land of which it is not the owner to—
- (a) provide a public service or to provide a public recreational space; or
 - (b) substitute a zoning scheme or part thereof for a zoning scheme in terms of which the land is not zoned in accordance with the utilisation thereof or existing use rights.
- (2) An applicant, who wishes land to be rezoned, must submit an application to the Municipality in terms of Section 15(2).
- (3) When the Municipality creates an overlay zone for land it must comply with Sections 12 and 13 of the Municipal Systems Act.
- (4) Zoning may be made applicable to a land unit or part thereof and zoning need not follow cadastral boundaries.
- (5) Subject to subsection (6), a rezoning approval contemplated in subsection (2) lapses after the applicable period reckoned from the date that the approval comes into operation if, within that period—
- (a) the zoning is not utilised in accordance with the approval; or
 - (b) the following requirements have not been met:
 - (i) the approval by the Municipality of a building plan envisage for the utilisation of the approved use right; and
 - (ii) commencement of the construction of the building contemplated in Subparagraph (i).
- or
- (c) the rezoning approval was not promulgated in the Provincial Gazette after all pre-building construction and transfer conditions have been met.
- (6) An approval of a rezoning to subdivisional area contemplated in section 20(2) lapses after the applicable period reckoned from the date that the approval comes into operation if, within that period—
- (a) a subdivision application is not submitted; or
 - (b) the conditions of approval are not complied with.

- (7) If a subdivision application is submitted in respect of land that is zoned as subdivisinal area, the zoning of subdivisinal area lapses on the later date of the following dates:
- (a) the date on which the subdivision is approved; or
 - (b) the date after the applicable period contemplated in Subsection (6) including any extended period approved in terms of Section 67.
- (8) The approval of a rezoning to subdivisinal area must include conditions that make provision for at least—
- (a) density requirements;
 - (b) main land uses and the extent thereof; and
 - (c) a detailed phasing plan or a framework including—
 - (i) main transport routes;
 - (ii) main land uses;
 - (iii) bulk infrastructure;
 - (iv) requirements of organs of state;
 - (v) public open space requirements; and (vi) physical development constraints.
- (9) If a rezoning approval lapses, the zoning applicable to the land before the approval of the rezoning applies or, where no zoning existed before the approval of the rezoning, the Municipality must determine a zoning in terms of Section 13.

Departures

18. (1) An applicant may apply to the Municipality in terms of Section 15(2)-
- (a) for a departure from the development parameters of a zoning or an overlay zone; or
 - (b) to utilise land on a temporary basis for a purpose not permitted in terms of the primary rights of the zoning applicable to the land for a period not exceeding five years.
- (2) A departure contemplated in Subsection (1)(a) lapses after the applicable period from the date that the approval comes into operation if, within that period—
- (a) the departure is not utilised in accordance with the approval; or
 - (b) the following requirements have not been met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved departure; and
 - (ii) commencement of the construction of the building contemplated in Subparagraph (i).
- (3) The Municipality may approve a departure contemplated in Subsection (1)(b) for a period shorter than five years but, if a shorter period is approved, the period together with any extension approved in accordance with Section 67 may not exceed five years;
- (4) A temporary departure contemplated in Subsection (1)(b) may include an improvement of land only if—
- (a) the improvement is temporary in nature; and
 - (b) the land can, without further construction or demolition, revert to its previous lawful use upon the expiry of the use right.

Consent uses

19. (1) An applicant may apply to the Municipality in terms of Section 15(2) for a consent use contemplated in the zoning scheme.

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

Subdivision

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

Confirmation of subdivision

21. (1) A subdivision or part thereof is confirmed and cannot lapse when the following requirements are met within the period contemplated in Section 22(1):
 - (a) approval by the Surveyor General of the general plan or diagram contemplated in Section 20(5);

- (b) completion of the installation of engineering services in accordance with the conditions contemplated in Section 20(4) and other applicable legislation;
 - (c) proof to the satisfaction of the Municipality that all the conditions of the approved subdivision that must be complied with before compliance with Paragraph (d) have been met in respect of the area shown on the general plan or diagram; and
 - (d) registration of the transfer of ownership, a certificate of consolidated title or certificate of registered title in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.
- (2) Upon confirmation of a subdivision or part thereof in terms of Subsection (1), zonings indicated on an approved subdivision plan are confirmed and cannot lapse.
 - (3) The Municipality must in writing confirm to the applicant or any other person on his or her written request that a subdivision or part of a subdivision is confirmed if the applicant has to the satisfaction of the Municipality submitted proof of compliance with the requirements referred to in Subsection (1)(a) to (d) for the subdivision or part thereof.
 - (4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless the subdivision is confirmed as contemplated in Subsection (1) or the Municipality approved the construction before the confirmation of the subdivision.

Lapsing of subdivision

22. (1) An approved subdivision lapses after the applicable period from the date that the approval comes into operation if the requirements contemplated in Section 21(1)(a) to (d) have not been met within that period.
- (2) If an applicant complies with Section 21(1)(b) and (c) only in respect of a part of the land reflected on the general plan contemplated in Section 21(1)(a), the applicant must withdraw the general plan and submit a new general plan to the Surveyor General for that part of the land.
- (3) If an approval of a subdivision or part thereof lapses in terms of Subsection (1)—
 - (a) the Municipality must—
 - (i) amend the zoning map and, where applicable, the register accordingly; and
 - (ii) notify the Surveyor General accordingly; and
 - (b) the Surveyor General must endorse the records of the Surveyor General's office to reflect the notification that the subdivision has lapsed.

Amendment or cancellation of subdivision plan

23. (1) The Municipality may in terms of Section 15(2) approve the amendment or cancellation of a subdivision plan, including conditions of approval, the general plan or diagram, in relation to land units shown on the general plan or diagram that have not been registered yet in terms of the Deeds Registries Act.
- (2) When the Municipality approves an application in terms of Subsection (1), any public place that is no longer required by virtue of the approval must be closed in terms of Section 26.
- (3) The Municipality must notify the Surveyor General of an approval in terms of Subsection (1) and the Surveyor General must endorse the records of the Surveyor General's office to reflect the amendment or cancellation of the subdivision.
- (4) An amended subdivision approval contemplated in subsection 1 does not extend the validity period of the initial approval of the subdivision as contemplated in section 22(1).

Exemption of certain subdivisions and consolidations

24. (1) The subdivision or consolidation of land does not require the approval of the Municipality in the following cases:
- (a) a subdivision or consolidation that arises from the implementation of a court ruling;
 - (b) a subdivision or consolidation that arises from an expropriation;
 - (c) a minor amendment to the common boundary between two or more land units if the resulting change in area of any of the land units does not exceed 10 per cent even if the two or more land units have different zonings;
 - (d) the consolidation of a closed public place with an abutting erf;
 - (e) the construction or alteration of a public or proclaimed street;
 - (f) the registration of a servitude or lease agreement for—
 - (i) the provision or installation of water pipelines, electricity transmission lines, sewer pipelines, storm water pipes and canals, gas pipelines or oil and petroleum product pipelines by or on behalf of an organ of state or service provider;
 - (ii) the provision or installation of telecommunication lines and telecommunication infrastructure by or on behalf of a licensed telecommunications operator;
 - (iii) the imposition of height restrictions;
 - (iv) the granting of a right of habitation, private right of way or usufruct; or
 - (v) the provision of a borehole or water pipelines other than water pipelines on behalf of an organ of state or service provider;
 - (g) the exclusive utilisation of land for agricultural purposes if the utilisation—
 - (i) in the case of a subdivision, requires approval in terms of legislation regulating the subdivision of agricultural land; and
 - (ii) does not lead to urban expansion;
 - (h) the establishment of a development scheme as defined in section 1(1) of the Sectional Titles Act, 1986 (Act 95 of 1986);
 - (i) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan;
 - (j) exceptional circumstances if the exemption does not adversely affect municipal land use planning or the rights or legitimate expectations of any person.
- (2) An owner or his or her agent must obtain a certificate from the Municipality that certifies in writing that the subdivision or consolidation is exempted from the application of Section 15, and Sections 20 to 23 in the case of a subdivision, or Sections 15, 31 and 32 in the case of a consolidation.
- (3) The Municipality must indicate on the subdivision plan, or on the diagram in respect of the consolidation, that the subdivision or consolidation is exempted from the application of the sections referred to in Subsection (2).
- (4) Subsections (2) and (3) do not apply in respect of a subdivision or consolidation contemplated in subsection (1)(a), (b) or (h).

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

25. (1) The ownership of land that is earmarked for a public place as shown on an approved subdivision plan vests in the Municipality upon confirmation of the subdivision or a part thereof.
- (2) The Municipality may in terms of conditions imposed in terms of Section 66 determine that land designated for the provision of municipal service infrastructure and amenities on an approved subdivision plan be transferred to the Municipality upon confirmation of the subdivision or a part thereof.

Closure of public places

26. (1) The Municipality may, on its own initiative or on application, permanently close a public place or any part thereof in accordance with Chapter IV.
- (2) An applicant who requires the closure of a public place, whether permanently or temporarily, must apply in terms of Section 15(2) to the Municipality.
- (3) If any person lodges a claim against the Municipality for loss or damage that he or she has allegedly suffered due to wrongdoing on the part of the Municipality when it permanently closed a public place, the authorised employee must—
- (a) require proof of negligence or any other wrongdoing on the part of the Municipality which resulted in the loss or damage; and
 - (b) before any claim is paid or settled, obtain a full technical investigation report in respect of the circumstances that led to the closure of the public place to determine whether or not there has been negligence on the part of the Municipality.
- (4) The Municipality may pay a claim if—
- (a) the circumstances of the loss or damage reveal that the Municipality acted wrongfully;
 - (b) in the case of loss of or damage to property, the claimant has proved his or her loss or damage;
 - (c) in the case of personal injury, the claimant has provided proof of a fair and reasonable quantum;
 - (d) no claim has been paid by personal insurance covering the same loss; and
 - (e) any relevant information as requested by the authorised employee has been received.
- (5) The ownership of the land comprising any public place, or a part thereof, that is permanently closed in terms of this section continues to vest in the Municipality unless the Municipality determines otherwise.
- (6) The Municipal Manager may, without complying with Chapter IV, temporarily close a public place—
- (a) for the purpose of, or pending, the construction, reconstruction or maintenance of the public place;
 - (b) for the purpose of, or pending, the construction, extension, maintenance or demolition of any building, structure, works or service alongside, on, across, through, over or under the public place;
 - (c) if the public place is in a state that is dangerous to the public;
 - (d) by reason of an emergency or public event that requires special measures for the control of traffic or crowds; or
 - (e) for any other reason that renders the temporary closing of the public place necessary or desirable.
- (7) The Municipality must notify the Surveyor General of an approval in terms of Subsection (1) and the Surveyor General must endorse the records of the Surveyor General's office to reflect the closure of the public place.

Services arising from subdivision

27. Subsequent to the approval of an application for subdivision in terms of this By-Law, the owner of any land unit originating from the subdivision must—
- (a) allow that the following be conveyed across his or her land unit as may be reasonably required in respect of other land units originating from the subdivision:
 - (i) gas mains;

- (ii) electricity cables;
 - (iii) telephone cables;
 - (iv) television cables;
 - (v) other electronic infrastructure;
 - (vi) main and other water pipes;
 - (vii) foul sewers;
 - (viii) storm-water pipes; and
 - (ix) ditches and channels;
- (b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:
- (i) surface installations such as mini-substations;
 - (ii) meter kiosks; and
 - (iii) service pillars;
- (c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in Paragraph (a) or (b); and
- (d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and to provide a safe and proper slope to its bank where necessitated by differences between the level of the street as finally constructed and the level of the land unit unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.

Certification by Municipality

28. (1) A person may apply to the Registrar of Deeds to register the transfer of a land unit, a certificate of title or certificate of consolidated title, as the case may be, in any of the instances referred to in Subsection (3)(a) to (c), only if the Municipality has issued a certificate in terms of this section.
- (2) The Registrar of Deeds may register the transfer of a land unit, a certificate of title or certificate of consolidated title, as the case may be, in any of the instances referred to in Subsection (3)(a) to (c) only if the Municipality has issued a certificate in terms of this section.
- (3) The Municipality must issue a certificate to transfer a land unit contemplated in Subsections (1) and (2) if the owner provides the Municipality with the following:
- (a) where an owners' association has been established in respect of that land unit, a conveyancer's certificate confirming that money due by the transferor of the land unit to that owners' association has been paid, or that provision has been made to the satisfaction of the owners' association for the payment thereof;
 - (b) in the case of any existing contravention penalty due by the transferor of the land unit, proof of payment of the penalty or proof of compliance with an instruction in a compliance notice issued to the transferor in terms of Chapter IX;
 - (c) in the case of the first registration of the transfer of ownership of a land unit arising from a subdivision to any person other than the developer and where an owner's association is constituted, proof that—
 - (i) all common property arising from the subdivision has been transferred to the owners' association by virtue of section 29(3)(e); or
 - (ii) all common property arising from the subdivision will be transferred to the owners' association simultaneously with the registration of the transfer of that land unit;
 - (d) in the case of the first registration of the transfer of ownership or certificate of registered title of a land unit arising from a subdivision and that leads to the confirmation of the subdivision, proof that—
 - (i) land needed for public purposes or other municipal infrastructure as contemplated in terms of a condition imposed under section 66 has been transferred to the Municipality or will be transferred to the Municipality

- simultaneously with the registration of the transfer of that land unit, certificate of consolidated title or certificate of registered title;
- (ii) the engineering services and amenities that must be provided in connection with the subdivision are available; and
- (iii) a certificate contemplated in section 20(6) has been issued by the Municipality.

Owners' associations

29. (1) The Municipality may, when approving an application for a subdivision of land, impose conditions relating to the compulsory establishment of an owners' association by the applicant for an area determined in the conditions.
- (2) An owners' association that comes into being by virtue of Subsection (1) is a juristic person and must have a constitution.
- (3) The constitution of an owners' association must be approved by the Municipality before registration of the transfer of the first land unit and must make provision for—
- (a) the owners' association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
 - (b) control over and maintenance of buildings, services or amenities arising from the subdivision;
 - (c) the regulation of at least one annual meeting with its members;
 - (d) control over the design guidelines of the buildings and erven arising from the subdivision;
 - (e) the ownership by the owners' association of all common property arising from the subdivision, including—
 - (i) private open spaces;
 - (ii) private roads; and
 - (iii) land required for services provided by the owners' association;
 - (f) enforcement of conditions of approval or management plans;
 - (g) procedures to obtain the consent of the members of the owners' association to transfer an erf in the event that the owners' association ceases to function; and
 - (h) the implementation and enforcement by the owners' association of the provisions of the constitution.
- (4) The constitution of an owners' association may have other objectives as set by the association but may not contain provisions that are in conflict with any law.
- (5) The constitution of the owners' association takes effect upon the registration of the transfer of ownership of the first land unit to a person other than the developer.
- (6) An owners' association may amend its constitution when necessary, but if an amendment affects the Municipality or a provision referred to in Subsection (3), the amendment must also be approved by the Municipality.
- (7) An owners' association that comes into being by virtue of Subsection (1) —
- (a) has as its members all the owners of the land units arising from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and
 - (b) is upon registration of the transfer of ownership of the first land unit to a person other than the developer automatically established.
- (8) The design guidelines contemplated in Subsection (3)(d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.

Owners' associations that cease to function

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

Consolidation of land units

31. (1) No person may consolidate land without the approval of the Municipality in terms of Section 15(2) unless the consolidation is exempted in terms of section 24.
- (2) If the Municipality approves a consolidation, the applicant must submit a diagram to the Surveyor General for approval, including proof to the satisfaction of the Surveyor General of—
- (a) the Municipality's decision to approve the consolidation;
 - (b) the conditions of approval imposed in terms of Section 66; and
 - (c) the approved consolidation plan.
- (3) If the Municipality approves a consolidation, the Municipality must amend the zoning map and where applicable the register, accordingly.

Lapsing of consolidation

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

- (b) the Surveyor-General must endorse the records of the Surveyor General's office to reflect the notification that the consolidation has lapsed.

Removal, suspension or amendment of restrictive conditions

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

application for land development is submitted simultaneously apply for the removal, suspension or amendment of the restrictive condition.

- (8) The Municipality must consider the land development application and the application for the removal, suspension or amendment of the restrictive condition contemplated in subsection (7) together and make an integrated decision.
- (9) Where a restrictive condition only requires a consent from the Municipality an application is not required in terms of section 15(2)(f).

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

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

CHAPTER IV

APPLICATION PROCEDURES

Manner and date of notification

35. (1) Any serving of a notice or notification or acknowledgement given in terms of this By-Law must be in writing and may be issued to a person—
 - (a) by delivering it by hand to the person;
 - (b) by sending it by registered mail—
 - (i) to that person's business or residential address and municipal billing address, where the billing address differs from the business or residential address; or
 - (ii) in the case of a juristic person, to its registered address or principal place of business and municipal billing address, where the billing address differs from the business or residential address;
 - (c) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or
 - (d) where an address is unknown despite reasonable enquiry, by publishing it once in the *Provincial Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address.
- (2) The date of notification in respect of a notice served or given to a person in terms of this By-Law—
 - (a) if it was served by certified or registered post, is the date of registration of the notice; and
 - (b) if when it was delivered to that person personally, is the date of delivery to that person;

- (c) if when it was left at that person's place of residence, work or business in the Republic with a person apparently over the age of sixteen years, is the date on which it was left with that person;
 - (d) if when it was displayed in a conspicuous place on the property or premises to which it pertains, is the date that it is posted on that place; or
 - (e) when it was e-mailed or sent to an electronic address, is the date that it was received by that person as contemplated in the Electronic Communications and Transactions Act, 2002.
- (3) The Municipality may determine specific methods of service and notification in respect of applications and appeals including—
 - (a) information specifications relating to matters such as size, scale, colour, hard copy, number of copies, electronic format and file format;
 - (b) the manner of submission to and communication with the Municipality;
 - (c) the method by which a person may be notified;
 - (d) other information requirements; and
 - (e) other procedural requirements.

Procedures for applications

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

Pre-application consultation

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

Information required

- 38.** (1) Subject to Subsection (2), an application must be accompanied by the following information and Documents where applicable:
 - (a) an application form provided by the Municipality, completed and signed by the applicant;
 - (b) if the applicant is an agent, a power of attorney authorising the applicant to make the application on behalf of the owner;

- (c) if the owner of the land is a company, closed corporation, trust, body corporate or owners' association, proof that the person is authorised to make the application on behalf of the company, closed corporation, trust, body corporate or owners' association;
 - (d) proof of registered ownership or any other relevant right held in the land concerned;
 - (e) if a mortgage bond is registered in respect of the land concerned, the bondholder's consent;
 - (f) a written motivation for the application based on the applicable criteria referred to in section 65, excluding sections 65(a), (b), (d), (e) and (g);
 - (g) a copy of the Surveyor General's diagram of the property concerned or, if it does not exist, an extract from the relevant general plan;
 - (h) a locality plan and site development plan, if required, or a plan showing the proposed land development in its cadastral context;
 - (i) in the case of an application for the subdivision of land, copies of the subdivision plan showing the following:
 - (i) the location of the proposed land units;
 - (ii) the proposed zonings in respect of the proposed land units;
 - (iii) all existing structures on the property and abutting properties;
 - (iv) the proposed public places and the land needed for public purposes;
 - (v) the existing access points;
 - (vi) all servitudes;
 - (vii) contours with at least a one meter interval or such other interval as may be approved by the Municipality;
 - (viii) the street furniture;
 - (ix) the lamp, electricity and telephone posts;
 - (x) the electricity transformers and mini-substations;
 - (xi) the storm-water channels and catchpits;
 - (xii) the sewerage lines and connection points;
 - (xiii) any significant natural features; and
 - (xiv) all distances and areas to scale;
 - (j) proof of an agreement or permission if the proposed land development requires a servitude over land or access to a provincial or national road;
 - (k) any other documents or information that the Municipality may require;
 - (l) proof of payment of application fees;
 - (m) a copy of the title deed of the land concerned;
 - (n) a conveyancer's certificate indicating that the application is not restricted by any condition contained in the title deed pertaining to the land concerned or a copy of all historical title deeds if required by the Municipality; and
 - (o) where applicable, the minutes of a pre-application consultation in respect of the application.
- (2) The Municipality may at a pre-application consultation add or remove any information or documents contemplated in Subsection (1) for a particular application.
 - (3) The Municipality may issue guidelines regarding the submission of information, documents or procedural requirements.

Application fees

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

Grounds for refusing to accept application

40. The Municipality may in terms of section 41(3) refuse to accept an application if—
- (a) there is no proof of payment of the applicable fees; or
 - (b) the application is not in the form or does not contain the information or documents referred to in Section 38.

Receipt of application and commencement of application process

41. (1) The Municipality must—
- (a) record receipt of an application, in writing or by affixing a stamp on the application, on the day of receipt;
 - (b) verify whether the application complies with Section 38; and
 - (c) notify the applicant in writing within fourteen (14) days of receipt of the application—
 - (i) that the application is complete and complies with Section 38 and that the application process commences; or
 - (ii) of any information, documents or fees referred to in Section 38 that are outstanding and that the applicant must provide to the Municipality within 14 days of the date of notification.
- (2) The Municipality must within fourteen (14) days of receipt of the outstanding information, documents or fees referred to in Subsection (1)(c)(ii) notify the applicant in writing that the application is complete and that the application process commences.
- (3) The Municipality may refuse to consider the application if the applicant fails to provide the information or documents or pay the fees within the period contemplated in Subsection (1)(c)(ii).
- (4) The Municipality must notify the applicant in writing of a refusal to consider an application under Subsection (3) and must close the application.
- (5) An applicant has no right of appeal to the Appeal Authority in respect of a decision contemplated in Subsection (3) to refuse to consider an application.
- (6) If an applicant wishes to continue with an application that the Municipality refused to consider under Subsection (3), the applicant must apply again and pay the applicable application fees.
- (7) The Municipality must cause notice of the application to be given within 21 days from the date on which the application process commences as contemplated in subsection (1)(c)(i) or (2).

Provision of additional information or documents

42. (1) The Municipality must, within 60 days of receipt of an application that complies with section 38, notify the applicant in writing of any information or documents it requires in addition to the requirements contemplated in Section 38.
- (2) The applicant must provide the Municipality with the additional information or documents contemplated in Subsection (1) within 30 days of the date of notification or within the further period agreed to between the applicant and the Municipality.
- (3) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (2), the Municipality must consider the application without the information or documents and notify the applicant accordingly.

- (4) The Municipality must, within 21 days of receipt of the additional information or documents, if the applicant provided all the required information or documents, acknowledge receipt thereof and notify the applicant in writing that the application process proceeds or that further information, documents or fees are required as a result of the information or documents received.
- (5) If the Municipality notified the applicant that further information or documents are required as contemplated in Subsection (4), Subsections (2) and (3) apply to the further submission of information or documents.

Withdrawal of application or power of attorney

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

Public notice in accordance with other laws and integrated procedures

44. (1) The Municipality may, on written request and motivation by an applicant, before notice is given of an application in terms of Section 45 or 46, determine that—
 - (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-Law; or
 - (b) public notice of the application given in terms of this By-Law may be published in accordance with the requirements for public notice applicable to a related application in terms of another law.
- (2) If the Municipality determines that an application may be published as contemplated in Subsection (1)(b), an agreement must be entered into between the Municipality and the relevant organs of state to facilitate the simultaneous publication of notices.

Publication of notices

45. (1) Subject to Section 44, the Municipality must, in accordance with Subsection (2), cause public notice to be given of the following applications:
 - (a) an application for a rezoning;
 - (b) the subdivision of land larger than five hectares inside the outer limit of urban expansion as reflected in the Municipal Spatial Development Framework;
 - (c) the subdivision of land larger than one hectare outside the outer limit of urban expansion as reflected in the Municipal Spatial Development Framework;
 - (d) if the Municipality has no approved Municipal Spatial Development Framework, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (e) if the Municipality has no approved Municipal Spatial Development Framework, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (f) the closure of a public place;
 - (g) an application in respect of a restrictive condition;

- (6) The Municipality may require the applicant to make the application available for inspection by members of the public at a public place determined by the Municipality.

Contents of notice

47. When notice of an application must be published or served in terms of this By-law, the notice must—
- (a) provide the name and contact details of the applicant and the owner;
 - (b) identify the land or land unit to which the application relates by giving the property description and the physical address;
 - (c) state the intent and purpose of the application;
 - (d) state that a copy of the application and supporting documentation will be available for viewing during the hours and at the place mentioned in the notice;
 - (e) state the name and contact details of the person to whom comments must be addressed;
 - (f) invite members of the public to submit written comments, together with the reasons therefor, in respect of the application;
 - (g) state in what manner comments may be submitted;
 - (h) state the date by which the comments must be submitted, which date may not be less than 30 days from the date on which the notice was given; and
 - (i) state that any person who cannot write may during office hours come to an address stated in the notice where a named staff member of the Municipality will assist those persons by transcribing their comments.

Other methods of public notice

48. (1) The Municipality may, cause public notice to be given by one or more of the methods referred to in Subsection (2)—
- (a) to ensure additional public notice of applications listed in Section 45(1) if the Municipality considers notice in accordance with Section 45 or 46 to be ineffective or expects that the notice would be ineffective; or
 - (b) to give public notice of any other application in terms of this By-Law.
- (2) Public notice contemplated in Subsection (1) may be given by—
- (a) displaying a notice contemplated in Section 47 of a size of at least two A3 pages on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
 - (i) the notice is displayed for a minimum of 30 days during any period that the public may comment on the application; and
 - (ii) the applicant, within 30 days from the last day of display of the notice, submits to the Municipality—
 - (aa) a sworn affidavit confirming the maintenance of the notice for the prescribed period; and
 - (bb) at least two photos of the notice, one from close up and one from across the street;
 - (b) convening a meeting for the purpose of informing affected members of the public of the application;
 - (c) broadcasting information regarding the application on a local radio station in a specified language;
 - (d) holding an open day or public meeting to notify and inform affected members of the public of the application;
 - (e) publishing the application on the Municipality's website for the duration of the period within which the public may comment on the application;

is complete as contemplated in section 41(1)(c)(i) or (2) cause notice of the application together with a copy of the application to be given to every municipal department and organ of state that has an interest in the application and request their comment on the application.

- (2) An organ of state must comment on a land use application within 60 days of—
 - (a) the date of notification of a request for comment on the application; or
 - (b) receiving all the information necessary to comment if the application is not complete and a request for additional information is made within 14 days of the date of notification of the request for comment.
- (3) If an organ of state fails to comment within the period referred to in subsection (2), the Municipality must notify the organ of state's accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), of the failure.

Amendments before approval

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

Further public notice

53. (1) The Municipality may require that notice of an application be given again if more than 18 months have elapsed since the first public notice of the application and if the Municipality has not considered the application.
- (2) The Municipality may, at any stage during the processing of the application if new information comes to its attention that is material to the consideration of the application, require—
 - (a) notice of an application to be given or served again in terms of Section 44, 45, 46 or 48;
 - (b) an application to be re-sent to municipal departments and, where applicable, other organs of state or service providers for comment.

Liability for cost of notice

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

Right of applicant to reply

55. (1) Copies of all comments and other information submitted to the Municipality must be given to the applicant within 14 days after the closing date for public comment together with a notice informing the applicant of his or her rights in terms of this section.

- (2) The applicant may, within 30 days from the date on which he or she received the comments, submit a written reply thereto to the Municipality.
- (3) The applicant may, before the expiry of the period of 30 days referred to in Subsection (2), apply to the Municipality for an extension of the period to submit a written reply, to an additional period not exceeding 14 days.
- (4) If the applicant does not submit a reply within the period of 30 days or within an additional period contemplated in Subsection (3), if granted, the applicant is considered to have no comment.
- (5) The Municipality may in writing request additional information or documents from the applicant as a result of the comments received, and the applicant must supply the information or documents within 30 days of notification of the written request or the further period as may be agreed upon between the applicant and the Municipality.
- (6) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (5), the Municipality must consider the application without the information or documents and notify the applicant accordingly.

Written assessment of application

- 56.**
- (1) An authorised employee must in writing in accordance with section 65 assess an application and make a recommendation to the decision-maker regarding the approval or refusal of the application.
 - (2) An authorised employee may in writing request additional information during the assessment of an application, and the applicant must supply the information or documents within 30 days of notification of the written request or the further period as may be agreed upon between the applicant and the Municipality.
 - (3) If the applicant fails to provide the additional information or documents within the period contemplated in subsection (2), the Municipality must consider the application without the information or documents and notify the applicant accordingly.
 - (4) An assessment of an application must include a motivation for the recommendation and, where applicable, the proposed conditions of approval.

Decision-making period

- 57.**
- (1) When an authorised employee makes a decision in respect of an application as contemplated in section 69(1) and no integrated process in terms of another law is being followed, the authorised employee must decide on the application within 60 days, reckoned from—
 - (a) the last day for the submission of comments as contemplated in Section 50(2) if no comments were submitted;
 - (b) the last day for the submission of the applicant's reply to comments submitted as contemplated in Section 55(2) or (3); or
 - (c) the last day for the submission of additional information as contemplated in Section 55(5) or 56(2).
 - (2) If no integrated process in terms of another law is being followed and the Tribunal must decide on an application as contemplated in section 69(2), the Tribunal must decide on the application within 120 days, reckoned from the applicable date contemplated in subsection (1)(a), (b) or (c).

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

Failure to act within period

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

Powers to conduct routine inspections

59. (1) An authorised employee or member of the Tribunal may, in accordance with the requirements of this section, enter land or a building to conduct an inspection for the purpose of obtaining information to assess an application in terms of this By-law and to prepare a written assessment contemplated in Section 56.
- (2) When conducting an inspection, the authorised employee or member of the Tribunal may—
- (a) request that any record, document or item that is relevant to the purpose of the investigation be inspected;
 - (b) make copies of or take extracts from any document produced by virtue of Paragraph (a) that is related to the inspection;
 - (c) on providing a receipt, remove a record, document or other item that is related to the inspection;
 - (d) inspect any building or structure and make enquiries regarding that building or structure.
- (3) No person may interfere with a person referred to in Subsection (1) who is conducting an inspection as contemplated in Subsection (1).
- (4) The authorised employee or member of the Tribunal must, on request, produce identification showing that he or she is authorised to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time after reasonable notice has been given to the owner, occupier or person in lawful control of the land or building and with the written consent of the owner, occupier or person in lawful control of the land or building.

Decisions on applications

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

Notification and coming into operation of decision

61. (1) The Municipality must, within 21 days of its decision, in writing notify the applicant and any person whose rights are affected by the decision of the decision, the reasons for the decision and their right to appeal, if applicable.

- (2) A notice contemplated in Subsection (1) must inform an applicant when an approval comes into operation.
- (3) If the owner has appointed an agent, the owner must take steps to ensure that the agent notifies him or her of the decision of the Municipality.
- (4) An approval comes into operation only after the expiry of the period contemplated in Section 79(2) within which an appeal must be lodged if no appeal has been lodged.
- (5) Subject to Subsection (6), the operation of the approval of an application that is the subject of an appeal is suspended pending the decision of the Appeal Authority on the appeal.
- (6) If an appeal is lodged only against conditions imposed in terms of Section 66, the Tribunal or the authorised employee who imposed the conditions may determine that the approval of the application is not suspended.

Duties of agent

- 62.**
- (1) An agent must ensure that he or she has the contact details of the owner on whose behalf he or she is authorised to act.
 - (2) An agent may not provide information or make a statement in support of an application which information or statement he or she knows or believes to be misleading, false or inaccurate.

Errors and omissions

- 63.**
- (1) The Municipality may at any time correct an error in the wording of its decision if the correction does not change the decision or result in an alteration, insertion, suspension or deletion of a condition of approval.
 - (2) The Municipality may, on its own initiative or on application by the applicant or interested party, upon good cause shown, condone an error in a procedure, if the condonation does not have a material adverse effect on, or unreasonably prejudice, any party.

Exemptions to facilitate expedited procedures

- 64**
- (1) The Municipality may in writing and subject to Section 60 of the Land Use Planning Act—
 - (a) exempt a development from compliance with a provision of this By-Law to reduce the financial or administrative burden of—
 - (i) integrated application processes contemplated in Section 44;
 - (ii) the provision of housing with the assistance of a state subsidy; or
 - (iii) incremental upgrading of existing settlements;
 - (b) in an emergency situation authorise that a development may depart from any of the provisions of this By-Law.
 - (2) If the Provincial Minister grants an exemption or authorisation to deviate from a provision of the Land Use Planning Act to the Municipality in terms of Section 60 of the Land Use Planning Act, the Municipality is exempted from or authorised to deviate from any provision in this By-Law that corresponds to the provision of the Land Use Planning Act in respect of which an exemption was granted or deviation was authorised.

CHAPTER V

CRITERIA FOR DECISION-MAKING

General criteria for consideration of applications

65. When the Municipality considers an application, it must have regard to the following:
- (a) the application submitted in terms of this By-Law;
 - (b) the procedure followed in processing the application;
 - (c) the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses;
 - (d) the comments in response to the notice of the application, including comments received from organs of state, municipal departments and the Provincial Minister in terms of Section 45 of the Land Use Planning Act;
 - (e) the response by the applicant, if any, to the comments referred to in Paragraph (d);
 - (f) investigations carried out in terms of other laws that are relevant to the consideration of the application;
 - (g) a written assessment by a registered planner appointed by the Municipality in respect of an application for—
 - (i) a rezoning;
 - (ii) a subdivision of more than 20 cadastral units;
 - (iii) a removal, suspension or amendment of a restrictive condition if it relates to a change of land use;
 - (iv) an amendment, deletion or imposition of additional conditions in respect of an existing use right;
 - (v) an approval of an overlay zone contemplated in the zoning scheme;
 - (vi) a phasing, amendment or cancellation of a subdivision plan or part thereof;
 - (vii) a closure of a public place or part thereof;
 - (h) the impact of the proposed land development on municipal engineering services;
 - (i) the integrated development plan, including the municipal spatial development framework;
 - (j) the integrated development plan of the district municipality, including its spatial development framework, where applicable;
 - (k) the applicable local Spatial Development Frameworks adopted by the Municipality;
 - (l) the applicable structure plans;
 - (m) the applicable policies of the Municipality that guide decision making;
 - (n) the Provincial Spatial Development Framework;
 - (o) where applicable, a Regional Spatial Development Framework contemplated in Section 18 of the Spatial Planning and Land Use Management Act and Provincial Regional Spatial Development Framework;
 - (p) the policies, principles and the planning and development norms and criteria set by the national and provincial government;
 - (q) the matters referred to in Section 42 of the Spatial Planning and Land Use Management Act;
 - (r) the principles referred to in Chapter VI of the Land Use Planning Act;
 - (s) the applicable provisions of the zoning scheme; and
 - (t) any restrictive condition applicable to the land concerned.

Conditions of approval

66. (1) The Municipality may approve an application subject to reasonable conditions that arise from the approval of the proposed utilisation of land.
- (2) Conditions imposed in accordance with Subsection (1) may include conditions relating to—
- (a) the provision of engineering services and infrastructure;
 - (b) requirements relating to engineering services as contemplated in Sections 82 and 83;
 - (c) the cession of land or the payment of money;
 - (d) settlement restructuring;
 - (e) agricultural or heritage resource conservation;
 - (f) biodiversity conservation and management;
 - (g) the provision of housing with the assistance of a state subsidy, social facilities or social infrastructure;
 - (h) energy efficiency;
 - (i) requirements aimed at addressing climate change;
 - (j) the establishment of an owners' association in respect of the approval of a subdivision;
 - (k) the provision of land needed by other organs of state;
 - (l) the endorsement in terms of the Deeds Registries Act in respect of public places where the ownership thereof vests in the Municipality;
 - (m) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
 - (n) the extent of land to be ceded to the Municipality for the purpose of a public open space or road as determined in accordance with a policy adopted by the Municipality;
 - (o) the registration of public places in the name of the Municipality;
 - (p) the transfer of ownership to the Municipality of land needed for other public purposes;
 - (q) the implementation of a subdivision in phases;
 - (r) requirements of other organs of state;
 - (s) the submission of a construction management plan to manage the impact of the construction of a new building on the surrounding properties or on the environment;
 - (t) agreements to be entered into in respect of certain conditions;
 - (u) the phasing of a development, including lapsing clauses relating to such phasing;
 - (v) the delimitation of development parameters or land uses that are set for a particular zoning;
 - (w) the setting of a validity period and any extensions thereto;
 - (x) the setting of a period within which a particular condition must be met;
 - (y) requirements for an occasional use, which must include—
 - (i) parking and the number of ablution facilities required;
 - (ii) the maximum duration or occurrence of the occasional use; and
 - (iii) any other development parameters that the Municipality may determine;
 - (z) the payment of a contravention penalty in respect of the unlawful utilisation of land.
- (3) If the Municipality imposes a condition contemplated in Subsection (2)(a) or (b), an engineering services agreement must be concluded between the Municipality and the owner of the land concerned before the construction of engineering services and infrastructure commences on the land.
- (4) A condition contemplated in Subsection (2)(c) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the Municipality in accordance with Section 83(7) and any other applicable provincial norms and standards.
- (5) Municipal public expenditure contemplated in Subsection (4) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—

- (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
 - (b) nature conservation;
 - (c) energy conservation;
 - (d) climate change; or
 - (e) engineering services.
- (6) Except for land needed for public places or internal engineering services, any additional land required by the Municipality or other organs of state arising from an approved subdivision must be acquired subject to the applicable laws that provide for the acquisition or expropriation of land.
- (7) An owners' association or home owners' association that came into being by virtue of a condition imposed under the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), and that exists immediately before the commencement of this By-Law is regarded as an owners' association that came into being by virtue of a condition imposed by the Municipality in accordance with this By-Law.
- (8) The Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.
- (9) Conditions requiring a standard to be met must specifically refer to an approved or published standard.
- (10) No conditions may be imposed that rely on a third party for fulfilment.
- (11) Notwithstanding the provisions of any other section in this By-law, a conditional approval of an application lapses if the conditions therein are not complied with within
- (a) a period of ten (10) years from the date of such conditional approval, if no period for compliance is specified in such approval; or
 - (b) the period for compliance specified in such conditional approval, which, together with any extension which may be granted, may not exceed ten (10) years.

CHAPTER VI

EXTENSION OF VALIDITY PERIOD OF APPROVALS

Applications for extension of validity period

67. (1) The Municipality may, on a date before or after the expiry of the validity period of an approval, approve an application for the extension of a validity period imposed in terms of a condition of approval if the application for the extension of the period was submitted before the expiry of the validity period.
- (2) When the Municipality considers an application in terms of Subsection (1), it must have regard to the following:
- (a) whether the circumstances prevailing at the time of the original approval have materially changed;
 - (b) whether the legislative or policy requirements applicable to the approval that prevailed at the time of the original approval have materially changed; and
 - (c) whether there is a pending review application in court which may have an effect on the date of implementation of the approval.

- (3) If there are material changes in circumstances or in legislative or policy requirements that will necessitate new conditions of approval if an extension of a validity period is approved, an application contemplated in Section 15(2)(h) must be submitted for consideration before or simultaneously with the application for the extension of a validity period.
- (4) The extended validity period takes effect on and is reckoned from the expiry date of the validity period applicable to the original approval or from the expiry date of the previously extended validity period approved in terms of this By-Law.

CHAPTER VII

MUNICIPAL PLANNING DECISION-MAKING STRUCTURES

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

68. Applications or appeals decided—

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

Consideration of applications

69. (1) The Municipality may categorise applications referred to in section 15(2) for consideration and determination by an authorised employee.
- (2) The Tribunal considers and determines all applications referred to in section 15(2) that have not been categorised for consideration and determination by an authorised employee.

Establishment of Tribunal

70. (1) The Municipality must—

- (a) establish a Municipal Planning Tribunal for its municipal area;
 - (b) by agreement with one or more municipalities establish a joint Municipal Planning Tribunal; or
 - (c) agree to the establishment of a district Municipal Planning Tribunal by the District Municipality.
- (2) An agreement referred to in Subsection (1)(b) or (c) must provide for—
- (a) the composition of the Tribunal;
 - (b) the terms and conditions of appointment of members of the Tribunal;
 - (c) the determination of rules and procedures at meetings of the Tribunal; and
- (d) other matters as may be prescribed in terms of the Spatial Planning and Land Use Management Act.

Composition of Tribunal for municipal area

71. (1) A Tribunal established in terms of section 70(1)(a) must consist of at least the following members appointed by the Council:
- (a) three employees in the full time service of the Municipality; and
 - (b) two persons who are not employees of the Municipality or councillors.
- (2) The members of the Tribunal must have knowledge and experience of land use planning or the law related thereto and be representative of a broad range of appropriate experience and expertise.
- (3) A member of the Tribunal appointed in terms of Subsection (1)(b) may be—
- (a) an official or employee of—
 - (i) any department of state or administration in the national or provincial sphere of government;
 - (ii) a government business enterprise;
 - (iii) a public entity;
 - (iv) organised local government as envisaged in the Constitution;
 - (v) an organisation created by government to provide municipal support;
 - (vi) a non-governmental organisation; or
 - (vii) any other organ of state not provided for in subparagraphs (i) to (iv); or
 - (b) an individual in his or her own capacity.

Process for appointment of members for Tribunal for municipal area

72. (1) The members of the Tribunal referred to in Subsection 71(1)(b) may be appointed by the Council only after the Municipality has—
- (a) in the case of an official or employee contemplated in Section 71(3)(a), extended a written invitation to nominate an official or employee to serve on the Tribunal to the departments in the national and provincial spheres of government, other organs of state and organisations referred to in Section 71(3)(a); and
 - (b) in the case of member contemplated in section 71(3)(b), by notice in a newspaper in circulation in the municipal area, invited interested parties to submit, within the period stated in the notice, names of persons who meet the requirements to be so appointed.
- (2) An invitation for nominations must—
- (a) request sufficient information to enable the Municipality to evaluate the knowledge and experience of the nominee;
 - (b) request a written nomination in the form that the Municipality determines that complies with Subsection (3);
 - (c) permit self-nomination; and
 - (d) provide for a closing date for nominations, which date may not be less than 14 days from the date of publication of the invitation in terms of subsection (1)(b) or the written invitation in terms of subsection (1)(a), and no nominations submitted after that date may be considered by the Municipality.
- (3) A nomination in response to an invitation must—
- (a) provide for acceptance of the nomination by the nominee, if it is not a self-nomination;
 - (b) include confirmation by the nominee that he or she is not disqualified from serving as a member in terms of Section 74;

- (c) include agreement by the nominee that the Municipality may verify all the information provided by the nominee; and
 - (d) include a statement that the nominee will be obliged to commit to and uphold a code of conduct if he or she is appointed.
- (4) If no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the Municipality, the Municipality must invite nominations for a second time and follow the process required for the invitation for nominations referred to in this section.
- (5) If after the second invitation for nominations, no or insufficient nominations are received or if the nominees do not possess the requisite knowledge and experience or comply with any additional criteria which may have been determined by the Municipality, the executive authority of the Municipality must designate persons who possess the requisite knowledge and experience and comply with any additional criteria which may have been determined by the Municipality and appoint the persons.
- (6) Nominations submitted to the Municipality by virtue of Subsection (1) must be submitted in writing in the form determined by the Municipality and must contain the contents referred to in Subsection. (3).
- (7) The Municipality must convene an evaluation panel consisting of officials in the employ of the Municipality to evaluate nominations that comply with this section as received by the Municipality and determine the terms of reference of that evaluation panel.
- (8) The Council must appoint the members of the Tribunal after having regard to—
 - (a) the recommendations of the evaluation panel;
 - (b) the knowledge and experience of candidates in respect of land use planning or the law related thereto;
 - (c) the requirement that the members of the Tribunal must be representative of a broad range of appropriate experience and expertise;
 - (d) the powers and duties of the Tribunal; and
 - (e) the policy of the Municipality in respect of the promotion of persons previously disadvantaged by unfair discrimination.
- (9) The Council may not appoint a person to the Tribunal if that person—
 - (a) was not nominated in accordance with the provisions of this section;
 - (b) is disqualified from appointment as contemplated in Section 74; or
 - (c) does not possess the knowledge or experience required in terms of Section 71(2).
- (10) The Council must designate from among the members of the Tribunal—
 - (a) the chairperson of the Tribunal; and
 - (b) another member as deputy chairperson, to act as chairperson of the Tribunal when the chairperson is absent or unable to perform his or her duties.
- (11) The Municipal Manager must—
 - (a) inform the members in writing of their appointment;
 - (b) obtain written confirmation from the Council that the Council is satisfied that the Tribunal is in a position to commence its operations; and
 - (c) after receipt of the confirmation referred to in Paragraph (a), publish a notice in the *Provincial Gazette* of the following:
 - (i) the name of each member of the Tribunal;
 - (ii) the date on which the appointment of each member takes effect;

- (iii) the term of office of each member; and
 - (iv) the date that the Tribunal will commence its operation.
- (12) The Tribunal may commence its operations only after publication of the notice contemplated in Subsection (11) (c).

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

73. (1) A member of a Tribunal contemplated in Section 70(1)(a)—
- (a) is appointed for five years or a shorter period as the Municipality may determine; and
 - (b) may be appointed for further terms, subject to Section 37(1) of the Spatial Planning and Land Use Management Act.
- (2) The office of a member becomes vacant if—
- (a) the member tenders his or her resignation in writing to the chairperson of the Tribunal or, if the member who is resigning is the chairperson, to the Council;
 - (b) the member tenders his or her resignation in writing to the chairperson of the Tribunal;
 - (c) the member is removed from the Tribunal under Subsection (3); or
 - (d) the member dies.
- (3) The Council may, after having given the member an opportunity to be heard, remove a member of the Tribunal if—
- (a) sufficient grounds exist for his or her removal;
 - (b) the member contravenes the code of conduct referred to in Section 76;
 - (c) the member becomes subject to a disqualification from membership of the Tribunal as referred to in Section 74.
- (4) A vacancy on the Tribunal must be filled by the Council in terms of Section 71 and 72.
- (5) A member who is appointed by virtue of Subsection (4) holds office for the unexpired part of the period for which the member he or she replaces was appointed.
- (6) Members of the Tribunal referred to in Section 71(3)(b) must be appointed on the terms and conditions and must be paid the remuneration and allowances and be reimbursed for expenses, as determined by the Council.
- (7) An official of the Municipality appointed in terms of Section 71(1)(a) as a member of the Tribunal—
- (a) may serve as member of the Tribunal only for as long as he or she is in the full time employ of the Municipality;
 - (b) is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership on the Tribunal.
- (8) A person appointed in terms of Section 71(1)(b) as a member of the Tribunal—
- (a) is not an employee on the staff establishment of the Municipality;
 - (b) in the case of a person referred to in Section 71(3)(a), is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other additional employee benefit as a result of his or her membership of the Tribunal;
 - (c) performs the specific tasks in respect of the consideration of an application allocated to him or her by the chairperson of the Tribunal;

- (d) sits at such meetings of the Tribunal that requires his or her relevant knowledge and experience as determined by the chairperson of the Tribunal;
 - (e) in the case of a person referred to in Section 71(3)(b), is entitled to a seating and travel allowance as determined by the Municipality for each meeting of the Tribunal that he or she is required to attend; and
 - (f) in the case of a person referred to in Section 71(3)(b), is not entitled to overtime, annual leave, sick leave, maternity leave, family responsibility leave, study leave, special leave, a performance bonus, medical scheme contribution, pension, motor vehicle or any other benefit to which a municipal employee is entitled to.
- (9) The allowances referred to in Subsection (8)(e) are subject to taxation in accordance with the normal tax rules that are issued by the South African Revenue Service.

Disqualification from membership of Tribunal

74. (1) A person may not be appointed or continue to serve as a member of the Tribunal if that person—
- (a) is not a citizen or permanent resident of the Republic of South Africa;
 - (b) is a member of Parliament, a Provincial Legislature, a municipal council or a House of Traditional Leaders;
 - (c) is an unrehabilitated insolvent;
 - (d) has been declared by a court of law to be mentally incompetent or has been detained under the Mental Health Care Act, 2002 (Act 17 of 2002);
 - (e) has at any time been convicted of an offence involving dishonesty;
 - (f) has at any time been removed from an office of trust on account of misconduct;
 - (g) has previously been removed from a tribunal for a breach of the Spatial Planning and Land Use Management Act or this By-Law;
 - (h) has been found guilty of misconduct, incapacity or incompetence; or
 - (i) fails to comply with the Spatial Planning and Land Use Management Act or this By-Law.
- (2) A member must vacate office if that member becomes subject to a disqualification as contemplated in Subsection (1).
- (3) A member of a Tribunal—
- (a) must make full disclosure of any conflict of interest, including any potential conflict; and
 - (b) may not attend, participate or vote in any proceedings of the Tribunal in relation to any matter in respect of which the member has a conflict of interest.
- (4) For the purposes of this section, a member has a conflict of interest if—
- (a) the member, a spouse, family member, partner or business associate of the member is the applicant or has a pecuniary or other interest in the matter before the Tribunal;
 - (b) the member has any other interest that may preclude or may reasonably be perceived as precluding the member from performing the functions of the member in a fair, unbiased and proper manner;
 - (c) the member is an official in the employ of national, provincial or local government, if the department by which such an official is employed, has a direct or substantial interest in the outcome of the matter.
- (5) The Council may at any time remove any member of the Tribunal from office—
- (a) if there are reasonable grounds justifying the removal; or
 - (b) where a member has been disqualified in terms of Subsection (1), after giving such a member an opportunity to be heard.

- (6) If a member's appointment is terminated or the member resigns, the Council may appoint a person to fill the vacancy for the unexpired portion of the vacating member's term of office, in accordance with Sections 71 and 72.

Meetings of Tribunal for municipal area

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

Code of conduct for members of Tribunal for municipal area

76. (1) The code of conduct in Schedule 1 applies to every member of a Tribunal contemplated in Section 71(1).
- (2) If a member contravenes the code of conduct, the Council may—
- (a) in the case of member contemplated in Section 71(1)(a), institute disciplinary proceedings against the member;
 - (b) remove the member from office.

Administrator for Tribunal for municipal area

77. (1) The Municipal Manager must appoint or designate an employee as the Administrator and other staff for the Tribunal contemplated in Section 70(1)(a) in terms of the Municipal Systems Act.

- (2) The Administrator must—
- (a) liaise with the relevant Tribunal members and the parties concerned regarding any application to be determined by, or other proceedings of, the Tribunal;
 - (b) maintain a diary of meetings of the Tribunal;
 - (c) allocate a meeting date for, and application number to, an application;
 - (d) arrange the attendance of members of the Tribunal at meetings;
 - (e) arrange venues for Tribunal meetings;
 - (f) perform the administrative functions in connection with the proceedings of the Tribunal;
 - (g) ensure that the proceedings of the Tribunal are conducted efficiently and in accordance with the directions of the chairperson of the Tribunal;
 - (h) arrange the affairs of the Tribunal so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated applications and authorisations;
 - (i) notify the parties concerned of decisions and procedural directives given by the Tribunal;
 - (j) keep a record of all applications submitted to the Tribunal as well as the outcome of each, including—
 - (i) decisions of the Tribunal;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the Tribunal; and
 - (k) keep records by any means as the Tribunal may deem expedient.

Functioning of Tribunal for municipal area

- 78.**
- (1) The meetings of the Tribunal contemplated in Section 75(1)(a) must be held at the times and places as the chairperson may determine.
 - (2) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application, requests to make a verbal representation at a meeting of the Tribunal, he or she must submit a written request to the Administrator at least 14 days before that meeting.
 - (3) The Chairperson may approve a request contemplated in Subsection (2), subject to reasonable conditions.
 - (4) An application may be considered by the Tribunal by means of—
 - (a) the consideration of the written application and comments; or
 - (b) an oral hearing.
 - (5) The application may be considered in terms of Subsection (4)(a) if it appears to the Tribunal that the issues for determination of the application can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
 - (6) An oral hearing may be held—
 - (a) if it appears to the Tribunal that the issues for determination of the application cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
 - (b) if such hearing would assist in the expeditious and fair disposal of the application.
 - (7) If appropriate in the circumstances, the oral hearing may be held by electronic means.

Appeals

79. (1) The executive authority (*executive committee/executive mayor of the Municipality/if the Municipality does not have an executive committee or executive mayor, a committee of councillors*) is the Appeal Authority in respect of decisions of the Tribunal or an authorised employee contemplated in section 68(a) or (b) and a failure to decide on an application as contemplated in section 58.
- (2) A person whose rights are affected by a decision contemplated in Subsection (1) may appeal in writing to the Appeal Authority within 21 days of notification of the decision.
- (3) An applicant may appeal in writing to the Appeal Authority in respect of the failure of the Tribunal or an authorised employee to make a decision within the period contemplated in Section 57(1), (2) or (3), any time after the expiry of the period contemplated in that section.
- (4) An appeal is lodged by serving the appeal on the Municipal Manager in the form determined by the Municipality and subject to section 80(1).
- (5) When the Appeal Authority considers an appeal, it must have regard to—
- (a) the provisions of Section 65, read with the necessary changes; and
 - (b) the comments of the Provincial Minister contemplated in Section 52 of the Land Use Planning Act.

Procedure for appeal

80. (1) An appeal is invalid if—
- (a) in the case of an appeal contemplated in Section 79(2), it is not lodged within the period referred to in that subsection; or
 - (b) it does not comply with this section 79 (2) – (4) and 80(2)-(7).
- (2) An appeal must set out the following:
- (a) the grounds for the appeal which may include the following grounds:
 - (i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
 - (ii) grounds relating to the merits of the land development or land use application on which the appellant believes the Tribunal or authorised employee erred in coming to the conclusion that the Tribunal or authorised employee did, as the case may be;
 - (b) whether the appeal is lodged against the whole decision or a part of the decision;
 - (c) if the appeal is lodged against a part of the decision, a description of the part;
 - (d) if the appeal is lodged against a condition of approval, a description of the condition;
 - (e) the factual or legal findings that the appellant relies on;
 - (f) the relief sought by the appellant;
 - (g) any issue that the appellant wishes the Appeal Authority to consider in making its decision; and
 - (h) in the case of an appeal in respect of the failure of a decision maker to make a decision, the facts that prove the failure.
- (3) Any person who lodges an appeal must within the period referred subsection 79(2), submit proof of payment of appeal fees as may be determined by the Municipality to the Municipal Manager.
- (4) An applicant who lodges an appeal must simultaneously serve notice of the appeal on any person who commented on the application concerned and any other person as the Municipality may determine.

- (5) The notice must be served in accordance with Section 35.
- (6) The notice contemplated in subsection (5) must invite persons to comment on the appeal within 21 days of the date of notification.
- (7) The appellant must submit proof of service of the notice as contemplated in Subsection (5) to the Municipal Manager within 14 days of the date of notification.
- (8) If a person other than the applicant lodges an appeal, the Municipal Manager must give written notice of the appeal to the applicant within 14 days of receipt thereof.
- (9) An applicant who has received notice of an appeal in terms of subsection (8) may submit comment on the appeal to the Municipal Manager within 21 days of the date of notification.
- (10) The Municipality may refuse to accept any comments on an appeal submitted after the closing date for comments on an appeal.
- (11) The Municipal Manager—
 - (a) may request the Provincial Minister within 14 days of the receipt of an appeal to comment in writing on the appeal within 60 days of the date of notification of the request;
 - (b) must notify and request the Provincial Minister within 14 days of the receipt of an appeal to comment on the appeal within 60 days of the date of notification of the request in respect of appeals relating to the following applications:
 - (i) a development outside the Municipality's planned outer limit of urban expansion as reflected in its Municipal Spatial Development Framework;
 - (ii) if the Municipality has no approved Municipal Spatial Development Framework, a development outside the physical edge, including existing urban land use approvals, of the existing urban area;
 - (iii) a rezoning of land zoned for agricultural or conservation purposes;
 - (iv) any category of land use applications as may be prescribed by the Provincial Minister; and
 - (c) must on receipt of an appeal in terms of this section notify the applicant in writing whether or not the operation of the approval of the application is suspended.
- (12) An authorised employee must draft a report assessing an appeal and must submit it to the Municipal Manager within—
 - (a) 45 days of the closing date for comment requested in terms of subsections (6) and (9), if no comment was requested in terms of Subsection (11); or
 - (b) 45 days of the closing date for comments requested in terms of Subsection (11).
- (13) The Municipal manager must within 14 days of receiving the report contemplated in Subsection (12) submit the appeal to the Appeal Authority.
- (14) The Municipal Manager or an employee designated by him or her must—
 - (a) liaise with the Appeal Authority and the parties concerned regarding any appeal lodged with the Appeal Authority;
 - (b) maintain a diary of meetings of the Appeal Authority;
 - (c) allocate a meeting date for, and appeal number to, an appeal;
 - (d) arrange the attendance of members of the Appeal Authority at meetings;
 - (e) arrange venues for the Appeal Authority;
 - (f) perform the administrative functions in connection with the proceedings of the Appeal Authority;

- (g) ensure that the proceedings of the Appeal Authority are conducted efficiently and in accordance with the directions of the Appeal Authority;
 - (h) arrange the affairs of the Appeal Authority so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated appeal procedures;
 - (i) notify the parties concerned of decisions and procedural directives given by the Appeal Authority;
 - (j) keep a record of all appeals lodged as well as the outcome of each, including—
 - (i) decisions of the Appeal Authority;
 - (ii) on-site inspections and any matter recorded as a result thereof;
 - (iii) reasons for decisions; and
 - (iv) proceedings of the Appeal Authority; and
 - (v) keep records by any means as the Appeal Authority may deem expedient.
- (15) An appellant may, at any time before the Appeal Authority makes a decision on an appeal submitted by the appellant, withdraw the appeal by giving written notice of the withdrawal to the Municipal Manager.
- (16) The appellant must in writing inform the Municipality if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the appeal.

Consideration by Appeal Authority

- 81.** (1) An appeal may be considered by the Appeal Authority by means of—
- (a) the consideration of the written appeal and comments; or
 - (b) an oral hearing.
- (2) The appeal may be considered in terms of subsection (1)(a) if it appears to the Appeal Authority that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
- (3) An oral hearing may be held—
- (a) if it appears to the Appeal Authority that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
 - (b) if such hearing would assist in the expeditious and fair disposal of the appeal.
- (4) If appropriate in the circumstances, the oral hearing may be held by electronic means.
- (5) If the Appeal Authority decides to hold an oral hearing, any party to the appeal proceedings may appear in person or may be represented by another person.
- (6) The Appeal Authority must ensure that every party to a proceeding before the Appeal Authority is given an opportunity to present his or her case, whether in writing or orally as contemplated in subsections (2) and (3) and, in particular, to inspect any documents to which the Appeal Authority proposes to have regard in reaching a decision in the proceeding and to submit comments thereon in accordance with this Chapter or, in the case of an oral hearing, to make submissions in relation to those documents.
- (7) The Appeal Authority must—
- (a) consider and determine all appeals lawfully submitted to it;
 - (b) confirm, vary or revoke the decision of the Tribunal or authorised employee;
 - (c) provide reasons for any decision made by it;

- (d)* give directions relevant to its functions to the Municipality;
 - (e)* keep a record of all its proceedings; and
 - (f)* determine whether the appeal falls within its jurisdiction.
- (8) Subject to subsection (12), the Appeal Authority must decide on an appeal within 60 days of receipt of the assessment report as contemplated in section 80(13).
- (9) If the Appeal Authority revokes a decision of the Tribunal or authorised employee it may—
 - (a)* remit the matter to the Tribunal or authorised employee—
 - (i)* if there was an error in the process that was unfair and that cannot be corrected by the Appeal Authority; and
 - (ii)* with instructions regarding the correction of the error; or
 - (b)* replace the decision with any decision it regards necessary.
- (10) The Appeal Authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.
- (11) The Appeal Authority must within 21 days from the date of its decision notify the parties to an appeal in writing of—
 - (a)* the decision and the reasons therefor; and
 - (b)* if the decision on an appeal upholds an approval, notify the applicant in writing that he or she may act on the approval.
- (12) The Appeal Authority may extend the period contemplated in subsection (8) in exceptional circumstances, including the following:
 - (a)* if an interested person has submitted a petition for intervener status;
 - (b)* if an oral hearing is to be held.

CHAPTER VIII PROVISION OF ENGINEERING SERVICES

Responsibility for provision of engineering services

- 82.**
- (1) An applicant is responsible for the provision, installation and costs of internal engineering services required for a development once an application is approved.
 - (2) The Municipality is responsible for the provision and installation of external engineering services.
 - (3) If the Municipality is not the provider of an engineering service, the applicant must satisfy the Municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.
 - (4) The Municipality may enter into a written agreement with an applicant to provide that—
 - (a)* the applicant is responsible for the provision, installation and costs of external engineering services instead of paying the applicable development charges; or
 - (b)* the applicant is responsible for the provision, installation and costs of external engineering services and that the fair and reasonable costs of the external engineering services may be set off against the development charges payable by the applicant.

Development charges and other contributions

- 83.**
- (1) The applicant must pay development charges to the Municipality in respect of the provision and installation of external engineering services.
 - (2) These external engineering services for which development charges are payable must be set out in a policy adopted by the Municipality.
 - (3) The amount of the development charges payable by an applicant must be calculated in accordance with the policy adopted by the Municipality.
 - (4) The date by which development charges must be paid and the means of payment must be specified in the conditions of approval.
 - (5) The development charges imposed are subject to escalation at the rate calculated in accordance with the policy on development charges.
 - (6) The Municipality must annually submit a report to the Council on the development charges paid to the Municipality, together with a statement of the expenditure of the amount and the purpose of the expenditure.
 - (7) When determining the contribution contemplated in Section 66(4) and (5), the Municipality must have regard to provincial norms and standards as well as—
 - (a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;
 - (b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;
 - (c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;
 - (d) money in respect of contributions contemplated in Section 66(4) paid in the past by the owner of the land concerned; and
 - (e) money in respect of contributions contemplated in Section 66(4) to be paid in the future by the owner of the land concerned.

Land for parks, open spaces and other uses

- 84.**
- (1) When the Municipality approves an application for the use of land for residential purposes, the Municipality may require the applicant to provide land for parks or public open spaces in terms of conditions of approval imposed in accordance with section 66.
 - (2) The extent of land required for parks or public open spaces is determined by the Municipality in accordance with a policy adopted by the Municipality.
 - (3) The land required for parks or public open spaces must be provided within the land area of the application or may, with the consent of the Municipality, be provided elsewhere within the municipal area.
 - (4) When an application is approved without the required provision of land for parks or open spaces within the land area of the development, the applicant may be required to pay money to the Municipality in lieu of the provision of land.

CHAPTER IX ENFORCEMENT

Enforcement

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

Offences and penalties

86. (1) A person is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment if he or she—
- (a) contravenes or fails to comply with Sections 15(1), (4), (8) and (9), 20(1), 21(4), 31(1), 59(3), 62(2) or 88(2);
 - (b) utilises land in a manner other than prescribed by a zoning scheme without the approval of the Municipality;
 - (c) upon registration of the transfer of ownership of the first land unit arising from a subdivision to a person other than the developer, fails to transfer all common property arising from the subdivision to the owners' association;
 - (d) supplies particulars, information or answers in an application, or in an appeal against a decision on an application, or in any documentation or representation related to an application or an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct;
 - (e) falsely professes to be an authorised employee or the interpreter or assistant of an authorised employee; or
 - (f) hinders or interferes with an authorised employee in the exercise of any power or the performance of any duty of that employee.
- (2) An owner who permits his or her land to be used in a manner set out in subsection (1)(b) and who does not cease that use or take reasonable steps to ensure that the use ceases, is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence in terms of this By-Law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable upon conviction to imprisonment for a period not exceeding three months or to an equivalent fine or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission.
- (4) The Municipality may adopt fines and contravention penalties to be imposed in the enforcement of this By-Law.

Serving of compliance notices

87. (1) The Municipality must serve a compliance notice on a person if it has reasonable grounds to suspect that the person is guilty of an offence in terms of Section 86.
- (2) A compliance notice must instruct the person to cease the unlawful utilisation of land or construction activity or both, without delay or within the period determined by the Municipality, and may include an instruction to—

- (a) demolish, remove or alter any building, structure or work unlawfully erected or constructed or to rehabilitate the land or restore the building concerned to its original form or to cease the activity, as the case may be, within the period determined by the Municipal Manager;
 - (b) submit an application for the approval of the utilisation of the land or construction activity in terms of this By-Law within 30 days of the service of the compliance notice and to pay the contravention penalty within 30 days of the approval of the utilisation; or
 - (c) rectify the contravention of or non-compliance with a condition of approval within a specified period.
- (3) A person who has received a compliance notice with an instruction contemplated in Subsection (2)(a) may not submit an application in terms of Subsection (2)(b).
- (4) An instruction to submit an application in terms of Subsection (2)(b) must not be construed as an indication that the application will be approved.
- (5) In the event that the application submitted in terms of Subsection (2)(b) is refused, the owner must demolish, remove or alter the building, structure or work unlawfully erected or constructed and rehabilitate the land or restore the building.
- (6) A person who received a compliance notice in terms of this section may object to the notice by submitting written representations to the Municipality within 30 days of the date of notification.

Contents of compliance notice

88. (1) A compliance notice must—

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

- (2) Any person on whom a compliance notice is served must comply with that notice within the period stated in the notice unless the person has objected to the notice in terms of Section 89 and the Municipality has not decided on the matter in terms of that section or the Municipality has agreed to suspend the operation of the compliance notice in terms of Section 89(2).

Objections to compliance notice

- 89.**
- (1) Any person who receives a compliance notice in terms of Section 87 may object to the notice by making written representations to the Municipality within 30 days of the date of notification.
 - (2) After consideration of any objections or representations made in terms of Subsection (1) and any other relevant information, the Municipality—
 - (a) may suspend, confirm, vary or withdraw the compliance notice or any part of the compliance notice; and
 - (b) must specify the period within which the person to whom the compliance notice is addressed must comply with any part of the compliance notice that is confirmed or varied.

Failure to comply with compliance notice

- 90.** If a person fails to comply with a compliance notice, the Municipality may—
- (a) lay a criminal charge against the person;
 - (b) apply to the court for an order—
 - (i) restraining that person from continuing the unlawful utilisation of the land;
 - (ii) directing that person to, without the payment of compensation—
 - (aa) demolish, remove or alter any building, structure or work unlawfully erected or constructed; or
 - (bb) rehabilitate the land concerned;
 - (c) in the case of a consent use or temporary departure, withdraw the approval granted and take any of the other steps contemplated in section 88(1)(g).

Compliance certificates

- 91.**
- (1) An authorised employee who is satisfied that the owner or occupier of any land or premises has complied with a compliance notice may issue a certificate, in the manner and form determined by the Municipality, to confirm the compliance.
 - (2) The authorised employee must submit a report to the Municipality regarding his or her findings contemplated in Subsection (1) and the issuing of a compliance certificate.

Urgent matters

- 92.**
- (1) The Municipality does not have to comply with Sections 87(6), 88(1)(f) and 89 in a case where an unlawful utilisation of land must be stopped urgently and may issue a compliance notice calling upon the person or owner to cease the unlawful utilisation of land immediately.
 - (2) If the person or owner fails to cease the unlawful utilisation of land immediately, the Municipality may apply to the court for an urgent interdict or any other relief necessary.

General powers and functions of authorised employees

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

Powers of entry, search and seizure

94. (1) In ensuring compliance with this By-law an authorised employee may in accordance with section 93—
- (a) question any person on land or premises entered upon or in a building entered who, in the opinion of the authorised employee, may be able to provide information on a matter that relates to an investigation regarding an offence in terms of, or contravention of, this By-Law;
 - (b) question any person on that land or those premises or in that building about any act or omission in respect of which there is a reasonable suspicion that it constitutes—
 - (i) an offence in terms of this By-Law;
 - (ii) a contravention of this By-Law; or
 - (iii) a contravention of an approval or a term or condition of that approval;
 - (c) question that person about any structure, object, document, book, record, written or electronic information or inspect any structure, object, document, book, record or written or electronic information that may be relevant for the purpose of the investigation;
 - (d) copy or make extracts from any document, book, record, written or electronic information referred to in Paragraph (c), or remove that document, book, record or written or electronic information in order to make copies thereof or extracts therefrom;
 - (e) require that person to produce or deliver to a place specified by the authorised employee any document, book, record, written or electronic information referred to in Paragraph (c) for inspection;
 - (f) examine that document, book, record, written or electronic information or make a copy thereof or an extract therefrom;
 - (g) require from that person an explanation of any entry in that document, book, record, written or electronic information;
 - (h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
 - (i) take photographs or make audio-visual recordings of anything or any person on that land or those premises or in that building relevant to the purposes of the investigation; or
 - (j) seize a book, record, written or electronic information referred to in Paragraph (c) or article, substance, plant or machinery referred to in Paragraph (h) or a part or sample thereof that in his or her opinion may serve as evidence at the trial of the person to be charged with an offence under this By-Law or the common law, provided that the user of the article, substance, plant or machinery on the land or premises or in the building concerned may make copies of that book, record or document before the seizure.

- (2) When an authorised employee removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated in this section, he or she must issue a receipt to the owner or person in control thereof.
- (3) An authorised employee may not have a direct or indirect personal or private interest in the matter to be investigated.

Warrant of entry for enforcement purposes

95. (1) A judge of a High Court or a Magistrate for the district in which the land is situated may, at the request of the Municipality, issue a warrant to enter upon the land or premises or building if—
- (a) the prior permission of the occupier or owner cannot be obtained after reasonable attempts; or
 - (b) the purpose of the inspection would be frustrated by the occupier or owner's prior knowledge thereof.
- (2) A warrant may be issued only if it appears to the Judge or Magistrate from information on oath or affirmation that there are reasonable grounds for believing that—
- (a) an authorised employee has been refused entry to land or a building that he or she is entitled to inspect;
 - (b) an authorised employee will be refused entry to land or a building that he or she is entitled to inspect;
 - (c) an offence contemplated in section 86 is occurring or has occurred and an inspection of the premises is likely to yield information pertaining to that offence; or
 - (d) the inspection is reasonably necessary for the purposes of this By-Law.
- (3) A warrant must authorise the Municipality to enter upon the land or premises or to enter the building to take any of the measures referred to in Section 94 as specified in the warrant, on one occasion only, and that entry must occur—
- (a) within one month of the date on which the warrant was issued; and
 - (b) at a reasonable time, except where the warrant was issued on grounds of urgency.

Regard to decency and order

96. The entry upon land or premises or in a building under this Chapter must be conducted with strict regard to decency and order, which must include regard to—
- (a) a person's right to respect for and protection of his or her dignity;
 - (b) the right to freedom and security of the person; and
 - (c) a person's right to personal privacy.

Enforcement litigation

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

CHAPTER X

MISCELLANEOUS

Naming and numbering of streets

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

Conflict

99. In the event of an inconsistency between the English, Afrikaans or Xhosa text, the English text shall prevail.

Repeal and Transitional Arrangements

100. (1) The By-Laws listed in Schedule 2 are repealed.
- (2) An application that has already been accepted by the Mossel Bay Municipality in terms of section 15(2) before this By-law become effective, will be processed and considered in terms of the legislation as it existed at the time of acceptance.

Short title and commencement

101. (1) This By-Law is called the Mossel Bay Municipality: By-Law on Municipal Land Use Planning, 2021.
- (2) The By-law comes into operation on the date it is published in the *Provincial Gazette*.

SCHEDULE 1

CODE OF CONDUCT FOR MEMBERS OF TRIBUNAL

General conduct

1. A member of the Tribunal must at all times—
- (a) act in accordance with the principles of accountability and transparency; and
- (b) disclose his or her personal interests in any decision to be made in the planning process in which he or she serves or has been requested to serve;

- (c) abstain completely from direct or indirect participation as an advisor in any matter in which he or she has a personal interest and leave any chamber in which such matter is under deliberation unless the personal interest has been made a matter of public record and the Council has given written approval and has expressly authorised his or her participation.

2. A member of the Tribunal may not—

- (a) use his or her position or privileges as Tribunal member or confidential information obtained as a Tribunal member, for private gain or to improperly benefit another person; or
 (b) participate as a decision-maker concerning a matter in which that Tribunal member or that member's spouse, family member, partner or business associate has a direct or indirect personal interest or private business interest.

Gifts

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

Undue influence

4. A member of the Tribunal may not—

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

SCHEDULE 2

BY-LAWS REPEALED BY SECTION 100

The Mossel Bay Municipality: By-Law on Municipal Land Use Planning, 2015 (as amended in 2019) is repealed.

SCHEDULE 3

RECORD OF AMENDMENTS

None

