

2018 REVIEW - PROPOSED AMENDMENTS TO THE UMHLATHUZE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

SUMMARY OF PROPOSED CHANGES

1. **By the addition of the following definitions to the bylaw:**

“Appeal Authority Registrar” is the person appointed in terms of Section 64 of this By-law and has the same meaning as Municipal Manager for the purposes of an appeal;

“intervener status” means a person who has been granted status as an interested and affected party in terms of Regulation 31(1) of SPLUMA, read with Section 117 of this By-law;

“Municipal Planning Registrar or Deputy Registrar” means a municipal official designated or appointed in terms of either Section 17(1) or Section 17(2) of this By-law, whichever is applicable, or is acting as such in terms of Section 17(6) of this By-law and who performs the powers and functions as contemplated in Section 17(4)-(5) of this By-law;

The purpose of the additional definitions is to aid in the interpretation of the bylaw.

2. **By deleting the current definitions in the bylaw listed below and by substituting them to read as follows:**

“building line” means a line parallel to any boundary of an erf within which no building or structure may be erected, the extent of which is prescribed in terms of the Land Use Scheme. It shall include a street building line, side building lines and rear building line;

“land development application” means an application submitted to the Municipality in terms of Section 27(1) of this By-law;

“Municipal Planning Approval Authority” means the Municipal Planning Tribunal or Municipal Planning Authorised Official or Municipal Council delegated to determine and decide on land development applications in terms of this By-law;

“public facility” includes educational facilities, a nursing home, frail care unit, medical facility, playground, sports field, public open space, community centre, municipal office or hall, utility facilities, place of worship, cemetery, public transport facility and parking lot;

“Record of Decision” means a Record of Decision of an application for municipal planning approval, including any amendment thereto, or a judgment by the Municipal Planning Appeal Authority as contemplated in this By-law;

“Spatial Development Framework” means the Spatial Development Framework adopted by the Municipal Council in terms of Section 25(1) of the Municipal Systems Act and Section 20(1) of the SPLUMA;

“the Land Use Scheme” means the uMhlathuze Land Use Scheme adopted by the Municipal Council in terms of Chapter 5 of SPLUMA and this By-law;

The purpose of the revised definitions is to aid in the interpretation of the Bylaw.

3. By the deletion of the following definition:

“**land use scheme**” means the land use scheme adopted by the Municipality in terms of this By-law or any other national or provincial legislation;

The definition is to be deleted since it is duplicated (refer to “*the Land Use Scheme*”).

4. By the deletion of Section 2(4) and the substitution thereof with the following wording:

Application of By-law

2.(4) No person may use or develop land unless the use or land development is permitted in terms of the Municipality’s adopted land use scheme or approval granted in terms of this By-law.

The purpose of the substitution is to correct an error.

5. By the deletion of Section 4 and the substitution thereof with the following wording:

- 4.The Municipality must have a Municipal Planning Approval Authority comprising of the following:-
- (a) the Municipal Planning Authorised Official;
 - (b) the Municipal Planning Tribunal; and
 - (c) the Municipal Council.

The purpose of the substitution is to correct an error.

6. By the deletion of Section 6(1) and the substitution thereof with the following wording:

- 6.(1) The Municipal Council 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.

The purpose of the substitution is to clarify delegation of power.

7. By the deletion of Section 7(15) and the substitution thereof with the following wording:

Appointment and composition of the Municipal Planning Tribunal

7. (15) In event of the Municipality deciding to appoint members to the Municipal Planning Tribunal as provided in Sub-section (2)(b) above, it shall comply with the call for nomination procedures as set out in the SPLUMA Regulations.

The purpose of the substitution is to correct an error.

8. By the deletion of Section 12(3) and the substitution thereof with the following wording:

Constitution of Municipal Planning Tribunal for Decision Making

12. (3) The Chairperson of the Municipal Planning Tribunal must preside over a meeting of the Municipal Planning Tribunal. In the absence of the Chairperson and Deputy Chairperson, the attending members of the Municipal Planning Tribunal may designate a Presiding Officer by means of a proposal being seconded, provided that a quorum is present.

The purpose of the substitution is to clarify that the Presiding Officer is appointed by the attending members of the Municipal Planning Tribunal, not upfront by the Chairperson.

9. By the deletion of Section 13 and the substitution thereof with the following wording:

Decision of Municipal Planning Tribunal

13.(1) A recommendation or decision on an application for municipal planning approval is decided by a majority of all members present at a meeting of the Municipal Planning Tribunal.

(2) In event of the equality of votes, the Chairperson or the designated Presiding Officer has a deciding vote.

(3) The Chairperson or Presiding Officer must sign the minutes of the meeting recording the decision of the Municipal Planning Tribunal.

(4) The decision of the Municipal Planning Tribunal shall be communicated to the parties in the application within 30 days from the date of making of such a decision.

(5) The Municipal Planning Registrar shall keep a register of all municipal planning approvals it has made.

(6) The Municipal Planning Tribunal shall after every three months provide a report to the Municipality on all land development applications it considered or determined and the outcomes thereof.

The purpose of the substitution is to aid in interpretation and to clarify delegated authority.

10. By the deletion of Section 20(6) and the substitution thereof with the following wording:

Legal effect of land use scheme

20. (6) The right to use land for a purpose may not be alienated or separated from the land to which it relates.

The purpose of the substitution is to aid in interpretation.

11. By the deletion of Section 26 and the substitution thereof with the following wording:

Categorisation of land development applications for municipal planning approval

26. The Municipal Council has prescribed, in accordance with Schedule 3 of this By-law, categories for all land development applications requiring municipal planning approval to be determined and decided by:

- (a) the Municipal Planning Tribunal;
- (b) the Municipal Planning Authorised Official; and
- (c) the Municipal Council.

The purpose of the substitution is to aid in interpretation.

12. By the deletion of Section 27(1)(l) and the substitution thereof with the following wording:

Land development activities which require municipal planning approval

27.(1)(l) material amendments to, or partial cancellation of a Municipal Planning Approval Authority's decision on an application for municipal planning approval or application for an Amending General Plan, read with Section 60A of this By-law;

The purpose of the substitution is to clarify delegation of power and to make provision for applications for an Amending General Plan.

13. By the deletion of Section 31 and the substitution thereof with the following wording:

Application on land where a previous approval has not yet been finalised

31. An application on land, which is subject to a previous land development approval and where conditions of approval have not yet been complied with, shall not be considered unless the previous approval is cancelled and re-applied for, or application is specifically made to amend such approval in terms of Section 27(1)(l) of this By-law.

The purpose of the substitution is to aid in interpretation.

14. By the deletion of Section 32(1) and 32(2) and the substitution thereof with the following wording:

Procedures for applications for municipal planning approval

32. (1) The Municipality has prescribed procedures in terms of Schedule 5 of this By-law for the submission and processing of all land development applications requiring approval.

(2) The Municipality has determined which applications must follow a public participation process. The extent of public consultation and procedure to be followed is set out in Schedule 4 of this By-law.

The purpose of the substitution is to aid in interpretation.

15. By the deletion of Section 36(1) and the substitution thereof with the following wording:

Public Participation

36.(1) The Municipal Planning Registrar must inform an applicant once it considers an application for land development to be complete. This signifies the commencement of the administrative phase of the application as set out in Regulation 16 of SPLUMA.

The purpose of the substitution is to clarify delegation of power.

16. By the deletion of Section 40 and the substitution thereof with the following wording:

Relationship between municipal planning approval and the land use scheme

40. The Municipal Planning Approval Authority may not approve any land development activity as listed in Section 27(1) of this By-law, which is in conflict with the provisions of the land use scheme.

The purpose of the substitution is to clarify delegation of power.

17. By the deletion of Section 45 and the substitution thereof with the following wording:

Appeal against Municipal Planning Approval Authority's decision

45. A person who intends to appeal the decision of the Municipal Planning Approval Authority may do so in line with the provisions of Chapter 5 of this By-law.

The substitution is required as the content of Section 45 is duplicated in Section 67 of the By-law.

18. By the deletion of Section 47:

The deletion is required to make provision for submission of new applications even though a planning application was previously refused. Each application will therefore be considered on its own merit.

19. By the deletion of Section 50 and the substitution thereof with the following wording:

Disclosure that property is not registrable before compliance with conditions

50. An agreement for the alienation of a subdivision of land or for consolidated land that was approved by a Municipal Planning Approval Authority, but for which it has not issued a certificate of compliance with conditions of approval, must contain a clause disclosing-

- (a) that the owner has not yet complied with the conditions of approval; and
- (b) that the property is not registrable as contemplated in Section 2 of the Alienation of Land Act, 1981 (Act No. 68 of 1981).

The purpose of the substitution is to clarify delegation of power, and to correct the reference to the relevant section of the Alienation of Land Act.

20. By the deletion of Section 54(2) and the substitution thereof with the following wording:

Registration of ownership for subdivision of a property or consolidated property, or opening of township register

54.(2) Subject to applicable national legislation, the Registrar of Deeds may not register land in separate ownership, unless the Municipality has issued a certificate in terms of Section 53 of SPLUMA and Section 48(1) of this By-law stating that the conditions of approval for the subdivision of the land, consolidation of the land, or township establishment, have been complied with.

The purpose of the substitution is to aid in interpretation.

21. By the deletion of Section 56(2) and the substitution thereof with the following wording:

Lodging of deeds, plans and documents with Registrar of Deeds pursuant to an application for the removal, amendment, or suspension of a restrictive condition of title or servitude and certificate of compliance with certain conditions of approval

56.(2) A person may not apply to the Registrar of Deeds to record the removal, amendment, or suspension of a restrictive condition of title or servitude, unless the Municipality has issued a certificate in terms of Section 53 of SPLUMA and Section 48(1) of this By-law stating that the conditions of approval, have been complied with.

The purpose of the substitution is to aid in interpretation.

22. By the deletion of Section 57 and the substitution thereof with the following wording:

Lapsing of municipal planning approval

57. (1) Should the applicant fail to comply with the conditions of approval or conditions of establishment, the municipal planning approval lapses:

(a) after the time period specified by the Municipal Planning Approval Authority for compliance; or
(b) within a period of five years after the effective date of the Municipal Planning Approval Authority's decision.

(2) The Municipality must update its records, including its land use scheme, to reflect the lapsing of an application for municipal planning approval.

(3) The Surveyor General and Registrar of Deeds may require the Municipality to confirm in writing whether municipal planning approval for the subdivision of land, consolidation of land, notarial tying of adjacent properties, township establishment or the removal, amendment or suspension of a restrictive condition of title has lapsed.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

23. By the deletion of Section 59(1) and the substitution thereof with the following wording:

Application for a non-material amendment to a municipal planning approval

59. (1) An applicant may apply for a non-material amendment to an existing municipal planning approval on his or her own initiative or at the request of the Municipality.

The purpose of the substitution is to clarify delegation of power.

24. By the addition of Section 60A to read as follows:

Material amendments to a municipal planning approval

60A. (1) An application that cannot be considered a non-material amendment shall be submitted in terms of Section 27(1)(l) of this By-law as a material amendment to an existing municipal planning approval.

(2) An application in terms of Section 27(1)(l) of this By-law shall follow the processes as set out in Schedule 4 Item 5 and Schedule 5 of this Bylaw.

The purpose of the addition is to clarify matters relating to material amendments to an existing municipal planning approval.

25. By the deletion of Section 61 and the substitution thereof with the following wording:

Record of decision on a non-material or material amendment to a municipal planning approval

61. (1) A Municipal Planning Approval Authority must:

- (a) approve an application in whole or in part;
- (b) approve an application subject to conditions;
- (c) postpone its decision on an application; or
- (d) refuse an application.

(2) Should an application for a non-material or material change to a municipal planning approval be approved, an amended record of decision must be issued.

The purpose is to amend the heading and to reflect that records of decision for non-material and material amendments to a municipal planning approval must be issued. Section 63(3) is proposed for deletion, as it now dealt with in terms of Section 60A.

26. By the addition of Section 61A to read as follows:

Cancellation of a municipal planning approval

61A. (1) An applicant may apply to the Municipal Planning Registrar to cancel an existing municipal planning approval.

(2) The Municipal Planning Registrar must inform an applicant of any processes that must first be followed in order to cancel an existing municipal planning approval, if any.

(3) An applicant is responsible for any processes and costs relating to the cancellation of an existing municipal planning approval.

The purpose of the addition is to provide for the cancellation of existing municipal planning approvals.

27. By the deletion of Section 63 and the substitution thereof with the following wording:

Powers of the appeal authority

63. The appeal authority may:

- (a) dismiss an appeal and confirm the decision appealed against;
- (b) uphold part of the appeal and-
 - (i) vary the decision appealed against;
 - (ii) set aside the decision and make a new decision; or
 - (iii) set aside the decision and remit the matter to the Municipal Planning Approval Authority, with or without directions to any person or body to take appropriate steps.
- (c) Consider application by any person who has interest in the appeal to intervene as a party;
- (d) Condone any failure by any party to an appeal to comply with its directions or time-limits provided in this By-law;
- (e) Consider application to confirm invalidity of an appeal;
- (f) Subpoena any person to come before it to testify or produce any document;
- (g) Conduct any necessary site inspections or investigations;
- (h) Decide any question concerning its own jurisdiction;
- (i) Give directions relevant to its functions to any person in the service of the provincial administration, a provincial public entity, provincial government business entity or a Municipality relevant to matters referred to in this By-law;
- (j) On its own initiative, obtain expert evidence or opinion; and
- (k) Postpone an appeal for a reasonable period to obtain further information or advice.

The purpose of the substitution is to delete Section 63(f) and to renumber the remaining sub-sections. Section 63(f) is deleted as the Municipal Appeals Registrar must be delegated the functions to appoint an independent person to evaluate an appeal (refer to proposed Section 64A(2)).

28. By the addition of Section 63A to read as follows:

Appointment, Functions and Powers of the Presiding Officer of the Appeal Authority

63A. (1) The Chairperson of the Executive Authority of the Municipality shall be the Presiding Officer relating to appeal proceedings, provided that he/she may delegate such authority to a member of the Executive Authority.

(2) The Presiding Officer shall perform the functions as set out in Chapter 5 and Schedule 6 of this By-law.

The purpose of the addition is to provide for the appointment, functions and powers of the Presiding Officer of the Appeal Authority.

29. By the deletion of Section 64 and the substitution thereof with the following wording:

The Appeal Authority Registrar

64.(1) The Municipality shall designate an official as the Appeal Authority Registrar and Deputy Registrar respectively.

(2) In the event that the Municipality has not designated the registrar, the Municipal Manager shall perform the functions of the registrar.

The purpose of the substitution is to delete Section 64(3). Section 64(3) is proposed for deletion as it is dealt with under proposed Section 64A(1).

30. By the addition of Section 64A to read as follows:

Powers of the Appeal Authority Registrar

64A. The Appeal Authority Registrar:

(1) Shall provide administrative support relating to appeals as set out in this By-law, and provide administrative support to the Appeal Authority.

(2) May direct that an appeal be evaluated by an official of the Municipality or independent person who has relevant skills, knowledge, expertise or qualifications, to evaluate the appeal, and to determine the terms of reference for such official or person;

(3) May rule that an appeal is invalid if:

(a) it is not lodged within the time period contemplated in Schedule 6 Item 1(1) and/or by the persons identified in Schedule 6 Item 1(3) of this By-law; and/or

(b) it does not address the matters listed in Schedule 6 Item 2(1)(a)-(e) of this By-law.

The purpose of the addition is to clarify the powers of the Appeal Authority Registrar.

31. By the deletion of Section 65 and the substitution thereof with the following wording:

The Appeal Procedure

65. The Municipality has prescribed the procedures for appeals in terms of Schedule 6 and applications for intervener status in terms of Schedule 6A of this By-law.

The purpose of the substitution is to remove reference to “condonation”, which is no longer provided for in the Bylaw, and to clarify that the procedures for appeals and intervener status have been provided for.

32. By the deletion of Section 67 and the substitution thereof with the following wording:

Lodging of an appeal

67. (1) A person who intends to appeal against the decision of the Municipal Planning Approval Authority may lodge a written appeal with the Appeal Authority Registrar or the Municipal Manager, if the registrar has not been appointed, within 21 days from the date of serving of notice.

(2) The written appeal shall set out fully the grounds of the appeal.

(3) A person who lodges an appeal must be required to pay the relevant application fee determined by the Municipality in terms of its tariffs and fees.

The purpose of the substitution is to delete Sections 67(4) and 67(5). These sections are procedural matters dealt with in Schedule 6 Item 1 of the By-law.

33. By the deletion of Section 69:

The purpose of the deletion is to remove reference to condonation in the By-law, since the appeal procedure already deals with applications for extension of time to submit an appeal or opposition to an appeal. It is not necessary to provide for any further condonation.

34. By the deletion of Section 70 and the substitution thereof with the following wording:

Evaluation and referral of an appeal

70. (1) The Appeal Authority Registrar may appoint an official or independent person who has relevant skills, knowledge, expertise or qualifications to evaluate the merits of the appeal in writing.

(2) The independent person’s evaluation report must include –

(a) the details of the application for municipal planning approval and a summary of the procedure followed;

(b) the memorandum of appeal submitted;

(c) the responding memorandum in opposition to the appeal submitted, if any;

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

(e) confirmation that appeal complies with SPLUMA, this By-law and any relevant procedure, or details of the defect, if it does not.

(3) The Appeal Authority Registrar must refer the independent person’s evaluation report and the accompanying documents to the Appeal Authority.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

35. By the deletion of Section 72(2) and the substitution thereof with the following wording:

Appeal hearing

72.(2) The appeal proceeding shall be chaired by the Presiding Officer.

The purpose of the substitution is to aid in interpretation.

36. By the deletion of Sections 78(4) and 78(5) and the substitution thereof with the following wording:

Appointment of Municipal Planning Enforcement Officer

78.(4) A Municipality must issue a Municipal Planning Enforcement Officer with an appointment letter and card stating that he or she has been designated as an enforcement officer for the purposes of this By-law or must show proof that he or she is an enforcement officer.

(5) A Municipal Planning Enforcement Officer must produce a letter and card on request of any person affected by the exercise of a power in terms of this section.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

37. By the deletion of Section 80(2) and the substitution thereof with the following wording:

Powers and Functions of a Municipal Planning Enforcement Officer

80.(2) A Municipal Planning Enforcement Officer in order to effect compliance with this By-law, land use scheme or municipal planning approval:

- (a) may at any reasonable time, after reasonable notice has been given or without prior notice, enter and inspect any land or enter a building for the purposes of ensuring compliance with this By-law;
- (b) may at any reasonable time and after reasonable notice has been given to the owner or occupier of the land or building, or without prior notice, enter and inspect a relevant private building outside its normal business hours, if entering upon the land or entering a building outside the Municipality's normal business hours is essential;
- (c) may be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;
- (d) may question any person on that property who, in his or her opinion, may be able to furnish information on a matter to which this By-law relates;
- (e) may inspect and take a picture or video footage –
 - (i) of any article, substance, or machinery which is or was on the property; and
 - (ii) of any work performed on the land or any condition prevalent on the land;
- (f) may seize any document, record, article, substance, or machinery which, in his or her opinion, is necessary as evidence at the trial of any person charged with an offence under this By-law or the common law. A Municipal Planning Enforcement Officer must issue a receipt to the owner or person in control of document, record, article, substance, or machinery which he or she has seized;
- (g) may grant a user of a document or record the right to make copies of the book or record before its seizure;
- (h) may direct any person to appear before him or her at such time and place as may be agreed upon and question the person;
- (i) must leave the land or building as effectively secured against trespassers as he or she found it, if the owner or occupier is not present;
- (j) may issue notices to comply; and
- (k) may recommend the following measures as a means to prevent the continuation of an illegal land use:
 - (i) charging a monthly contravention penalty charge as contemplated in Section 83 of this By-law; and/or
 - (ii) reduction or disconnection of engineering services as contemplated in Section 84 of this By-law.

The purpose of the substitution is to aid in interpretation.

38. By the deletion of Section 81(1) and the substitution thereof with the following wording:

Offences and penalties in relation to municipal planning approval

81.(1) A person is guilty of an offence if he/she –

- (a) uses land, subdivides land, consolidates land, establishes a township, notarially ties adjacent land or erect buildings on a land contrary to the provisions of this By-law;
- (b) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a provision of the land use scheme;
- (c) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a restrictive condition of title or servitude;
- (d) uses land, subdivides land, consolidates land, establishes a township, notarially tying adjacent land or erect buildings on land contrary to a Municipal Planning Approval Authority's Record of Decision on land development application;
- (e) fails to disclose that land is not registrable or transferable;
- (f) removes a site notice declaring that an activity on land is unlawful;
- (g) offers or pays a reward for –
 - (i) the written support of an organ of state in support of a land development application or a non-material amendment to a Municipal Planning Approval Authority's decision;
 - (ii) the written support of a Traditional Council for an application for municipal planning approval or a non-material amendment to Municipality's a Municipal Planning Approval Authority's decision; or
 - (iii) the approval or refusal of a land development application or a non-material amendment to a Municipal Planning Approval Authority's decision;
- (h) requests or accepts a reward for –
 - (i) the written support of an organ of state in support of an application for municipal planning approval or a non-material amendment to a Municipal Planning Approval Authority's decision;
 - (ii) the written support of a Traditional Council for a land development application or a non-material amendment to a Municipal Planning Approval Authority's decision; or
 - (iii) the approval or refusal of an application for municipal planning approval or a non-material amendment to a Municipal Planning Approval Authority's decision.

The purpose of the substitution is to clarify delegation of power.

39. By the addition of Section 81A to read as follows:

Cancellation of Municipal Planning Approval due to non-compliance

81A. (1) The Municipal Planning Approval Authority may cancel an approval issued in terms of Section 42(3)(a) and (b), should the applicant breach or fail to comply with the conditions of approval or conditions of establishment.

(2) Prior to cancellation of the approval, the Municipality shall issue a notice to comply as provided for in Schedule 7 of this By-law, and shall inform the owner to rectify any non-compliance within a set period of time.

(3) The decision to cancel an approval is final, and shall not be subject to any appeal process.

The purpose of the addition is to provide for the cancellation of an approval due to non-compliance.

40. By the deletion of Section 83(1) and the substitution thereof with the following wording:

Contravention penalty charge to prevent the continuation of an activity that constitutes an offence

83.(1) The Municipality must impose a monthly contravention penalty charge to prevent the continuation of an activity that constitutes an offence contemplated Section 81(1)(a)-(d) in line with its Credit Control and Debt Management Policy and By-law and tariffs of fees, which charge shall be deemed a duty in terms of Section 118(3) of the Municipal Systems Act.

The purpose of the substitution is to aid in interpretation.

41. By the deletion of Section 84(1) and the substitution thereof with the following wording:

Reduction or disconnection of engineering services to prevent the continuation of activity that constitutes an offence

84.(1) In addition to the contravention penalty charge, as provided for in Section 83 of this By-law, the Municipality may reduce or disconnect engineering services to prevent the continuation of an activity that constitutes an offence contemplated Section 81(1)(a)-(d) without a court order in line with its Credit Control and Debt Management Policy and By-law.

The purpose of the substitution is to clarify that Section 83 (the contravention penalty charge) and Section 84 (reduction or disconnection of services) may be implemented concurrently.

42. By the deletion of Section 85(2) and the substitution thereof with the following wording:

Lodging of complaint

85.(2) A written complaint in which it is alleged that a person is committing an offence may be supported by relevant documentation and other evidence and contact details of the person lodging the complaint.

The purpose of the substitution is to aid in interpretation.

43. By the deletion of Section 90 and the substitution thereof with the following wording:

Display of notice on land that activity is unlawful

90. The Municipality must display a notice on site, if it obtained a temporary or final interdict to prevent use of land or erection of buildings contrary to this By-law, a land use scheme or a restrictive condition of title or servitude registered against the land or any other Condition(s) as imposed by a Municipal Planning Approval Authority, stating that –

- (a) the activity identified in the notice is unlawful;
- (b) a temporary or final interdict has been obtained to prevent the activity;
- (c) that any person who continues with the activity will be guilty of an offence; and
- (d) that any person who continues with the activity is liable on conviction as outlined in Section 81 and 82 of this By-law.

The purpose of the substitution is to correct reference to Sections 81 and 82 in subsection (d).

44. By the deletion of Section 92 and the substitution thereof with the following wording:

Subsequent application for municipal planning approval

92. (1) A person who is in contravention of this By-law may apply to the Municipal Planning Approval Authority to rectify the contravention as contemplated in Section 81(1) of this By-law in line with the Land Use Scheme, which application shall be considered a subsequent application and shall be submitted in terms of Section 27(1) of this By-law.

(2) A person making a subsequent application must-

(a) cease the contravention until the application has been considered and approved; and

(b) submit an application; and

(c) pay the relevant contravention penalty charge levied in accordance with Section 83 of this By-law, if appropriate.

(3) The Municipality shall confirm that the contravention has ceased.

(4) The Municipality shall cease enforcement action upon confirmation that the contravention has ceased.

The purpose of the substitution is to aid in interpretation.

45. By the deletion of Section 93 and the substitution thereof with the following wording:

Offence and misconduct by a municipal official who approves the erection of buildings or use of land without prior approval in terms of the Act

93.(1) An official is guilty of an offence and misconduct –

(a) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent properties or erection of buildings on land without municipal planning approval, if municipal planning approval is required in terms of this By-law;

(b) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a provision of a land use scheme;

(c) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a Municipal Planning Approval Authority's approval as contemplated in Section 43 or Appeal Authority's decision contemplated in Section 73 of this By-law;

(d) when authorising the use of land, subdivision of land, consolidation of land, the establishment of a township, notarially tying adjacent land or erection of buildings on land contrary to a restrictive condition of title or servitude; or

(e) if the official certified that a condition of approval for municipal planning approval has been complied with, when it has not.

(2) An official is guilty of an offence in terms of this section, irrespective of whether or not the official was aware that prior approval is required for the erection of buildings in terms of this By-law.

(3) An official who is guilty of an offence in terms of this section is liable on conviction to a fine as contemplated in Section 81(5) and (6).

(4) An official who is guilty of misconduct under this section may be disciplined in accordance with the disciplinary code of the person's employer or the official's profession.

(5) It is a defence for an official charged in terms of this section if it can be proven that the official acted in an emergency to save human life, property or the environment.

The purpose of the substitution is to correct an error and to clarify delegation of power.

46. By the deletion of Section 94:

The deletion is proposed as it is not necessary to include these matters as an offence.

47. By the deletion of Section 95:

The deletion is proposed as it is not necessary to include these matters as an offence.

48. By the deletion of Section 101 and the substitution thereof with the following wording:

Delegations by Municipality

101.(1) The Municipal Council may not delegate the following powers –

(a) the power to decide an application for municipal planning approval for –

(i) the adoption of a land use scheme;

(ii) an amendment to a land use scheme that requires an amendment to the land use scheme regulations;

(iii) the repeal of a land use scheme; and

(iv) a material change to the Municipal Council's decision to adopt a land use scheme or to amend the land use scheme regulations.

(b) the appointment of members of the Municipal Planning Tribunal;

(c) the determination of the conditions subject to which a member of the Municipal Planning Tribunal holds office;

(d) the removal of a member of the Municipal Planning Tribunal;

(e) the designation of a Chairperson and Deputy Chairperson of the Municipal Planning Tribunal, provided that the Municipal Planning Tribunal may appoint a Presiding Officer to act as the Chairperson during a meeting should the Chairperson and Deputy Chairperson be unable to attend; and

(f) the power to decide an appeal in terms of this By-law to a Municipal Planning Enforcement Officer.

(2) A power conferred on –

(a) a Municipal Planning Tribunal;

(b) Chairperson of a Municipal Planning Tribunal;

(c) a member of a Municipal Planning Tribunal;

(d) Municipal Planning Registrar; or

(e) Municipal Planning Authorised Official;

may not be delegated, unless this By-law provides expressly otherwise.

(3) A Municipality may delegate any power conferred on it in terms this By-law, other than the powers contemplated in Sub-sections (1) and (2) –

(a) to a committee of the Municipality established in terms of Section 79(1)(a) of the Municipal Structures Act; or

(b) to an official employed by the Municipality.

(4) A power or duty may –

(a) be delegated to more than one functionary;

(b) be delegated to a named person or the holder of a specific office or position; and

(c) be delegated subject to any conditions or limitations that the Municipality considers necessary;

(5) A delegation does not –

(a) prevent the Municipal Council from exercising that power or performing the duty; or

(b) relieve the Municipal Council from being accountable for the exercise of the power or the performance of the duty.

- (6) An act performed by a delegated authority has the same force as if it had been done by the Municipal Council.
- (7) An act performed by a delegated authority, which was done within the scope of the delegation, remains in force and is not invalidated by reason of –
- (a) the Municipal Council electing afterwards to exercise that power or performing the function or duty; or
 - (b) a later amendment or withdrawal of a delegation.
- (8) A delegation in terms of this section –
- (a) must be in writing;
 - (b) must include the following details –
 - (i) the matter being delegated; and
 - (ii) the conditions subject to which the delegation is made, if any.
- (9) The Municipal Council may at any time amend the terms of a delegation, or revoke a delegation made in terms of this section.
- (10) A Municipality must keep an updated record of all delegations made in terms of this By-law.
- (11) Any act done in terms of a power conferred on the Municipality in terms of this By-law that is exercised without the necessary authority is voidable.

The purpose of the substitution is to aid in interpretation and to avoid duplication.

49. By the deletion of Section 102 and the substitution thereof with the following wording:

Record of a land use scheme

102. The Municipality's land use scheme map must be updated at least monthly to show amendments to the land use scheme that have been approved.

The purpose of the substitution is to aid in interpretation.

50. By the deletion of Section 111(1) and the substitution thereof with the following wording:

Appointment of Expert Technical Advisor

111.(1) The Municipality may appoint an Expert Technical Advisor to assist it in consideration and determination of any land development applications or appeals.

The purpose of the substitution is to clarify delegation of power.

51. By the deletion of Section 113 and the substitution thereof with the following wording:

Calculation of number of days

113.(1) If this By-law prescribes a period for performing an action, the number of days must be calculated by excluding the first day, excluding any public holidays, and by including weekends and the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public holiday must be regarded as the last day of the period.

(2) Days that the Municipal Council is officially in recess must be excluded from the period in which the Municipality must perform an action in terms of this By-law.

(3) Days between and including 16 December and 1 January of each year must be excluded from the period in which any party must perform an action in terms of this By-law, unless such action is required in

terms of a court judgement or a delay in action would, in the opinion of the Municipality, lead to an impact on the environment and impact on safety or well-being.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

52. By the deletion of Section 115 and the substitution thereof with the following wording:

Effect of change of ownership of land to which a land development application relates

115.(1) If land, which is the subject of a land development application, is transferred to a new owner, the new owner may continue with the application as the legal successor-in-title of the previous owner and the new owner shall be regarded as the applicant for the purposes of this By-law.

(2) A new owner must inform the Municipality in writing that he or she wishes to continue, or not, with an application and provide the Municipality with his or her contact details.

The purpose of the substitution is to correct an error and to aid in interpretation.

53. By the deletion of Section 116(2) and the substitution thereof with the following wording:

Ceding of rights associated with a person who commented on a land development application to a new property owner

116.(2) The new owner must provide the applicant and Municipality with a copy of the agreement to cede the rights and his or her contact details before the application is resolved by the Municipal Planning Authority.

The purpose of the substitution is to correct an error.

54. By the deletion of Section 117 and the substitution thereof with the following wording:

Application for intervener status in land development applications or appeals

117.(1) As provided for in Regulation 31 of SPLUMA, any person may apply in writing to the Authorised Official or the Presiding Officer of the Appeal Authority to be granted intervener status in an existing application at any time during the proceedings, but within seven days of becoming aware of the proceedings.

(2) A petition for intervener status must provide the reasons for applying for intervener status, as provided for in Section 45(3) of SPLUMA, including:

(a) when and how they became aware of the proceedings;

(b) the reasons why the person did not raise their concerns or objections during the public participation process followed for the land development application;

(c) the reasons why the decision of the Municipal Planning Approval Authority would affect his or her rights, and/or how his or her rights may be adversely affected by the pending decision of the Appeal Authority;

(d) how the group has a direct concern in the proceedings if the petitioner represents a group of people;

- (e) why the petitioner's interest would be impeded by the decision of the Municipal Planning Approval Authority or the Appeal Authority;
 - (f) why his or her interest is not adequately represented by the current parties to the proceedings; and
 - (g) how the petitioner could provide a different perspective on the issues before the Municipal Planning Approval Authority or the Appeal Authority.
- (3) In accordance with Section 31(2) of the Regulations, the petitioner must submit together with the petition to be granted intervener status an affidavit stating that he or she –
- (a) does not collude with any applicant, objector or appellant; and
 - (b) is willing to deal with or act in regard to the application or appeal as the Municipal Planning Approval Authority or Appeal Authority may direct.
- (4) The Authorised Official or the Presiding Officer of the Appeal Authority must consider the following matters when it decides an application for leave to intervene –
- (a) whether the applicant for intervention could be considered an interested person as contemplated in Section 45(4) of SPLUMA;
 - (b) whether public participation was required for the application;
 - (c) whether the applicant for intervention was given notice of the application;
 - (d) the applicant for intervention's motivation for the request to intervene;
 - (e) whether his or her rights have been affected by the decision of the Municipal Planning Authority or that his or her rights may be adversely affected by the decision of the Municipal Planning Authority and might therefore be adversely affected by the decision of the appeal authority;
 - (f) that the petitioner represents a group of people who have a direct concern in the proceedings;
 - (g) the ability of the petitioner to protect his or her interest would be impeded by the decision of the Municipal Planning Authority or appeal authority and that his or her interest is not adequately represented by the current parties to the proceedings;
 - (h) the written consent of all the other parties to the application or appeal to agree to the party intervening, if they did consent to the party intervening;
 - (i) prejudice that may be suffered by the applicant or any other person, including the public;
 - (j) the applicant for intervention's prospects of success;
 - (k) avoidance of unnecessary delay in the administration of justice;
 - (l) the convenience of the Municipal Planning Approval Authority or Appeal Authority;
 - (m) if a party applies to intervene in a land development application, whether the applicant for intervention is the only person who wishes to comment on the application, or if there are other persons who also made similar comments on the application;
 - (n) if a party applies to intervene in an appeal;

(o) whether the applicant for intervention is the only person who wishes to appeal against the decision of the Municipal Planning Approval Authority, or if there are other appellants that also appealed against the decision on similar grounds;

(p) the importance of the appeal;

(q) the applicant for intervention's interest in the outcome of the appeal;

(r) whether the applicant will provide a different perspective on the issues before the Municipal Planning Approval Authority or the Appeal Authority, without expanding those issues; and

(s) any other relevant factor.

(5) The Authorised Official or Presiding Officer of the Appeal Authority must –

(a) approve; or

(b) refuse,

an application for leave to intervene.

(6) The Authorised Official or the Presiding Officer of the Appeal Authority may impose any reasonable conditions and may limit a person who applied for intervention's participation to the issues in which the person's interest has been established in its decision to grant leave to intervene.

(7) If a person was granted leave to intervene in a land development application, the person must submit written comments on the application to the Municipal Planning Approval Authority in the manner and by the date determined by the Authorised Official in its decision to grant leave to intervene.

(8) If a person was granted leave to intervene in an appeal, the person must participate in the appeal proceedings in the manner determined by the Presiding Officer of the Appeal Authority in its decision to grant leave to intervene.

(9) A person who was granted leave to intervene in a land development application must be regarded as a person who commented on the application when the public was consulted, irrespective of whether or not public participation was required for the application.

The purpose of the substitution is to clarify delegation of power and to provide for applications for intervener status during a land development application process as well as an appeal process.

55. By the deletion of Section 118 and the substitution thereof with the following wording:

118. (1) This By-law is called the uMhlathuze Spatial Planning and Land Use Management By-law, 2017.

(2) By means of publication in Provincial Gazette No. 1878, the commencement date of this By-law is 21 September 2017.

(3) Any amendments to this By-law shall come into operation upon notice in the Provincial Gazette.

The purpose of the substitution is to aid in interpretation.

56. By the deletion of Schedule 2 Item 2(b) and the substitution thereof with the following wording:

Activities that do not require municipal planning approval outside the area of a land use scheme

2. The following activities or land uses do not require municipal planning approval outside the area of a land use scheme –

(b) in all other areas outside the land use scheme:

(i) household dwelling;

(ii) subsistence agriculture; and

(iii) any other activity or land use that in the opinion of the Municipality does not require an application for municipal planning approval.

The purpose of the substitution is to correct an error in numbering.

57. By the deletion of Schedule 3 Item 7(g) and (o) and the substitution thereof with the following wording:

Category 1 Land Development Applications

7. Category 1 land development applications for municipal planning approval include:

(g) the cancellation or partial cancellation of a Municipal Planning Approval Authority's decision on an application for municipal planning approval or application for an Amending General Plan, except a decision to adopt or amend a land use scheme;

(o) any amendment to a decision on an application for municipal planning approval that was considered previously by the Municipal Planning Tribunal.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

58. By the deletion of Schedule 3 Item 8(i) and the substitution thereof with the following wording:

Category 2 Land Development Applications

8. Category 2 land development applications for municipal planning approval include:

(i) any amendment to a decision on an application for municipal planning approval that was considered previously by the Municipal Planning Authorised Official.

The purpose of the substitution is to aid in interpretation.

59. By the deletion of Schedule 4 Item 5 and the substitution thereof with the following wording:

General Provisions

5. Save for an immaterial amendment to correct an error, updating of reference or change of name, any amendment to an existing municipal planning approval granted shall follow a similar public participation process as followed during the original application procedure, unless the Municipality is of the opinion that the proposed amendment to the municipal planning approval would not affect the rights of the public. In such cases, the Municipality shall advise on the relevant public participation process to be undertaken, if any.

The purpose of the substitution is to aid in interpretation.

60. By the addition of Schedule 5A Item 1(7) to read as follows:

Pre-application procedure

1.(7) The applicant must submit an electronic copy of the full application document to the Municipal Planning Registrar, who shall notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant—

- (a) that the application may be submitted formally and that the relevant application fee must be paid; or
- (b) of corrections and any additional plans, documents or other information required.

The purpose of the substitution is to aid in interpretation of the procedure followed, and to clarify delegation of power.

61. By the deletion of Schedule 5A Item 8:

The deletion is necessary as information is duplicated in Item 9.

62. By the substitution of the heading and the addition of Schedule 5A Item 9(5) to read as follows:

Public Participation or Giving Public Notice.—

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

The purpose of the substitution is to replace the heading, to aid in interpretation and to clarify delegation of power.

63. By the deletion of Schedule 5A Item 15 and the substitution thereof with the following wording:

Evaluation and Referral of application to Municipal Planning Approval Authority

15. The Registered Planner must assess the merits of the application as required in terms of Section 37 of this By-law, and refer the application to the Municipal Planning Approval Authority within 30 days of:

- (a) the closing date for the lodging of comments as stated in the public notice, if no comments or objections were received; or
- (b) receipt of the written response from the Applicant as set out in Item 14(2), or receipt of the applicants letter waiving its right to respond to comments as set out in Item 14(3) of this Schedule; or
- (c) receipt of any document that is, in the Municipality's opinion, required and must accompany the application for municipal planning approval.

The purpose of the substitution is to aid in interpretation.

64. By the deletion of Schedule 5A Item 17 and the substitution thereof with the following wording:

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

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

- (a) within 60 days of the closing date for representations, or receipt of the response to objections submitted, or receipt of any document that is, in the Municipality's opinion, required and must accompany the application for municipal planning approval, if the Municipal Planning Authorised Official or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;
- (b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if Municipal Planning Authorised Official or Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or
- (c) such further period as agreed upon with the applicant, which period may not exceed 180 days after:
 - (i) the closing date for representations, or receipt of the response to objections submitted; if the Municipal Planning Authorised Official or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing; or
 - (ii) conclusion of the site inspection or public hearing.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

65. By the deletion of Schedule 5A Item 21 and the substitution thereof with the following wording:

Record of decision

- 21.** (1) The Municipal Planning Registrar must, within 30 days after a decision relating to a planning application, serve notice of the decision on the applicant and every person who lodged a written comment.
- (2) Notice to anyone who is a signatory to a joint petition or group representation, may be given to the—
- (a) authorised representative of the signatories if the petition or representation is lodged by a person claiming to be the authorised representative; or
 - (b) person whose name appears first on the document, if no person claims to be the authorised representative of the signatories.
- (3) Notice to a signatory to a joint petition or group representation contemplated in Sub-item (2) constitutes notice to each person named in the joint petition or group representation.
- (4) If the land of a person who lodged comments on the application is transferred to a new owner, the comments are considered as having been lodged by the new owner.
- (5) A Municipal Planning Registrar must, within 14 days of a request by the applicant or any other person on whom notice was served, provide the applicant or that person—
- (a) with a copy of the Municipality's decision and the reasons for the decision; and
 - (b) if the application was approved subject to conditions, with a copy of all the conditions imposed by the Municipality, together with the reasons for imposing those conditions.

The purpose of the substitution is to clarify delegation of power.

66. By the addition of Schedule 5A Item 22 to read as follows:

Cancellation of an existing municipal planning approval

22.(1) An applicant may apply to the Municipal Planning Registrar for the cancellation of an existing planning approval.

(2) The Municipal Planning Registrar must inform an applicant of any processes that must first be followed in order to cancel an existing municipal planning approval, if any.

(3) An applicant must submit any relevant documentation and pay any relevant costs as required by the Municipality.

(4) The Municipal Planning Registrar shall confirm the cancellation in writing, and shall update the relevant application register accordingly.

The addition is necessary to deal with cancellation of an existing municipal planning approval.

67. By the deletion of Schedule 5B Item 3 and the substitution thereof with the following wording:

Lodging of application

3.(1) An application for municipal planning approval for land development in recognised traditional settlement areas must include –

- (a) the name and contact details of the applicant;
- (b) the name of the household which the applicant represents;
- (c) the name of the Traditional Council or community;
- (d) the name of the Inkosi of such traditional area and of the induna of such isiGodi, or the name of the land holding entity, if applicable;
- (e) a letter in support of the application, signed by the Traditional Council or the land holding entity or other community leaders;
- (f) a locality plan, GPS co-ordinates or a survey diagram;
- (g) the written motivation for the proposed land development;
- (h) photographic evidence of the site;
- (i) a letter in support of the application, signed by the Ingonyama Trust Board or a valid lease agreement (if applicable);
- (j) a Site Development Plan; and
- (k) any other document or information which the Municipality may require.

The purpose of the substitution is to aid in interpretation.

68. By the deletion of Schedule 5B Item 4 and the substitution thereof with the following wording:

Confirming availability of the land and completeness of application

4.(1) The Municipal Planning Registrar must, within 30 days of receipt of the application, or such further period as agreed upon with the applicant, assess the information submitted in terms of Item 3(1) above to determine if the application is complete.

(2) If the information is complete, the Municipal Planning Registrar must –

- (a) verify that the land forms part of the recognised traditional settlement area; and
- (b) compare the application to the Municipality's records of –
 - (i) other applications and approvals for municipal planning approval in the same area; and
 - (ii) land reserved for engineering services or public facilities in the area;

to determine if the land is available for proposed use or development.

(3) If it is established that the land which is the subject of the application for municipal planning approval is not available for various reasons, or that the application is incomplete, the Municipal Planning Registrar shall advise the applicant in writing within 30 days, or such further period as agreed upon with the applicant, of such discovery, calling upon the applicant to: –

(a) withdraw the application; or

(b) amend the application in consultation with the relevant Traditional Council or land holding entity and the interested and affected person(s); and/or

(c) submit additional information.

(4) The Municipality shall give the applicant 30 days from the date of the notice referred to in Sub-item (3) above, or such further period as agreed upon with the applicant, to either withdraw or amend the application.

(5) If the applicant fails to respond in writing to the notice of the Municipality provided in Sub-item (3) above, on the expiry of the 30 day period, or such further period as agreed upon with the applicant, the application shall be deemed to have been withdrawn.

(6) If the application is complete and no additional information is required, the Municipal Planning Registrar must within 14 days, give direction to the applicant, on what form of public participation process will be required.

(7) The Municipal Planning Registrar may exempt the applicant from conducting any public participation process as provided in this By-law.

(8) The applicant shall finalise the public participation process required in terms of Sub-item (6) above within 90 days, or such further period as agreed upon with the applicant, and submit written proof of such process to the Municipal Planning Registrar.

(9) Should the applicant fail to submit written proof that the required public participation process has been finalized as provided for in Sub-item (8) above, the application shall be deemed to have been withdrawn.

The purpose of the substitution is to clarify delegation of power and limit the time within which an applicant must respond to either withdraw or amend an application.

69. By the deletion of Schedule 5B Item 5 and the substitution thereof with the following wording:

Granting of municipal planning approval

5.(1) If –

(a) the application is complete;

(b) the land forms part of a recognised traditional settlement area;

(c) the land has not been claimed by any other person;

(d) the land is not required for engineering services or public facilities;

(e) the land is not prone to flooding or any other conditions that make it unsafe for human habitation;

(f) the land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security;

(g) the land is not environmentally sensitive;

(h) the application is not contrary to the provisions of the land use scheme;

(i) the Ingonyama Trust Board or any other land holding entity has no objection to the land being used for proposed land development or use; and

(j) the required public participation process has been finalised and proof of such process has been submitted to the Municipality;

the Registered Planner must evaluate the application and refer the application within 60 days, or such further period as agreed upon with the applicant, to the Municipal Planning Approval Authority for consideration and approval in terms of this By-law.

(2) The Municipal Planning Registrar must record all application documentation.

(3) If the application is incomplete, the site is not available, or it is on land contemplated in Sub-item (1), the Municipal Planning Approval Authority may refuse the application.

(4) The Municipal Planning Approval Authority may grant or refuse municipal planning applications for land development in recognised traditional settlement areas subject to any conditions.

(5) The Municipal Planning Approval Authority may grant municipal planning approval for land development in a recognised traditional settlement area subject to a condition that the approval is attached to the applicant or the land, which is the subject of the application.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

70. By the deletion of Schedule 5B Item 6 and the substitution thereof with the following wording:

Record of decision

6. (1) The Municipal Planning Registrar must, within 30 days after a decision relating to a planning application, serve notice of the decision on the applicant, the relevant Traditional Council or management of the communal land holding entity within which the land development application is located and every person who lodged a written comment.

(2) The applicant shall accept the conditions of approval in writing.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

71. By the addition of Schedule 5B Item 8 to read as follows:

Cancellation of an existing municipal planning approval

8.(1) An applicant may apply to the Municipal Planning Registrar for the cancellation of an existing planning approval.

(2) An applicant must submit any relevant documentation and pay any relevant costs as required by the Municipality.

(3) The Municipal Planning Registrar shall confirm the cancellation in writing, and shall update the relevant application register accordingly.

The addition is necessary to deal with cancellation of an existing municipal planning approval.

72. By the deletion of Schedule 6 Item 2(2) and the substitution thereof with the following wording:

2.(2) The Appeal Authority may rule that an appeal is invalid if it does not address the matters listed in Sub-item 2(1)(a)-(e) of this Schedule.

The purpose of the substitution is to clarify delegation of power.

73. By the deletion of Schedule 6 Items 3(1) and (2) and the substitution thereof with the following wording:

Application for an extension of the period to lodge a written appeal or written opposition to an appeal

3.(1) An applicant or a person who has a right of appeal and a person who is entitled to lodge a written opposition to an appeal, may, within the 21 days allowed for the lodging of an appeal or written opposition to an appeal, apply to the Municipal Manager or Appeal Authority Registrar for an extension of the period within which to lodge a written appeal or written opposition to an appeal.

(2) The application as referred to in Sub-item 3(1) must be submitted to the Municipal Manager or Appeal Authority Registrar.

The purpose of the substitution is to clarify delegation of power.

74. By the deletion of Schedule 6 Item 7:

The purpose of the deletion is to make provision for an application procedure for intervener status as a stand-alone Schedule under proposed Schedule 6A, which not only deals with applications for intervener status as part of an appeal process, but also applications for intervener status as part of a land development application.

As a result of the deletion of “Part 3” of Schedule 6, the numbering of Part 4 to 8 will be adjusted.

75. By the deletion of Schedule 6 Item 9(5) and the substitution thereof with the following wording:

9.(5) If the written opposition to an appeal is not received within the time period contemplated in Sub-item 9(4), the Municipal Manager or Appeal Authority Registrar may rule that the written opposition to an appeal is invalid and will not be considered.

The purpose of the substitution is to remove the power currently resting with the Appeal Authority Registrar to decide that an application is invalid due to the content of the written opposition to an appeal. This power should rest with the Appeal Authority.

76. By the amendment of the heading and deletion of Schedule 6 Item 10 and the substitution thereof with the following wording:

Determination whether additional information or skills are required to decide on an appeal

10.(1) Upon receipt of the written opposition to an appeal as contemplated in Sub-item 9(4), the Appeal Authority Registrar must within 30 days submit information relevant to the appeal to the Presiding Officer, and make a recommendation relating to the matters described in Sub-item 10(2).

(2) The Presiding Officer must consider the information, and within 14 days inform the Appeal Authority Registrar:

- (a) whether written or oral proceedings would be required;
- (b) whether any additional information would be required in order for the Appeal Authority to consider the matter and whether it would be necessary to subpoena such information;
- (c) whether any witnesses should be subpoenaed;
- (d) whether the appeals authority would require the services of a technical advisor/s;

- (e) whether a site inspection must be conducted; and
- (f) proposed dates for the site inspection and hearing.

The substitution is necessary in order to correct the heading, since dates will be set in terms of the provisions of proposed Schedule 6 Item 12A. Also, the appellant and respondent indicate their preference for a written or oral hearing in terms of the provisions of Schedule 6 Item 2(1)(f) and 9(3)(e), and therefore Item 10(3)-(5) may be deleted.

77. By the deletion of Schedule 6 Item 12 and the substitution thereof with the following wording:

Compilation of documents required to decide an appeal

12.(1) The Appeal Authority Registrar must compile all the memoranda and any other documents received from a party to an appeal hearing or requested by the Presiding Officer.

(2) The appeal documentation shall include:

- (a) the land development application submitted to the Municipality;
- (b) proof of compliance with the public participation process and all comments or objections received;
- (c) any report evaluating the merits of the application;
- (d) the decision of the Municipal Planning Tribunal or Municipal Planning Authorised Official and conditions of approval;
- (e) proof that all parties to the land use development application were informed of the Municipal Planning Tribunal or Municipal Planning Authorised Official decision and their right to appeal the decision;
- (f) the appeal memorandum received;
- (g) the written opposition to an appeal received (if relevant);
- (h) any application for an extension of the period to lodge a written appeal or written opposition to an appeal and a decision in this regard;
- (i) any application for intervener status (if relevant);
- (j) a summary of the procedures followed and whether or not it complied with legislative timeframes; and
- (k) any other relevant information that the Appeal Authority Registrar may deem necessary.

The substitution is necessary in order to delete Items 12(3) and 12(4). These actions have been included under proposed Schedule 6 Item 12A.

78. By the addition of Schedule 6 Item 12A to read as follows:

Setting of dates

12A. (1) The Appeal Authority Registrar must inform all parties to an appeal in writing of the date, time and venue for the proposed hearing and site inspection, if relevant, and request the submission of the every document on which the party intends to rely on at an appeal hearing at least 21 days before the appeal hearing commences, including:

- (a) details of the person who shall present their case during an oral appeal hearing, if relevant, together with his/her interest in the case and contact details; and
- (b) a list of experts who the party will rely on for expert testimony during an oral appeal hearing and an indication of their field of expertise, if applicable.

(2) The Appeal Authority Registrar must make the documents available to all parties to the appeal at least 14 days before the appeal hearing commences.

(3) The Appeal Authority Registrar may post the documents on the Municipality's Website at least 14 days before the appeal hearing commences.

The addition is necessary in order to deal with setting of dates for appeals.

79. By the deletion of Schedule 6 Item 14 and the substitution thereof with the following wording:

Rescinding of an appeal due to undue delay by an appellant

14.(1) The Presiding Officer may in writing rescind an appeal, if he or she is satisfied –

- (a) that the Appeal Authority Registrar has made at least three attempts to set a date, time and place to hear the appeal;
- (b) that the appellant has been warned that failure to agree to a date, time and place to hear the appeal can lead to the appeal being rescinded; and
- (c) the appellant had sufficient opportunity to agree to a date, time and place to hear the appeal.

(2) The Appeal Authority Registrar must give notice of the decision by the Presiding Officer to rescind an appeal due to undue delay by an appellant to all parties to an appeal.

(3) The decision of the Presiding Officer relating to rescinding an appeal due to undue delay by an appellant will be final and no further appeal to the specific issue will be permitted.

The substitution is necessary to correct delegated authority.

80. By the deletion of Schedule 6 Item 17 and the substitution thereof with the following wording:

Withdrawal of appeal or opposition to appeal

17. A party to the appeal may withdraw an appeal at least 14 days prior to a hearing by serving written notice of its withdrawal on the Appeal Authority Registrar, the Municipal Manager and on every other party to the appeal.

The substitution is necessary to avoid duplication in the existing wording.

81. By the deletion of Schedule 6 Item 19(3) and the substitution thereof with the following wording:

Appeal Hearing

19.(3) In accordance with Regulation 30(1) of SPLUMA, the Municipal Manager as the Appeal Authority Registrar must, as soon as practicable, but no later than 14 days after completion of the pre-hearing process, submit the appeal to the appeal authority to hear the appeal.

The purpose of the substitution is to aid in interpretation.

82. By the deletion of Schedule 6 Item 20 and the substitution thereof with the following wording:

Procedure applicable to a Written Appeal Hearing

- 20.(1) The Appeal Authority shall consider the written documentation submitted, and make recommendation relating to the merits of the matter on appeal.
- (2) The Appeal Authority shall confirm, vary or revoke the decision of the Municipal Planning Tribunal or Municipal Planning Authorised Official.
- (3) Should voting take place, a decision of a majority of members of the Appeal Authority shall stand, and in the event of an equality of votes the Presiding Officer has a deciding vote.
- (4) No provision is made during a written hearing for oral representation by the parties to an appeal.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power.

83. By the deletion of Schedule 6 Item 21 and the substitution thereof with the following wording:

Procedure applicable to an Oral Appeal Hearing

- 21.(1) A party to an appeal is entitled to be present during an oral appeal hearing.
- (2) The Appeal Authority must consider the merits of the matter on appeal, and to that end the Presiding Officer shall:
- (a) allow a relevant Municipal Official to give background relating to the decision on a land development application and the case before the Appeal Authority; and
 - (b) allow the appellant and other parties in the appeal to raise issues and to introduce evidence as per their written appeal and written opposition to an appeal, whether oral or documentary, and address the Appeal Authority on the merits of their case.
- (3) The Presiding Officer may request the parties to an appeal to leave the room at any time in order to discuss any matter in committee.
- (4) The Appeal Authority must consider the merits of the matter on appeal, and in accordance with Regulation 22 of SPLUMA, shall consider the following:
- (a) whether the appeal falls within its jurisdiction;
 - (b) whether the administrative action taken during the application process was procedurally fair or not as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
 - (c) the merits of the land use or land development application;
 - (d) the merits of the appeal submitted; and
 - (e) the merits of the written opposition to an appeal submitted.
- (5) The Appeal Authority must also consider the planning decision by the Municipal Planning Tribunal or Municipal Planning Authorised Official against the matters listed in Section 42 of SPLUMA.
- (6) The Appeal Authority shall confirm, vary or revoke the decision of the Municipal Planning Tribunal or Municipal Planning Authorised Official.
- (7) Should voting take place, a decision of a majority of members of the Appeal Authority shall stand, and in the event of an equality of votes the Presiding Officer has a deciding vote.

The purpose of the substitution is to aid in interpretation and to clarify delegation of power. Items 21(4)-(6) are proposed for deletion, as introduction of new evidence during the appeal hearing is not supported.

84. By the addition of Schedule 6A to read as follows:

SCHEDULE 6A

APPLYING FOR INTERVENER STATUS IN TERMS OF REGULATION 31 OF SPLUMA, READ WITH SECTION 117 OF THE BY LAW

Application for Intervener Status

1.(1) A person may, at any time during the proceedings, but within 7 days of becoming aware of the proceedings, submit a petition to be granted intervener status to the Municipal Planning Registrar or the Appeal Authority Registrar.

(2) The Municipal Planning Registrar or the Appeal Authority Registrar must acknowledge receipt of the petition for intervener status within 3 days of receipt.

Decision relating to an application for Intervener Status

2. (1) If an application for intervener status relates to a land development application, the Municipal Planning Registrar must within 7 days of receipt of an application for intervener status refer the application to the Authorised Official for a decision.

(2) If an application for intervener status relates to an appeal, the Appeal Authority Registrar must within 7 days of receipt of an application for intervener status refer the application to the Presiding Officer for a decision.

(3) The Authorised Official or Presiding Officer must determine whether the matters listed in Section 45(4) of SPLUMA, Regulation 31 of SPLUMA and Section 117(1)-(4) of this By-law have been complied with, and determine whether intervener status will be granted or not, and any conditions applicable to being granted intervener status as set out in Section 45(5) of SPLUMA and Section 117(6) of this By-law.

(4) The Authorised Official or Presiding Officer shall issue the decision relating to an application for intervener status within 7 days of receipt of the application as provided for in sub-item (1) or (2).

(5) The Municipal Planning Registrar or Appeal Authority Registrar must within 7 days of receipt of the Authorised Official's or Presiding Officer's decision relating to the matter submit a copy of the decision to the petitioner and the parties to the land development application or appeal proceeding.

(6) In accordance with Regulation 31(5), the determination by the Authorised Official or Presiding Officer whether to grant or refuse an application for intervener status is final and not subject to appeal.

The addition is necessary in order to make provision for an application procedure for intervener status during a land development application procedure or during an appeal procedure.

85. By the deletion of Schedule 7 Item 2 and the substitution thereof with the following wording:

Notice to comply

2.(1) Upon identification of a contravention, the Municipal Planning Enforcement Officer shall issue a first notice to the property owner, informing him/her of the contravention and affording the landowner 30 days to cease the activity or comply, as contemplated in Section 81 of this By-law.

- (2) The Municipal Planning Enforcement Officer shall conduct a site visit to determine whether the contravention is continuing after lapsing of the 30 days referred to in Sub-item 2(1).
- (3) Should the second inspection confirm that the contravention is continuing, the Municipal Planning Enforcement Officer shall issue a second and final notice to the property owner, affording the owner 30 days to cease the activity or comply, as contemplated in Section 81 of this By-law.
- (4) The Municipal Planning Enforcement Officer shall conduct a site visit to determine whether the contravention is continuing after lapsing of the 30 days referred to in Sub-item 2(3).
- (5) Should the relevant contravener breach Section 81(1)(d) of this By-law, the Municipal Planning Enforcement Officer shall issue a notice to comply, affording the owner 7 days to cease the activity or to comply. A pre-litigation process as set out in Sub-item 2(7)-(8) will not be applicable in this instance.
- (6) Should the relevant contravener breach Section 81(1)(b) of this By-law by undertaking a land use activity that the Municipal Planning Enforcement Officer believes would cause irreparable harm to the amenity of the neighbourhood or the environment, an urgent notice will be issued instructing the owner to immediately cease the activity or to comply. A pre-litigation process as set out in Sub-item 2(7)-(8) will not be applicable in this instance.
- (7) The Municipal Planning Enforcement Officer shall refer the matter to the Municipality's Legal Section to convene a pre-litigation meeting.
- (8) During the pre-litigation meeting, the owner is informed to rectifying the contravention within 14 days of pre-litigation. The outcome of the pre-litigation meeting shall be confirmed in writing to the owner.
- (9) Failure to comply with Sub-items 5, 6 and 8 would result in actions as set out in Sections 83 and 84 of this By-law.

The purpose of the substitution is to aid in interpretation.

86. In Schedule 8 Item 7, by the deletion of the wording “as provided in Regulation 23 of the DFA” after the words “is deemed to have lapsed”

The purpose of the deletion is to correct an error in referring to Regulation 23 of the DFA.

87. By the substitution of relevant headings referred to in the Index to reflect the changes as set out in detail in this notice:

- a) The deletion of Sections 47, 69, 94 and 95
- b) The addition of Sections 60A, 61A, 63A, 64A and 81A and Schedule 6A
- c) The amendment of headings applicable to Section 61

The purpose is to reflect changes made to the headings as set out in more detail in this document.