



**JOE GQABI
MUNICIPAL PLANNING TRIBUNAL**

**STANDARD OPERATIONAL
PROCEDURES**

January 2020

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1. DEFINITIONS AND INTERPRETATION

The definitions below are the same definitions as those contained in the Act. These definitions will be applicable to this Operational Procedure.

- 1.1 “administrative officer” means the Town Planner of the Joe Gqabi District Municipality.
- 1.2 “secretariat” means Town Planners of local municipalities lead by the District Town Planner whose function is to provide administrative support to the Tribunal
- 1.3 “administrative phase” means the phase that commences only after a land development application is submitted to the Local Municipality and confirmed as received, and is the phase during which all public participation processes shall be finalised. The local municipality is responsible for the abovementioned components of this phase.
- 1.4 “applicant” means any natural person, juristic person, trust or an organ of state submitting a land development application as contemplated in section 45 of SPLUMA
- 1.5 “Bill of Rights” means the provisions of sections 7 – 39 of the Constitution
- 1.7 “chairperson” means the member of the Municipal Planning Tribunal appointed by the Municipal Council as Chairperson
- 1.8 “deputy Chairperson” means the member of the Municipal Planning Tribunal appointed by the Municipal Council as the deputy Chairperson
- 1.9 “committee of the Municipal Planning Tribunal” means at least 3 (three) members of the Municipal Planning Tribunal as designated by the Municipal Planning Tribunal, to hear, consider and decide a matter which comes before it in terms of the provisions of section 40(1) of SPLUMA. These designated members must include at least 1 (one) member who is not a municipal official in terms of the provisions of section 40(2) of SPLUMA. The Municipal Planning Tribunal Chairperson must designate 1 (one) of the at least 3 (three) designated members to act as the presiding officer of the committee
- 1.10 “consideration phase” means the phase during which the Municipal Planning Tribunal must consider an application by means of either written or oral proceedings and during which investigations regarding the specific application can be undertaken, if so required
- 1.11 “Constitution” means the Constitution of the Republic of South Africa, Act 108 of 1996
- 1.12 “day(s)” means calendar days, including Saturday, Sunday, or a public holiday. Where a certain number of days is to be calculated, the number of days are calculated by excluding the day on which the document is served and includes the day of the meeting/hearing
- 1.13 “inspector” means a person designated or appointed by a Local Municipality as an inspector in terms of section 3(3) of SPLUMA and who is at the disposal of the Municipal Planning Tribunal in terms of section 48(2) of SPLUMA, if so requested

- 1.14 “land development” - means (1) the erection of buildings or structures on land; and/or (2) the change of the use of land (that is the purpose for which land is or may be used lawfully, including any conditions related to such purpose), which includes: (2.1) township establishments, including the determination of a settlement, the formalisation or incremental upgrading of an informal settlement and the extension of boundaries of approved townships; (2.2) the removal, amendment or suspension of restrictive conditions or servitudes; (2.3) the amendment of a land use scheme; and/or (3) the subdivision or consolidation of land, which may include the closure of a public place, and the amendment or cancellation of general plan; and/or (4) any deviation from the land use or uses permitted in terms of an applicable land use scheme, and includes a land use application
- 1.15 “municipal area” means the area of jurisdiction of a local municipality in terms of the Local Government: Municipal Demarcation Act, Act 27 of 1998
- 1.16 “local municipality” means Elundini Local Municipality, Senqu Local Municipality and Walter Sisulu Local Municipality
- 1.17 “A development charge” - is a once off charge levied by a municipality on the land owner or applicant as a condition for approving land development application. They are imposed to cover the costs incurred by the municipality when installing new infrastructure or upgrading an existing infrastructure.
- 1.18 “Engineering Services” - means a system for the provision of water, electricity, renewable energy equipment, gas, roads, storm water drainage and collection and removal of solid waste or sewerage, solid waste sites required for the purpose of land development;
- 1.19 “organ of state” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa Act, Act 108 of 1996
- 1.20 “PAJA” means the Promotion of Administrative Justice Act, Act 3 of 2000
- 1.21 “PAIA” means the Promotion of Access to Information Act, Act 2 of 2000
- 1.22 “regulations” - means the regulations promulgated in terms of section 54 of SPLUMA which was promulgated in the Government Gazette No. 38594 of 23 March 2015 under Notice Number R239 and which came into operation on 13 November 2015
- 1.23 “SPLUMA” - means the Spatial Planning and Land Use Management Act, Act 16 of 2013 which came into operation on 1 July 2015
- 1.24 “Tribunal Roll” - is defined as the standing items including applications on the roll that shall be considered in a Tribunal Meeting. Under no circumstances shall an application not accounted in this roll be considered by the Tribunal.
- 1.25 “Tribunal/MPT” - meaning the Municipal Planning Tribunal established in terms of Section 35 of the Spatial Planning and Land Use Management Act, 16 of 2013

- 1.26 “Owner” - means the person in whose name land is registered in the deeds registry or a holder of a real right of land the person in whom land vests
- 1.27 “Quorum” - means the majority of the Municipal Tribunal members, with at least three of the appointed members present. Two (2) of the members being Municipal employees and one (1) being an independent member not in the employ of the Municipality
- 1.28 “Council” - means the Municipal Council of the Joe Gqabi District Municipality, unless otherwise stated
- 1.29 “By-law” - means a gazzeted by-law applicable to the municipality within which an application for land use or land development relates

2 THE JOE GQABI DISTRICT MUNICIPAL PLANNING TRIBUNAL

- 2.1 The Municipal Planning Tribunal is a committee appointed by Council Municipal Planning Approval Authority appointed by Council in accordance with Section 35 of SPLUMA.
- 2.2 The role of the Municipal Planning Tribunal is to determine land use and development applications within the jurisdiction of each of the three local municipalities within the Joe Gqabi District, subject to a signing of a cooperation agreement in terms of Sections 34 (2) of SPLUMA.

3 APPLICATION OF THESE OPERATIONAL PROCEDURES

- 3.1 The municipality must, in terms of the provisions of regulation 3(1)(k) develop and approve operational procedures for the Municipal Planning Tribunal
- 3.2 These procedures seek to provide a readily available reference to ensure orderly conduct of meetings and to regulate the decision making process.
- 3.3 These Operational Procedures shall apply to all the meetings and/or hearings of the Municipal Planning Tribunal and shall mutatis mutandis apply to all the meetings of any committee designated by the Municipal Planning Tribunal
- 3.4 All members, officials, attendees and public members must adhere to the conduct of these procedures at all times
- 3.5 The ruling of the presiding officer on the interpretation and implementation of these procedures shall be final and binding on procedural aspects

4. PRINCIPLES TO BE APPLIED IN DECISION MAKING

- 4.1 The Municipal Planning Tribunal or its designated committee must:
- 4.1.1 allow access to information held by the Municipal Planning Tribunal in accordance with the provisions of section 32 of the Constitution regarding access to information, and PAIA;
 - 4.1.2 conduct its proceedings in a procedurally fair manner, as required by the provisions of section 33 of the Constitution regarding just administrative action, and PAJA;
 - 4.1.3 ensure that its decisions and actions are lawful;
 - 4.1.4 give written reasons for its decisions in terms of the provisions of section 5 of PAJA;
 - 4.1.5 ensure that its decisions are justifiable, rational and reasonable;
 - 4.1.6 when interpreting any legislation, promote the spirit, purport and objects of the Bill of Rights by virtue of the provisions of section 39(2) of the Constitution;
 - 4.1.7 act in a manner that is consistent with the Bill of Rights;
 - 4.1.8 act fairly, independently, lawfully and legally as the principles of administrative justice demand; and
 - 4.1.9 ensure that it adheres to the two rules of natural justice prior to its decision-making process –
 - 4.1.9.1 *Audi alterem partem rule* (let the other side be heard); and
 - 4.1.9.2 *Nemo iudex in sua causa* (no-one is fit to be a judge in his own cause)
 - 4.1.9.3 in terms of the Development Principles as contained in Chapter 2 of the Spatial Planning and Land Use Management Act, Act 16 of 2013 (SPLUMA)

5. ROLE OF THE CHAIRPERSON/PRESIDING OFFICER

- 5.1 The presiding officer of a designated committee must inter alia:
- 5.1.1 maintain order;
 - 5.1.2 act in accordance with commonly accepted decorum;
 - 5.1.3 remain patient and courteous to legal practitioners, parties, witnesses and the public, and require them to act likewise;
 - 5.1.4 manage proceedings in such a way, to expedite their conclusion as cost-effectively as possible;
 - 5.1.5 not exert undue influence in order to promote a settlement;

- 5.1.6 lay down reasonable time limits for argument, (but may be cut short if further argument would not be of material assistance);
- 5.1.7 the examination and cross-examination of witnesses should be curtailed if it exceeds reasonable bounds; and
- 5.1.8 applications for postponements must be scrutinised for real merit and must be dealt with firmly and fairly.
- 5.1.9 The Chairperson may restrain the debate by a member if, in his/her opinion, that member is no longer debating an application on the Tribunal Roll; is repeating himself/herself or obstructing the meeting.
- 5.1.10 Ensure that any person refusing to comply with his/her ruling leaves the meeting place immediately and in the case of members, report these instances to Council

6. NOTICE OF MEETINGS TO MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

- 6.1 The Municipal Planning Tribunal shall meet as a whole at least quarterly as it may be necessary, on the date, time and place as the Chairperson may determine in consultation with the secretariat.
- 6.2 The Chairperson shall provide the administrative officer of the Municipal Planning Tribunal with the notice of the meeting, indicating the time, place and date of such meeting, as well as the agenda for such meeting.
- 6.3 The administrative officer shall furnish each and every member of the Municipal Planning Tribunal with the notice of the meeting and agenda for such meeting, at least 7 (seven) days prior to such meeting.
- 6.4 The chairperson may rule an item to be urgent in which case the notice maybe at least 24-hours or lesser as the Chairperson may direct.
- 6.5 Municipal Planning Tribunal members in the full-time service of the state shall receive such notification via their work e-mail addresses and private e-mail addressed when applicable. Members who are not municipal officials (including objectors or interested parties), must in writing, specify an appropriate e-mail address. Electronic notice of a meeting or any other official correspondence to these e-mail addresses will constitute a legally proper notice of a meeting. The notice will constitute a formal agenda of the meeting.
- 6.6 A notice to the Municipal Planning Tribunal shall be limited to the applicant; and those who have lodged a formal objection or comment within the specified time as stipulated in the Newspaper advertisement of the application.

- 6.7 The provisions of the Electronic Communications and Transactions Act, Act 25 of 2002 apply to any electronic communications made in terms of these rules.
- 6.8 Upon receipt of a notice for a meeting, any member who with a conflict of interest shall submit a written notice to this effect to the Chairperson within three days of receiving a notice.

7. PROCEDURE DURING THE TRIBUNAL MEETING

- 7.1 Only written and signed leave of absence applications will be approved
- 7.2 All members and officials shall declare their interests and sign a declaration of interest form at every meeting
- 7.3 The Tribunal meeting shall only consider applications based on written submissions only.
- 7.4 Items for discussion shall be limited to the lodged applicants
- 7.5 The Chairperson will be guided by the agenda of the meeting
- 7.6 The Tribunal is chaired by the chairperson appointed by Council as the chairperson of the Tribunal or a deputy chairperson or a presiding officer elected.
- 7.7 Due to complexities pertaining to discussion on each application, the chairperson may follow proceedings in accordance to the Tribunal Roll in which case the applicant should reserve time until his/her application is due.
- 7.8 The Chairperson may also divert in terms of sequence of the Tribunal Roll, and have courtesy to entertaining applications in accordance to whoever may be at the venue before the commencement of the meeting.
- 7.9 It should be noted that applicants, interested or effected parties should arrive at the meetings at least 15 minutes before the commencement of the Tribunal in order to be notified of the day's proceedings
- 7.10 The chairperson will announce the application and requests a municipal town planner to conduct a presentation for the Tribunal.
- 7.11 Tribunal meetings shall be open to the public, objectors and any other interested persons
- 7.12 The purpose of participation in Municipal Tribunal seating's is to invite the applicant or any person who lodged a formal comment or objection within the stipulated time to only bring questions of clarity towards the application. No new or additional information shall be entertained.
- 7.13 The Chairperson shall explain the procedure to be followed, including the limits on speakers being the applicant or interested or affected parties and the speaker shall give his/her name and address for the record.
- 7.14 Reports to the Tribunal must only be presented as a hardcopy and/or a slide presentation.

- 7.15 Thereafter the Chairperson shall invite comments from the applicant and objectors. Such comments must express the need to seek clarification pertaining to the application.
- 7.16 The Chairperson will then request comments and questions from Tribunal members.
- 7.17 Improper and disruptive conduct by parties may result in removal from the meeting.
- 7.18 Applicant, objectors or interested and affected parties may only be present at the Tribunal meeting during the initial tabling of the application. Thereafter any further public interaction will be at the discretion of the Chairperson.
- 7.19 Only the Council appointed members will participate in the determination of an application

8. SITE INSPECTIONS (INSPECTIONS IN LOCO)

- 8.1 A site visit may be requested by the Tribunal within the decision making process. A site visit/inspection shall be defined as a visit by the Tribunal to the subject application in accordance with the SPLUMA bylaws
- 8.2 In submission of an application to Council the applicant agrees to have their property inspected by the Tribunal for the finalization of the application.
- 8.3 The Administrative Officer shall notify the applicant of the site inspection date. It is the duty of the applicant to notify the owner if applicable.
- 8.4 It shall be noted that if the applicant denies granting access to the Tribunal for a site visit such will also be noted as denying required information. The Tribunal will assess the application in accordance to the submissions before it.
- 8.5 The applicant shall not directly communicate with or invite a member of the Tribunal to view his/her property outside of the official operations of the Tribunal.
- 8.6 The site visit of the subject application shall be discussed on the same day of seating of the Tribunal meeting and the Registrar should have a supplementary report on the Tribunal Roll.

9. QUORUM

- 9.1 The quorum shall be determined as 50 + 1
- 9.2 If there is no quorum and the Chairperson is present, he/she must adjourn the meeting for 15 minutes, and, if at the end of that period there is still no quorum, the meeting must again be adjourned for a period determined by the Chairperson at his/her discretion or he/she may adjourn the meeting to another time and date at the same venue or to another time, date and venue.
- 9.2 In an absence of the Chairperson and where no quorum exists, the Administrative Officer shall adjourn the meeting for 15 minutes after the commencement time. If at the expiry of

the 15 minutes after the appointed time for the commencement of the meeting, the required quorum is not present, the meeting shall be cancelled.

10. MINUTES

- 10.1 The Administrative Officer must ensure that all proceedings of the Tribunal are recorded electronically and its decisions, including reasons are minuted.
- 10.2 Every member of the Tribunal as well as any person attending a meeting must sign the attendance register and the names of those who:
 - a. Are absent with leave having been granted by the Chairperson
 - b. Are absent without leave having been granted
 - c. Arrive after the meeting has started (with time of arrival)
 - d. Absent themselves from the meeting at any time (with time of departure and arrival)
 - e. Leave the meeting prior to the conclusion thereof and that the time and reason for departure are recorded.
- 10.3 The Administrative Officer must circulate draft minutes to all members and officials who of the Tribunal meeting within 7 days of the meeting.
- 10.4 Members and officials are given 3 days to comment and input on the minutes. If no comment or input is received within the prescribed timeframe, the minutes will be deemed as correct and final.
- 10.4 The correctness of the minutes must, subsequent to the submission of comments and inputs by the members, be signed off by the Chairperson within 3 days.
- 10.5 The Administrative Officer must circulate and archive all minutes approved by the Chairperson. The Administrative Officer shall publish the minutes on the official Municipal website.

11. RECORD OF DECISION & CORRESPONDENCE

- 11.1 The Tribunal shall act to Approve, Partially Approve or Refuse an application, with reasons.
- 11.2 The Tribunal decision regarding an application shall be communicated by the Administrative Officer.
- 11.3 The Administrative Officer, having received the decision from the Chairperson or presiding officer, shall issue a letter of the decision of the Tribunal that is signed and dated by the Chairperson within 3 days to the Local Municipality which the application was lodged.

11.4 The Local Municipality will be responsible to communicate the decision of the Tribunal within 5 days of receipt.

11.5 The Local Municipality must issue the letter of the Tribunal's decision to:

a) The applicant

b) Any objector(s)

b) Any person granted permission in terms of Promotion of Access to Information Act, Act 2 of 2000.

11.3 A member of the MPT by the direction of the chairperson of the MPT must draft a comprehensive Record of decision.

12. ADOPTION AND AMENDMENTS OF OPERATIONAL PROCEDURES

12.1 The Operational Procedure will be adopted and amended by Tribunal and then tabled before Council for endorsement.

12.2 The Chairperson of the Tribunal in writing may request amendments to the Operational Procedures with reasons and submit this to the Administrative Officer.

12.3 The Operational Procedures will be reviewed as and when necessary and such a need for review shall be raised, in writing, with the Chairperson.

13. REFERENCING OF APPLICATIONS

All applications that are to be presented before the Tribunal will be given an MPT reference number by the Administrative Officer once the application is ready for the Tribunal.

The applications will be referenced as follows:

MPT20/01/01ELM

Where:

MPT = Municipal Planning Tribunal

20 = Year

01 = First Tribunal Meeting

01 = First item on the agenda

ELM = relevant municipality