



rural development & land reform

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Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

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REGISTRAR'S CIRCULAR 7 of 2016 **CITY OF TSHWANE METROPOLITAN MUNICIPALITY BY-LAW**

1. Purpose

To set out the requirements affecting the Pretoria Deeds Registry, to comply with the City of Tshwane Metropolitan Municipality's Land Use Management By-law (Notice 327 of 2016: Gauteng extraordinary *Gazette* dated 2 March 2016), relating to properties within its jurisdictional geographical area.

2. Background

Section 156(2) of the Constitution of the Republic of South Africa, 1996 confers on municipalities the right to administer local government matters listed in Part B of Schedules 4 and 5 thereof. The City of Tshwane Metropolitan Municipality has adopted its By-law in terms of section 13 of the Municipal Systems Act, Act 32 of 2000 (herein after referred to as the By-law). This By-law came into operation on 2 March 2016, in terms of Local Authority Notice 327 of 2016; Provincial *Gazette* No 72. This By-law should be read in conjunction with the Spatial Planning and Land Use Management Act, Act 16 of 2013 (herein after referred to as SPLUMA).

3. Pending applications in terms of other legislation

Section 3 of the By-law provides for transitional arrangements. Applications pending before the Municipality before the coming into operation of the By-law shall be dealt with in terms of that specific legislation, subject to the provision of Section 2(2) of SPLUMA. This has the effect that certain provisions of provincial legislation in operation within the jurisdiction of the City of Tshwane became inconsistent/partially inconsistent with SPLUMA, and without the benefit of the provincial legislation being repealed section 12(2) of the Interpretation Act, Act 33 of 1967 cannot apply. With the enactment of the By-law, new development applications have to be finalised and dealt with in terms of the By-law.

4. Categorization

Section 15 of the By-law deals with categorization of land development applications. Due to the fact that the Deeds registry will not be able to determine the applicable category, the Municipality must refer to the applicable category in the notification in terms of Section 46(1) of

SPLUMA or if compliance to Section 46(1) is not required, separate notification is required by the Deeds registry to determine the authorizing authority.

5. Removal of Restrictive Conditions

5.1 Section 47 of SPLUMA deals with restrictive conditions.

5.2 In terms of the definitions as contained in Section 1 of the By-law the definition of "land development application" read with Section 41(1) of SPLUMA includes the alteration, suspension or removal of restrictive conditions.

This has the effect that:

- 1) The 5 year period as provided for in Section 43(2) of SPLUMA is therefore applicable and the application by the owner to remove, amend or suspend a restrictive condition, must be registered within the said 5 years as provided in Section 47(5) of SPLUMA.

Notification for approval to the removal, amendment or suspension of a restrictive condition, by the Municipal Planning Tribunal as provided for in Section 47(1) of SPLUMA must be lodged with the application to enable the Registrar of deeds to determine the validity date thereof.

and

- 2) The compliance certificate in terms of Section 16(10)(b) of the By-law as referred to in paragraph 7 of this circular, read with Section 53 of SPLUMA, must be lodged.

5.3 Section 16(2)(a) of the By-law provides that an owner of a property(ties) or the Municipality of its own accord, who wishes to remove, amend or suspend a restrictive or obsolete condition, obligation, servitude or reservation registered against the title of a property(ties), may apply in writing to the Municipality.

5.4 Section 16(2)(b) of the By-law provides that the Municipality shall not:

- i) remove a personal servitude without the consent in writing of the beneficiary; *or*
- ii) remove a praedial servitude without the consent in writing of the dominant tenement; *or*
- iii) remove a servitude in favour of the general public or a public place under control and management of the Municipality vested or created by means of a servitude read with section 63 of the Transvaal Local Government Ordinance 17 of 1939, having followed the provisions of the said Ordinance or other relevant legislation.

It is evident from the above provision that the Municipality will not remove servitudes out of its own accord.

The provisions of the Deeds Registries Act 47 of 1937 are applicable to the registration and lapsing or cancellation of servitudes.

5.5 Section 16(2)(c) of the By-law provides that where any conditions relating to land use rights, buildings and or control or obligation relating thereto are:

- i) contained in the title deed; and/or
- ii) conditions arising out of conditions of establishment; and/or
- iii) conditions imposed by-, or for the benefit of-, or anybody or person; and
 - (aa) of which the person is no longer living and without a successor being included in the condition; *or*

- (bb) a body or legal entity that has been disestablished; or
 - (cc) has become obsolete;
- then the Municipality may remove, amend or suspend such conditions or obligations, e.g. a Home Owners Association that is disestablished.


5.6 Section 45(6) of SPLUMA provides that where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the townships board or any controlling authority, such consent may be granted by the municipality and such reference to the administrator, a Premier, the townships board or controlling authority is deemed to be a reference to the municipality. This should be read together with Section 16(2)(d) of the By-law that deals with restrictive conditions:

- i) requiring the consent of the Municipality; and/or
- ii) where the Municipality was granted substitution of authority in terms of the section 45(6) of the Act and the Gauteng Removal of Restrictions Act, 1996 (Act 3 of 1996); the Municipality may dispose of the conditions by granting the said consent in writing or as contemplated in subsection (e) with an application.

Cognisance should be taken that although Section 2 of Act 3 of 1996 substitute the Municipality as authorizing authority in conditions, Section 3(3) determines that it is not the case in a building line restriction which has been imposed under Section 9 and 9A of the Advertising of Roads and Ribbons Act 21 of 1940.

Section 47(4) of SPLUMA applies to the removal or suspension of a condition to the benefit of the State and therefor the consent must be given by the relevant State body in terms of the applicable law, and the municipality cannot consent in terms of the By-law.

5.7 The applicant shall notify the Registrar of Deeds of the decision of the Municipality on the removal of restrictive conditions and provide a copy of the notice in the Provincial Gazette to the Registrar of Deeds. The Registrar of Deeds will on application by the owner, endorse the title deeds of the property (ties) to the effect that the conditions have been removed, suspended or amended.

5.8 The owner or his/her  authorized agent shall lodge with the Registrar of Deeds the following documents for endorsing of the alteration, suspension or removal of the restrictive condition:

- 1) A Section 3(1)(v) Act 47 of 1937 application requesting the endorsing of the title in terms of Section 16(2)(g) of the By-law regarding the removal, amendment or suspension of the condition.
- 2) A certified copy of the Provincial Gazette as provided in section 16(1)(y) of the By-law.
- 3) Notification by the Municipal Planning Tribunal with reference to the date of approval to enable the Deeds Office to determine the 5 year validity as provided for in Section 43(2) of SPLUMA.
- 4) A compliance certificate by the Municipality in terms of Section 16(10)(b) of the By-law, as referred to in paragraph 7 of this circular. If no conditional approval is involved, the Municipality can merely certify that Section 16(10)(b) of the By-law does not find application.
- 5) Approval by another controlling authority as provided for in Section 45(6) read with Section 47(4) of SPLUMA, if required.

6. Establishment of Townships

The process of Township Establishment Applications or Extension of boundaries is provided for in Section 16(4) of the By-law.

6.1 Section 33(2) of SPLUMA prescribes that where an application or authorization is required in terms of any other legislation for related land use, such an application must also be made or such authorization must also be requested in terms of that legislation (e.g. Subdivision of Agriculture Land Act 70 of 1970).
As Township Establishment takes place on farm property, the Subdivision of Agriculture Land Act 70 of 1970 needs to be complied with or the contrary must be proven as provided for in CRC 6 of 2002.

6.2 Section 45(6) of SPLUMA finds application when it is required that a condition contrary to township establishment must be removed, or if removal of a condition is required in terms of the "conditions of establishment".

Notice of an application to remove, amend or suspend a restrictive condition which operates for the benefit of the State, must be in writing and given in the prescribed manner to the organ of State which is responsible for the administration of the law or the performance of the function to which such condition relates as provided in Section 47(4) of SPLUMA.

Consents required in terms of Legislation not repealed by SPLUMA (e.g. Gauteng Transport Infrastructure Act 8 of 2001, Advertising of Roads and Ribbon Development Act 21 of 40; SANRAL Act 7 of 1998, etc.) must therefore be issued by that Controlling Authority.

6.3 Section 16(8) of the By-law provides for the Opening of a Township Register. The applicant shall lodge with the Registrar of Deeds the following documents for opening of a township register:

1) A notification by the Municipality in terms of Section 46(1) of SPLUMA read with Section 16(4)(m) of the By-law .

The notification must refer to:

- a) The date of approval of the township establishment application, to enable the Registrar of deeds to determine the date of validity, mentioned in Section 43 (2) of SPLUMA.
- b) The applicable categorization in terms of the By-law to enable the Registrar of deeds to determine the legislative authority.

2) The notification mentioned in paragraph 1 above shall be accompanied by:

- a) A statement of conditions, known as conditions of establishment, for the township issued by the Authorized Official or Municipality Planning Tribunal.

The Conditions of Establishment will be based on the Land Audit Report of the Conveyancer in terms of Schedule 6 of the By-law read with Section 16(4)(g) of the By-law.

Registrar Circular 3 of 2015 and Registrar Circular 23 of 2015 and any amendment thereto will apply to the Conditions of Establishment issued by the Authorized Official or Municipality Planning Tribunal.

The Registrar of deeds must be notified by the Authorized Official or Municipality Planning Tribunal of any amendment to the Conditions of Establishment;

- b) An approved layout plan which must accompany the conditions of establishment.
- 3) If the land development application has been amended after approval, the Section 16(19) notification by the Municipality to amend the Conditions of Establishment must be lodged provided it takes place:
- (i) within 2 months from the date of such notification of approval; and
 - (ii) before a notice has been placed in the Provincial Gazette, as required in terms of this By-law or any other legislation, to bring the land development rights into operation; and
 - (iii) before the registration of any property created as a result of a land development application for subdivision or consolidation, in terms of this By-law or other legislation; and
 - (iv) before the registration of any registration transaction required as a result of the approval of a land development application in terms of this By-law or other relevant legislation.
- 4) A certificate in terms of Section 16(7)(b) of the By-law from the Municipality, that all the conditions to be complied with by the township owner, prior to the opening of a township register, including the provision of engineering services and/or guarantees and payment monies contemplated in subsection 16(4)(e) of the By-law, have been complied with. The certificate may include all the conditions and registration transactions to be registered simultaneously with the opening of the township register. This may include a condition/consent that the property may be transferred to a new owner. The provision of Section 29 of the By-law which requires proof of registration and a copy of the registered title deed will not be required in this instance. The Conditions of Establishment though must refer to the new owner.

If the township application lapses in terms of any provision of the By-law or in terms of Section 43(2) of SPLUMA, the certification granted by the Municipality shall simultaneously lapse.

No Section 16(10)(b) of the By-law certificate is required for the Opening of a Township Register.

- 5) General Plan for the Township (and Diagrams, if applicable).
- 6) Letter of extension by the Municipality until such period as the Municipality may allow, if the said Section 16(7)(b) compliance certificate, Conditions of Establishment, General Plan and diagram together with the title deeds for endorsement and registration, were not lodged within a period of 12 months from the date of approval of the General Plan of the Township by the Surveyor-General, as provided for in Section 16(8)(a) of the By-law.
- 6.4 After Opening of the register, the Registrar of Deeds shall notify the Municipality of the registration and endorsing of the title deeds as provided for in Section 16(8)(c)(i) of the By-law.
- 6.5 Section 16(8)(c)(ii) of the By-law provides that the Registrar of Deeds shall not register any further registration transactions in respect of any land situated within the township, until such time as the township is declared an approved township in terms of section 16(9);
- (aa) provided that the Municipality may grant, on request by the owner, its consent for the

- land on which the township is to be established, to be transferred to a new owner;
and
(bb) subject to the provisions of section 29 of the By-law having been complied with by the owner of the land, to the satisfaction of the Municipality, who may in its consent impose any condition it deems expedient.

The Conditions of Establishment will refer to the original owner. The consent by the Municipality, of transfer to a new owner must be lodged. Examiners must verify if the imposed conditions place any duty on the Registrar of Deeds. A new set of Conditions of Establishment will be lodged herewith which refers to the new owner. Proclamation will take place in accordance with this new Conditions of Establishment.

After compliance with section 29 of the By-law, all rights and obligation of the land development applicant will be passed to the new owner and he shall be deemed to be the developer of the township.

Due to this prohibition no new bond can be registered by the transferee. The existing bond registered by the land development applicant, who is also the transferor to the transaction, may however be substituted in terms of Section 57 of Act 47 of 1937. The linking of such a typical batch would be:

- 1-Transfer to the land development applicant (Developer) if applicable,
- 2-Bond,
- 3-Consent to Opening of the Township Register,
- 4-Bondholders consent,
- 5-Transfer to Section 29 owner
- 6-Section 57 of Act 47 of 1937 substitution of debtor.

6.6 Section 16(9) of the By-law provides that the Municipality or applicant, if authorized by the Municipality, shall by notice in the Provincial Gazette; declare the township an approved township.

6.7 Section 23 of the By-law provides for re-proclamation in case of errors or omissions.

6.8 Section 31 of the by-law provides for an owner entering into contracts and options prior to rights in terms of this by-law coming into operation, provided certain requirements are met. Examiners must verify if Section 31 has been complied with or not, before a note is raised to comply with RCR 45/2012 regarding that the date of sale before date of proclamation.

6.9 Examiners must complete Annexure A hereto with all township applications.

7. Compliance Certificate by the Municipality

Section 16(10)(b) of the By-law read with Section 53 of SPLUMA provides that no property (ties) or land and/or erf/erven and/or sections and/or units, sectional title schemes/registers or other registration transaction/s, in a land development area, which registration transactions results from a land development application(s), may be submitted by the applicant and/or owner, to the Registrar of Deed for registration, including transfer and the registration of a Certificate of Consolidated Title and/or Certificate of Registered in the name of the owner; prior to the Municipality certifying to the Registrar of Deeds that:

- (i) all engineering services have been designed and constructed to the satisfaction of the Municipality, including the provision of guarantees, and maintenance guarantees, for services having been provided to the satisfaction of the Municipality as may be required;
- (ii) all engineering services contributions and open spaces and parks contributions and/or development charges and/or other monies have been paid;
- (iii) all engineering services have been or will be protected to the satisfaction of the Municipality by means of servitudes;
- (iv) all conditions of the approval of the land development application have been complied with or that arrangements for compliance to the satisfaction of the Municipality have been made, which arrangements shall form part of an agreement read with Chapter 7 of this By-law, to the satisfaction of the Municipality;
- (v) it is in a position to consider a final building plan; and
- (vi) all the properties have either been transferred in terms of section 16(11) of the By-law or shall be transferred simultaneously with the first transfer or registration of a newly created property or sectional title scheme.

As per the wording of the section, the certificate must contain compliance with para i to vi above before transfer or registration can take place. The section specifically also includes a Certificate of Registered Title and a Certificate of Consolidated title.

This certificate will be required with: 1) first transfer or registration from the township,

- 2) subdivision,
- 3) first transfer or registration from the subdivision,
- 4) consolidation
- 5) first transfer or registration from the consolidation
- 6) opening of a scheme (not with Section 25 right of extension of a scheme as it is not a conditional approval)
- 7) first transfer or registration from the scheme,
- 8) incision
- 9) amendment or cancellation of a general plan
- 10) section 45(6) SPLUMA consent in terms of a Title condition,
- 11) removal of restrictive conditions,
- 12) any application where the use, form or function of land change.

In the case where a dual certificate is lodged by the Municipality in compliance with Section 16(10)(b) of the By-law e.g. for opening of a Sectional title scheme together with first transfer or registration from the scheme, the original compliance certificate must be lodged with the opening of a Sectional title scheme. In case first transfer or registration from the scheme takes place at a later stage, a certified copy of the compliance certificate must be lodged with every subsequent first transfer or registration. Reference must be made in all instances to indicate where the original compliance certificate is filed and it must be checked by Examiners.

8. To be Complied with prior to transfer or registration taking place

Section 16(11) of the By-law provides that where a land development application or a law requires that a property or land be transferred to the Municipality, a non-profit company and/or anybody or person as required by the Municipality; the property or the land shall be

transferred:

- 1) prior to the registration of any property resulting from a land development application, including prior to the registration of a certificate of registered title and/or transfer of a property(ies), or a portion thereof, or opening of a sectional title scheme and/ or registration of a unit in a sectional title scheme, read with section 16(10) of the by-law;
and
- 2) within a period of 6 months from the date of the land use rights coming into operation or within such further period as the Municipality may allow, if the owner doesn't want to register any properties resulting from the approval of a land development area.

Examiners should note a caveat against these properties. Since the Registrar of deeds will not be in a position to determine if the owner doesn't want to register any properties resulting from the approval of a land development area. The said properties must be registered within a period of 6 months from the date of the registration of the land development area, or period of extension as provided for by the Municipality.

9. Subdivision or consolidation

9.1 Section 16(12)(a) of the By-law provides for:

- (i) subdivision of an erf in a proclaimed township;
- (ii) consolidation of two or more erven in a proclaimed township where:
 - (aa) such erven are owned by the same owner; and
 - (bb) the erven are located within the same township;
- (iii) subdivision of a registered farm portion(s) or agricultural holding; provided that such subdivision shall not constitute a township in the opinion of the Municipality.
(Note that Consolidation of farm land is not governed by this By-law)

9.2 Documents to be lodged in the Deeds registry:



- 1) Notification by the Municipality in terms of Section 46(1) of SPLUMA. The notification must refer to:
 - a) the date of the conditional approval of the application to enable the Registrar of deeds to determine the date of validity, mentioned in Section 43 (2) of SPLUMA.
 - b) the applicable categorization in terms of the By-law to enable the Registrar of deeds to determine the legislative authority;
- 2) Consent to subdivision or consolidation with attached conditions as provided for in Section 16(12)(d)((i)(dd) or Section 16(12)(e)(ii) of the By-law read with RCR 33 of 2012 (which apply to subdivisions); whichever is applicable.
- 3) The consent of another controlling authority required in terms of any other legislation as prescribed in Section 33(2) of SPLUMA e.g. Advertising of Roads and Ribbon Development Act, Act 21 of 1970; Subdivision of Agriculture Land Act 70 of 1970, SANRAL Act 7 of 1998; Gauteng Transport Infrastructure Act 8 of 2001; etc.
Examiners must ensure that where authorization is also regulated in terms of another law, the authority in terms of that legislation may exercise their powers jointly in an integrated document or by separate documents as provided for in Section 30.
- 4) The compliance certificate in terms of Section 16(10)(b) of the By-law as referred to in paragraph 7 of this circular, read with Section 53 of SPLUMA.

- 5) A document from the Municipality wherein they amend or delete any condition (other than a condition of title) or add any condition as referred to in the conditions of subdivision or conditions of consolidation, if applicable, as provided for in Section 16(12)(g)(ii).

9.3 Compliance with Section 16(11) of the By-law which require prior transfer of certain erven, as referred to in paragraph 8 of this circular applies also to subdivisions and consolidations, if applicable.

10. Alteration, Amendment or Cancellation of General Plan

10.1 Section 16(15)(i) of the By-law provides that upon the approval of an application to alter, amend, or totally or partially cancel a general plan, the township or part thereof shall cease to exist as a township. The Surveyor General shall inform the Registrar of deeds, who shall make the necessary alterations, amendments or endorsements to or on the relevant title deeds and registers in his/ her deeds registry as provided for in Section 37(4) of the Land Survey Act 8 of 1997.

An SG Caveat will be noted against the Remainder of the Township. An application must be lodged in the Deeds registry and the title will be endorsed accordingly. The altered, amended or totally/ partially cancelled General Plan must be provided with the application.

10.2 Section 16(15)(c) of the By-law provides that this section will not apply to an alteration or amendment of a general plan for the closing of any public place or street or a portion thereof in terms of Section 67 or 68 of the Transvaal Local Government Ordinance 17 of 1939.

10.3 Section 16(15)(g)(i) provides that the Municipality may determine that a public place that has vested under the control and management of the Municipality in terms of section 63 of the Transvaal Local Government Ordinance 17 of 1939) but which in its opinion has not been developed or is no longer necessary for the provision of basic services to the community, may be closed as public place. This will have the effect that the normal procedure affecting e.g. street closures, will apply.

Due to the provision of Section 63 of the Transvaal Local Government Ordinance, 17 of 1939, the property remains vested in the Municipality.

When the General Plan is cancelled in total, the former public place will be delineated on a new diagram and will be indicated as a portion of the farm property. These former public places will not form part of the remainder of the township which reverted back to the farm register.

The public place which has been delineated on a diagram as a portion will have to be registered in the name of the municipality as provided for in Section 31 of the Deeds Registries Act 47 of 1937, before the developer/owner can deal with the remainder of the property.

10.4 An approval by the Municipality to alter, amend or totally or partially cancel a general plan, may include consent that the public place re-vest with the township owner as provided for in Section 16(15)(h) of the By-law. This will have the effect that a vesting Transfer in terms of Section 31 of the Deeds Registries Act, 47 of 1937 must firstly be registered in the name of the Municipality where after vesting transfer as provide for in

Section 31 of the Deeds Registries Act 47 of 1937, in the name of the township owner can take place.

10.5 The definition of "land development application" includes the amendment or cancellation of a general plan. Subsection 15(b)(iii) provides that the Municipality may impose conditions. This has the effect that the Registrar of deeds will require notification by the Municipality in terms of Section 46(1) of SPLUMA.

The notification must refer to:

- a) the date of the conditional approval of the application to enable the Registrar of deeds to determine the date of validity, mentioned in Section 43 (2) of SPLUMA. It is not necessary that the notification refers to the categorization as the section refers to Municipality. The Municipal Planning Tribunal will not be involved.
- b) if ownership of public places will remain with the Municipality or re-vest with the Township owner as provided for in Section 15(16)(f) of the By-law.
- c) if closing of any public place or street or a portion thereof in terms of Section 67 or 68 of the Local Government Ordinance 17 of 1939 is required to be registered simultaneously.


10.6 Documents to be lodged:

- 1) A Section 3(1)(v) Deeds Registries Act. Act 47 of 1937 application, with a proper causa referring to alteration, amendment or partially or wholly cancellation of a general plan (whichever applies) in terms of Section 16(15) of the By-law.
- 2) a certified copy of the altered, amended or totally or partially cancelled general plan, issued by the Surveyor General as provided for in Regulation 20(7) of the Deeds Registries Act 47 of 1937, must be lodged with the Registrar of Deeds, which has been endorsed by the Surveyor-General to that effect as provided for in Section 16(15)(f) of the By-law.
- 3) The Section 46(1) SPLUMA notification, as referred to in paragraph 10.5 of this circular.
- 4) The Title Deed of the township.
- 5) Vesting Transfers, if applicable.

11. Sectional Titles

11.1 Section 28(11) of the By-law provides that the Registrar of Deeds shall not register any transaction in terms of the Deeds Registries Act 47 of 1937 or the Sectional Titles Act 95 of 1986, where such registration must be authorized in terms of a land development application including the imposition of a condition of title, imposed by the Municipality. This section together with the definition of "land development" which includes the erection of buildings or structures on land, or the change of use of land, has the effect that SPLUMA also applies on sectional titles.

11.2 Documents to be lodged with opening of the scheme:

- 1) Notification by the Municipality in terms of Section  (1) of SPLUMA.

The notification must refer to:

- a) the date of the conditional approval of the application to enable the Registrar of

- deeds to determine the date of validity, mentioned in Section 43 (2) of SPLUMA.
- b) the applicable categorization in terms of the By-law to enable the Registrar of deeds to determine the legislative authority;
- 2) A compliance certificate by the Municipality in terms of Section 16(10) of the By-law, as referred to in paragraph 7 of this circular.

11.3 The compliance certificate by the Municipality in terms of Section 16(10) of the By-law (as discussed in paragraph 7 of this circular) is again required for first transfer or registration from the scheme, regardless of the fact that it was lodged during the opening of the scheme, as it is a specific requirement in the said section.

12. Excisions

12.1 Section 32 of the By-law provides for the Excision of land from an Agricultural Holding Register.

12.2 Section 32 (b-d) of the By-law set out the requirements if excision of an Agricultural Holding is required as a result of a township establishment. It determines that:

- 1) Excision may be a requirement in a pre-proclamation condition in terms of section 16(4)(g) to this By-law;
- 2) The endorsement of the Agricultural Holding Title by the Registrar of Deeds, to the effect that it is excised and known as a farm portion for purposes of a township establishment application, can be done simultaneously with the endorsement of the title deed of the farm portion and the opening of a township register in terms of section 16(4) of this By-law.
- 3) The Municipality shall certify that the pre-proclamation conditions have been complied with in terms of section 16(7)(b) of this By-law and in so certifying it may require that certain conditions be complied with together with the opening of township register, which may include the registration of the excision of an Agricultural Holding.

12.3 Although the use of land change with excision, Section 32(f) of the By-law determines that where the Municipality is authorized to grant permission for the excision of an Agricultural Holding in terms of any other law, that an application for excision shall not be regarded as a land development application for purposes of this By-law;

12.4 Section 32(j) of the By-law provides that the Municipality may grant permission for excision and may impose any condition it deems expedient and for purposes of granting the excision application shall issue a certificate of excision of the Agricultural Holding. Although Section 32(k) of the By-law determines that the applicant shall deliver a copy of the excision certificate to the Registrar of deeds, the Registrar of deeds will insist that the original certificate be submitted. A copy of the certificate will not be accepted since it will not comply with the requirements provided for in Regulation 20(7) of the Deeds Registries Act, Act 47 of 1937.

12.5 It should be noted that although Section 32(e) of the By-law provides that if an applicant wishes to excise an Agricultural Holding for whatever purpose, including the removal of restrictive conditions of title applicable to Agricultural Holding, that the Municipality shall only regard proof of such excision as being that the title deed of the Agricultural Holding

has been endorsed by the Registrar of Deeds, and a copy of the farm title deed created at the Registrar of Deeds as a result of the excision, that the *status quo* will remain and that the Registrar of Deeds will not issue the applicant/owner with a new title deed for the farm property. The existing title of the Agricultural Holding will be endorsed regarding the excision and it will be thereafter regarded as the farm title deed.

12.6 Section 32(i) of the By-law provides that an excision application shall only be valid upon the date on which the title deed of the Agricultural Holding has been endorsed by the Registrar of Deeds to the effect that the Agricultural Holding has been excised. Section 6(2) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 provides that the excision of an agricultural holding will be effective on the cancellation of the certificate which was issued in terms of Section 1 of the said act, and there for the Registrar of deeds will continue with the practice to note the excision certificate as a caveat against the property record of the affected holding, and will insist that the application by the owner, for the endorsing of the excision of the holding, be first lodged before any further registrations may be registered. The application for excision may however still be lodged with any simul registration and the *status quo* will remain. The application for the excision of the agricultural holding must still be done in terms of Section 6(2) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 and the heading thereof may not refer to the By-law. The causa of the application must however have a suitable reference to the fact that the excision was approved in terms of the By-law.

12.7 The By-law does not provide for road closures in an agriculture settlement and therefor the provisions of Section 5A(1) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 will still apply to those road closures.

Section 5A(1) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 provide that when any road in an agricultural holding settlement is closed that it will vest in the local authority, subject to the provisions of Section 5A(3) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919.

Section 5A(3)(b) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 provide that when the certificate of a settlement or a portion thereof is cancelled, that Section 5A(1) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 will not apply, and therefore such road will vest in the owner of the settlement and not the municipality.

If the municipality however wants to retain the roads, they will have to delineate the roads as a portion on a diagram, approved by the Surveyor-General. The municipality will also need to register a vesting transfer as provided for in Section 31 of the Deeds Registries Act 47 of 1937, as a road closure under the provisions of Section 5A(1) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919. The said Section 31 vesting Transfer will have to be registered before the municipality cancels the certificate as provided for in Section 6(2) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919, as to prevent it reverting back to the owner.

13. Establishment of a 3rd Party entity requirement

13.1 Section 32(1) of the By-law provides that if a land development application or any other law requires that a non-profit company / property- homeowners association / other

entity, as may be approved by the Municipality is to be created or established in respect of a land development application then;

- (a) such an entity shall be established or registered prior to the proclamation of a township in terms of section 16(4)(g)(vi) or at such time as the Municipality may determine, in the case of a township, but prior to the registration of any property as contemplated in section 16(10) of this By-law; and
- (b) in the case of a subdivision or any other land development application prior to the registration of any newly created portions or the exercising of any land use rights granted in terms of any land development application.

13.2 Although Section 32(2)(b) of the By-law determines that the conditions contained in Schedule 19 of the By-law should be incorporated during establishment of the entity, it should be noted that only registrable conditions in terms of Section 63 of the Deeds Registries Act, Act 47 of 1937 may be inserted in a title deed.

13.3 Schedule 19(13) of the By-law is clear that the developer shall become a member of the non-profit company (NPC) and will remain a member till the last portion/erf or Unit in the development has been transferred. In future the developer will also be compelled to lodge a certificate from the Home owners association when transferring a portion/erf or Unit, since the developer will already be a member of the NPC and the development will already be subject to the conditions of the NPC.

Examiners must therefore ensure that the acceptance certificate as provided for in Section 65(1) of the Deeds Registries Act 47 of 1937 must be lodged, as well as a consent to transfer/clearance certificate by the home owners association.



REGISTRAR OF DEEDS
DEEDS REGISTRY
PRETORIA
DATE: 04/07/2016

TSHWANE BY-LAW CHECK LIST FOR OPENING OF TOWNSHIP

	J/E	S/E
Conditions contrary to Township had been cancelled/removed		
Act 70/1970 complied with or letter of exemption filed		
Caveat noted (Section 16(10) certificate needed for first transfers)		
Section 16(4)(m) notification lodged (1) to determine the date of validity, mentioned in Section 43(2) of SPLUMA and (2) to determine applicable legislative authority (categorization)		

GENERAL PLAN

1) General Plan approved on:		
2) Checked right bottom corner PTA/JHB (If JHB, Bond should be dealt with – NB: Bond can't be registered in both PTA and JHB)		
3) Re-layout/Amending plan referred to		

CONDITIONS OF ESTABLISHMENT

1) Letter of extension lodged, if documents not lodged in deeds office within 12 months from date of approval of General Plan.		
2) Original Conditions of Establishment with attached layout plan lodged.		
3) Section 16(19) notification of amendment of Conditions of Establishment lodged (only if applicable)		
4) Section 16 (7)(b) certificate lodged (Stating Conditions of Establishment complied with. NB Not applicable if Local Authority is owner)		
5) Heading refer to owner in Title		
6) Section 29 consent lodged for change of ownership (if applicable)		
7) Heading refer to Property in Title (Not necessary to refer to (a Portion of Portion...))		
8) Heading refer to Tshwane By-law		
9) General Plan Number Corresponds with Plan lodged		
10) Conditions identified have been cancelled		
11) Conditions to be complied with prior to establishment have been complied with		
12) Existing conditions of title have been disposed of and correspond with servitude notes on General Plan		
13) Conditions of title correspond with servitude notes on General Plan		
14) Conditions in favour of 3rd parties are included under a separate heading and correspond with servitude notes on General Plan		

SECTION 46 APPLICATION

1) Application made for Opening of Township		
2) Application made for registration of General Plan and Re-layout/Amending plan		

Junior Examiner:

Senior Examiner: