

NQUTHU LOCAL MUNICIPALITY

WAYLEAVE BY-LAW



NQUTHU MUNICIPALITY UMASIPALA WASE NQUTHU

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To provide for the regulation of all works to be executed in any public road reserve and municipal servitudes; to provide for wayleave application approval, rejection and withdrawal procedures; to provide for the regulation of protected precincts; to provide for matters relating to costs; to provide for existing and planned services; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the constitution established local government as a distinctive sphere of government, interdependent and interrelated with the national and provincial spheres of government; and

WHEREAS there is agreement on the fundamental importance of local government to democracy, development and nation-building in our country; and

WHEREAS the municipality has an obligation to protect all services infrastructure within its road reserve boundaries

WHEREAS the constitution authorises and empowers municipalities to administer the local government matters listed in part B of schedules 4 and 5, relating to municipal public works, municipal roads and public places.

WHEREAS the municipality is committed to prevent damage to vehicles, injuries to vehicles occupants and pedestrians, to reduce the delays caused by road works and to prevent the reduction of the effective life span and durability of roads, footways and other services.

BE IT THEREFORE ENACTED by the municipal council of the **NQUTHU LOCAL MUNICIPALITY** as follows:-

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SECTION 1: DEFINITIONS

The following words and phrases shall have the meaning assigned to them in this bylaw, unless the context clearly indicates otherwise in which event the meaning shall be confined to the context:

"Applicant" means an individual, organization, or entity that appoints a professional engineer to apply for a wayleave by using the electronic wayleave management system (WLMS) on its behalf and will be known as the wayleave holder. The applicant will be responsible for paying any required fees and refundable deposits of hand deliver an original guarantee.

"as-built information" means information relating to how infrastructure has been installed by an operator;

"Authorised Agent" means a person authorized to implement the provisions of these By-laws, including but not limited to –

- a) Peace officers as contemplated in Section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977), as amended;
- b) Municipal police officers as contemplated in the South African Police Services Act, 1995 (Act 8 of 1995) or duly appointed by the Municipality; and/or
- c) Such employees, agents, delegated nominees, representatives and/or service providers of the Municipality as are specifically authorized by the Municipality in this regard.

"Backfilling" refers to the replacement of the structural layers in the trench or excavation and includes the base, subbase, selected subgrade and subgrade, but excludes the surfacing (see Reinstatement);

"Certificate of Completion" means the document issued by the Service Coordinator as proof that Work in the Public Road Reserve was completed according to the requirements of these By-laws;

"Completion Notice" means the document submitted by the Wayleave Holder to the Service Coordinator when the Work in the Public Road Reserve has been completed;

"Council" means the Municipal Council of the Nquthu local municipality established by Provincial Notice No. 6770 of 2000 dated 1 October 2000, as amended, or its successor in title, and any committee or person to which or whom an instruction has been given or any power, function or duty has been delegated or sub-delegated in terms of, or as contemplated in, Section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"Cross Cut" is the excavation of a trench by hand to identify and/or confirm the positions of existing Services in the Public Road Reserve.

"Distance of Excavation" means the shortest horizontal distance between an existing service nearest to the excavation.

"Emergency Work" is defined as any Work that is required to prevent or end a dangerous situation, to prevent or end an unplanned interruption in the supply of a Service, or to avoid any substantial losses.

"Lane Rentals" means the rentals determined by the Council from time to time to be paid to the Municipality in respect of Work in the Public Road Reserve that results in time delay costs being incurred by the users of the Public Road Reserve provided that departments of the Municipality

shall be excluded from the liability to pay the same. The following are lane (but not limited to) road lane, parking lane, pedestrian lane, bicycle lane, bus lane.

“Micro Trench (MT)” A micro trench is a narrow, shallow trench typically cut into asphalt pavement using specialized equipment. The depth and cross-section of the trench vary depending on the number of ducts to be laid but are typically less than 300mm deep and 50mm wide. Micro trenches are used to install underground cables and other utilities without the need for disruptive excavation.

To ensure the longevity and integrity of the installed services, it is important to lay them at a constant level within the micro trench. This can be achieved by using a variety of methods, such as bedding the ducts in sand or using a dedicated micro trenching machine that cuts a precise groove in the pavement. Micro trenching is a relatively new technology, but it is quickly gaining popularity due to its many advantages, including:

- Reduced disruption to traffic and pedestrians
- Minimized environmental impact
- Faster and more cost-effective installation
- Increased service life of underground infrastructure

“Municipal Department” means any Department of the Municipality;

“Municipality” means the Nquthu local Municipality as a corporate entity and local sphere of Government and established in terms Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), read together with the proclamations made in terms thereof and amended from time to time as referred to in Section 1.6 above;

“Newly Surfaced” means any road that has been constructed, re-constructed or re-surfaced in the past 5 years;

“Outdoor Advertising” means the act or process of notifying, warning, informing or making known or any other act of transferring information in a visual manner, primarily to attract the attention of road users;

“Professional Engineer” a person must be registered in terms of act 114 of 1990 at ECSA, and the person must be registered as a Professional Engineer, or professional engineering Technician, or professional engineering Technologist. The person must take full responsibility for the documentation, designs and site supervision as prescribed by the code of conduct of ECSA. The person must have professional liability insurance.

“Protected Road Surfaces” are Roads across which no digging of trenches will be permitted;

“Public Road Reserve” means the full width of a Public road, and includes the verge and the roadway; **“Reinstatement”** refers to replacing the bituminous surfacing or paving blocks in the case of roads, or the paving blocks, paving slabs, bituminous surfacing or grass in the case of footways and verges; **“Certificate of Completions”** (CoC) a CoC consist of the correctly signed Certificate, As Build drawings, Material Test results and Compaction Test results. As per GCC.

“Service” means any infrastructure in the Public Road Reserve that is used for supplying a product or service that is intended for public use and that is the property of a Service Agency;

“Service Agency” means any Municipal Department, public agency or private company that owns a Service in the Public Road Reserve;

“Service Coordinator” means the official that work in Roads and Transport Department who has the responsibility to coordinate and regulate any Work undertaken in those sections of the Public Road Reserve that fall within the Municipal area of the Council.

“Service Enquiry” is the process that must be followed by a Wayleave Applicant to obtain positions of existing services from all Service Agencies prior to applying for a Wayleave.

“Trenchless Methods” are methods used to place Services under the road without excavating trenches through the surfacing and structural layers. Specialized drilling equipment is normally used. **“Wayleave”** means the formal approval, and its accompanying conditions, in the prescribed format of Council to carry out Work in the Public Road Reserve. A Wayleave is issued by the Service Coordinator and consists of a Wayleave form and approved drawings;

“Wayleave Holder” means the Municipal Department or who is in possession of a Wayleave approved by the Group Head Road and Transport or his delegated official.

“Work” in the Public Road Reserve means any activity related to a Service, carried out within the Public Road Reserve. It includes, but is not limited to, any project-related activities, irrespective of the size of the project.

“Work Not Requiring a Wayleave” means all types of work which do not require excavation, traffic control or Reinstatement activities and for which a Wayleave is not required.

SECTION 2: OBJECTIVES OF THE BYLAW

The objectives of this bylaw are to –

- (1) Create an effective system for the control of excavations within the municipal road reserves and municipal servitudes.
- (2) Regulate wayleave agreements
- (3) Ensure cooperative process within the municipality
- (4) To facilitate the rapid deployment of electronic communication infrastructure

SECTION 3: APPLICATION OF THE BYLAW

- (1) This By-Law applies to all people or entities seeking to deploy or operate electronic communications facilities and or any other service on, under or above Municipal property, excluding permissions granted prior to the commencement of this By-Law or any application for the utilization of Municipal property by Community Safety Forums and/or Community Police Forums and/or Accredited and Associated Neighborhood and/or Farm Watch Structures.
- (2) Approval in terms of this bylaw is required irrespective of the zoning of any property in terms of the applicable planning scheme and/ or provision of applicable laws
- (3) The following activities and/or any combination thereof are included:
 - a) Trenching and micro trenching and related work in the Municipal area;
 - b) The siting and erection of poles and stringing of cable on or over poles within the Municipal area;
 - c) The stringing of cable on or between existing poles or any other Municipal property;
 - d) The erection of poles, base stations, towers or masts for the location of radio apparatus in the Municipal area, including micro-cell deployments on street furniture;

- e) Maintenance and operational activities related to already-deployed electronic communications facilities; and
- f) Any 5G connection or connections of transformers or any similar connection to any pole.

SECTION 4: PROHIBITIONS

- (1) No civil work for the deployment or maintenance of electronic communications facilities and/or services or the performance of emergency works or minor works may take place in the Municipal area without prior written permission having been obtained in terms of this By-Law.
- (2) No deployment of electronic communications facilities attached to-
 - (a) Municipal property; or
 - (b) street furniture, shall be effected without the applicant and the Municipality having first entered into an agreement.
- (3) All deployments of electronic communications facilities and/or anywhere on, above or under Municipal property must comply with all required permissions in addition to a wayleave or Municipal agreement.
- (4) All deployment of electronic communication facilities within the radius of 1,8 kilometers from the Nquthu Central Business District must be done using underground methods unless such other method has been discussed and approved by the municipality.

SECTION 5: ADMINISTRATION AND ENFORCEMENT

- (1) The Director: Technical Services and/or Director: Planning and Economic Development is responsible for the administration and enforcement of this By-Law or parts thereof.
- (2) The Director: Technical Services and/or Director: Planning and Economic Development may delegate these powers and duties to any other municipal employee whose functional duties such wayleave or electronic communications facility may fall, to act accordingly.
- (3) The Director: Technical Services and/or Director: Planning and Economic Development may delegate any power or duty to any competent official in his Directorate.

SECTION 6: APPLICATION PROCESS: GENERAL

- (1) Permission to work in the Municipal area must be obtained from the Municipality through a formal wayleave application.
- (2) The application must be made on the way-leave application form obtained from the municipal offices, Planning Department or Technical Department.
- (3) Prior to submitting the wayleave application form the applicant must obtain any necessary approval from all relevant authorities and affected providers.
- (4) Application fees for a wayleave are as set out in the annual budgeting framework adopted by the municipality in line with applicable legislation and policies.
- (5) Application fees are non-refundable.

- (6) Lease agreements and monthly rental fees must be applicable unless discussed otherwise with the municipality and an approval thereof is done by the municipality.

SECTION 7: APPLICATION PROCESS: STANDARD WORKS

- (1) A completed wayleave application referred in 6(2) must include at least the following:
- (a) Drawings in digital format or (3) copies of drawings of the proposed work, clearly showing the following:
 - (i) The full extent of the deployment, including –
 - (aa) Any deployment of electronic communications facilities on, under or over private land in the municipal area; and
 - (bb) the position and size of ancillary and supporting facilities (such as cabinets, containers, manholes, handholes and junction boxes)
 - (ii) The position of other services infrastructure already deployed in the area, and any above ground cable location or pilot holes undertaken must be done by prior arrangement with and under supervision of the municipality
 - (iii) The depth of all electronic communications facilities below the road, where trenching is planned
 - (iv) The distance of the works from the boundary of the road reserve, where relevant.
 - (v) Where arial fibre is planned, the dimensions and functionality of poles, where they are to be sited and the height at which fibre will be strung.
 - (b) The proposed reinstatement
 - (c) The proposed commencement date and expected duration of the works
 - (d) Details of consents or permission required from third parties for the planned deployment and proof that these have been obtained.
 - (e) Where applicable, a statement that the leasing of existing electronic facilities has been investigated and is not feasible.
 - (f) A municipal land use agreement between the owner/ operator of the electronic communication network and the municipality
- (2) The Municipality must notify the applicant in writing within ten (10) working days of receipt of a wayleave application form that-
- (a) the wayleave application form is complete, and that all required information has been submitted and payments made. The date on this notice will be considered as the wayleave submission date; or
 - (b) the wayleave application form is not complete and must be resubmitted, and such notice will specify the requirements which have not been met, and these must be complied with within a further fifteen (15) working days, failing which a completely new application will have to be submitted.
- (3) A wayleave application must be processed within thirty (30) working days from the wayleave submission date, and if the Municipality requires additional time for processing the application, it will notify the applicant in writing prior to the expiry of the initial period that a maximum of a further fifteen (15) working days is required.

- (4) The Municipality may, during the wayleave application processing period, consult with the applicant regarding aesthetic considerations and concerns relating to planned works within the Municipal area and may require that-
- (a) subject to Section 7(5)(c), the applicant conducts a public participation process in respect of affected persons; or
 - (b) terms and conditions relating to the preservation of the aesthetic character of an area are included in a wayleave issued.
 - (c) The requirement to conduct a public participation process shall not apply where-
 - (i) the applicant is required to undertake a heritage impact assessment under the National Heritage Resources Act, No. 25 of 1999, or an environmental impact assessment under the National Environmental Management Act, No. 107 of 1998; or
 - (ii) a public participation process acceptable to the Municipality has already been conducted by the applicant.
- (5) All preliminary work requested by the Municipality must be adhered to before work will be allowed to commence. Such requests include inter alia that the Municipality must always be notified in writing, seven (7) working days in advance by the wayleave holder prior to commencing with the work by the wayleave holder. Alternatively notice periods specified by the Municipality must be adhered to.
- (6) The work must be carried out according to the procedures and specifications as referred to in the wayleave document, the conditions under which the work was approved and any other requirements of affected Municipal Departments.
- (7) Proof of the wayleave must be kept on site while the work is in progress.
- (8) The wayleave applicant will be issued with one copy of the approved wayleave if so, required upon payment of the approved tariff for such copy. Additional copies may also be obtained if the wayleave is applicable to more than one work area or work team if so, required upon payment of the approved tariff for such copies.
- (9) Work will be stopped if proof of the wayleave is not available during inspections on site and fines may be imposed until the required proof is available on site.
- (10) On completion of the work all trenches and excavations in the Municipal area must be backfilled and reinstated according to the Municipality's specifications. Permanent reinstatements are then the responsibility of the wayleave holder as per the wayleave specific conditions.
- (11) On completion of the work and temporary or permanent reinstatement, as applicable, a completion notice must be sent to the Municipality by the wayleave holder.
- (12) The Municipality must review the completion notice as well as carry out an inspection of the site after receiving the completion notice. A certificate of completion confirming that all specifications have been met must be submitted by the wayleave holder to the department.
- (13) The applicable guarantee period of twelve (12) months will be stated on the certificate of completion and will commence from date of signature.

SECTION 8:
APPLICATION PROCESS: MINOR, EMERGENCY AND MAINTENANCE WORKS

- (1) Processing of wayleave for emergency works ranks higher in priority than wayleaves for standard works, minor and maintenance (which are ranked equally)
- (2) Wayleaves for minor, emergency or maintenance works may only be applied for, in respect of electronic communications facilities deployed under a wayleave issued by the Municipality.
- (3) A completed application form must include at least the following:
 - (a) Drawings in digital format or three (3) copies of drawings clearly indicating where works will be conducted;
 - (b) The nature of the emergency, minor or maintenance works to be carried out;
 - (c) The proposed commencement date and expected duration of the works;
- (5) Completed application forms must be submitted to the designated point of contact in the Municipality.
- (6) Submitted wayleave application forms will be vetted by the Municipality for completeness, including payment of the application fee.
- (7) The Municipality will notify the wayleave holder, as soon as practicable, that-
 - (a) the wayleave application form is complete, and all required information has been submitted. The date on this notice will be the wayleave submission date; or
 - (b) the wayleave application form is not complete, and such notice must specify the requirements which have not been met, that these must be complied within a further fifteen (15) working days, failing which a completely new application will have to be submitted.
- (8) A wayleave application must be processed as soon as practicable after the wayleave submission date.

SECTION 9:
APPLICATION PROCESS: EXTENSION OF THE DURATION OF WORKS

- (1) Immediately on becoming aware of circumstances reasonably beyond its control that cause a delay or which it reasonably anticipates will cause a delay in completion of the works beyond the term of the wayleave, the wayleave holder must submit a request for an extension of the wayleave.
- (2) A completed application form must include at least the following:
 - (a) The original wayleave number;
 - (b) The original expiry date of the wayleave for which an extension is sought;
 - (c) The revised expiration date applied for; and
 - (d) The circumstances necessitating an extension.

SECTION 10:
OBLIGATIONS OF WAYLEAVE HOLDER

- (1) A wayleave holder is required to maintain compliance with all applicable laws for the duration of the wayleave.

- (2) The issue of a wayleave does not derogate from the Municipality's right to impose additional requirements relating to compliance with-
 - (a) environmental or other impact studies required by the Municipality;
 - (b) heritage protection policies; or
 - (c) any other applicable law or Municipal Policy.
- (3) A wayleave holder is responsible for the acts and omissions of its agents and contractors in the performance of the works.
- (4) A wayleave holder must take all steps necessary to verify the exact location and type of already-deployed services infrastructure prior to the commencement of the works.
- (5) A wayleave holder must commence with the works within thirty (30) days of the wayleave issue date, and written notification of the date and location of planned commencement must be provided to the Municipality no less than ten (10) working days prior to such date.
- (6) The wayleave holder must provide the Municipality with the opportunity to conduct installation of optical cables while the works of the wayleave holder is in progress, if necessary.
- (7) The wayleave holder must ensure that no above ground permanent fixtures onto private property boundary walls are made without the written permission from the property owner.
- (8) No expansion/extension of midblock even distribution networks or overhead infrastructure, which include the erection of new pole structures and laying new cabling for telecommunication networks may be done without the written approval from all surrounding property owners and relevant Home Owners Association, if applicable according to the municipality.
- (9) The wayleave holder must allow another wayleave holder which has started works in the same Municipal area to finalize all works and obtain a completion notice before any work is commenced.
- (10) The wayleave holder is expected to source at least 60% unskilled labour from local sources and refrain from using unskilled labour from outside the Municipal area, where feasible and practical. The wayleave holder must liaise directly with the applicable Department within the Municipality.
- (11) The wayleave holder must lay the sleeve network in a linear, parallel and consistent manner restricted to within one meter as measured from the erf/property cadastral boundary.
- (12) Extensions to the planned commencement date and completion date may be approved by the Municipality on good cause shown.
- (13) The Municipality may require a wayleave holder to-
 - (a) publish a notice of the planned works, which must include dates and routes, and areas for the benefit of potentially affected persons; and
 - (b) display the name and contact details of the wayleave holder at the site of the works.
- (14) A wayleave holder must ensure that a copy of the wayleave is kept on site at all times when the works are being performed.
- (15) All works shall be undertaken between the hours indicated in the wayleave. Different work hours may be set for works that are-
 - (a) noisy, invasive or disruptive; and
 - (b) any other works that do not create any disturbance or other risk to labour or the public.

- (16) A wayleave holder must, within ten (10) working days of the date of the issue of a completion notice, provide the Municipality with as-built drawings and geographical information systems (GIS) information in respect of the completed works, to the satisfaction of the Municipality.
- (17) A wayleave holder shall maintain sufficient public liability and indemnity insurance, taking into account the nature and the extent of the works.

SECTION 11: OBLIGATIONS OF THE MUNICIPALITY

- (1) The municipality shall process wayleave applications –
- (a) For emergency works, in accordance with the severity of the emergency;
 - (b) For standard, minor and maintenance works –
 - (i) On a first-come-first-served basis, subject to its right to play an active role in co-ordinating overlapping applications to ensure efficient use of Municipal Property; and
 - (ii) On a non-discriminatory basis, taking into account the nature and scope of the application; and
 - (c) Taking into account the national policy relating to the rapid deployment of electronic communication facilities
- (2) The municipality will provide the wayleave applicant with such records as it possesses relating to potentially affected services, such as gas, water, electricity and other infrastructure providers and affected servitudes.
- (3) The information contemplated in 11(2) will be provided for information purpose only and the municipality disclaims any liability for reliance thereon. It remains the responsibility of wayleave holder to verify the existence and location of the indicated infrastructure.
- (4) The municipality has the right to supervise the execution of the works authorised by the wayleave.
- (5) The municipality will issue a completion notice once it is satisfied that the works have been completed and all necessary reinstatement and rehabilitation have been undertaken successfully
- (6) The municipality will co-ordinate all users of municipal property and must –
- (a) Keep up-to-date records of all infrastructure deployed on, under or above municipal property;
 - (b) Ensure that any third party applying to the municipality to undertake work in, on or under the municipal land or municipal property, which may impact on electronic communications facilities deployed by the wayleave holder, notifies the wayleave holder, in writing, in advance of any planned works and affords that wayleave holder a right of supervision;
 - (c) Notify wayleave holders of any works to be undertaken by the municipality, which may impact on electronic communications facilities deployed by that wayleave holder.

SECTION 12:
EFFICIENT USE OF MUNICIPAL PROPERTY

- (1) An applicants shall, prior to the submission of a wayleave application, take reasonable steps to notify interested parties of its intention to apply for a wayleave
- (2) Reasonable steps contemplated in 12(1) must include –
 - (a) The publication of a notice in the print and online version, if any, of a local newspaper; and
 - (b) Sending a notification to all members of any database established for this purpose, of the intended application
- (3) A notice referred in 12(2) must –
 - (a) Provide details that are reasonably required for third parties to determine whether they wish to enter into a co-build or similar arrangement with the wayleave holder; and
 - (b) Allow no less than ten (10) working days for interested parties to respond.

SECTION 13:
TARIFFS

- (1) Tariffs relating to –
 - (a) Application for wayleaves and other permissions;
 - (b) The deployment and maintenance of electronic communications facilities on, under or above municipal land or municipal property; and
 - (c) Remedial work where there has been non-compliance by the wayleave holder are formulated and reviewed annually under the municipal tariff policy.

SECTION 14:
BANK GUARANTIES

- (1) The Municipality will require that a wayleave holder provide it with a deposit and/or an irrevocable bank or performance guarantee issued by a reputable financial institution intended to provide the Municipality with access to funds to remedy non-compliance by the wayleave holder and damage caused to Municipal property.
- (2) The deposit and/or bank or performance guarantee must be furnished to the Municipality prior to the commencement of works and must set out the following:
 - (a) A description of the events covered by the deposit and/or bank or performance guarantee and the manner in which the quantum of the deposit and/or guarantee has been calculated
 - (b) The term of the deposit and/or the bank or performance guarantee, which shall be for a period of at least eighteen (18) months from the wayleave issue date, but no less than twelve (12) months from the issue of the completion certificate date.
 - (c) The process for the Municipality to utilize the deposit or call on the bank or performance guarantee, which should allow for individual claims payable in no more than twenty (20) working days.
- (3) The Municipality will give the wayleave holder reasonable written notice of its intention to utilize the deposit or call up the bank or performance guarantee and afford it a reasonable

opportunity of no less than fifteen (15) working days to make representations in this regard or to cure the non-compliance.

SECTION 15: INDEMNITY BY APPLICANTS

- (1) Applicants are required to indemnify and hold harmless the Municipality, its staff and representatives in respect of-
 - (a) any claims for damage caused to third-party infrastructure or interruption or the degradation of third-party services caused by the applicant; and
 - (b) any claims for damage caused by other holders of wayleaves/ permissions to the applicant's electronic communications facilities or electronic communications network.

SECTION 16: AD HOC INCENTIVES

- (1) The Municipal Council may, in its sole discretion, apply incentives for the deployment of electronic communications facilities in areas in the Municipality that are without access to affordable broadband services.
- (2) In exercising its discretion under this By-Law, the Municipal Council will have regard to national policy relating to the rapid deployment of electronic communications facilities and the transformative effect of inclusive access to affordable electronic communications.

SECTION 17: FORMAL COMMUNICATION

- (1) All communications between the parties relating to an application must be in writing.
- (2) The Municipality and an applicant shall each appoint a representative for the sending and receipt of formal communications under the application, and the contact details of the representative must be set out in the application.
- (3) A representative may be changed on reasonable written notice to the Municipality or the applicant as the case may be.
- (4) All written communications delivered by hand or courier shall be deemed to have been received on the business day after the day of delivery, and all electronic communications delivered by facsimile or email shall be deemed to have been received on the business day after sending.

SECTION 18:
SANCTIONS FOR NON-COMPLIANCE

- (1) Any person or entity who contravenes or fails to comply with any provision of the By-Law is guilty of an offence; and
- (2) any person or entity who continues to commit an offence after notice has been served on him/it or fails to cease committing such offence after he/it has been convicted of such offence, is guilty of a continuing offence; and
- (3) any person or entity who fails to give or refuses access to any authorised employee or representative of the Municipality if he or it requests entrance on any land or premises, or who furnishes a false statement, or gives false or misleading information knowing it to be false or misleading, is guilty of an offence; and

is liable upon conviction to-

- (a) a fine not exceeding one hundred Thousand Rand (R 100 000) or such higher amount as may be determined by the Magistrate of the Magistrate Court or imprisonment for a period not exceeding three years or such higher period as may be determined by the Magistrate of the Magistrate Court, or to both such fine and such imprisonment; and
 - (b) in the case of a continuing offence, an additional fine may be imposed or an additional period of imprisonment for each day on which such offence is continued; and
 - (c) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure.
- (4) Where the Municipality determines that the wayleave holder is in breach of the terms of the wayleave, then in addition to claims for remedial work and imposing a sanction as provided for, it reserves the right not to accept any further wayleave applications until the wayleave holder is in good standing with the Municipality.
 - (5) The Municipality may further exercise its right to lodge a complaint with the Independent Communications Authority of South Africa where it is of the view that the applicant is an electronic communications network service licensee acting in contravention of its license terms and conditions.

SECTION 19:
SERVICE OF DOCUMENTS AND PROCESS

- (1) Whenever a notice, order, demand or other document is authorized or required to be served on a person or entity in terms of this By-Law, it shall be deemed to have been effectively and sufficiently served on such person or entity-
 - (a) when it has been delivered to him or a representative of the entity personally; or
 - (b) when it has been left at his place of residence or business in the Republic with a person or entity apparently over the age of sixteen years; or
 - (c) when it has been posted by registered or certified mail to his last known residential or businesses address in the Republic and proof of the posting thereof is produced; or
 - (d) when it has been sent by electronic mail to the email address as contained in the application; or

- (e) if his or its address in the Republic is unknown, when it has been served on his or its agent or representative in the Republic in the manner provided for in paragraph (a), (b), (c) or (d); or
 - (f) if his or its address and agent in the Republic are unknown, when it has been posted in a conspicuous place on the immovable property (if any) to which it relates.
- (2) When any notice, order, demand or other document as aforesaid is authorized or required to be served on a person or entity by reason of him or it being or having been the owner or occupier of or holding some other right in respect of immovable property, it shall not be necessary to name him or it but it shall be sufficient if he or it is therein described as the owner, occupier or holder of such immovable property or other right, as the case may be.

SECTION 20: EXEMPTIONS

- (1) Any person or entity may in writing apply to the Municipality for exemption from any provision of this By-Law.
- (2) The Municipality may-
- (a) grant an exemption in writing and set and determine conditions to be complied with and the period for which such exemption is granted;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with the conditions imposed by the Municipality. However, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.
- (5) Where any conditions, requirements or restrictions are ignored or not fully complied with the Municipality may take action against the offender and/or institute legal proceedings.

SECTION 20: LIMITATION OF LIABILITY

- (1) The Municipality is not liable for any damages or loss caused by-
- (a) the exercise of any power or the performance of any duty in good faith under this By-Law; or
 - (b) the failure to exercise any power or perform any function or duty in good faith under this By-Law.

SECTION 21: APPEALS

A person whose rights are affected by a decision taken in terms of this By-Law has the right to lodge an appeal against the decision taken in terms of Section 62 of the Local Government: Municipal Systems Act, No. 32 of 2000.