

MOSSEL BAY MUNICIPALITY
BY-LAW RELATING TO WAYLEAVES AND ELECTRONIC COMMUNICATIONS
FACILITIES, 2023



(ADOPTED BY RESOLUTION **OF THE MUNICIPAL COUNCIL OF**
MOSSEL BAY, PROMULGATED IN PROVINCIAL GAZETTE DATED, XXXXX)

The Municipality of Mossel Bay (“the Municipality”) hereby publishes the By-Law Relating to Wayleaves and Electronic Communications Facilities, as set out below. It has been promulgated by the Municipality in terms of Section 156(2) of the Constitution of the Republic of South Africa, 1996 and in accordance with Section 13(a) of the Local Government: Municipal Systems Act, No. 32 of 2000).

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1. Definitions

- (1) In this By-Law, words used in the masculine gender include the feminine, the singular the plural and vice versa, the English text prevails in the event of an inconsistency between the different texts and unless the context otherwise indicates-

“application” means the application for a wayleave and/or the construction of an antenna and/or mast and/or satellite transponder and/or a radio apparatus in terms of this By-Law;

“applicant” means the person or entity applying for the permission in terms of this By-Law and who is the owner of the electronic communications facilities;

“completion notice” means a notice issued by the Municipality, after confirmation by all relevant internal departments to the Department of Roads, Transport and Stormwater, confirming that all work has been completed as per the terms and conditions of the wayleave issued;

"Electronic Communications Act" means the Electronic Communications Act, No. 36 of 2005;

"electronic communications facility" includes but is not limited to any-

- (a) wire;
- (b) cable (including undersea and land-based fibre optic cables);
- (c) antenna;
- (d) mast;
- (e) satellite transponder;
- (f) circuit;
- (g) cable landing station;
- (h) international gateway;
- (i) earth station; and
- (j) radio apparatus or other thing, which can be used for, or in connection with, electronic communications, including where applicable –

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- (i) colocation space;
- (ii) monitoring equipment;
- (iii) space on or within poles, ducts, cable trays, manholes, hand holds and conduits,
and
- (iv) associated support systems, sub-systems and services, ancillary to such
electronic communications facilities or otherwise necessary for controlling
connectivity of the various electronic communications facilities for proper
functionality, control, integration and utilization of such electronic
communications facilities;

"electronic communications network" means any system of electronic communications facilities (excluding subscriber equipment), including without limitation-

- (a) satellite systems;
- (b) fixed systems (circuit- and packet-switched);
- (c) mobile systems;
- (d) fibre optic cables (undersea and land-based);
- (e) electricity cable systems (to the extent used for electronic communication services);
and
- (f) other transmission systems, used for conveyance of electronic communications;

"electronic communications network service" means a service whereby a person or entity makes available an electronic communications network, whether by sale, lease or otherwise –

- (a) for that person`s or entity`s own use for the provision of an electronic communications service or broadcasting service;
- (b) to another person or entity for that other person`s or entity`s use in the provision of an electronic communications service or broadcasting service; or

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- (c) for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated, and “network services” is construed accordingly;

"emergency works" means

- (a) any work that is required to prevent or end a dangerous situation; or
- (b) to prevent or end an unplanned interruption in the supply of a service; or
- (c) to avoid substantial losses; and
- (d) for which there is no other remedy and does not comprise minor works;

“free standing base station” means a freestanding support structure on land or anchored to land and used for telecommunication infrastructure to transmit or receive electronic communication signals;

"minor works" means maintenance or remedial work on electronic communications facilities or networks installed in terms of a wayleave that;

- (a) can be completed in less than 12 hours; and
- (b) does not involve any of the following:
 - (i) damage or risk of damage to Municipal property and/or third parties' property,
 - (ii) disruption to traffic,
 - (iii) danger or risk of danger to the public,
 - (iv) work more than 500 meters;

"Municipality" means the Municipality of Mossel Bay established in terms of Section 12 of the Local Government: Municipal Systems Act, No. 117 of 1998, and includes any duly authorized agents, service providers or any employee thereof acting in connection with this By-Law by virtue of a power vested in the Municipality and delegated or sub-delegated to such agent, service provider or employee;

"Municipal area” means the area of jurisdiction of the Municipality as determined in terms of the Local Government: Municipal Demarcation Act, No. 27 of 1998;

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“Municipal council” or **“council”** means the Mossel Bay Municipal council as referred to in Section 157 of the Constitution of the Republic of South Africa, 1996;

"Municipal lease agreement" means an agreement entered into between the Municipality and the owner of electronic communications facilities deployed in the Municipal area in respect of works outside a road reserve or on street furniture in terms of which a monthly or annual amount will be paid for the lease of the area for a determined time period;

"Municipal property" means any property which the Municipality either owns or has personal rights to, such as, for example, the right to use, manage, occupy or control the property. Municipal property includes Municipal infrastructure, Municipal towers, reservoirs, Municipal land, street furniture, and the road reserve and is located within the Municipal area;

"Municipal website" means the official website of the Municipality as required by section 21B of the Local Government: Municipal Systems Act, No. 32 of 2000;

"radio apparatus" means an electronic communications facility which is capable of transmitting or receiving any signal by radio, excluding subscriber equipment, if such subscriber equipment is used solely for that purpose;

"road reserve" means the space between cadastral lines either zoned for road use or set aside for road use in the title deed or a servitude registered over land;

“service” means any service, such as roads, water pipelines, electricity, sanitation, gas line which is installed on, under or above any property within the Municipal area;

“street furniture” means items such as poles and streetlights located alongside a road reserve within the Municipal area;

“wayleave” means a document issued to a person or entity setting out the terms and conditions upon which that person or entity may deploy and maintain electronic communication facilities or services within the Municipal area and a **“construction permit”** will bear the same meaning;

“wayleave holder” means the person or entity to whom a wayleave is issued and includes his or its agents and contractors;

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“works” means the specific activity authorised by the Municipality.

2. Application of the By-Law

- (1) This By-Law applies to all persons 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 utilisation of Municipal property by Community Safety Forums and/or Community Police Forums and/or Accredited and Associated Neighbourhood and/or Farm Watch Structures.
- (2) The following activities and/or any combination thereof is 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.

3. Administration and enforcement

- (1) The Director: infrastructure Services and/or Director: Planning and Economic Development and/or the Senior Manager: Legal Services is responsible for the administration and enforcement of this By-Law or parts thereof.
- (2) The Director: infrastructure Services and/or Director: Planning and Economic Development and/or the Senior Manager: Legal Services may delegate these powers and duties to any other Director under whose functional duties such wayleave or electronic communications facility may fall, to act accordingly.

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- (3) The Director: infrastructure Services and/or Director: Planning and Economic Development and/or the Senior Manager: Legal Services may delegate any power or duty to any competent official in his Directorate.

4. Prohibitions

- (1) Subject to Section 2, no works 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 a lease 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 lease agreement.

5. Information / documentation to be submitted by applicant: wayleaves

- (1) In order for an application to be considered, the application form must include at least the following:

(a) Drawings, with aerial backdrops, in digital format or three (3) copies of drawings of the proposed work clearly showing the following:

(i) The full extent of the work, including-

(aa) any deployment of electronic communications facilities and/or services on, under or over private or Municipal property 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

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arrangement with the Municipality, which shall have the right to supervise such activities.

(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 aerial 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 permissions required from third parties for the planned deployment and proof that these have been obtained.

(e) Where applicable, a statement that the colocation of existing electronic communications facilities has been investigated and is not feasible.

(f) Where applicable, evidence that the applicant has met the infrastructure sharing notification requirements set out in Section 15(6)(b).

(g) A completed compliance statement as provided for in the wayleave application form.

(h) A Municipal lease agreement between the applicant and the Municipality, if applicable.

(i) Proof of payment of the application fees applicable, as set out in the annual budgeting framework and adopted by the Municipality in line with applicable legislation and policies.

6. Application process wayleaves: general

(1) Permission to work in the Municipal area must be obtained from the Municipality through a formal online web-based wayleave application.

(2) Application fees are non-refundable.

(3) The order in which wayleave applications will be processed will be as follows:

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- (a) emergency works and minor works;
- (b) Extensions of current wayleaves; and
- (c) Standard works and maintenance works on a first-in-first-out basis, but subject to the Municipality's right to play an active role in coordinating overlapping applications to ensure efficient use of Municipal property.

7. Application process wayleaves: standard works

- (1) Submitted wayleave application forms must be vetted by the Municipality for completeness, including payment of the application fee.
- (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.

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- (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. All applicants will be required to sign the Mossel Bay Municipality's standard wayleave conditions of approval, including the standard indemnity and applicable specifications.
- (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 on 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.

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- (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.

8. Application Process Wayleaves: Minor, Emergency and Maintenance works

- (1) 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.
- (2) 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 or maintenance works to be carried out;
 - (c) The proposed commencement date and expected duration of the works;
 - (d) A completed compliance statement as provided for in the wayleave application form.
- (3) Completed application forms must be submitted to the designated point of contact in the Municipality.
- (4) Submitted wayleave application forms will be vetted by the Municipality for completeness, including payment of the application fee.
- (5) 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 with within a further fifteen (15) working days, failing which a completely new application will have to be submitted.

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- (6) A wayleave application must be processed as soon as practicable after the wayleave submission date.

9. Application process wayleaves: extension of wayleave

- (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.

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

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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.
- (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. Distribution boxes must be installed underground and flush with existing sidewalks.
- (8) No expansion/extension of midblock erven 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.
- (9) The wayleave holder must allow another wayleave holder which has started works in the same Municipal area to finalise 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 Directorate of 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.

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- (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.

11. Deposits and/or guarantees by wayleave holder

- (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 calculate
 - (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 utilise 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.

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- (3) The Municipality will give the wayleave holder reasonable written notice of its intention to utilise 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.
- (4) The Municipality reserves the right to require, on good cause shown, that the wayleave holder provide a further deposit or bank or performance guarantee for a reasonable period, and good cause in this context includes but is not limited to-
 - (a) the exhaustion of the deposit or bank or performance guarantee through claims against it by the Municipality prior to its expiry; and
 - (b) continuing engineering concerns about damage to Municipal property.
- (5) Any deposits paid, which is not claimed within three (3) years after the expiry of the term thereof will be forfeited to the Municipality in terms of the Tariff Policy of the Municipality.

12. Efficient use of Municipal property: wayleaves

- (1) An applicant shall, prior to the submission of a wayleave application, take reasonable steps to notify third-party infrastructure providers of its intention to apply for a wayleave.
- (2) Reasonable steps contemplated in subsection (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 to in subsection (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.

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- (4) The Municipality may include a requirement in a wayleave that the wayleave holder deploy additional duct space or dark fibre when trenching main routes or crossing roads to allow for facilities leasing and infrastructure sharing and avoid inefficient use of Municipal property.

13. Application process: cellular towers and communication infrastructure on Municipal property

- (1) An application for space for telecommunication equipment on a municipal property must be submitted by e-mail containing at least the following information:
- (a) applicant's full details, addresses and contact numbers;
 - (b) details of the equipment that forms part of the installation;
 - (c) a building plan in A3 format for the installation;
 - (d) electricity consumption of the installation;
 - (e) demand for service to be delivered by installation;
 - (f) materials that will be used for installation;
 - (g) access requirements to installation;
 - (h) safeguarding of installation and equipment by applicant;
 - (i) proof of ICASA approval of frequency to be used by installation;
 - (j) purpose of the proposed installation
- (2) Each successful applicant will be required to enter into a valid lease agreement on the terms and conditions as specified by the Municipality.
- (3) Space for the installation of telecommunications infrastructure will be let at a market related rental amount as determined by the Municipality.
- (4) All materials used for the installation must be of acceptable standard, taking into account the location and size thereof and local weather conditions. The electricity supply per antenna must not exceed ten (10) amps, single phase.
- (5) The erection of the infrastructure/installation must be done in conjunction with and subject to inspection by the Municipality.

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- (6) The Municipality will determine technical specifications for telecommunications installations on Municipal infrastructure.
- (7) The Municipality has the authority to approve or disapprove the installation and/or the location of an installation.
- (8) The installation may not exceed three (3) meters above the reservoir or Municipal tower/mast on which it is mounted without prior permission of the Municipality.
- (9) No existing installation may be modified or radio frequency transmissions changed without prior permission of the Municipality.
- (10) Any satellite dish antenna with a cross section of more than one comma five (1,5) meters must be placed in such a manner that it has the least visual impact on the environment to the satisfaction of the Municipality.
- (11) The successful applicants will be responsible for the costs of construction and maintenance of its own equipment and installation.
- (12) The applicants undertake not to adjust, alter, disturb or damage the other existing installations on the site.
- (13) All successful applicants for the erection of new freestanding base telecommunication stations on Municipal property must make available to the Municipality; at no costs, space for the installation of Municipal telecommunication and/or telemetry infrastructure.

14. Removal or relocation of electronic communications facilities

- (1) If any alteration to or removal of existing electronic communications facilities is necessary due to work undertaken by the Municipality, the Municipality shall bear the costs thereof.
- (2) Where an applicant believes that any alien or invasive tree or vegetation on Municipal property obstructs, interferes with or is likely to interfere with the working or maintenance of deployed electronic communications facilities, it must submit a request, in writing, to the Municipality for consideration of granting permission that such alien or invasive tree or vegetation may be removed by the applicant.

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- (3) Where an applicant requires the removal, alteration or relocation of Municipal property, it must submit a request, in writing, to the Municipality for consideration by the Municipality.
- (4) Where the Municipality consents to any request in terms of this section, the cost of the required work shall be borne by the applicant.
- (5) An applicant shall-
 - (a) consult with the Municipality regarding end-of-life or decommissioning of electronic communications facilities deployed;
 - (b) comply with the reasonable instructions of the Municipality regarding the removal of the electronic communications facilities and rehabilitation or reinstatement, where applicable, within thirty (30) days of the notice; and
 - (c) bear the cost of any removal and rehabilitation or reinstatement, as the case may be.

15. Obligations of the Municipality

- (1) The Municipality shall process applications for wayleaves in the following order-
 - (a) for emergency works, in accordance with the severity of the emergency;
 - (b) for extensions, 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
 - (c) for standard and maintenance works 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
 - (d) taking into account national policy relating to the rapid deployment of electronic communications facilities.
- (2) Subject to Section 22, the Municipality will provide the 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) This information contemplated in subsection (2) will be provided for information purposes only, and the Municipality disclaims any liability for reliance thereon: It

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remains the responsibility of the 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 a 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 to the satisfaction of the Municipality.
- (6) The Municipality will co-ordinate all users of Municipal property, and to this end, the Municipality 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 area or Municipal property, which may impact on electronic communications facilities deployed by a wayleave holder, notifies that 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.

16. Tariffs and fees

- (1) Tariffs relating to fees payable for-
 - (a) applications for wayleaves or other permissions; and
 - (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;will be formulated in terms of the Municipality's Tariff Policy.
- (2) The Municipality's will have the right to impose additional requirements relating to-

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- (a) the entering into a lease and/or usage agreement and to levy a rental and/or fee for the right to make use of Municipal property for purpose of-
 - (i) installation of electronic communications facilities;
 - (ii) the storage of equipment or the establishment of site offices and workshops;
 - (iii) payment of fees and other costs associated with occupation such as the cost for service consumption.
- (3) Tariffs and fees in terms of this By-Law will be determined annually during the budget process.
- (4) Current tariffs and fees payable will be made available on the Mossel Bay Municipal website.

17. 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.

18. 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.

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19. Amendments of terms and conditions of permission

- (1) The terms and conditions of permission obtained in terms of this By-Law may be amended if-
 - (a) an amendment thereof is reasonably required-
 - (i) due to new information that was not in the Municipality's knowledge when the permission was granted and which is material to the operation of the permission;
 - (ii) to give effect to a law of general application; or
 - (iii) to give effect to a court order; or
 - (b) the Municipality and the applicant have consented thereto.
- (2) The Municipality will issue a revised wayleave / permission.

20. Transferability

- (1) Municipal lease agreements and/or wayleaves are transferable, subject to the prior approval, in writing, of the Municipal Manager or his delegate.
- (2) The Municipal Manager or his delegate may make any approval, as contemplated in subsection (1), subject to any condition(s) as he may deem necessary.

21. Dispute resolution

- (1) The Municipality will seek to resolve disputes arising from the implementation of this By-Law, in terms of dispute resolution clauses contained in the relevant wayleave and/or Municipal lease agreement and subject to prescribed legislation.
- (2) Nothing in this By-Law restricts the right of the Municipality or the wayleave holder and/or lessee to approach a court of competent jurisdiction for relief on an urgent basis.

22. Confidentiality and protection of personal information

- (1) All plans, drawings and other documents exchanged with an applicant that are not in the public domain or should not properly be in the public domain shall be regarded as confidential information.

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- (2) Subject to subsection (3), the Municipality and an applicant shall not share confidential information other than to the extent necessary for the application and implementation processes or where there is a legal duty to do so.
- (3) To the extent that any personal information, as defined in the Protection of Personal Information Act, No. 4 of 2013, is contained in an application or other communications between the Municipality and an applicant, each party shall comply with its obligations under the said Act in the processing of that personal information.

23. Formal communications

- (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.

24. 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-

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- (a) a fine or imprisonment, or to both such fine and such imprisonment; and
 - (b) in the case of a continuing offence, to an additional fine 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 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 licence terms and conditions.

25. Service of documents and process

- (1) Whenever a notice, order, demand or other document is authorised 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

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- (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 authorised 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.

26. Exemptions

- (1) Any person or entity may in writing apply to the Municipality for exemption from any provision of this By-Law.
- (2) The Municipal Council 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.

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27. 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.

28. Appeals

- (1) 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. 117 of 1998.

29. Short title and commencement

- (1) This By-Law shall be known as the Mossel Bay Municipality By-Law Relating to Wayleaves and Electronic Communications Facilities and shall come into operation on the date of publication thereof in the Provincial Gazette.