

MOGALE CITY LOCAL MUNICIPALITY

WAYLEAVE BY-LAW

The Municipal Manager of Mogale City Local Municipality hereby in terms of section 13(a) of the Local Government: Municipal Systems Act, 32 of 2000, read with section 162(2) of the Constitution, 1996, publishes the Wayleave By-law for Mogale City Local Municipality (“Mogale City”) as approved by its Council which will come into operation on the date of promulgation of this notice.

APPROVED

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PREAMBLE

WHEREAS Mogale City Local Municipality (herein after referred to as “**Mogale City**”) is Local Metropolitan Municipality established in terms of the Municipal Structures Act 117 of 1998 and empowered in terms of Constitution of the Republic of South Africa Act 108 of 1996 to administer local government matters and to make and administer By-Laws;

WHEREAS Section 156(1)(a) and (b) of the Constitution of the republic of South Africa, Act 108 of 1996 (“the Constitution”) confers upon municipalities the executive authority and the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution and any other matters assigned to Municipalities by National or Provincial Legislation;

WHEREAS Part B of Schedule 4 and Part B of Schedule 5 of the Constitution Lists “Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under the Constitution, or any other law;

WHEREAS Section 156(2) of the Constitution empowers municipalities to make and administer By-Laws for the effective administration of the matters which it has the right to administer;

WHEREAS Mogale City is required to provide uninterrupted services to all its residents at all times and remains committed to continuously improve its capability for effective and developmental service delivery;

WHEREAS Mogale City has an obligation to protect all public infrastructure including services infrastructure within its Road Reserve boundaries; and

WHEREAS Mogale City is committed to prevent damage to motor vehicles, injuries to motor vehicle occupants or passengers and pedestrians, to reduce the travel delays caused by road works and to prevent the reduction of the effective life span and durability of roads, footways and other services;

IT IS THEREFORE ENACTED by Mogale City as follows:

CHAPTER 1

INTERPRETATION AND APPLICATION

1. DEFINITIONS

In this By-Law, unless the context otherwise indicates,

- “Advertisement”** - means any representation by a word, or abbreviation thereof, letter, logo, symbol, sign, figure, painting, drawing or other pictorial representation, or light, displayed in or in view of any public place, Provincial or National Road within the jurisdiction of Mogale City for the purpose of drawing the attention of the public to or promoting any product, service, business or commercial enterprise, trade, person, election or candidature in an election, voter registration, entertainment, function, meeting or other event, aspects relating to security and news headlines;
- “Advertising”** - means the act or process of displaying an advertisement and
- “advertise”** has a corresponding meaning;
- “Applicant”** means persons, including juristic persons applying, in terms of this By-Law, to Mogale City for an approval of a Wayleave in terms of this By-Law
- “Application”** - means a Wayleave application filed by way of prescribed applications forms pursuant to the provisions of this By-law;
- “Application for Extension of Wayleave”** - means an application filed by Wayleave holder for extension of a Wayleave;

- “Approved”** - means written approval of application for wayleave by Mogale City and **“wayleave approval”** has a corresponding meaning;
- “Authorised Official”** - means any person or official who has been duly authorized by Mogale City;
- “Certificate of Completion”** - means the document issued by an authorized official certifying the completion of works in terms of this by-law;
- “Code of Conduct”** - means the prescribed Mogale City ‘s code of practice for working in the Road Reserve;
- “Contractor”** - means any person or legal entity whose services have been enlisted by Wayleave Holder to undertake the works in the Road Reserve;
- “Council”** - means Mogale City Municipal Council established in terms of Section 12 of the Municipal Structures Act 117 of 1998 as amended, exercising its legislative and executive authority through its municipal council; or (b) its successors in title; or (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub delegated, or an instruction given, as contemplated in section 59 of the Municipal Systems Act, as the case may be;
- “Road Cut” or “Cross Cutting”** - means any crossing of an Protected Road Surface or pedestrian precinct that requires the surface layer to be cut straight or square;

“Designated Public**Transport Route”**

- means a designated road that is designed to move large numbers public transport users or commuters to all parts of Mogale City rapidly and safely;

“Emergency Work”

- means any work that is required to prevent or end a dangerous situation, or end an unplanned interruption in the supply of the services, or to avoid any substantial interruption in the supply of the services;

“External Service**Agency”**

- means any private agency, company or utility other than Mogale City Department such as Eskom and Telkom that has a service infrastructure in the Road Reserve;

“Internal Service**Agency”**

- means any Mogale City department with a designated authority and function, that has a service infrastructure in the Road Reserve;

“Lane Rentals”

- means the rental paid to Mogale City by a service agency whose work in the road results in time delay costs (TDC) being incurred by the users of the Road Reserve;

“Mogale City”

- means:
 - (a) the Mogale City Local Municipality established in terms of Municipal Structure Act 117 of 1998 as amended, as amended, or
 - (b) its successors in title; or

- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act,, as amended;

“Mogale City CCTV Surveillance Camera By-law” and “CCTV Camera By-law”

Has a corresponding meaning

- means Mogale City Local Municipality Closed Circuit Television Surveillance Camera By-law;
- “Mogale City Department”** - means means any department of Mogale City with a specified or designated function within Mogale City in relation to this By-Law;
- ”Motorway”** - means a road or part of a road designated as a motorway/freeway in terms of applicable legislation;
- “Municipal Systems Act”** - means the Local Government: Municipal Systems Act, 2000 (Act, No. 32 of 2000) and any regulations made thereunder;
- “National Building Regulations”** - means national Building Regulations promulgated in terms of National Building and Regulations and Building Standards Act 1977 (Act 103 of 1977) and any regulations made thereunder;
- “National Environmental Management Act”** - means the National Environmental Management Act, 1998 (Act No. 107 of 1998) and any regulations made thereunder;

- “National Road Traffic Act”** - means the National Road Traffic Act, 1996 (Act No. 93 of 1996), and any regulations made thereunder;
- “National Water Act”** - means the National Water Act, 1998 (Act No. 36 of 1998), and any regulations made thereunder;
- “Newly Surfaced”** - means any municipal road that has been constructed, re-constructed or re-surfaced within the past seven (7) years;
- “Outdoor Advertising”** - means an outdoor display of any advertisement in view of any public place, including Provincial or National Road within the jurisdiction of Mogale City;
- “Public Place”** - means a public street, bridge, subway, a square, open space, garden and any other enclosed space to which the public has a right of access or which is commonly used by the public;
- “Prescribed Conditions”** means conditions prescribed in this By-Law and such further conditions as may be prescribed in the approval;
- “Prescribed Fees”** means the prescribed fees, including but not limited to penalty fees, penalty tariff, and application fees including renewal fees payable in terms of this By-Law, as determined by the Council from time to time;
- “Public Road”** - means road, street or thoroughfare or other right of way to which the public has a right of access or which is used by the public;
- “Refundable Surety Deposit Amount”** - means a prescribed refundable surety deposit amount which shall be payable by a Wayleave Holder prior to undertaking works on the protected roads;

- “Registered Engineer”** means a person registered with the Engineering council of South Africa as a professional engineer or a professional engineer technologist, professional certified engineer or professional engineering technician under the Engineering Professional act, 2000, Act No 46 of 2000);
- “Reinstatement”** means, in relation to a Site, the work necessary to restore the Road Reserve and all features contained in it to the same or a better state than existed before the activities which altered the original state took place;
- “Road” or “Roadway”** - **means** that portion of a public road which is constructed and intended for vehicular traffic;
- “Road authority”** - means the organization or authorized agency **appointed** by Mogale City that is responsible for providing and maintaining the road network within the municipal area of jurisdiction;
- “Road Reserve”** - **means** the full width of a public road including the roadway, and it includes the verge and the roadway;
- “Service”** - any system for supply a public need that a **service agency** has on the Road Reserve.
- “Service Agency”** - means any Mogale City department, internal or external **service** agency, company or utility that has a service infrastructure in the Road reserve;
- “Services Infrastructure”** - means any service infrastructure in the Road Reserve that is used for supplying a products or services that is intended for private or public use and that is the property of an internal or external service agency or is privately owned;

- “Site”** - means an area of ground within the Road Reserve on which the work is to be undertaken;
- “Special Approval”** - means a special approval which must be sought in terms of this By-Law by Applicant in respect of an application;
- “Special Intervention Precincts”** - means specifically defined geographical areas within Mogale City where public and/or private sector investment has created high quality urban public spaces in line with Mogale City’s spatial plans and detailed urban design plans;
- “Special Wayleave Approval”** - means a Special Wayleave permit which must be obtained from Mogale City’s duly delegated official or structure prior to any works being undertaken, commence or done in urban freeways or motorways, major (inter) urban arterials and designated public transport route;
- “Trenchless Methods”** - means methods that are used to place Services Infrastructure under the road without excavating trenches through the surfacing and structural layers in respect of which specialized drilling equipment is normally used;
- “Wayleave”** - means a formal approval by Mogale City to carry out work in the Road Reserve;
- “Wayleave Approval”** - means the approved Wayleave application, and its accompanying conditions;
- “Wayleave Applicant”** - means a natural or juristic person making an application for Wayleave to Mogale City;

- “Wayleave conditions”** - means all conditions prescribed in the Wayleave Approval;
- “Wayleave Holder”** - means a natural person or juristic person who is the holder of an Approved Wayleave.; and
- “Work” or “Works”** - means the digging of trenches, tunneling, including Trenchless Methods, Cross Cutting for the purposes of the erection of signboards, erection of structures, infrastructure, shaping and landscaping and any other work that may affect motorists, cyclist, pedestrians, the road, the footways, curbing, traffic signs, traffic signals, street lighting, underground or overheard service or any other structure or service that is contained within a Road Reserve.

2. APPLICATION

- 2.1 This By-Law applies to all applications for Wayleave to carry work in the Road Reserve, within the area of jurisdiction of Mogale City.
- 2.2 Approvals in terms of this By-law is required irrespective of the zoning of any property in terms of the applicable town planning scheme and or provision of applicable laws.
- 2.3 This by law does not apply to work undertaken within national or provincial motorway, reserves or in road reserves located with the boundary or area of jurisdiction of Mogale City.
- 2.4 This By-Law must be read with the applicable provisions of Mogale City’s CCTV By-law, Outdoor Advertising By-Law, and any other applicable by-law of Mogale City any applicable provincial or national legislation.
- 2.5 No work shall be undertaken in any area as contemplated in this By-law without written approval of Mogale City.

- 2.6 Only the holder of a valid Wayleave permit granted by Mogale City shall be permitted to undertake work in the Road Reserve.
- 2.7 All construction work by a contractor on the Road Reserve must be undertaken under supervision of a registered engineer.
- 2.8 Permission to work in the Road Reserve shall only be obtained from the authorised official pursuant to a formal wayleave process as prescribed in this By-law.
- 2.9 All Wayleave Applicant or Holder must comply with all provisions of this By-law and any prescribed or special conditions, relating to that Wayleave Approval and must ensure that such provisions are complied with by their contractors.
- 2.10 All work described in the Wayleave shall commence within ninety (90) days of issue of a Wayleave, failing which the Wayleave shall lapse and re-application is required.
- 2.11 An approval in terms of this By-Law does not exempt the Applicant or Wayleave Holder from complying with any other applicable law.

3. OBJECTIVES AND PURPOSE

The objectives and purpose of this By-Law are to:

- 3.1 provide for the regulation of all work to be executed in any Road Reserve within the area of jurisdiction of Mogale City;
- 3.2 provide for the regulation of work relating to the installation or maintenance of underground or overhead services by municipal and non-municipal service agencies within Mogale City;
- 3.3 to ensure that Mogale City delivers on its service delivery objectives as set out in section 152 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) as provided for hereunder;

- 3.4 to protect all services infrastructure within its Road Reserve boundaries;
- 3.5 to provide for the classification, restrictions and protections of roads;
- 3.6 to prevent damage to motor vehicles, injuries to motor vehicle occupants and pedestrians, to reduce the travel delays caused by road works and to prevent undue reduction of the life span and durability of roads, footways and other services infrastructure;
- 3.7 to ensure that the use or undertaking of any works through any Approved Wayleave within Mogale City, is in strict compliance of the applicable laws; and
- 3.8 to prescribe and regulate how works within the Road Reserve is to be undertaken in order to safeguard all Road Reserve within Mogale City.

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CHAPTER 2

APPROVAL AND CONSIDERATION OF APPLICATIONS

4. APPROVAL OF WAYLEAVE

- 4.1 No person may undertake any works on the Road Reserve as provided for in this By-Law without prior written Wayleave Approval of Mogale City.
- 4.2 No Works or activity shall be undertaken within the Road Reserve, without prior written approval of Mogale City.
- 4.3 An application for approval envisaged in subsection (1) above must be as prescribed and accompanied by such documentation, information, maps, diagrams and plans as set out in the schedule of this by- law.
- 4.4 Mogale City may, in its sole discretion, exempt an Applicant from complying with any requirements on good cause shown.
- 4.5 Only work described in the Wayleave shall be undertaken and only at locations specified in the Wayleave.

5. CONSIDERATION OF APPLICATIONS

- 5.1 In considering an application submitted, Mogale City shall consider other legislation including national legislation, policy, and by-laws of Mogale City, and have due regard to the following:
- 5.1.1 The compatibility of the proposed works with the environment and with the amenity of the immediate neighbourhood, urban design and streetscape;
- 5.1.2 Whether the proposed Wayleave will:
- (a) have and Impact on future planned infrastructure rollout;

- (b) have a negative visual impact on any property under any applicable town-planning or land use scheme; or
- (c) constitute a danger to any person or property or to motorists or pedestrians or obstruct vehicular or pedestrian traffic or constitute a traffic hazard in general;
- (d) in any way impair the visibility of any road traffic sign;
- (e) obscure any existing and legally erected infrastructure;
- (f) negatively impact of any existing infrastructure or approved or planned infrastructure rollout;
- (g) obscure any feature which in the opinion of Mogale City is a natural feature, architectural feature or visual line of civic, architectural, historical or heritage significance; or
- (h) in Mogale City's opinion, be unsightly or objectionable or detrimentally impact on the architectural design of any building of the property concerned or any adjacent or nearby property; and
- (i) has the effect of unlawfully breaching any of the implicated constitutional rights like privacy and dignity;
- (j) any restrictive or other conditions specified in Mogale City's town planning scheme, conditions of establishment or any other law;
- (k) any written comments, objections or representations submitted in respect of the application by any interested party;
- (l) any and conditions determined or prescribed by any statutory authority, in terms of any legislation or any applicable law; and

(m) compliance with the provisions of this By-Law.

- 5.2 Mogale City may refuse any application or approve it subject to any amendment or condition Mogale City deems appropriate, including but not limited to relocation of privately owned infrastructure at the costs of the Wayleave Holder.
- 5.3 Any approval in terms of this By-Law will be for a period as determine by Mogale City or a period of 12 (twelve) months; and it will be deemed that a period of as stated will run from the date of granting of Wayleave in terms of the this By-Law.
- 5.4 Mogale City must forthwith, in writing, notify the Applicant of its decision by registered post or by any other means available to Mogale City, including e-mail and/or fax, and must provide written reasons for its decision when requested to do so by the Applicant in writing as contemplated in section 5 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).
- 5.5 The Council must, for its own record, retain every application, plans, drawings and other documentation submitted, for a period it considers appropriate.
- 5.6 If an application submitted has been refused, no further application may be lodged by the same Applicant in respect of the same exact installation Site for a period of one year from the date of such refusal, unless a motivation is submitted in writing for an approval indicating a change of circumstances.
- 5.7 Mogale City may conduct an inspection on a Wayleave Site at any time.

CHAPTER 3

**PRESENT SERVICES INFRASTRUCTURE AND PLANNED SERVICES
INFRASTRUCTURE**

**6. EXISTING SERVICES INFRASTRUCTURE AND PLANNED SERVICES
INFRASTRUCTURE**

6.1 An application for Wayleave shall be accompanied by relevant service infrastructure drawings indicating the exact location or position of present services infrastructure in the area where work is to be undertaken.

6.2 An Applicant shall acquaint themselves of all services infrastructure, and the process of obtaining all relevant service plans indicating the location and position of existing services infrastructure from the service agencies; and where necessary, through digging of a pilot hole.

6.3 All plans for works shall indicate the exact location, position and type of service infrastructure in the area where work will be undertaken.

6.4 Service agencies may, in writing, require that additional precautions be taken relating to the work in the vicinity of their services infrastructure.

6.5 All application for existing and or planned services infrastructure as contemplated shall follow the prescribed procedure as provided for in the schedule and as informed by Mogale City 's Integrated Development Plan.

CHAPTER 4

ROAD CLASSIFICATION RESTRICTIONS, SPECIAL APPROVALS AND PROTECTION.

7. ROAD CLASSIFICATION

7.1 All roads within the jurisdiction of Mogale City are classified as set below in terms of category and applicable restrictions:

Category	Road Type	Wayleave Restrictions
1	Urban Freeway/Motorways	Protected road surface No dig road Special Wayleave approval
2	Major (inter) urban arterials Designated Public Transport Route, as the case may be	Protected road surface No dig road Special Wayleave Approval
3	(Inter) district connectors Minor (intra) urban arterials	Protected road surface Wayleave Approval
4	Inter neighborhood distributors Intra neighborhood distributors	Protected road surface Wayleave Approval
5	Residential Roads	Protected road surface Wayleave Approval

7.2 No digging of trenches across a protected road surface is permitted unless a special permission or Wayleave is granted by Mogale City.

7.3 Any road surface within Mogale City including newly constructed, reconstructed or newly surfaced road surface shall be deemed to be protected roads (no dig) for a period of seven (7) years.

CHAPTER 5

SPECIAL PRECINCTS

8. SPECIAL INTERVENTION PRECINCTS

- 8.1 All work in special intervention precincts is subject to special trenching methods and Trenchless Methods and care must be taken to ensure minimal damage to specialised and expensive material and road furniture.
- 8.2 Mogale City may prescribe the trenching method to be used and the manner such work is to be undertaken in accordance with the code of practice.
- 8.3 Mogale City shall declare and record such special intervention precincts as and when projects are completed.

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CHAPTER 6**AMENDMENT AND WITHDRAWAL OF WAYLEAVE APPROVAL****9. WITHDRAWAL AND AMENDMENT OF APPROVALS**

9.1 Mogale City may, after considering any representations made by an offending party, withdraw an approval granted in terms of this By-law or granted in terms of any other by-law or other legislation applicable to works on the Road Reserve or amend any approval by adding, amending, or deleting a condition in respect of such approval if, in the opinion of Mogale City, the Wayleave concerned:

9.1.1 is or has, as a result of a change to the nature of the environment or the amenity of the neighbourhood, streetscape or landscape or urban design existing at the time of such approval, become detrimental to the area in which it is located by reason of its size, quality of design, workmanship, material or its mere existence in the area;

9.1.2 the Wayleave Holder or contractor or its personnel have failed to comply with Mogale City 's code of practice for working in the Road Reserve;

9.1.3 the Wayleave Holder or contractor or its personnel have failed to comply with the provisions of this Bylaw, the requirements of any applicable legislation or prescribed terms and conditions;

9.1.4 where approval was granted based on falsehood, misinformation or misrepresentation;

9.1.5 constitutes, or has become, a danger to any person, service infrastructure or property;

9.1.6 is obscuring any natural feature, architectural feature or visual line of civic, architectural, historical or heritage significance; or

- 9.1.7 has become prohibited in terms of this By-law or any other law;
- 9.2 Failure to comply with any provisions of the By-law, Mogale City shall be entitled to seize and impound any equipment used to carry out any work.
- 9.3 Prior to taking any decision in terms of subsection 1 above, Mogale City must in writing notify the Wayleave Holder of its proposed action and that such owner may within 21 (twenty-one) days of the receipt of the notice make written representations concerning the proposed action.
- 9.4 The Wayleave Holder concerned must forthwith be given notice in writing of any decision taken in terms of subsection 1.
- 9.5 Mogale City must upon receipt of a written request, provide written reasons for its decision as contemplated in section 5 of the Promotion of Administrative Justice Act, 2000.
- 9.6 Any Wayleave Holder so notified shall cease any works, take measures to vacate the Site with immediate effect and undertake reinstatement of all trenches and excavations to SABS standards prior to vacating the Site.

CHAPTER 7**MISCELLANEOUS PROVISIONS****10. COSTS, SURETY, LIABILITY FOR DAMAGES AND INSURANCE**

10.1 All related costs to an application, including Wayleave application processing costs, refundable surety deposit, reinstatement costs, and related costs shall be borne by the Applicant.

10.2 All related liability, including:

- (a) all liability for damages whatsoever caused to any service infrastructure;
- (b) costs of relocation of existing service infrastructure;
- (c) tests;
- (d) backfilling.
- (e) costs claimed by Mogale City from external service agencies due to removed parking meters;
- (f) Mogale City 's costs related to rendering of services to complete work or altering work to conform to Wayleave specifications;
- (g) all such costs that may be borne by the Wayleave Holder that are recoverable from third parties related to executing work in the Road Reserve, and
- (h) costs due to breach of the provisions of this By-law.

shall be borne by the Applicant.

10.3 Mogale City will be exempt from all liability arising from the application and subsequent approval, including pre- and post-execution of any works on the Road Reserve.

- 10.4 All Applicants for a Wayleave, a holder and or contractor shall take out a comprehensive public liability insurance cover to ensure against all possible civil claims, and all possible risk that may occur due to breach of the provisions of this By-Law, prescribed conditions or any applicable statute or law.
- 10.5 Such comprehensive public liability insurance must remain in place for the duration of the Approved Wayleave.
- 10.6 All Applicants shall adhere to process as laid down in the code of practice on matters referred to in subsection 1, 2 and 4 above.

11. PROHIBITION ON PLACEMENT OF FIBRE OPTIC CABLE ON OR WITHIN MUNICIPAL SERVICES INFRASTRUCTURE

- 11.1 No person shall use Mogale City's services infrastructure to support, suspend or place fibre optic cables within any Road Reserve; without prior written consent of Mogale City.
- 11.2 Any person who contravenes subsection 1 and causes damage to existing services infrastructure will be liable for the any costs of repairs to such services infrastructure.

CHAPTER 8

GENERAL PROVISIONS

12. TRAFFIC CONTROL AND SAFETY

- 12.1 All Applicants or Wayleave holder shall ensure adherence to prescribe conditions; applicable provisions of the National Road Traffic Act; and applicable traffic and safety laws during and until the completion of any work on the Road Reserve.
- 12.2 No traffic and or pedestrian shall be impeded in any manner whatsoever by works in progress or uncompleted undertaken by Wayleave Holder.
- 12.3 All Applicants or Wayleave Holder shall always ensure safe and easy passage for traffic and pedestrians.
- 12.4 No works on arterials, major collectors, and central business district roads shall take place during peak traffic times as may be determined by Mogale City.

13. TEMPORARY ROAD CLOSURES, RESTRICTIONS AND SPECIAL PERMISSION

- 13.1 No road, or portion of the shall be closed completely to traffic by a Wayleave Holder or his contractor.
- 13.2 Mogale City may in exceptional circumstance grant permission for temporary road closure of a road or a portion, subject to the provision of any law.
- 13.3 The Wayleave Holder shall apply for approval of such road closure fourteen (14) days prior to the road being closed.

14. LANE RENTAL

- 14.1 Any lane rental due to Mogale City from a Wayleave Holder, shall be payable from date of commencement of work on the Road Reserve until the date when the certificate of completion is issued by Mogale City.

14.2 Mogale City shall determine the applicable tariffs, periods and duration for lane rentals.

15. EMERGENCY WORK

15.1 No emergency work may be carried out by a Wayleave Holder or his contractor without expressed written permission of Mogale City 's duly authorized official.

15.2 Any emergency work so authorized shall be carried out in accordance with all procedures and specifications applicable to the type of work as set out in this By-law, and as it may be required by the affected service agencies.

15.3 Emergency work includes electricity supply restoration, repairs to burst water pipes, clearance of sewer blockages resulting in overflows, flooding damage repairs, sink hole repairs and repairs to damage to public or private telecommunications infrastructure, the list not exhaustive.

15.4 Mogale City shall be notified in writing by a service agency within twenty-four (24) hours from commencing of any emergency work.

15.5 Failure to notify Mogale City timeously, such service agency shall be liable at an increased tariff for work without a Wayleave permission.

16. EXCAVATIONS

16.1 No person may make or cause to be made any hole, trench, pit or tunnel including by way of Trenchless Methods, on or under any Road or Road Reserve or remove any soil, metal or macadam therefrom without prior written permission of Mogale City, unless such person is authorized to do so in terms of these by-laws or any other law.

16.2 A person, who requires permission in terms of subsection 1 must comply with the requirements contained in schedule 1 of these by-laws and pay a prescribe fee.

16.3 No excavations by a Wayleave Holder shall be in contravention of any other statutory requirement regulating health and safety.

- 16.4 At all work Site, a construction board shall be displaced on Site indicating in full the approved Wayleave Holder number, the name of Wayleave Holder, the name of the contractor, and the approved period of construction.
- 16.5 Mogale City shall specify the minimum depth for the laying of any service infrastructure under a road surface, or any other place in the Road Reserve.
- 16.6 All excavated material and equipment shall be placed and demarcated and shall not cause disruption to vehicles and pedestrian.
- 16.7 No excavated material, road signs or hoardings shall obstruct a clear view of motorists.
- 16.8 Wayleave Holder shall always maintain safe walkway for pedestrian traffic.
- 16.9 Wayleave Holder shall ensure that excavation area is clearly demarcated with warning signs of such excavation to allow timely opportunity to motorists and pedestrians to take alternative routes.
- 16.10 No Wayleave Holder or person may remove or interfere with any road furniture (i.e. street names, traffic signs, bus shelter etc.) without arrangement with Mogale City for written permission for removal, storage and re-erection of such furniture.
- 16.11 Wayleave Holder shall ensure that where excavations are made to vehicle entrances to properties, a safe access to such properties shall be maintained at all times; and occupants of such properties are appraised at all times on how their access will be affected.
- 16.12 No works completion certificate shall be issue by Mogale City, unless the Wayleave Holder has performed the Site clearance; clean up, fixed any damage to existing services.

17. BACKFILLING AND REINSTATEMENT

No backfilling and reinstatement by a Wayleave Holder shall be in contravention to the specification as laid down in the code of practice.

18. CONSIDERATION OF SUBMISSIONS

18.1 If any written comments, representations, or objections have been received in respect of an application from any interested party contemplated this By-law, Mogale City must consider all such comments, representations and objections prior to taking a decision on the application.

18.2 Mogale City shall consider such application on written submissions only and no formal oral hearing will be conducted.

19. SERVICE OF NOTICES

Any notice that is required to be delivered or served by Mogale City for purposes of this By-Law, may be delivered, in any one of the following ways:

19.1 by handing a copy of the notice to the person concerned;

19.2 by leaving a copy of the notice at the person's place of residence, business or employment with any other person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;

19.3 by faxing or e-mailing a copy of the notice to the person where such fax number or e-mail address is available;

19.4 by handing a copy of the notice to any representative authorized in writing to accept service on behalf of the person;

19.5 if the person has chosen an address for service, by handing a copy of the notice to a person who is apparently at least 16 years old at that address;

19.6 by sending a copy of the notice by registered or certified post to the last- known address of the person concerned, and, unless the contrary is proved, it is deemed that service was effected on the seventh day following the day on which the document was posted;

19.7 if the person is a company or other body corporate, by serving a copy of the notice on an employee of the company of body corporate at its registered office or its

principal place of business within the Republic, or its main place of business in the area of jurisdiction of Mogale City, or if there is no employee willing to accept the service, by affixing a copy of the notice to the main door of the office or place of business; or

- 19.8 if the person is a partnership, firm or voluntary association, by serving a copy of the notice on a person who at the time of service is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of such partnership, firm or association or if such partnership, firm or association has no place of business, by serving a copy of the notice on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of such association, as the case may be.

20. INSPECTION

- 20.1 In addition to any power of inspection which an authorized official has in terms of this by-law, he or she may for any purpose relating to the implementation and enforcement of this By-Law, carry out an inspection of any Wayleave Site.
- 20.2 An authorized official must, before the commencement of, or during an inspection in terms of subsection 1, at the request of a Wayleave Holder produce a written confirmation of his or her appointment as an authorized official empowered to carry our inspections for the purposes of this By-Law.

21. APPEALS

- 21.1 Any interested party whose rights are affected by a decision by an authorized official in terms of or for the purposes of this By-Law, may appeal against that decision to Mogale City Manager or his nominee(s), by lodging a written notice of appeal, specifically specifying the grounds of appeal, within 21 (twenty-one) days of the date on which he or she was notified of that decision taken in terms of this By-Law.
- 21.2 Upon receipt of a notice of appeal, Mogale City Manager must give notice to all other interested parties, if any, that an appeal has been

lodged and enquire whether they want to make any further written submissions in respect of the appeal within 14 (fourteen) days from the date of such notification.

- 21.3 Mogale City Manager must consider the appeal on written submissions only and must consider such appeal and take a decision thereon within a reasonable time which must not exceed 90 (ninety) days from date of submission of the appeal or from date of expiry of the 14 (fourteen) day period contemplated in subsection .1 above.
- 21.4 Mogale City Manager may uphold the appeal, with or without amendments, or dismiss the appeal.
- 21.5 Mogale City Manager must forthwith after a decision has been taken in terms of subsection 4, in writing, notify the appellant thereof.
- 21.6 The appellant and any other interested party, if any, may upon being notified of a decision in terms of subsection 5, in writing apply for reasons for the decision and Mogale City Manager must furnish written reasons to the Applicant as contemplated in section 5 of the Promotion of Administrative Justice Act, 2000.

22. OFFENCES AND PENALTIES

- 22.1 Any person who:
 - 22.1.1 contravenes or fails to comply with any provision of this By-Law;
 - 22.1.2 refuses or fails to comply with any notice served on him or her in terms of or for the purposes of this By-Law;
 - 22.1.3 refuses or fails to comply with the terms or conditions of any approval issued in terms of this By-Law;
 - 22.1.4 obstructs, hinders or interferes with an authorized official or other official of Mogale City acting under power delegated to him or her, in the exercise of any power or the performance of any duty under this By-Law;

- 22.1.5 fails or refuses to furnish to an authorized official or other official of the Council acting under power delegated to him or her, with any documentation or information required for the purposes of this By- law or furnishes a false or misleading document or false or misleading information;
- 22.1.6 undertakes the works in the Road Reserve without a Wayleave Approval.
- 22.1.7 fails to notify Mogale City about work completion.
- 22.1.8 undertakes works without a valid public liability insurance;
- 22.1.9 undertakes works without an expired Wayleave;
- 22.1.10 fails to undertake temporary reinstatement upon leaving a Site with a view to complete the work at a later stage;
- 22.1.11 fails or refuses to comply with any instruction given in terms of or for the purposes of this By-Law;
- 22.1.12 impersonates an authorized official or other official of Mogale City acting under power delegated to him or her,
- shall be guilty of an offence and upon conviction be liable to a fine of R10 000.00 or imprisonment not exceeding six (6) months or to both a fine and such imprisonment and the fine must be calculated according to the ratio determined for such imprisonment in terms of the Adjustment of Fines Act 101 of 1991;
- 22.2 a person convicted of an offence under this By-Law who, after conviction, continues with the action in respect of which he or she was so convicted, is guilty of a continuing offence and liable to a fine, or upon conviction, to imprisonment for a period not exceeding three months or to both such fine and imprisonment, in respect of each day on which he or she so continues or has continued with that act or omission; and

22.3 nothing in subsections .1 and 2 above shall be construed to prevent Mogale City from imposing, in addition to criminal options available, impounding of any equipment used to carry any works, imposing a fine for impoundment, or institution of civil proceedings against any Wayleave Holder who is in contravention of any provision of this By-Law.

23 TARIFFS

Mogale City may determine tariffs or charges or surcharges dealing with any aspect, conduct or action in terms of this By-Law and such tariff and/or charges or surcharges shall be published in the Provincial Gazette for information after approval thereof by Mogale City.

24 SHORT TITLE AND COMMENCEMENT

This by-Law is referred to as the "Mogale City Wayleave By-Law" and will come into operation on date of promulgation of the by-law in the Provincial Gazette.

APPROVED

SCHEDULE 1

CODE OF PRACTICE FOR WORK IN THE ROAD RESERVE.

APPROVED