

## **FORWARD PLANNING FREQUENTLY ASKED QUESTIONS:**

### **1. When is an application for municipal planning approval not required?**

An application for municipal planning approval is not required for an amendment to a land use scheme –

- for the creation of private roads, municipal roads, local roads or district roads when land is subdivided in
- accordance with the purpose for which it has been zoned in a land use scheme, unless the land use scheme expressly provides otherwise;
- to record the actual use of a land or preferred use of land that is used in accordance with the provisions of the
- land use scheme, unless the land use scheme expressly provides otherwise;
- to record features and attributes, like historical buildings, archaeological sites and prominent ridges;
- to identify and show land that is subject to the Subdivision of Agricultural Land Act;
- to identify and show geographical areas in which activities may not commence without environmental approval contemplated in section 24(2)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- to identify and show geographical areas in which activities may commence without environmental approval contemplated in section 24(2)(b) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- to amend a schedule consisting of a register of land use scheme amendments;
- to amend a schedule consisting of a register of consents granted in terms of the land use scheme; and
- to amend a schedule consisting of guidelines, forms and other information that is purely intended for information purposes

### **2. When is an application for municipal planning approval required?**

The processing and consideration of development application is guided by the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) (SPLUMA); which is a national piece of legislation; as well as the KwaDukuza Municipality Spatial Planning and Land Use Management By-law No. 1630 (SPLUM By-law No. 1630). The SPLUM By-law No. 1630 as mentioned is a municipal planning By-law that is specific to the KwaDukuza Municipality. In terms of Chapter 4 of the SPLUM By-law No. 1630, an application for municipal planning approval is required for the following applications:

(a) **the adoption of a land use scheme**

(b) **the amendment of a land use scheme** – the amendment of a land use scheme includes the following:

- The rezoning of land
- The inclusion of a zone within the existing town planning
- The inclusion of a land use within an existing zone

- The amendment of development parameters (i.e increasing the coverage or floor area coverage; decreasing the minimum erf size etc)
- (c) **the repeal of a land use scheme**
- (d) **the subdivision of a land** – means the division of land in accordance with a layout plan into a combined total of less than fifty properties, including a remainder, but excluding land to be used for road purposes;
- (a) **the consolidation of land** – this involves the combination of two or more land parcels to create a larger site.
- (b) **township establishment** – means the division of land in accordance with a layout plan into a combined total of fifty or more properties, including a remainder, but excluding land to be used for road purposes
- (c) the notarial tying of adjacent land;
- (d) the extension of a sectional title scheme by the addition of land to common property in terms of section 26 of the Sectional Titles Act;
- (e) the permanent closure of a municipal road or a public place;
- (f) the removal, amendment or suspension of a restrictive condition of title or a servitude;
- (g) a material change to a Municipality's decision on an application for municipal planning approval;
- (h) the cancellation of a Municipality's decision on an application for municipal planning approval, except a decision to adopt or amend a land use scheme.

### **SPLUM BY-LAW**

#### **3. Can I request a pre-submission application meeting prior to submission?**

Applicants are advised to request pre-submission meetings with the Spatial Planning Section in order to obtain clarity on applications prior to circulating for commenting purposes and final submission.

#### **4. What are the prescribed fees for the submission of applications for municipal planning approval?**

The KwaDukuza Municipality Adopted Tariff of Charges prescribe the application fees which are updated during each financial year. The application costs may be summarized as follows:

- Pre-submission Application Fee
- Re-submission of pre-submission application
- Formal submission of applications (these vary based on the application proposal)

Please note that applications will not be processed if no proof of payment has been provided.

**5. Where can I obtain the applications forms for municipal planning approval?**

The municipal application forms may be obtained on the link below.

**APPLICATION FORMS**

**6. Who can submit an application for municipal planning approval?**

The following applications for municipal planning approval must be prepared by a Registered Planner, a person registered in terms of section 18(1)(a) of the Architectural Profession Act, or a person registered in terms of section 13(1)(d) of the Geomatics Professions Act as a Land Surveyor, or under the direction or in association with such a person

- an application for the adoption of a land use scheme;
- an application to amend the wording of a land use scheme, including development controls contained in it;
- an application to zone or rezone land;
- an application for consent in terms of land use scheme to use land for a purpose that it may only be used for with the municipality's consent;
- an application for township establishment; and
- an application for the permanent closure of a municipal road or a public place.

**7. What is the process for municipal planning approval and applicable timeframes?**

The application process may be summarized as follows (a more detailed process plan can be downloaded on the link below):

- (a) Pre-application consultation (not compulsory)
- (b) Circulation of application to relevant municipal departments, organs of state and servitude holders that may be affected by the application proposal (these vary based on the application proposal) (60 days)
- (c) Submission of pre-submission application to the spatial planning section
- (d) Municipality assesses whether application is complete and notifies applicant (30 days)
- (e) Applicant to provide additional information (if the application is considered incomplete) (60 days)
- (f) Municipality to notify applicant that application is complete (14 days)
- (g) Application to conduct public consultation period (minimum 30 days)
- (h) Municipality to provide applicant with copies of comments / objections (7 days)
- (i) Applicant reply to comments / objections (60 days)
- (j) Municipality to decide on the application (60-180 days)
- (k) The Municipality to issue the Record of Decision to the applicant and parties of its decision and right to appeal (21 days)
- (l) Appeal Period (21 days)

**APPLICATION PROCESS**

**(m) How do I obtain comments from the municipal internal departments, services authorities, organs of state and other relevant stakeholders?**

The applicant must circulate a copy of the application proposal and all relevant supporting documents to the relevant departments. The following forms must be used (departments have a period of 60 days to provide comments):

- **Form 10a:** Proof of submission to the relevant department (must be signed by an official from the relevant department) and is kept by the applicant.
- **Form 10b:** the relevant departments provide comments on this form. Applicants are advised to follow up with the departments for progress on their applications.

**(n) What happens with the application process in an event where a municipal department, Service Authority or Organ of State does not provide comments within the prescribed time frames?**

An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

**(o) What documents do I need to submit with my planning application?**

The documents required vary based on the complexity of the application, please refer to Form 1 (Checklist) of the application forms pack.

**(p) Do development applications need to conform to the norms and standards of other departments?**

A number of matters are taken into consideration during the assessment of a development application, this includes norms and standards set by relevant departments. The norms and standards that need to be taken into consideration are determined by the application proposal.

Example: an application site that is located within 500m of a provincial route must inform the KZN Department of Transport. The said department may further impose conditions which will be taken into consideration by the Municipal decision making authority when assessing the merits of an application.

**(q) What other policies do I need to take into consideration when motivating for the approval of an application?**

**(r) Is a Services Level Agreement required prior to the submission of an application?**

For applications where the services authority has confirmed that a Services Level Agreement is required, it is recommended that a Services Level Agreement is finalized prior to final consideration by the decision making authority. This will add value to the merits of your application and provide comfort to the decision making authority that the required engineering services will be provided.

**(s) Who are the municipal approval authorities?**

The municipal approval authorities as established in terms of SPLUMA, 2013 are as follows:

- (a) Municipal Council
- (b) Municipal Planning Tribunal
- (c) Municipal Planning Authorised Officer

Schedule 2 of the SPLUM By-law outlines the categorisation of applications in terms of the above mentioned decision making authorities.

**(t) Am I allowed to attend the MPT sitting when my application is being considered?**

Applicants are not permitted to attend the MPT sittings. Applicants are therefore encouraged to ensure that they submit as much information as possible and ensure that the motivation memorandum appropriately outlines the intentions of the application and all supporting documentation is attached.

**(u) Are all applications required to undergo the full public consultation process?**

In terms of Schedule 4, item 11 of the SPLUM By-law, the Municipal Planning Registrar may determine whether it is necessary to conduct public consultation. This is determined by the complexity of the application and anticipated impacts on the public.

**(v) Can I make amendments to my application once my application has been considered formal?**

In terms of Schedule 6, item 1, the applicant may at his discretion or at the request of the municipal planning registrar amend a formal application before a decision is made by the decision making authority. It must be noted that public consultation may need to be repeated or relevant parties informed of the amendment to the application.

**(w) How long do I have to re-submit a refused development application?**

A substantially similar application may not be brought in terms of this By-law, or any other law, within a period of two years after the date of refusal, without written permission from the relevant decision making authority.

**(x) How long do I have to comment and/or object on a municipal development application proposal?**

Individuals who wish to provide comments on an application may do so during the public consultation period. Anyone who has not provided comments within the stipulated timeframe will be excluded from any further participation.

**(y) Who can appeal the decision of the municipal planning approval authority?**

A person whose rights are affected by a decision by a Municipal Planning Authorised Officer or the Municipal Planning Tribunal to approve or refuse an application for municipal planning approval include the following persons –

- an applicant;
- a person who provided comments during the public consultation period, including a person who has been granted leave to intervene in the application for municipal planning approval contemplated in section 125(3)(a), who has –
  - a propriety interest;
  - pecuniary interest; or
  - other interest,

that will be adversely affected by the decision, excluding a reduction in the value of the land; and

- a municipality in which the land is

**(z) How long do I have to appeal a decision by the municipal approval authority?**

A person who is aggrieved by the decision of the Municipal Planning Tribunal may give written notice of the appeal and reasons to the Municipal Manager within a period of 21 of the date of notification of the decision.

**DOCUMENTS TO BE MADE AVAILABLE:**

1. Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013)
2. Spatial Planning and Land Use Management By-law No. 1630 (March 2016)
3. SPLUMA Application Forms