ETHEKWINI MUNICIPALITY

DEVELOPMENT PLANNING,
ENVIRONMENT AND MANAGEMENT UNIT



A DEVELOPER'S GUIDEBOOK

MILE

MUNICIPAL INSTITUTE OF LEARNING



Aerial view of the Durban CBD and the Harbour.

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PREFACE & ACKNOWLEDGEMENTS

The completion of the Developer's Guidebook has been a challenge, not only in assembling all the relevant information, but also to keep up with the constantly changing and evolving planning legislation at both a provincial and a national level. A process which is not yet completed. It has been further complicated in that the eThekwini Municipality has simultaneously been in the process consolidating, updating and modernising its planning schemes. When the process commenced there were approximately fifty schemes of various types covering the municipal area which have since shrunk to five.

The compilation of this Developers' Guidebook is therefore aimed at providing sufficient information to interested sectors enabling more efficient development processes within the eThekwini Municipality. While some of the document is repetitive when dealing with the various types of applications, this has been deliberately done so that anyone investigating how to make a particular type of application does not have to refer elsewhere. Furthermore, the use of annexures, it is intended will make the document somewhat more readable. Advantage has also been taken, for those with an electronic version of the document with links to the internet, of using hyperlinks to web pages providing further information, email address hyperlinks to contacts were possible and in addition internal hyperlinks from the contents page to the various sections and from the text to the referred to annexures.

The completion of the document would not have been possible without the guidance and encouragement of Nuthan Maharaj, the Manager Research and Policy. Valuable contributions, comments and suggestions have also been made by a host of other people including Lihle Phewa, Lekha Allopi, Gerald Clarke, Buddy Govender, Richard Holgate and Don Colborne to name but a few.

An update of the Developer's Manual will be necessary in the not too distant future when the KZN Planning and Development Bill, 2012 and the Spatial Planning and Land Use Management Bill, 2012 are eventually finalised and passed into law as Acts.

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March 2013.

DEVELOPER'S GUIDEBOOK

1. INTRODUCTION

The Development Planning Environment and Management Unit of the eThekwini Municipality have a variety of processes and procedures to manage the processing of development applications in compliance with a variety of applicable legislation. These processes and procedures are not always clearly understood by the Unit's client base, viz. including ordinary citizens, investors, developers and professional practitioners and there is a perceived need to improve communication in this regard. The Unit has consequently sought to prepare a toolkit of the development approval process within a 'guidebook'. The 'guidebook' may then serve as a reference to those engaged in land development within the municipal area of jurisdiction, ranging from large developments to minor alterations and additions to existing structures.

The target audience of the guidebook therefore includes not only developers, but built environment practitioners ranging from planners, to architects, to surveyors, to conveyancers and ordinary members of the general public who may be endeavouring to understand the planning process and even finally internal staff who may use it as a refresher. Furthermore, parties in other municipalities may find the document of some use. It is not intended that the guidebook should be a complete work or knowledge based on planning, but is rather aimed at giving a broad background understanding of planning and specifically the processes as required by the eThekwini Municipality's Development Planning and Management Unit and, where necessary, to point out where more specific information may be obtained.

It should be noted that while the information contained in this guidebook and its annexures at the time of compilation in early 2013, be it relating to legislation, schemes, policy or pro forma forms and conditions of establishment, is believed to be correct and the most up-to-date. Information by its nature is dynamic and subject to change from time to time. Reference should therefore be made to the respect regional offices to verify the information as being the most current.



2. LEGAL FRAMEWORK

2.1 Planning and development does not occur within a vacuum, in fact there is a prolifera of legislation which direct development and which the potential developers must be cognisant of and work within as applicable. This includes legislation at national, provincial and local levels, the latter being the sphere at which the eThekwini Municipality operates. Furthermore there are various policies adopted by Council of which developers need to be cognisant.

2.2 The legislative and policy requirements pertaining to planning and development within the eThekwini Municipality include the following: -

2.2.1 NATIONAL PLANNING

- Municipal Systems Act No 32 of 2000 and specifically Chapter 5 relating to the requirements for the preparation of an :-
- Integrated Development Plan (IDP), and
- A Spatial Development Framework (SDF)
- Spatial Planning and Land Use Management Bill, 2012 (expected to be enacted in 2013),
- Less Formal Townships Establishment Act No 113 of 1991,
- Development Facilitation Act No 67 of 1995 and its regulations (despite the Act having lapsed on 17 June 2012)

2.2.2 PROVINCIAL PLANNING

- KZN Planning and Development Act No 6 of 2008,
- KZN Planning and Development Act Amendment Bill, 2012,
- KZN Planning and Development Bill, 2012[1],
- Town Planning Ordinance No 27 of 1949 as applicable - the remaining vestiges,
- KwaZulu Land Affairs Act No 11 of 1992 and its regulations.

In addition there are aspects of certain Acts and Ordinances which must be borne in mind, some of these include: -

- Local Authorities Ordinance No 25 of 1974 (for road and public place closures),
- Subdivision of Agricultural Land Act No 70 of 1970,
- KZN Provincial Roads Act No 4 of 2001,
- South African National Road Agency Limited & National Roads Act No 7 of 1998,
- KwaZulu Ingonyama Trust Act No 3 of 1994,
- Restitution of Land Rights Act No 22 of 1994.

[1] *KZN Planning and Development Bill, 2012 was circulated in July 2012. It is intended it will replace both the KZN Planning and Development Act, 2008 and the initially proposed KZN Planning and Devel opment Act Amendment Bill, 2012.*

2.2.3 ENVIRONMENT & RELATED

- Environmental Conservation Act No 73 of 1989,
- National Environmental Management Act No 107 of 1998 and its regulations relating to EIA triggers,
- The National Environmental Management: Protected Areas Act No 57 of 2003
- National Environmental Management: Biodiversity Act No 10 of 2004
- National Environmental Management Act: Air Quality Act No 39 of 2004
- National Environmental Management: Integrated Coastal Management Act No 24 of 2008,
- National Environmental Management: Waste Act No 59 of 2008
- National Forestry Act No 84 of 1998,
- National Water Act No 36 of 1998,
- Mineral and Petroleum Resources Development Act No 28 of 2002.

2.2.4 SCHEMES

- Durban Town Planning Scheme
- Provincial model based schemes – various
- Other schemes and land use regulations
- Consolidated Schemes

2.2.5 BUILDING

- National Building Regulations and Building Standards Act No 103 of 1977 and its regulations.
- SANS 10400[2] - The application of the National Building Regulations

2.2.6 POLICIES

The following policies, whilst not restricted to, need to be borne in mind: -

- Advertising Policy
- Language Policy for the Municipality.
- Official Languages & Newspapers of Record
- Sewage Policy.
- Container Policy
- Stormwater Management Policy
- Tavern Policy (draft)
- D'MOSS – a policy now largely integrated into the schemes as a controlled area or overlay.
- Development in Ingonyama Trust Board Areas (to be developed)

A brief outline of some of the more significant aspects of the preceding acts and ordinances with respect to planning and the eThekwini Municipality's schemes and policies are included in Annexure 2 and Annexure 3 respectively.

[2] *The SANS 10400 Code, unlike in the past, is published chapter by chapter with each chapter having a different date (year) in which it is published.*

3. A BRIEF OVERVIEW OF THE INSTITUTIONAL STRUCTURE OF THE DEVELOPMENT PLANNING ENVIRONMENT AND MANAGEMENT UNIT

3.1 The Development Planning Environment and Management Unit is split into three major divisions or departments. These are the Development Planning Department, the Development Management Department and the Environment Planning and Climate Protection Department each with their own Deputy Head under an overall Head of the Unit. These departments in turn have various branches, each headed up by a Manager and, in some cases, supported by Regional Coordinators. The interrelationship of these three departments and the various branches and the managerial staff is illustrated in Figure 1.

DEVELOPMENT PLANNING ENVIRONMENT AND MANAGEMENT UNIT ORGANOGRAM as at September 2012

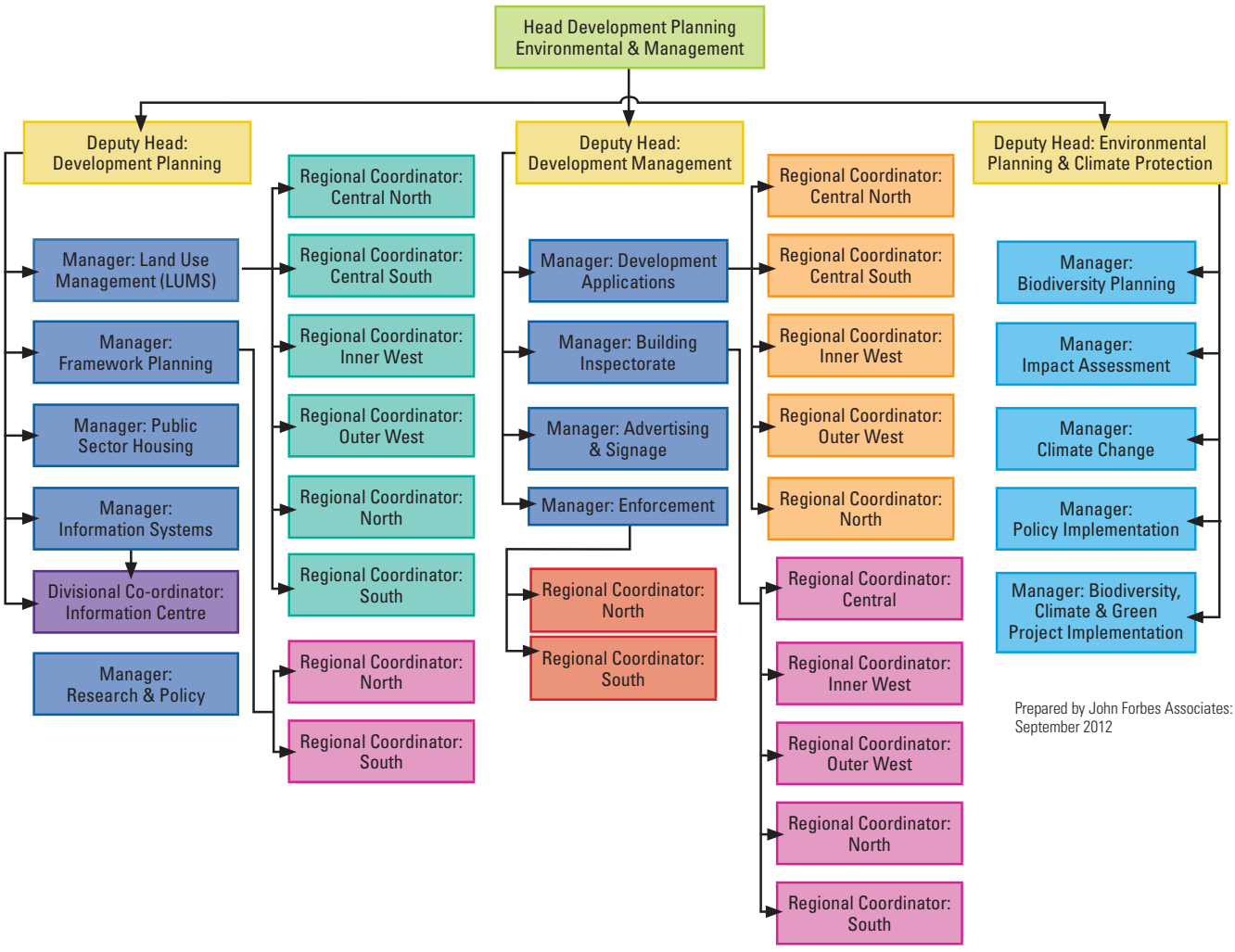


Figure 1 - Structure of Development Planning Enviornament and Management Unit as of September 2012 showing Heads, Managers and Regional Coordinators.

3.2 The Development Planning Department contains within its fold Framework Planning, Land Use Management (LUM), Research & Policy, Public Housing and Information Systems branches. The latter though largely based in the Central office has a satellite presence in the Hillcrest Office[3], where there is decentralisation of managerial functions. Regional Coordinators for many of the branches of the Unit are in most cases located in the various regional Sizakala Offices.

3.2.1 The Framework Planning Branch is primarily responsible for preparing and updating the city's Spatial Development Framework[4] with its four Spatial Development Plans[5] (Outer West, North, Central and South) and for preparing numerous other local area and other strategic plans. See figure 2 showing the overall schematic hierarchy of plans. This branch is also required to comment on the more significant or major development applications received with a view to ensuring that they broadly comply with the intent and vision of the various upstream or higher level plans of a strategic nature and that do not fall directly under the jurisdiction of the Land Use Management Branch.

[3] *The Development and Planning Department has enabled via the internet the ability for people to determine their zoning information related to their property. The zoning certificates have in recent time ONLY been available for the Central Regional Office (westwards up to and including Cato Manor, Chatsworth & Newlands; northwards up to and including Glenashley/Phoenix and southwards up to and including Merewent, Umlaas Canal). In other events the relevant Sizakala office is required to be visited to ascertain the data. NOTE: At the time of publication this facility had been temprarily suspended. It will eventually be available city wide.*

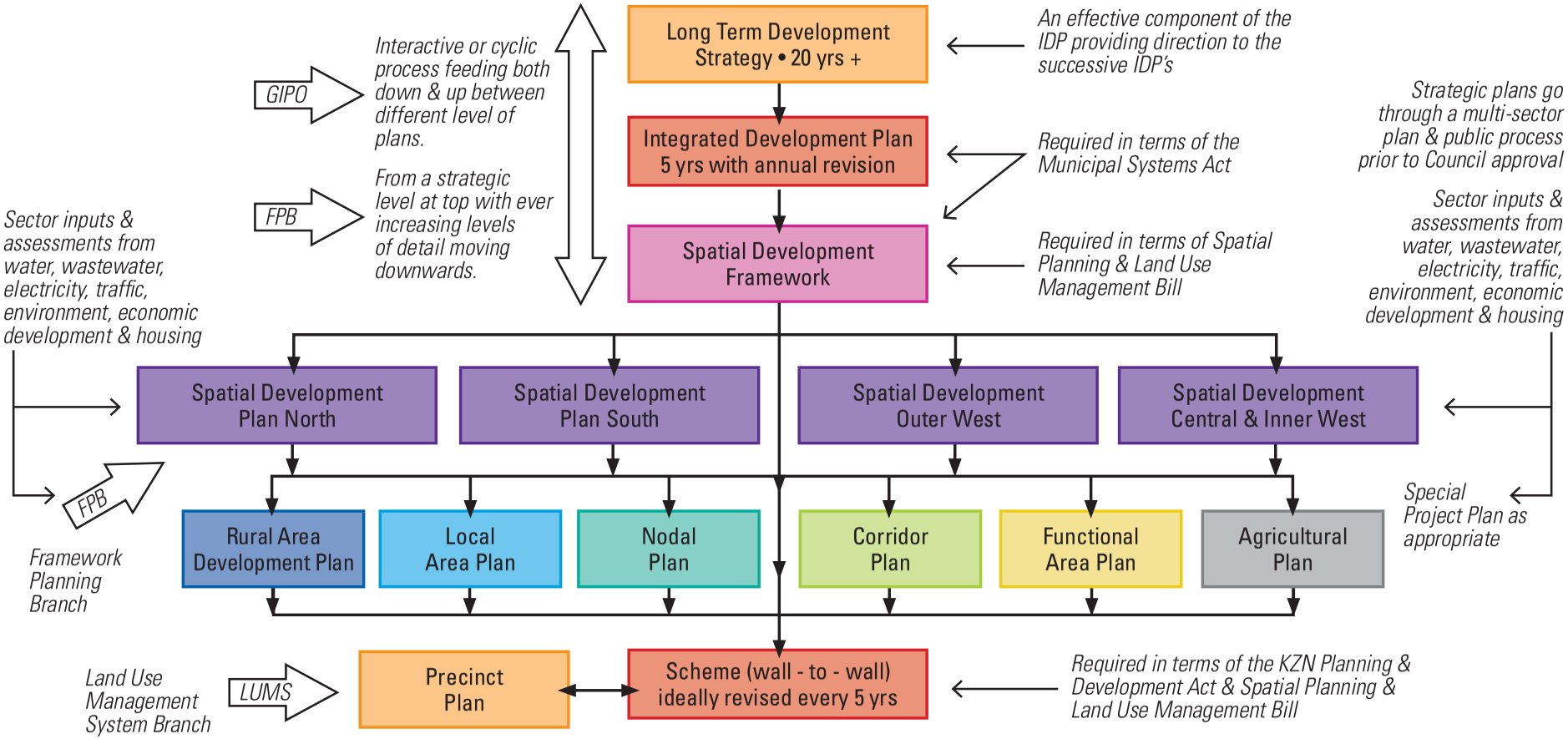
See http://www.durban.gov.za/Online_Tools/Pages/Zoning_Certificates.aspx.

[4] *Note that the eThekwini Integrated Development Plan (IDP) is prepared by the Geographical Information and Policy Office (GIPO) which in turn falls under the City Manager. The Spatial Development Framework forms a component of the IDP and falls within Plan 1 titled "Sustaining Our Natural and Built Environment".*

[5] *Spatial Development Plans are sometimes known in other municipalities as Regional Spatial Development Frameworks.*

SCHEMATIC HIERARCHY OF PLANS

Prepared by John Forbes Associates:
September 2012



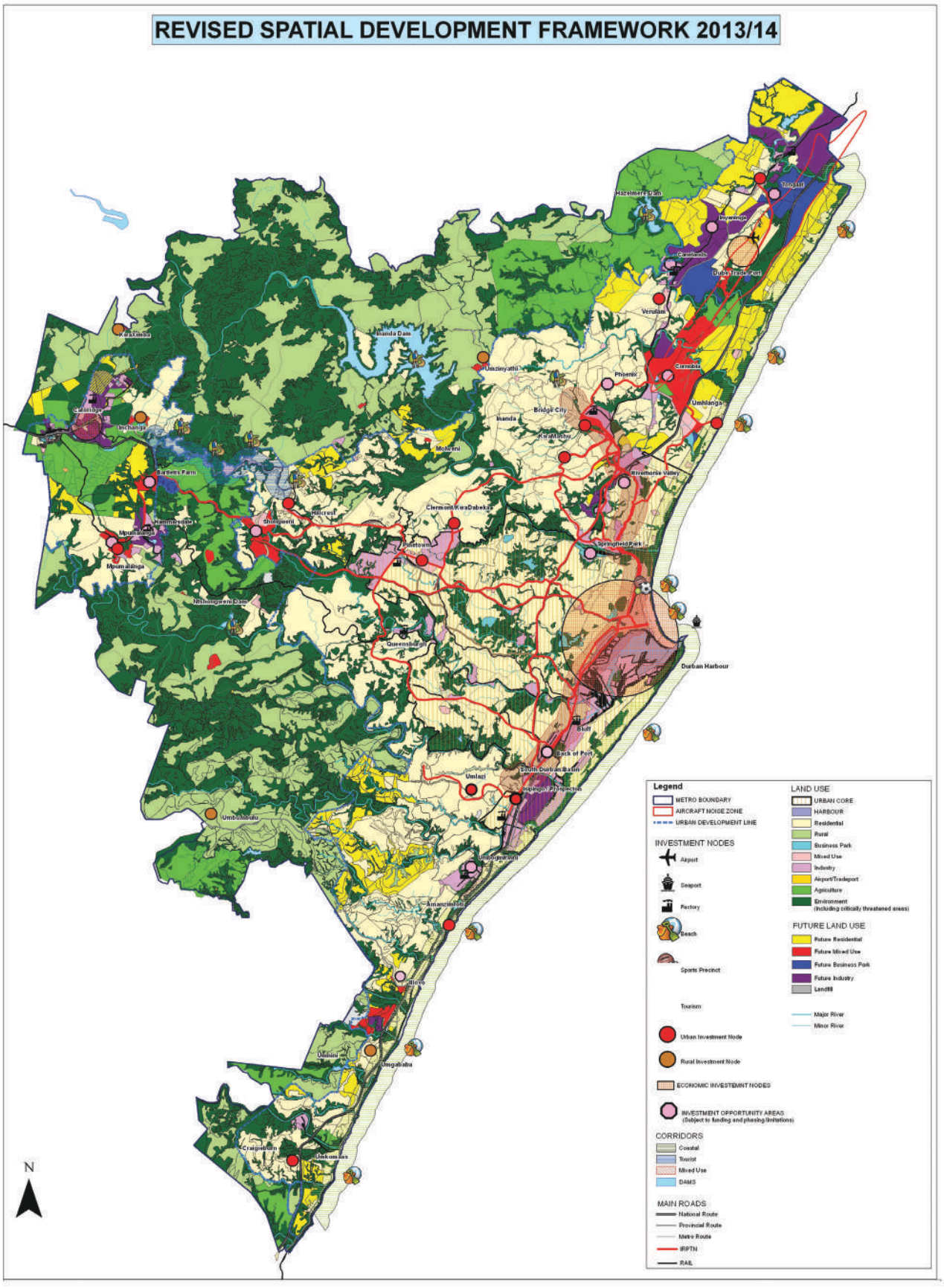


Figure 3 – eThekwini Spatial Development Framework 2013/2014

The full Spatial Development Framework report, with its component Spatial Development Plans, may be downloaded from: ***http://www.durban.gov.za/Resource_Centre/reports/Framework_Planning/Documents/FullReport.pdf***

Other plans and reports for which the Framework Planning Branch is responsible may be downloaded from ***http://www.durban.gov.za/Resource_Centre/reports/Framework_Planning/Documents/Forms/AllItems.aspx***

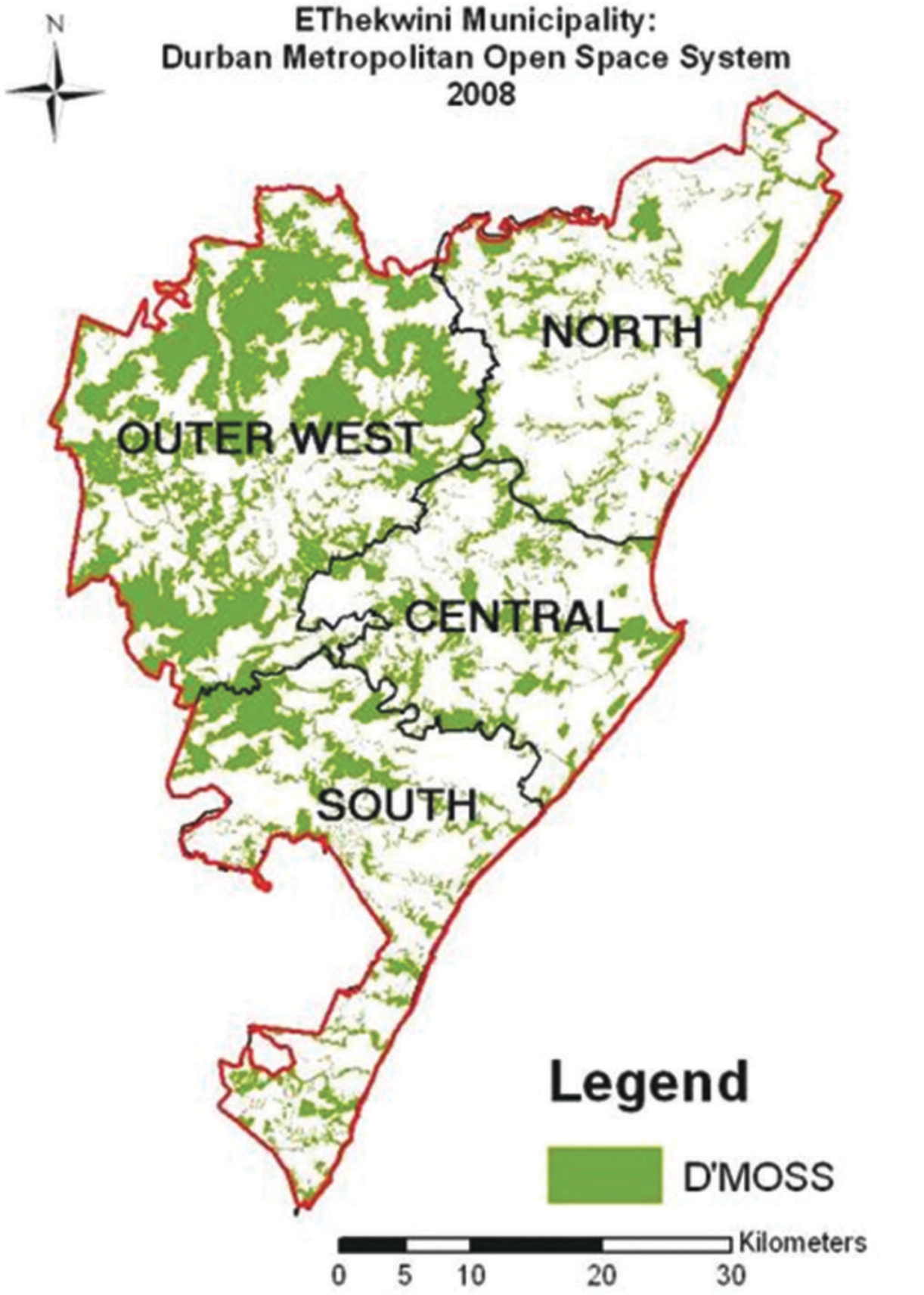
3.2.2 The Land Use Management Branch is responsible on the other hand for preparing and updating existing land use schemes in terms of the city's overall vision as expressed via the Integrated Development Plan (IDP), the Spatial Development Framework (SDF) and the four Spatial Development Plans (SDPS) and other downstream plans and last, but not least, it is responsible for assessing the individual planning applications of various sorts, i.e. rezoning, (special) consent, subdivision, etc.

As at the end of October 2012 the prior multiplicity of some fifty schemes in operation around the city - a legacy of the former pre-1996 entities - had been reduced to five individual schemes. See **Annexure 9** listing the immediately prior eThekwini schemes. This was achieved with single consolidated or replacement schemes respectively for the North, South and Inner West. While the previously consolidated Outer West and Central areas schemes are being updated. There will however still be a number of individual zoning maps for districts within each of the respective schemes. These schemes will eventually all have a very similar format making working between the different areas far more understandable for the general public and while ensuring that more equitable controls are found between the respective areas of the city. The branch is also piloting a new scheme within a tribal area at Umnini which it is hoped will eventually be rolled out across the Ingonyama Trust areas.

The Branch apart from the main central Durban office also has substantial presences at the Sizakala offices in Hillcrest, Umhlanga, Pinetown and Kingsburgh. Local LUMS Regional Managers are found in each of the respective centres. The branch is responsible for enforcing compliance of land use with the respective eThekwini schemes. This entails staff being responsible for the initial enforcement activity as required in terms of the PDA. For greater detail see**:** *http://www.durban.gov.za/City_Services/development_planning_management/Land_Use_Management/Pages/default.aspx.*

3.2.3 The Research and Policy Branch was established to undertake critical areas of research to inform strategic outcomes and implementation strategies. The Branch is also responsible for the crafting of policies to support implementation plans of other Branches within the Development Planning Department. One of the key functions of the Research and Policy Branch is to enhance and support the knowledge management vision of the Department in growing the eThekwini Municipality as a learning organisation. The collaborative approach of the Branch promotes cooperative governance and service delivery by engaging other spheres of government, tertiary institutions and developmental stakeholders in achieving its key purpose.

3.2.4 The Public Housing Sector Branch is responsible for ensuring that in all planning matters relating to public housing initiatives, and in particular to the housing initiatives of the Council's Housing Department located within the Procurement and Infrastructure Unit, that development applications are able to progress with the minimum of delays. This is to ensure that housing projects are not delayed any longer than necessary in securing the necessary statutory planning approvals. It effectively therefore serves as an interface between the Housing Department and the balance of the Development Planning Environment and Management Unit.



[6] *The public may obtain their own information on zoning via the internet from the Council's Geographic Information System (GIS). See http://citymaps.durban.gov.za/website/master/viewer.htm for further information. At present this includes not only the zoning, but also in most cases the basic relevant planning controls. Where the latter is presently not available it is being rolled out. A zoning certificate signed off by a senior planner is however desirable if serious investment or development is planned. NOTE: Following the adoption and coming into effect of new consolidated/replacement schemes in late 2012, the internet service has been temporarily withdrawn.*

3.2.5 The Information Systems Branch is responsible for maintaining all spatial records of zoning and zoning changes, mapping of billboard appropriate areas, updating of maps, servicing the other branches and departments and for the printing of maps for both internal departments and the public. A specialised Information Office assists with pre-development building and land use advice and controls, processes to follow, forms to complete, issues individual or generic web based Zoning Certificates etc. It is equipped with GIS[6] stations for public use offering a range of building related information like cadastral, ownership, application/ plan tracking, zoning, etc. The Information office also offers a Customer Care facility where all complaints/ compliments in respect of the Unit can be lodged and will be investigated. The Centre is located on the ground floor of Central Regional Office in KE Masinga Road. If necessary they will refer the public to planning or other specialists or the regional offices. The Branch also has a presence in the Hillcrest Sizakala Office. See *http://www.durban.gov.za/City_Services/development_planning_management/Pages/Zoning_Certificates.aspx* for zoning certificates.

It should be noted that the web version of the Town Planning Regulations, Zoning and Land Use accessible via the internet is provided solely for reference and the convenience of having the information in a computer readable format. The provisions and maps may not in some instances be the official version as enacted into law. The accuracy of any specific provision cannot therefore be assured, and the public is urged to consult the Development and Planning Unit for the current and official version of both the text and maps.

3.3 The Environmental Planning and Climate Protection Department is situated in the central Durban office.

Its various branches are responsible amongst other for biodiversity planning (including D'MOSS[7] and the Systematic Conservation Plan), the impact assessment of development applications and commenting on various Environmental Impact Assessment (EIAs) lodged with either the national or provincial departments, the implementation of conservation projects via Working on Fire and Working for Water, climate change adaptation and mitigation and environmental policy.

See *http://www.durban.gov.za/City_Services/development_planning_management/environmental_planning_climate_protection/Pages/default.aspx* for more information.

[7] *The Durban Metroplitan Open Space System known as D'MOSS is depicted on the respective schemes as overlays over the zoning and in addition may be found as a green (switchable) layer on the GIS.*

3.4 The Development Management Department is responsible for the processing of building plan applications, monitoring the erection of structures and other building works, enforcement and advertising and signage.

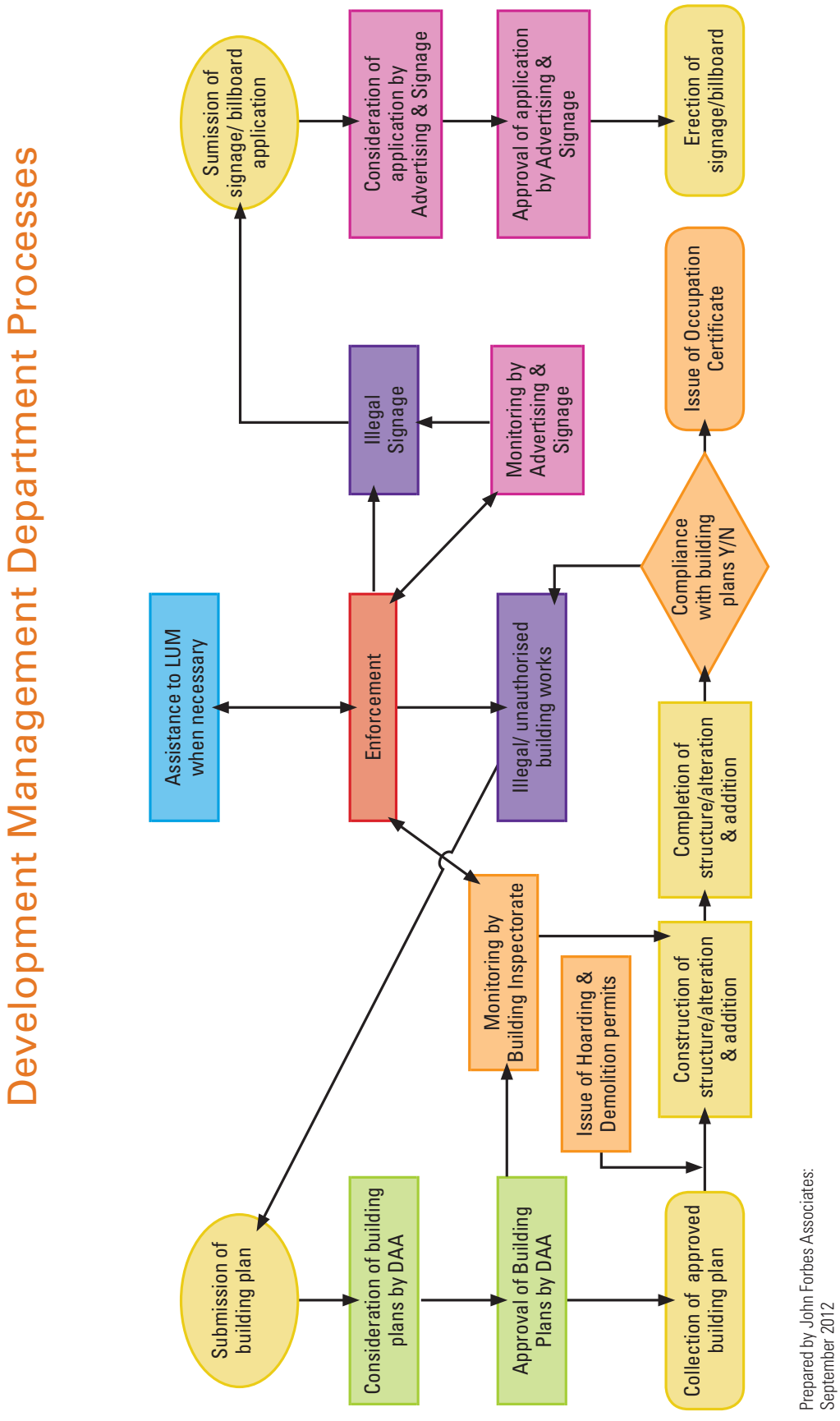


Figure 4 - Showing broad processes undertaken and interaction between the various branches of the Development Management Department.

3.4.1 The initial thrust of this Department is exercised via the **Development Application and Assessment (DAA) Branch** which is geared towards the scrutiny and assessment of building applications in a reliable and efficient manner, so as to ensure compliance with applicable laws and standards and promoting the safe and sustainable development of the built environment. They received building plans, circulate them for comment and based on these comments the department either approve or refuse the plans. Refused plans may, following suitable modification, be resubmitted for further consideration. See **http://www.durban.gov.za/City_Services/development_planning_management/Pages/Development_Applications_Approvals.aspx** for more information. See Figure 8 illustrates the approval process in greater detail.

3.4.2 The DAA branch is supported by the **Building Inspectorate Branch** who ensure compliance of any new structures or alterations and additions with the approved building plans by monitoring and where necessary redirecting the developer or builder. Accordingly, when a developer is about to commence construction in terms of an approved plan they should notify the building inspectorate as soon as the foundation trenches are dug so that they may carry out a first inspection. Further inspections are then carried out at various stages during the construction process. Upon completion, subject to compliance with the approved plan, an occupation certificate is issued. See *http://www.durban.gov.za/City_Services/development_planning_management/Pages/Building_Inspectorate.aspx* for more information. It should be noted that demolition permits are required if a building is to be demolished. Further if a building is 60 years or older and if it is to be altered or demolished the prior approval of Amafa, the KZN Heritage Authority, is required.

3.4.3 If necessary in the event of illegal erection of buildings or of unauthorised alterations and additions being undertaken the **Enforcement Branch** becomes involved to ensure compliance. See *http://www.durban.gov.za/City_Services/development_planning_management/Advertising_Signage/Pages/Appeals_Enforcements.aspx* for more information.

The Department apart from the Durban offices maintains substantial presences in the Sizakala offices in Hillcrest, Umhlanga, Verulam, Tongaat, Pinetown and Kingsburgh. The respective branches, other than for Enforcement, each has a Regional Coordinator for both Development Application Assessment and Building Inspectorate in each of the regional centres.

3.4.4. The Advertising and Signage Branch is also contained within the Development Management Department. It is responsible for the approval of signs and billboards and enforcement thereof in terms of policy and bylaws. The South African Manual for Outdoor Advertising Control (SAMOAC) acts as a guideline as to what signage is acceptable, in what type of location and under what conditions. It should be noted that there are different broad zones wherein different types of signage are permitted. See: -

http://www.durban.gov.za/City_Services/development_planning_management/Advertising_Signage/Pages/default.aspx.

[8] *The Enforcement Branch also gives support to LUMS when necessary. On the receipt of complaints of illegal land use by LUMS, the staff will carry out an on-site inspection and after confirmation of an illegal activity, will serve a Section 79 Prohibition Notice on the party with a requirement to cease all illegal activity within a certain period (at least 14 days). In the event of confirmation by them of subsequent non-compliance they will then advise the Rates Department and there after hand the matter over to the Enforcement Branch for further action. The matter may then proceed to the High Court. It should be noted that the Rates Department after receipt of notification of an illegal land use change the rate in the rand for the property from the existing rate in the Rand to the vacant land rate x 4. This may result in a very substantially higher rates account on the monthly consolidated rate, water and electricity bill. There is also the risk that in the event of a subsequent successful conviction the owner will obtain a criminal record.*

4. PURPOSE OF SCHEMES

4.1 Why do we have town planning schemes, or, as they are now called following their extension into rural areas, schemes[9]? The general purpose of schemes, amongst others, as originally set out in terms of Section 40 of the Town Planning Ordinance read as follows: -

> *(1) Every structure plan, development plan, town planning scheme (scheme) or package of plans shall have for its general purpose a co-ordinated and harmonious development of the municipal area, or any area or areas situate therein, to which it relates (including where necessary the reconstruction and redevelopment of any part which has already been subdivided, whether there are or are not buildings thereon) in such a way as will most effectively tend to promote health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications.*
>
> *2) A scheme shall contain such provisions, not incompatible with the relevant structure plan[10] and development plan, as may be deemed necessary or expedient for regulating, restricting or prohibiting the development of the area to which such scheme relates and generally for carrying out any of the objects for which such scheme is made and in particular, but without derogating from the generality of the foregoing, for dealing with any of the matters referred to in the Schedule to this ordinance.*

While the Town Planning Ordinance is no longer current, it nevertheless gives a very comprehensive understanding the general purpose of a scheme and which still holds true. The only really obvious omission is the apparent lack of any direct reference for the promotion, conservation and protection of the natural environment and the biodiversity which it contains and which was not vogue when the ordinance was written well prior to the environmental movement in the 1970s. This omission may however perhaps be inferred by the reference to amenity.

4.2 In terms of Section 3 of the KZN Planning and Development Act, 1998 on the other hand, this somewhat lengthy definition has been succinctly synthesised down to: -

> *The purpose of a scheme is to regulate land use and to promote orderly development in accordance with the municipality's integrated development plan.*

Thereby alternatively simply relying on the vision, aims and objectives as contained within the integrated development plan and which in its component plans spells out the purpose of the scheme in far more detail than that contained in Section 40 of the Town Planning Ordinance.

4.3 Fundamentally on closer examination, there is little difference between the two definitions once the latter definition is expanded.

4.4 The scheme is therefore simply a tool to regulate for the sustainable development of land within a municipal area and in an orderly and replicatable manner. It must be fair to all, while paying due regard to the natural environment and meeting the broad social and economic requirements of the population as a whole. This scheme operates within the context of both available and planned services such as water, sewage, electricity and transportation, all as broadly encompassed and required within the Spatial Development Framework, the respective Spatial Development Plans and the other strategic plans prepared by the Framework Planning Branch.

[9] *In the latest KZN Planning and Development Bill, 2012 the terminology has been changed to Land Use Scheme.*

[10] *The previously styled structure plan and development plan no longer exist within the current hierarchy of plans. Their closest approximates are the Integrated Development Plan and the Spatial Development Framework.*





5. DEPARTMENTAL PRACTICE - PLANNING

The adjudication of planning applications (as opposed to building applications) is undertaken by the Land Use Management Branch of the Development Planning Department. Following the receipt of planning applications they are assessed in terms of the relevant scheme and in terms of the processes and procedures as laid down in the Planning and Development Act, the few remaining vestiges of the Town Planning Ordinance and the policies of Council. They are also where appropriate circulated to other branches, departments and units of Council to obtain input, e.g. relating to forward planning frameworks, waste water, storm water, environment, environmental health, etc. Before any eventual consideration by the Council, or delegated officials, a certified report is required to be prepared by a registered planner who is required to make a recommendation in terms of the Planning and Development Act. The broad process through which various types of planning applications pass prior to ultimate approval are illustrated below. It should be noted that this does not include the building plan approval process which would in most cases be required to be followed post planning approval.

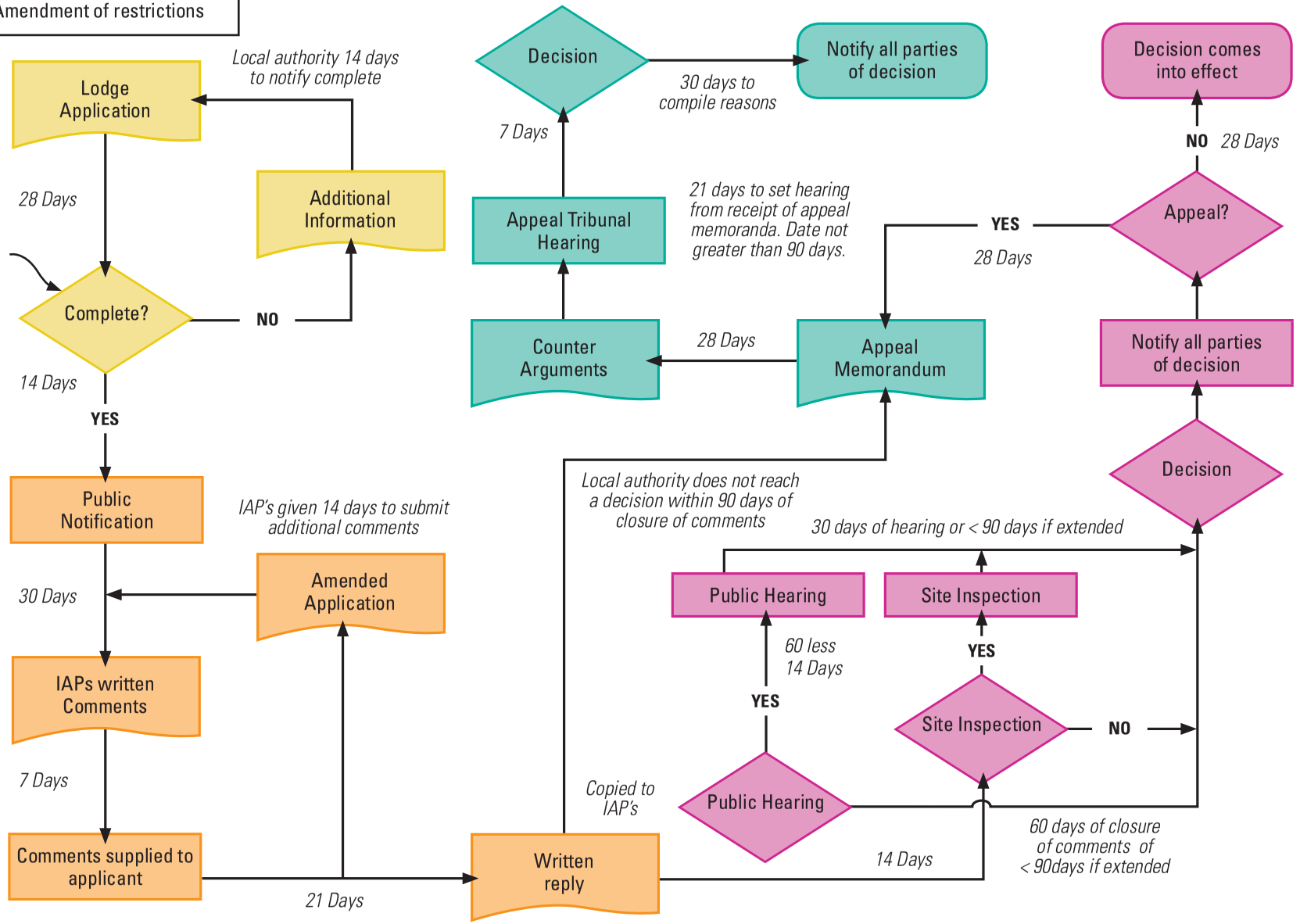
RIGHT:
Figure 5 – Flow schedule showing procedure for all PDA and TPO development applications from initial submission to building plan application. Showing by different colours prior-public, public notification, municipality consideration and appeal (if applicable) periods.

KZN POA, 2006 Application Process

Scheme Amendment, Subdivision & Consolidation. Development Outside of Scheme. Phasing/ Cancellation of Layout Plan, Road/Open Space Closure, Removal/Amendment of restrictions

Note: Land use changes & relaxation of scheme controls consent applications controlled in terms of Town Planning Ordinance, 1949 and NOT the KZN Planning & Develmopment Act, 2008

A pre-submission process is alternatively being followed by the eThekwini Municipality which is substantially the same as set out in the KZN PDA but without the set time frames. Following the application being adjudged complete the public notification process commences.



Prepared by John Forbes Associates: September 2012

A registered planner, when preparing his or her report on an application for its consideration for approval, approval with conditions or refusal, is legally obliged to measure the application against a number of very specific criteria as laid down in the Act for the different application types as shown in figure 5 – see Annexure 2. It should be noted that these criteria vary for the different types of applications. Accordingly, while a lay person[11] may currently submit an application to the Council, due to the complexity of considerations and conditions to be met before approval, it is highly recommended that preferably a planner, or a person well versed in planning matters, prepare the planning and development application and submit it to the Council for consideration.

The type of planning application is dependent in most cases on whether the approval sought falls within a scheme or outside a scheme, bearing in mind that there are not at present wall-to-wall schemes across the municipality. See **Annexure 3 Figure 7** showing the respective schemes. Furthermore, outside of schemes in particular, often additional approvals may be required, e.g. agricultural clearance and environmental authorisation. Greater detail on these aspects is given in **Annexure 2,** Sections 3.0 and 4.0

[11] *It is proposed in terms of regulations to be formulated in terms of the Planning Professions Act to reserve certain work for register planners.*

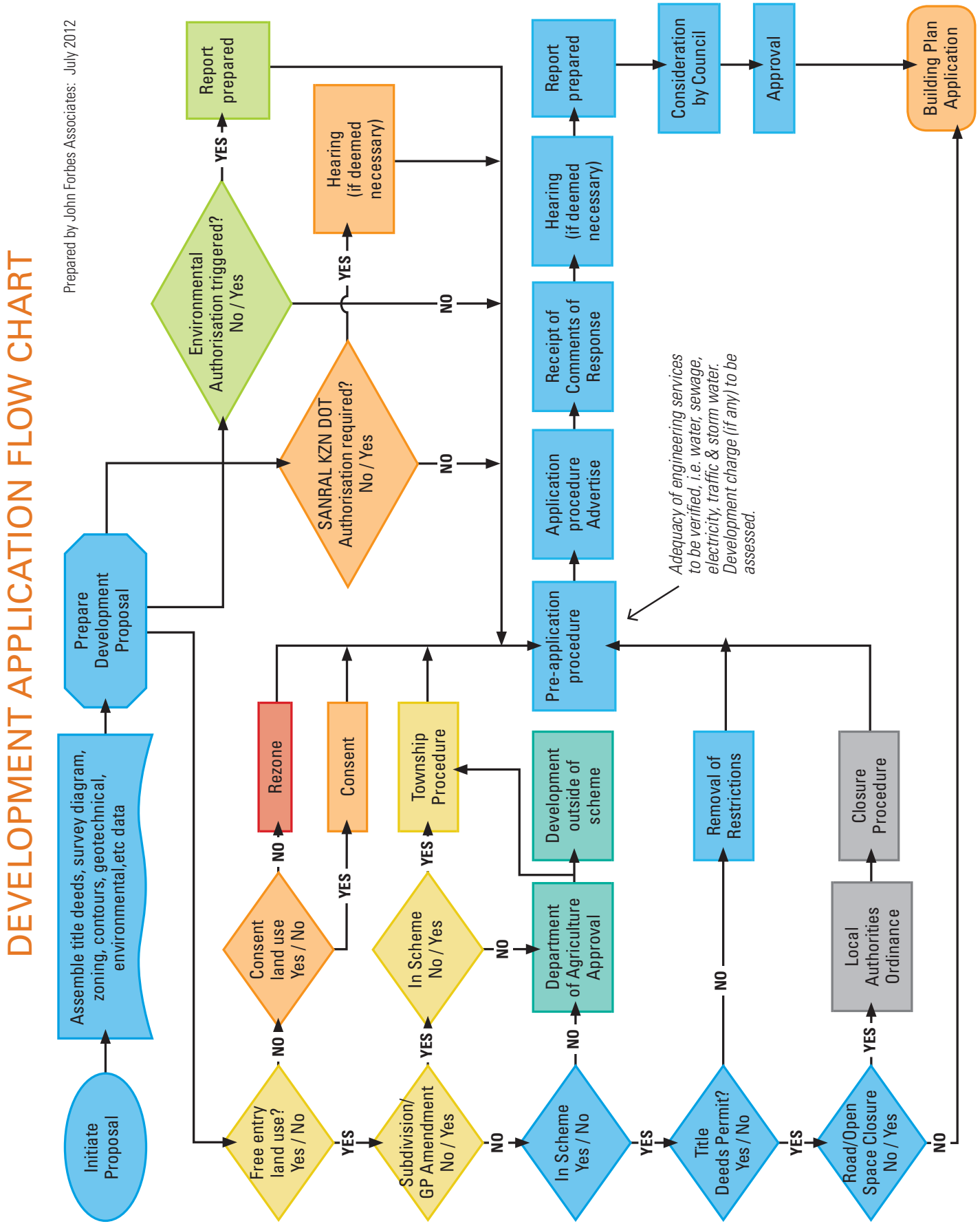


Figure 6 - Development application flow chart showing the process for different types of planning applications. Note: This does not infer the building plan application is part of the process but rather that the planning application is a necessary precursor to the submission of the building plan application.

The following divisions for different types of planning applications post pre-submission are based loosely around the current chapter divisions as found within the Planning and Development Act, 2008. Departmental practices and processes for different types of applications are as presented below:-

5.1 Pre-Submission Process

Prior to a formal development application being lodged by an applicant in terms of the KZN Planning and Development Act, i.e. for rezonings, subdivisions, removal of restrictive conditions, etc. and being formally accepted, an initial or draft application is required to be lodged with the Development and Planning Department to obtain an initial planning clearance. Only once this clearance is obtained will the application(s) be formally accepted in terms of the KZN Planning and Development Act. It should be noted that the department, as a development driver, has specifically established this pre-submission or pre-application process in an attempt to assist the Developer in realizing the project within the stipulated time frames for the application process as legally required by the Act. In fact in many instances it should be well within the time frame as contentious problems should have all been resolved prior to formal submission.

5.1.1 In terms of this non-statutory process[12], applications are not formally accepted until such time as all data deemed necessary to complete the application is received. Notwithstanding this requirement, an application number is allocated at the outset when the initial application is lodged. Only once all outstanding data is received is a formal acknowledgement letter sent to the applicant (jointly in terms of item 2 & 4 of Schedule 1). The applicant is then advised that they must place their public advertisements in the press, on site and notify neighbours within 14 days. It is only thereafter that the 28 days allocated formally in terms of the PDA commences. Note: It is only at this stage that the necessary application fees are required to be paid by the applicant.

5.1.2 The PDA does in fact allow for municipalities to refer formally lodged, but incomplete, applications back to applicants within the said 28 days (or agreed extended period) of formal lodgement. The applicant then has a further 90 days (or agreed extended period) to return with the missing information. Where after the municipality has a further 14 days in which to advise the applicant that the application is complete. This process however has the risk of the original 28 days allocated to the municipality after formal receipt of the application being exceeded and technically the application being voided or open to dispute. The pre-submission process should therefore obviate these steps.

5.2 Rezoning

5.2.1 Zoning assigns certain potential rights to a property, e.g. it normally specifies what the free entry, consent and prohibited land uses are and sets out the limitations and bulk factors for the zone. For example, the maximum allowed floor area is usually expressed as a floor area ratio (FAR) or plot area ratio (PAR), the maximum allowed coverage is expressed as a percentage, the maximum allowed height is given in storeys and any additional controls including building lines, side and rear spaces are specified. The initial zoning is normally undertaken by the Council when a scheme is prepared and an applicant then will seek to amend the scheme and/or rezone the land in question. Cases may however exist where properties fall outside a scheme and an initial zoning is sought by an applicant by the land's incorporation into a scheme.

5.2.2 It should be noted that the zoning may however be subject to other factors which will limit the potential otherwise assigned to erven in terms of the zoning; e.g. factors such as environmental constraints, oversteep land, land subject to flooding, the availability of water borne sewage reticulation, adequate vehicular access, etc.

[12] *In terms of the initial Planning and Development Bill, 2012 released in July 2012 this will become a statutory process.*

5.2.3 Rezoning applications as contemplated in terms of Section 10 of Chapter 2 (Schemes) of the Planning and Development Act are lodged and processed in terms of the procedures set out in Schedule 1 of the Act.

5.2.4 In terms of item 2 of the Schedule the application for a rezoning or scheme amendment is required to include: -

- The application form;
- written supportive motivation of the applicant;
- proof of registered ownership of the land and a copy of the diagram(s), unless the application relates to a general amendment of the municipality's scheme;
- the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme; and
- any other plans, diagrams, documents, information or fees that the municipality may require.

Notification

5.2.5 When the municipality has confirmed in terms of item 2 or 4 that the application is complete and may be advertised by the applicant in terms of item 6(1) read with item 6(2) and 6(3), a notice must within 14 days simultaneously be placed: -

- in the press in English (in Friday's Mercury) and in isiZulu (Thursday's Ilanga or Friday's Isolezwe);
- on the frontage(s) of the applicant site(s) in a conspicuous and easily accessible place(s). The site notice(s) is to be no less than 60 cm by 42cm in size.

5.2.6 The following parties are to be notified either by registered or personally delivered (and signed for) letters; -

- All neighbours within 100 metres[13] of the applicant site(s), or the chairperson(s) of a homeowners association(s) or body corporate(s) representing any relevant owners within 100 metres;
- the municipal councillor of the ward in which the application falls;
- relevant organs of state, be they national, provincial, local and/or quasi e.g. ACSA, Dube Tradeport, that have a potential interest, and
- any other parties the municipality considers may have an interest in the matter.

5.2.7 The notice and the relevant letters of advice must:-

- Identify the land to which the application relates, and if that land is an erf
  - * state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
  - * give the property description thereof;
  - * state the purpose of the application;
- state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice (normally the nearest regional Sizakala offices);
- invite members of the public to lodge written comments (whether objecting to or supporting the application) with the contact person stated in the notice;
- state how the comments may be lodged (normally by hand, postal services, fax or email with the respective contact details);

[13] *In terms of the KZN Planning and Development Act Amendment Bill, this requirement will be done away with and only immediate and/or opposite neighbours, and any others the municipality may identify, will need to be notified.*

- state the final date by when the comments must be lodged (no less than 30 days after service of the notice and after excluding all intervening public holidays and any concluding weekend. Note: It is prudent in the case of more complex applications to allow for a longer period to receive meaningful comments.)[14]; and
- state that a person's failure to lodge or forward comments in response to the notice disqualifies the person from any further participation in the process.

5.2.8 Note that if the application is for a general amendment of a scheme, or if it is otherwise impractical to serve notice on all parties who in the opinion of a municipality may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public on the matter. In such a case, the notices in the press and placed on site would of necessity have to indicate the date, time and venue of the proposed public meeting and the appropriate closure date would then have to be 30 days, as set out above, after the said public meeting[15].

5.3 Special and Written Consent

5.3.1 Schemes within a particular zone generally specify three categories of land use: free entry land uses where only a building plan is required to be submitted and approved before construction may commence, land uses which are totally prohibited and finally land uses which are only permitted with the special or written consent of the Council and which consent has to be obtained before a building plan may be submitted for consideration. The last category normally requires a public process to be followed which may involve just notifying immediate neighbours, in the case of a written consent, to advertising and directly notifying persons some distance away in the case of a special consent. The intention of requiring these processes to be followed is so that the likely impact of the specific land use as proposed may be assessed and if necessary suitable conditions put in place to limit proposed land use's impact or to even refuse the application if it seems that it will be totally incompatible with the surrounding land uses. The relaxation of a scheme control, e.g. the reduction of a building line, a side space, a rear space or the relaxation of the height restriction normally also requires the very same processes to be followed so that the likely impact on others may be determined. It should be noted that usually where a special consent is granted, it is for a specific proposal and is not a general carte blanche for that type of land use.

5.3.2 The Planning and Development Act No 6 of 2008 does not provide for Special Consent applications, which are essentially applications for consent to a municipality to allow relaxation of either the normal controls, such as side space, building lines etc. to allow specific categories of land use which are not either free entry land uses nor prohibited land uses in any particular zone. The Planning and Development Act Amendment Bill does however intend to introduce provision for such consent which will essentially follow an identical approval route, etc. to rezonings. The essential difference will be that the land is not rezoned, but merely a particular and very specific land use or a specific relaxation of a restriction is authorised. Until the amendment bill is enacted, applications are to be processed in terms of Section 67bis read with Sections 74ter of the KZN Town Planning Ordinance No 27 of 1949, as amended. The procedures and provisions are however almost identical to the Planning and Development Act, in that the procedures in the ordinance were amended in 2006 so as to facilitate a smooth transfer from the one legal system to the other. The relevant sections and the numbering thereof is however obviously different.

14 While customarily the closure for objections and representations has been the close of business, with the event of fax and email, comments may be lodged up to 24h00 on the final date.

15 Ideally a link could also be provided to where the notification and the application may be viewed on-line. This however is not currently obligatory.

5.3.3 In sections 17 – 20 of Chapter 2, the Planning and Development Act, 2008 does at present however still provide general principles for consent applications for land situated within the area of a scheme, matters that are required to be considered before granting an authorisation and with a caveat that any such consent granted may not be in conflict with either the provincial land use and development norms and standards (there are none at present), the municipalities integrated development plan (and so its downstream spatial development framework) and the relevant scheme. This essentially requires that the very same procedure as for a rezoning needs to be followed.

5.3.4 Special Consent applications as contemplated in terms of Section 67bis of the Town Planning Ordinance are lodged and processed in terms of the procedures and requirements as set out in Section 74bis, 74ter and 74quin of the Ordinance. These, as mentioned above, are fundamentally the same as the requirements found in Schedule 1 of the Planning and Development Act, 2008.

5.3.4.1 The application for a special consent is required to include: -

- The application form;
- written supportive motivation of the applicant; this should include all the applicable criteria as required by the scheme, e.g. existing zoning, proposed zoning, relevant bulk factors, permitted and conditional land uses, etc. ensuring that all the relevant matters as listed in **Annexure 1** are covered.
- proof of registered ownership of the land and a copy of the diagram(s), unless the application relates to a general amendment of the municipality's scheme;
- the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme; and
- any other plans, diagrams, documents, information or fees that the municipality may require.

Notification

5.3.5 When the municipality has confirmed that the application is complete and may be advertised by the applicant in terms of Section 74ter of the Town Planning Ordinance, a notice must within 14 days simultaneously be placed: -

- in the press in English (in Friday's Mercury) and in isiZulu (Thursday's Ilanga or Friday's Isolezwe);
- on the frontage(s) of the applicant site(s) in a conspicuous and easily accessible place(s). The site notice(s) is to be no less than 60 cm by 42cm in size.

5.3.6 The following parties are to be notified either by registered or personally delivered (and signed for) letters; -

- all neighbours within 100 metres of the applicant site(s), or the chairperson(s) of a home owners association(s) or body corporate(s) representing any relevant owners within 100 metres;
- the municipal councillor of the ward in which the application falls; and
- relevant organs of state, be they national, provincial, local and/or quasi e.g. ACSA, Dube Tradeport, that have a potential interest.
- Any other parties the municipality considers may have an interest in the matter.

5.3.7 The notice and the relevant letters of advice must:-

- identify the land to which the application relates, and if that land is an erf
  - * state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
  - * give the property description thereof;

- state the purpose of the application;
- state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice (normally the nearest regional Sizakala offices);
- invite members of the public to lodge written comments (whether objecting to or supporting the application) with the contact person stated in the notice;
- state how the comments may be lodged (normally by hand, postal services, fax or email with the respective contact details);
- state the final date by when the comments must be lodged (no less than 30 days after service and display of the notice and after excluding all intervening public holidays and any concluding weekend. Note: It is prudent in the case of more complex applications to allow for a longer period to receive meaningful comments.)[16]; and state that a person's failure to lodge or forward comments in response to the notice disqualifies the person from any further participation in the process.

5.3.8 It should be noted that certain consents/special consents do not always follow the full notification process. For instance in the case of bed and breakfast accommodation, i.e. up to four bedrooms (unlike guest houses which by definition are 5 to 10 bedrooms), and low key home business applications a much more limited notification process is normally required to be followed by the scheme with only the immediate neighbours being required to be notified. Similarly, in some schemes, only immediate neighbours are required to be notified for building line and side and rear space relaxations. However in the event of objections being lodged in these latter cases the applications are then required to be converted to a full special consent application with notification in the press etc. This special consent requirement is essentially to ensure a right of appeal to the objectors[17] in the event of them being aggrieved by the Council's final decision.

5.4 Townships, Subdivisions and Consolidations

5.4.1 The establishment of townships is where land is subdivided down into individual sites or erven for various land uses including roads and public places (open space). Normally, it would involve the creation of twenty or more separate subdivisions or erven which would eventually be shown on a general plan approved by the Surveyor General. However, the Surveyor General may sometimes agree to a general plan being prepared for as few as ten erven.

5.4.2 Subdivision on the other hand normally refer to the subdivision of a parent erf into a limited number of portions of the original erf and each portion are so designated. Usually there is no road created, but this is not necessarily a rule. In this case each portion of land would have its own survey diagram approved by the Surveyor General.

5.4.3 Consolidation occurs/ensues when a number of erven are consolidated into one newly designated erf with a new number.

5.4.4 Township establishment, subdivision, consolidation and other similar applications as contemplated in terms of Section 21 of Chapter 3 (Subdivision and Consolidation of Land) of the Planning and Development Act are lodged and processed in terms of the procedures set out in Schedule 1 of the Act.

Note: The following requirements and procedures are fundamentally the same as for the preceding sections 5.2.3 - 5.2.7.

[15] *While customarily the closure for objections and representations has been the close of business, with the event of fax and email, comments may be lodged up to 24h00 on the final date.*

[16] *Ideally these schemes clauses should be modified in the future so as to grant an automatic right of appeal to the Appeal Tribunal in the event of objections being lodged.*

5.4.5 In terms of item 2 of the Schedule any application for the establishment of a township, subdivision of land into two or more portions including a remainder, a consolidation of two or more contiguous erven and/or its subdivision, extension of a township, correction of a diagram, alteration or amendment of a general plan or the registration of a long term lease is required to include: -

- the application form;
- written supportive motivation of the applicant; this should include all the applicable criteria as required by the scheme, e.g. existing zoning, minimum erf size, minimum frontage, minimum access strip width, etc. ensuring that all the relevant matters as listed in **Annexure 1** are covered.
- proof of registered ownership of the land and a copy of the diagram(s), unless the application relates to a general amendment of the municipality's scheme;
- the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme;
- copies of the layout plan or general plan which may be required by the municipality; and
- any other plans, diagrams, documents, information or fees that the municipality may require.

Notification

5.4.6 When the municipality has confirmed in terms of item 2 or 4 that the application is complete and may be advertised by the applicant in terms of item 6(1) read with item 6(2) and 6(3), a notice must within 14 days simultaneously be placed: -

- in the press in English (in Friday's Mercury) and in isiZulu (Thursday's Ilanga or Friday's Isolezwe);
- on the frontage(s) of the applicant site(s) in a conspicuous and easily accessible place(s). The site notice(s) is to be no less than 60 cm by 42cm in size.

5.4.7 The following parties are to be notified either by registered or personally delivered (and signed for) letters; -

- all neighbours within 100 metres[18] of the applicant site(s), or the chairperson(s) of a home owners association(s) or body corporate(s) representing any relevant owners within 100 metres;
- the municipal councillor of the ward in which the application falls; and
- relevant organs of state, be they national, provincial, local and/or quasi e.g. ACSA, Dube Tradeport, that have a potential interest.

5.4.8 The notice and the relevant letters of advice must:-

- identify the land to which the application relates, and if that land is an erf
  - * state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
- give the property description thereof;
- state the purpose of the application;
- state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice (normally the nearest regional Sizakala offices);
- invite members of the public to lodge written comments (whether objecting to or supporting the application) with the contact person stated in the notice;

[18] *In terms of the KZN Planning and Development Act Amendment Bill, this requirement will be done away with and only immediate and/or opposite neighbours, and any others the municipality may identify, need to be notified.*

- state how the comments may be lodged (normally by hand, postal services, fax or email with the respective contact details);
- state the final date by when the comments must be lodged (no less than 30 days after service of the notice and after excluding all intervening public holidays and any concluding weekend. Note: It is prudent in the case of more complex applications to allow for a longer period to receive meaningful comments.)[19]; and
- state that a person's failure to lodge or forward comments in response to the notice disqualifies the person from any further participation in the process.

5.4.9 Note that if the application is for a general amendment of a scheme, or if it is otherwise impractical to serve notice on all parties who in the opinion of a municipality may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public on the matter. In such a case the notices in the press and placed on site would of necessity have to indicate the date, time and venue of the proposed public meeting and the appropriate closure date would then have to be 30 days, as set out above, after the said public meeting.

5.5 Development of Land Outside the Area of a Scheme

5.5.1 Applications for any development situated outside the area of an existing scheme, as contemplated in terms of Section 38 of Chapter 4 (Development of Land Outside Area of Scheme) of the Planning and Development Act, are lodged and processed in terms of the procedures set out in Schedule 1 of the Act.

5.5.2 Development in this instance includes the carrying out of building, construction, engineering, mining or other like operations on, under or over any land, and a material change to the existing use of any building or land without subdivision, but it does not include: -

- the construction, or use of, the first dwelling and outbuildings or improvements usually associated therewith on a separately registered subdivision, including a secondary self contained ancillary residential unit or granny flat which may be attached or detached but must be clearly associated with the first dwelling house and which unit may not exceed 80m2 in extent;
- the construction or use of any dwelling and outbuildings usually associated therewith for the settlement of a traditional household on land on which a traditional community lawfully resides, i.e. umuzi and related structures[20];
- land used for the cultivation of crops or for the rearing of animals, i.e. farming activities;
- the carrying out of any works required for the maintenance or improvement of an existing road within its existing boundaries;
- the provision of any engineering services in accordance with the municipality's integrated development plan; and
- the maintenance and repair of engineering services.

[19] *While customarily the closure for objections and representations has been the close of business, with the event of fax and email, comments may be lodged up to 24h00 on the final date.*

[20] *Clearly this exclusion does not include conventional housing that merely happens to be located within a tribal area. If there is any doubt as to whether a particular structure qualifies for exclusion on the basis of it being a traditional unit, the municipality should be approached for clarification.*

While Chapter 4 of the PDA is specifically designed to facilitate development where there is no scheme in place, it may in fact be more desirable for a variety of reasons to extend an existing scheme over an applicant site and give it a zone in terms of Chapter 2, even if it is on a parcel of land not flanking or even some distance from an existing scheme. If for instance a subdivision is simultaneously being created in terms of Chapter 3, i.e. for what will eventually constitute a very defined area as opposed to a small undefined portion of a large farm, a scheme extension and zoning is in fact deemed preferable. On the other hand for activities such as a wedding venue, a restaurant, a number of chalets, etc. to be situated on an undefined portion of a larger farm, a Chapter 4 application with very specific conditions framed for the discrete proposal may be more appropriate. It should not therefore be assumed that Chapter 4 is the route to be followed outside of a scheme and the municipality should be approached to determine its preference.

Note: The following requirements and procedures are fundamentally the same as for the preceding sections 5.2.3 - 5.2.7.

5.5.3 In terms of item 2 of the Schedule the application for development outside of a scheme area is required to include: -

- the application form;
  - * written supportive motivation of the applicant so as to give a comprehensive understanding of the proposal, e.g. proposed land uses, extent of land uses, number of units (if applicable), floor area, height, coverage, likelihood of future expansion, reason for not seeking a rezoning (if applicable), etc. This motivation should also cover all matters as listed in **Annexure 1.**
- proof of registered ownership of the land and a copy of the diagram(s), unless the application relates to a general amendment of the municipality's scheme;
- the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme;
- copies of any layout plan or general plan which may be required by the municipality; and
- any other plans, diagrams, documents, information or fees that the municipality may require.

Notification

5.5.4 When the municipality has confirmed in terms of item 2 or 4 that the application is complete and may be advertised by the applicant in terms of item 6(1) read with item 6(2) and 6(3), a notice must within 14 days simultaneously be placed: -

- in the press in English (in Friday's Mercury) and in isiZulu (Thursday's Ilanga or Friday's Isolezwe);
- on the frontage(s) of the applicant site(s) in a conspicuous and easily accessible place(s). The site notice(s) is to be no less than 60 cm by 42cm[21] in size.

5.5.5 The following parties are to be notified either by registered or personally delivered (and signed for) letters; -

- all neighbours within 100 metres[22] of the applicant site(s), or the chairperson(s) of a homeowners association(s) or body corporate(s) representing any relevant owners within 100 metres;
- the municipal councillor of the ward in which the application falls; and
- relevant organs of state, be they national, provincial, local and/or quasi e.g. ACSA, Dube Tradeport, that have a potential interest.

21 *In the latest KZN Planning and Development Bill, 2012 the minimum size of the site notices has been reduced to 297mm X 420mm which is the standard A3 size as defined in ISO 216.*

22 *In terms of the KZN Planning and Development Act Amendment Bill, this requirement will be done away with and only immediate and/or opposite neighbours, and any others the municipality may identify, need to be notified.*

5.5.6 The notice and the relevant letters of advice must:-

- identify the land to which the application relates, and if that land is an erf
  - * state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
  - * give the property description thereof;
- state the purpose of the application;
- state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice (normally the nearest regional Sizakala offices);
- invite members of the public to lodge written comments (whether objecting to or supporting the application) with the contact person stated in the notice;
- state how the comments may be lodged (normally by hand, postal services, fax or email with the respective contact details);
- state the final date by when the comments must be lodged (no less than 30 days after service of the notice and after excluding all intervening public holidays and any concluding weekend. Note: It is prudent in the case of more complex applications to allow for a longer period to receive meaningful comments.)[23]; and
- state that a person's failure to lodge or forward comments in response to the notice disqualifies the person from any further participation in the process.

5.5.7 Note that if the application is for a general amendment of a scheme, or if it is otherwise impractical to serve notice on all parties who in the opinion of a municipality may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public on the matter. In such a case the notices in the press and placed on site would of necessity have to indicate the date, time and venue of the proposed public meeting and the appropriate closure date would then have to be 30 days, as set out above, after the said public meeting.

5.6 Phasing or Cancellation of Approved Layout Plan for Subdivision or Development of Land

5.6.1 Applications for the phasing or cancellation of an approved layout plan for the subdivision or the development of land as contemplated in terms of Section 50 of Chapter 5 (Phasing or Cancellation of Approved Layout Plan for Subdivision or Development of Land) of the Planning and Development Act are lodged and processed in terms of the procedures set out in Schedule 1 of the Act. Such applications normally occur when a developer has had second thoughts on a particular township development and now wants to phase or stagger such development and/or alternatively wishes modify the layout plan over a portion of the original township area.

23 *While customarily the closure for objections and representations has been the close of business, with the event of fax and email, comments may be lodged up to 24h00 on the final date.*

5.6.2 An approved layout plan for the subdivision or development of land may be phased or cancelled only to the extent that it has already been approved by a municipality in whose area the land is situated. This is irrespective of whether the phasing or cancellation of the layout plan is aimed at: -

- the phasing of the development or subdivision of land by dividing the approved layout plan into two or more separate layout plans;
- the redesign of a portion of the approved layout plan for the subdivision or development of land by dividing the layout plan into two or more separate layout plans and cancelling the layout for the portion that is to be redesigned;
- the partial cancellation of rights to subdivide or develop land by dividing the approved layout plan into two or more layout plans and cancelling the layout plans for which the rights are cancelled;
- the cancellation of rights to subdivide or develop land by cancelling the approved layout plan; or
- the partial cancellation or cancellation of a general plan contemplated in section 37 of the Land Survey Act.

Note: The following requirements and procedures are much the same as for the preceding sections 5.2.3 - 5.2.7.

5.6.3 The application for the phasing or cancellation of an approved layout plan for the subdivision or the development of land is required to include: -

- the application form;
- written supportive motivation of the applicant;
- proof of registered ownership of the land and a copy of the diagram(s), unless the application relates to a general amendment of the municipality's scheme;
- the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme;
- sufficient copies of any layout plan, general plan and other documents which may be required by the municipality; and
- any other plans, diagrams, documents, information or fees that the municipality may require.

Notification

5.6.4 Written notice is required to be served on:-

- every member of the public who had previously lodged a written comment with regard to the original subdivision, consolidation, or the development of the land in question;
- any other person who, in the opinion of the municipality, is likely to be affected by the proposed phasing or cancellation of the layout plan, including organs of state and providers of engineering services;
- the Surveyor General, in the case of the subdivision or consolidation of the land; and
- the Registrar of Deeds.

5.7 Medium Density (Multiple Unit) Development and Development Without Subdivision

5.7.1 Medium density or multiple unit developments are customarily undertaken in terms of the provisions of the scheme in question. Sometimes the development may be allowed in multiples of the minimum erf size, e.g. at the same density in special residential zone but not necessarily with subdivisions and therefore not truly medium density in character, despite being so alluded to in the scheme in question. In other cases, a higher density may be allowed than if conventional subdivision were to occur.

5.7.2 Depending on the zone, in some cases special consent is required, in some cases not but a development plan or site development plan may be required, which may or may not require public notification and a call for comments. For example, when the land is already zoned for general residential, and only a building plan is required. The applicant is advised to consult with the relevant officials and determine the exact process to be followed. The following example taken from a scheme gives a general indication of what the requirements may be when a site development plan is required but no special consent procedure is required to be followed.

5.7.3 The applicant in making such application shall submit to the municipality suitable plans and motivations including all the necessary details for the complete development of the entire property, irrespective of whether or not such development is to take place in phases, including:-

- A plan or plans prepared by a professional engineer, professional land surveyor or registered planner to a scale of 1:200 (or other suitable scale agreed to by the municipality) showing :-
  - * Contour intervals of 2 metres,
  - * All relevant topographical detail including flood lines, environmentally sensitive areas and proposed servitudes,
  - * Areas steeper than 1:3,
  - * The position, nature, extent and levels of all proposed and existing buildings on the site together with adjacent properties within 10 metres of the site boundary,
  - * The proposed landscaping on the site including all platforms, banks, retaining wall positions,
  - * The position, dimensions and materials to be used in the construction of all roads driveways, parking areas and pathways,
  - * The boundaries of the proposed dwelling unit curtilages, exclusive use areas and common property areas,
  - * The position, nature and extent of any recreational facilities and utility areas or buildings,
  - * The proposed development phases, and
  - * Any other relevant information required by the municipality.
- A set of sketch plans prepared by a suitably qualified person at scale 1:100 showing the floor plans, sections and elevations of each type of structure within the proposed development, provided that typical plans may be submitted if the units are similar in nature. Such plans should indicate the materials to be used in the construction and proposed colours to be used for external wall finishes and roofs. Normally a common theme would be required to be observed.

[24] *For the purposes of computing the total number of permitted units, only the net developable area is sometimes used in the computation. This area is determined by deducting from the total site area, all areas of the site which are steeper than 1:3 or otherwise undevelopable by virtue of any physical or topographical constraint such as soil instability, liability to flooding, inaccessibility, topography or the presence of environmentally sensitive areas. Electricity power line, oil pipeline or similar servitudes may be partially or totally excluded from the developable area if, in the opinion of the municipality, these servitudes are likely to significantly reduce the development potential.*

- Plans prepared by a professional engineer showing wastewater disposal, stormwater disposal, water reticulation and internal road design as well as a report on the impact of the development on municipal services. The internal roads should be able to accommodate all relevant service vehicles as well as private passenger vehicles.
- A certificate by a registered professional land surveyor or registered planner showing the calculation of the number of permissible units in accordance with the relevant criteria[24].
- A report from a register professional (geotechnical) engineer on the soil stability and pertinent geological features on the site.
- The municipality may in its discretion call for an environmental impact assessment report or environmental management plan (despite same not being triggered in terms of the NEMA regulation listings).

5.7.4 The detailed procedure to be followed if any application involves a special consent, rezoning, subdivision, consolidation, etcetera is outlined elsewhere and this should be referred to if necessary.

5.8 Site Development Plan

5.8.1 The site development plan is very similar to the D-Plan or town planning development application required in the Durban scheme whereby, in order to avoid the expense of preparing detailed building plans, an application may be made in terms of Clause 24(2) could be made for town planning authority. The primary aim of this optional application was to save costs by obtaining authority in principle. Clause 24(2) requires two copies of a site plan drawn to a scale of 1:500 or 1:200 showing amongst others:-

- the extent of the site with all existing buildings and structures thereon plotted to scale;
- all adjoining sites with buildings thereon plotted to scale;
- all proposed buildings and structures and all proposed alterations and additions plotted to scale;
- a layout of any existing and/or proposed parking and/or loading/off-loading facilities showing all bay dimensions, road aisle widths and levels.

5.8.2 A number of the other existing schemes in the municipality however have a specific "site development plan" as a requirement in some of the zones and which is required to be approved prior to submitting formal building plans in terms of the National Building Regulations. The respective regional office should be contacted for the extent of the requirement where required. Generally however it will consist of an abridged version of medium density above and where at least a sketch plan prepared by a suitably qualified person showing the floor plans, sections and elevations of the structure(s) within the proposed development, the vehicular and pedestrian movements, the parking layout and associated calculations, engineering service provisions and the proposed site works and landscaping will be required.

5.8.3 The site development plan should be accompanied by a clear written motivation and description of what is proposed.

5.9 Alteration, Suspension and Deletion of Restrictive Conditions

5.9.1 An application as contemplated in terms of Section 60 of Chapter 6 (Alteration, Suspension and Deletion of Restrictions Relating to Land) of the Planning and Development Act are to be lodged and processed in terms of the procedures set out in Schedule 1. This relates not only to obligations or restrictions, which are binding on the owner of the land by virtue of:

- a restrictive condition or servitude registered against the land and which relates to: -
  - * the subdivision or consolidation of the land;
  - * the purpose for which the land may be used, and
  - * requirements that must be complied with relating to the erection of buildings or the use of the land;

which would have been addressed in the past in KwaZulu-Natal by Sections 3 and 4 of the Removal of Restrictions Act No 84 of 1967 and which was then overseen by the Private Townships Board or Planning and Development Commission as then set up in terms of the Town Planning Ordinance No 27 of 1949, but also to: -

- a condition of approval for the amendment to the municipality's scheme;
- a condition of approval for the subdivision or consolidation of land;
- a condition of approval for the development of land situated outside the area of a scheme; or
- a condition of approval for the phasing or cancellation of an approved layout plan.

5.9.2 Despite the above, it should be noted that Chapter 6 of the PDA does not facilitate a municipality to suspend or remove any mineral right registered against the title of any land.

5.9.3 It should further be noted that a proposal for the alteration, suspension or deletion of a restriction relating to land may be combined with a proposal to amend a scheme, to develop land situated outside the area of a scheme, or to subdivide and consolidate land, and processed as one proposal.

Note: The following requirements and procedures are fundamentally the same as for the preceding sections 5.2.3 - 5.2.7.

5.9.4 In terms of item 2 of the Schedule, the application for the alteration, suspension and deletion of restrictions relating to land is required to include: -

- * the application form;
- written supportive motivation of the applicant; written supportive motivation of the applicant; this should include all the applicable criteria as required by the scheme, e.g. existing zoning, future land use contemplated, etc. and ensuring that all the relevant matters as listed in **Annexure 1** are covered.
  - * proof of registered ownership of the land and a copy of the diagram(s), unless the application relates to a general amendment of the municipality's scheme;
  - * the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme; and
  - * any other plans, diagrams, documents, information or fees that the municipality may require.

Notification

5.9.5 When the municipality has confirmed in terms of item 2 or 4 that the application is complete and may be advertised by the applicant in terms of item 6(1) read with item 6(2) and 6(3), a notice must within 14 days simultaneously be placed: -

- in the press in English (in Friday's Mercury) and in isiZulu (Thursday's Ilanga or Friday's Isolezwe);
- on the frontage(s) of the applicant site(s) in a conspicuous and easily accessible place(s). The site notice(s) is to be no less than 60 cm by 42cm[25] min size.

5.9.6 The following parties are to be notified either by registered or personally delivered (and signed for) letters; -

- all neighbours within 100 metres[26] of the applicant site(s), or the chairperson(s) of a homeowners association(s) or body corporate(s) representing any relevant owners within 100 metres;
- the municipal councillor of the ward in which the application falls; and
- relevant organs of state, be they national, provincial, local and/or quasi e.g. ACSA, Dube Tradeport, that have a potential interest.

5.9.7 The notice and the relevant letters of advice must:-

- identify the land to which the application relates, and if that land is an erf
  * state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
  * give the property description thereof;
- state the purpose of the application;
- state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice (normally the nearest regional Sizakala offices);
- invite members of the public to lodge written comments (whether objecting to or supporting the application) with the contact person stated in the notice;
- state how the comments may be lodged (normally by hand, postal services, fax or email with the respective contact details);
- state the final date by when the comments must be lodged (no less than 30 days after service of the notice and after excluding all intervening public holidays and any concluding weekend. Note: It is prudent in the case of more complex applications to allow for a longer period to receive meaningful comments.)[27]; and
- state that a person's failure to lodge or forward comments in response to the notice disqualifies the person from any further participation in the process.

[25] *In the latest KZN Planning and Development Bill, 2012 the minimum size of the site notices has been reduced to 297mm X 420mm which is the standard A3 size as defined in ISO 216.*

[26] *In terms of the KZN Planning and Development Act Amendment Bill, this requirement will be done away with and only immediate and/or opposite neighbours, and any others the municipality may identify, need to be notified.*

[27] *While customarily the closure for objections and representations has been the close of business, with the event of fax and email, comments may be lodged up to 24h00 on the final date.*

5.9.8 Note that if the application is for a general amendment of a scheme, or if it is otherwise impractical to serve notice on all parties who in the opinion of a municipality may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public on the matter. In such a case the notices in the press and placed on site would of necessity have to indicate the date, time and venue of the proposed public meeting and the appropriate closure date would then have to be 30 days, as set out above, after the said public meeting.

5.10 Closure of Open Space and Roads

5.10.1 Applications for the permanent closure of open space or roads, as contemplated in terms of Sections 211 and 212 of the Local Authorities Ordinance No. 25 of 1974[28] read with Section 71 of Chapter 7 (General Principles For Permanent Closure Of Municipal Roads And Public Places) of the Planning and Development Act, are to be lodged and processed in terms of the principles and process set out in section 71 to 73. In this regard, the procedures as set out in Schedule 1 as applicable are broadly to be followed. Closure of such land has been often, but not necessarily always, closely associated with the consolidation and re-subdivision or re-layout of land and where it is incorporated into the proposed new township.

Note: The following requirements and procedures are fundamentally the same as for the preceding sections 5.2.3 - 5.2.7.

5.10.2 Accordingly, the application for the permanent closure of open space or roads is required to include:-

- the application form;
- written supportive motivation of the applicant; this should include all the applicable criteria as required by the scheme, e.g. existing and future zoning, flanking zoning, future land use, etc. and ensuring that all the relevant matters as listed in **Annexure 1** are covered.
- proof of registered ownership of the land and a copy of the diagram(s), unless the application relates to a general amendment of the municipality's scheme;
- the written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a scheme; and
- any other plans, diagrams, documents, information or fees that the municipality may require.

Notification

5.10.3 When the municipality has confirmed that the application is complete and may be advertised by the applicant, a notice must within 14 days simultaneously be placed: -

- in the press in English (in Friday's Mercury) and in isiZulu (Thursday's Ilanga or Friday's Isolezwe);
- on the frontage(s) of the applicant site(s) in a conspicuous and easily accessible place(s). The site notice(s) is to be no less than 60 cm by 42cm[29] in size.

5.10.4 The following parties are to be notified either by registered or personally delivered (and signed for) letters; -

- all neighbours within 100 metres[30] of the applicant site(s), or the chairperson(s) of a homeowners association(s) or body corporate(s) representing any relevant owners within 100 metres;

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[28] *The KZN Planning and Development Act Amendment Bill provides for the permanent closure of open space and roads using basically identical procedures as that required for other planning applications, while sections 211 and 212 of the Local Authorities Ordinance are intended to be repealed.*

[29] *In the latest KZN Planning and Development Bill, 2012 the minimum size of the site notices has been reduced to 297mm X 420mm which is the standard A3 size as defined in ISO 216.*

[30] *In terms of the KZN Planning and Development Act Amendment Bill, this requirement will be done away with and only immediate and/or opposite neighbours, and any others the municipality may identify, need to be notified.*

- the municipal councillor of the ward in which the application falls; and
- relevant organs of state, be they national, provincial, local and/or quasi e.g. ACSA, Dube Tradeport, that have a potential interest.

5.10.5 The notice and the relevant letters of advice must:-

- identify the land to which the application relates, and if that land is an erf
  * state the physical address of the erf, or, if the erf has no physical address, provide a locality map of the erf; and
  * give the property description thereof;
- state the purpose of the application;
- state that a copy of the application and its accompanying documents will be open for inspection by interested members of the public during the hours and at the place mentioned in the notice (normally the nearest regional Sizakala offices);
- invite members of the public to lodge written comments (whether objecting to or supporting the application) with the contact person stated in the notice;
- state how the comments may be lodged (normally by hand, postal services, fax or email with the respective contact details);
- state the final date by when the comments must be lodged (no less than 30 days after service of the notice and after excluding all intervening public holidays and any concluding weekend... Note: It is prudent in the case of more complex applications to allow for a longer period to receive meaningful comments.)[31]; and
- state that a person's failure to lodge or forward comments in response to the notice disqualifies the person from any further participation in the process.

5.10.6 Note that if it is otherwise impractical to serve notice on all parties who in the opinion of a municipality may have an interest in the matter or to display a notice on the land concerned, the municipality may convene a meeting for the purpose of informing the public of the matter. In such a case the notices in the press and placed on site would of necessity have to indicate the date, time and venue of the proposed public meeting and the appropriate closure date would then have to be 30 days, as set out above, after the said public meeting.

5.11 Zoning Certificates

Zoning Certificates indicating the existing zoning may be obtained on application by the public from the LUMS offices at the respective Sizakala Regional Offices and at the Info Office at 166 KE Masinga Road. These certificates not only give the zoning details, but also the free entry and land uses obtainable by consent and the applicable controls. These certificates may also be obtained on the internet[32] via:

http://www.durban.gov.za/City_Services/development_planning_management/Pages/default.aspx. It should be noted that at present this internet facility is limited to the old City of Durban or Central area but it is intended that in time this facility will be rolled out across the entire city.

[31] *While customarily the closure for objections and representations has been the close of business, with the event of fax and email, comments may be lodged up to 24h00 on the final date.*

[32] *Following the adoption and coming into effect of new consolidated/replacement schemes in late 2012, this service has been temporarily withdrawn.*

6. Related Matters: KZN Planning and Development Act

6.1 An Applicant's Right of Reply to Any Comments Lodged

Copies of all comments to applications that are lodged with a municipality are required to be provided to applicants within seven days after the closing date for public comment. The applicant may then within a period of twenty one days from receipt of the comments, lodge a written response with the municipality and serve a copy on the person(s) who made such comments. Alternatively, if he does not wish to so respond, the applicant may then elect to lodge a written waiver of his right to reply with the municipality.

6.2 Site Inspection

A municipality must decide whether to conduct a site inspection, within 14 days of

- receipt of the reply or waiver received from the applicant, or
- expiry of the period for lodging comments.

The municipality must notify the applicant of its intention to carry out an inspection and agree on the date and time of the inspection.

Note: A person who wilfully obstructs any person or persons from entering upon land or entering a building related to the application in question is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

6.3 Public Hearing

A municipality must decide whether to conduct a hearing, within 14 days of: -

- receipt of the reply or waiver received from the applicant, or
- expiry of the period for lodging comments.

The date of the hearing must be set down within 60 days from the commencement of the 14 day period referred to in this item, unless the applicant consents in writing to a longer period and all parties must be notified of the hearing by the municipality.

The notice of the hearing must

- specify the place, date and time thereof;
- state the purpose thereof; and
- inform parties of their rights contemplated in this item
- to be present or represented; and (it) to state their case or lead evidence in support thereof.

Any person has a right to attend the hearing or to be represented at the hearing and to personally, or through their representative

- state their case;
- call witnesses to testify and to present other evidence to support their case;
- cross-examine any person called as a witness by any opposite party;
- have access to documents produced in evidence; and
- address on the merits of the application.

6.4 Period for Municipality to Make a Decision

A municipality must decide on an application within: -

- 60 days of the closing date for representations, if the municipality did not hold a hearing;
- 30 days of the conclusion of the hearing, if the municipality did hold a hearing; or
- such further period as may be agreed to by the applicant, which period may not be more than: -
  - * 90 days after the closing date for representations, if the municipality did not hold a hearing and accompanying inspection; or
  - * 90 days after the conclusion of the hearing and accompanying inspection

N.B. Special Consent applications made in terms of the Town Planning Ordinance are required to have been decided upon within a period of two months from the receipt of the application or an extended period of time as may be jointly agreed upon. Failing this time period being met, the application is deemed to have been refused.

6.5 Time requirements when notifying the Public and Applicants

If registered mail is used to notify objectors and applicants, 21 days must elapse before the normal 28 day period to respond lapses, i.e. 49 days in total. That is if no response is received in the interim. However if notification is dispatched by email, or hand delivered, only the statutory 28 days applies.

N.B. In the case of Special Consent applications made in terms of the Town Planning Ordinance, the parties are required to be notified within 14 days (two weeks) of the decision.

6.6 Delegation to Take Decisions on Applications Lodged

All matters, other than for rezonings which have to be considered sequentially by the Town Planning Committee, EXCO and then the full council, are delegated to the Head: Development Planning Environment and Management, or staff thereunder by sub-delegation to take a decision.

N.B. Special Consent decisions are taken under delegated authority.

6.7 Effective Date of Decisions

6.7.1 In the event of comments or objections being lodged, a decision by Council only becomes effective after the written (or electronic) notification of the decision has been received by all the parties and no appeal has been lodged within 28 days of the receipt of the notification.

6.7.2 If an appeal is lodged, the decision is suspended until the appeal is finalized.

6.7.3 It should be noted that up to 21 days from date of posting of a registered letter is required to elapse before it may be assumed that all the recipients have received the notification. In this regard if notification is dispatched by email and proof of receipt is received, this period may be significantly reduced.[33]

6.7.4 If any objector or person lodging comments relies on portion of the 21 days beyond the normal allocated 28 days to lodge an appeal, he/she is expected to prove when he/she received the actual notification, i.e. an automatic 49 days from date of posting to lodge an appeal may not be assumed.

6.7.5 In the event of no comments or objections being received for a particular application, the decision takes effect immediately on notification to the applicant.

N.B. There is also a 28 day period in which Special Consent applications made in terms of the Town Planning Ordinance may be appealed following the receipt of notification.

[33] *In terms of the July 2012 released Planning and Development Bill, 2012 it is intended to modify the provisions so there is a single cut-off date by which all appeals must be lodged, as the present arrangement can result in multiple cut-off days for appeals as a result of registered mail postal delays with resultant multiple response-by dates.*

7. DEPARTMENTAL PRACTICE – BUILDING PLANS

7.1 Building plans for the erection of new structures are required to be lodged with the municipality in terms of the National Building Regulations and Standards Act No 103 of 1977 and in compliance with its regulations and various SABS codes of practice including SANS 10400 - The application of the National Building Regulations (SABS 0400)[34], etc. This is not merely a legal obligation but is necessary to ensure a safe and healthy living environment for the occupants, furthermore an approved plan is normally a prerequisite to obtaining a bond to finance the construction of the structure and finally failure to lodge same could possibly result in prosecution and financial hardship.

7.2 Only building plans application prepared and submitted under the name of a person appropriately registered with the South African Council for the Architectural Profession (SACAP) are acceptable.

7.3 The municipality is required to either grant or refuse[35] its approval in respect of any building plan application lodged with it: -

- within a period of 30 days after receipt of the application where the architectural area of the building is less than 500 square metres, and,
- within a period of 60 days after receipt of the application where the architectural area of the building is 500 square metres or larger.

7.4 In terms of Section 4 of the National Building Regulations and Standards Act it is an offence to erect any building without approval, where approval is required in terms of the Act.

7.5 In terms of Section 23 of the National Building Regulations and Standards Act an approval granted by the municipality does not exempt the owner of a building from liability, or taking due care and ensuring that the building is designed, erected, completed, occupied etc. in accordance with the provisions of the Act and any other applicable law. Furthermore, read in conjunction with the Consumer Protection Act, the architectural professional also has a duty of take due care.

7.6 It should also be noted with regard to an approved plan, when finally erecting a building both the architectural professional and the layman needs to be aware that simply changing the size of a window may result in non-compliance due to Part X. Building plans should therefore be strictly complied with unless an amended plan is submitted and approved.

7.7 Planning Application (also known as the Pre-Scrutiny) Process

This is an internal non-statutory process applied to building plans in which the broader planning aspects are assessed. This is done by way of an application submitted to the Land Use Management Branch, the intention being to ensure that all planning and land related issues are cleared prior to the submission of a building application.

[34] *he SABS documents were designated from SABS to SANS and a "1" added as a prefix to the existing number in terms of Government Gazette No 24002, Notice No 1373 of 2 November 2002.*

[35] *It should be noted that there is no provision for a referral, as it is sometimes assumed by the public. A refused application may however be resubmitted within a period of one year following rectification of the identified problems without incurring new submission fees.*

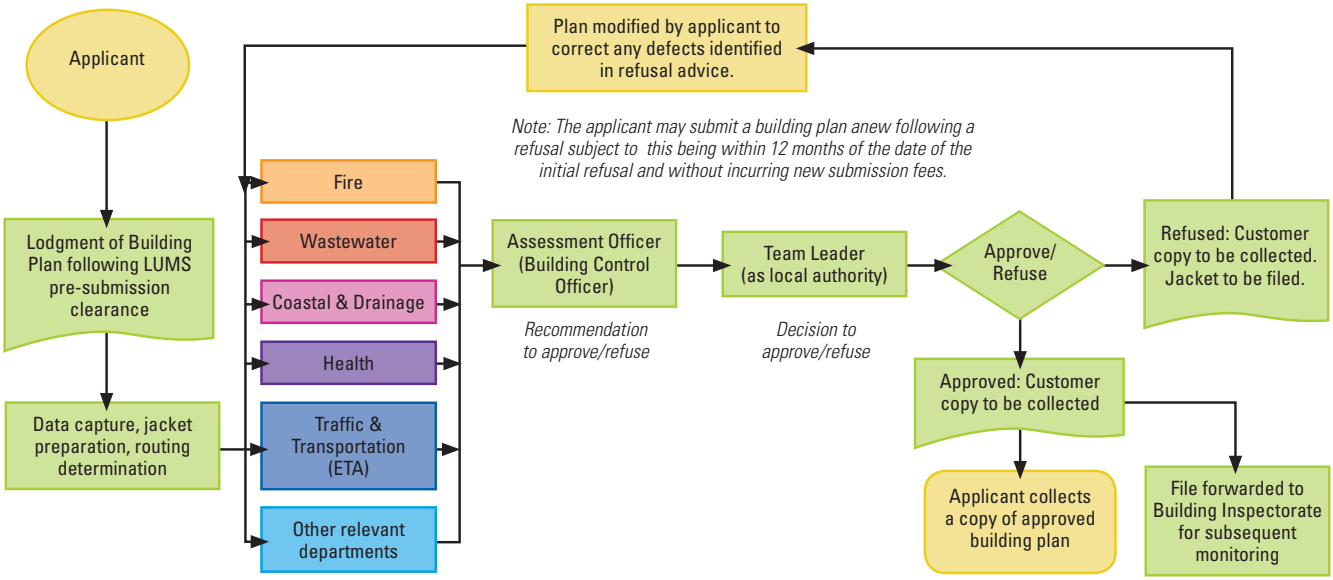
7.7.1 Prior to the formal submission of building plans, initial plans have to be lodged with Town Planning to obtain a planning clearance. Only once this clearance is obtained will the (Building Plan) Development Assessment and Approval Branch formally accept the plans in terms of the National Building Regulations.

7.7.2 All proposals including residential, commercial and industrial building plans are now also required to follow this process which requires input from a variety of departments other than Town Planning. This process may take up to 30 days, but usually can be achieved be achieved between 10 – 14 days.

7.7.3 In the event of a dispute involving a refusal to approve a building plan, a prohibition from erecting a building for aesthetic or other reasons, or the interpretation of any regulation or by-law, the matter may be referred to the National Building Regulations Review Board as referred to in Section 9 of the National Building Regulations and Standards Act. The board is constituted independently of the SABS and reports directly to the Minister of Economic Affairs and Technology. The review board consists of: -

- a chairman designated by the Minister (normally from a legal background); and
- two other persons appointed for the purpose of any particular appeal by the chairman and drawn from an extensive list that represents the broad building industry. This list includes various architect, building designer, engineering, quantity surveyor and town planning institutes, BIFSA, the Public Works Department, the Portland Cement Institute, the Lumbermillers Ass., the National Housing Commission, the Fire Protection Ass., South African Transport Services, the Department of Health and Welfare and the Department of Environmental Affairs. It is accordingly possible for the chairperson to select from those parties most well equipped to handle any particular issue that may come before it.

Building Plan Assessment and Approval Process



Prepared by John Forbes Associates:
September 2012

Figure 6 - Flow diagramme showing building plan assessment and approval process.

7.8 Impact of the KZN Planning and Development Bill

7.8.1 The newly proposed replacement Planning and Development Bill in terms of Section 56 not only requires building plans to be approved in terms of the national building regulations but also provides in subsection (2) for conditions of approval to be set.

7.8.2 Section 56 further sets out in subsection (3) that if any building plan is approved: -

i. in conflict with the scheme,

ii. in conflict with any development approval granted, or

iii. in conflict with the conditions of title

then the building plan approval shall be invalid.

8. APPEALS PROCESSES

8.1 Special Consents

In the event of either the applicant and/or objectors being dissatisfied with a special consent decision taken by the municipality in terms of section 67bis of the Town Planning Ordinance, the applicant or any objector(s) may within 28 days of the date of posting or personal delivery of the decision give notice of his/her intention to appeal to the Town Planning Appeals Board as provided for in section 67*bis* of the Ordinance. Any party giving notice of his intention to appeal must then, within 28 days of the date of posting or personal delivery of a decision, notify all other objectors if he is the applicant, or if he is an objector, he must notify the applicant and all other objectors. Thereafter within 21 days a memorandum of appeal should be lodged with the secretary of the Appeal Board[36], the municipality and all other interested parties including the applicant if he is not the appellant. In certain instances condonation for the late lodging in both cases above may be granted.

This is done by lodging fifteen copies of suitable memorandum setting forth the grounds of appeal with the secretary of the Town Planning Appeals Board as specified in the Town Planning Ordinance (Appeals Board & Hearing of Appeals) regulations, with the municipality and with the other interested parties.

The memorandum of appeal ideally should: -

- provide the essential facts of the matter;
- state the grounds of appeal and the relief sought;
- raise any issues, which the appellant wants the Appeal Board to consider in making its decision; and
- fully motivate an award of costs, if the relief sought includes a request for costs against the municipality.

Counter arguments or a responding memorandum is required to be lodged by the municipality within a further 60 days following the receipt of an appeal. Again, fifteen copies are required for the registrar and for each of the other parties as above.

Any responding memorandum ideally should: -

- state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;
- raise any issues or matters, which that party wants the Appeals Board to consider in making its decision; and
- include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.

Ideally, electronic copies of all memoranda above should be despatched to the respective parties to ensure both timeous receipt and, if appropriate, distribution.

Following the conclusion of the hearing, a decision is required to be made by the Town Planning Appeals Board and the reasons compiled. The decision of the Appeals Board is then subject to review by the responsible MEC for planning matters before the parties are duly advised of the outcome. There are no set time parameters for this action.[37]

Note: Pending an appeal decision from the Town Planning Appeals Board, any authorisations issued by the municipality are suspended.

[36] *In the event of the memorandum of appeal not being lodged the appeal lapses.*

[37] *Customarily a period of at least six months may be expected before a decision is conveyed.*

The Town Planning Appeals Board is still functioning and processing appeals despite the almost total repeal of the Town Planning Ordinance. This is in contrast to the KZN Planning and Development Commission where the commissioners appointed term of office came to an end on 7 November 2010. Despite this there is still a significant number of Section 47bis comments to be given and 47bisC rezoning and scheme amendment appeals to be concluded both in terms of the Town Planning Ordinance and as provided in terms of the transitional measures of the KZN Planning and Development Act. The MEC will have to reappoint or appoint new commissioners in this regard.[38]



[38] *It has recently been advised by COGTA that a reappointment of the Town and Regional Planning Commission is extremely unlikely and that COGTA officials will likely be delegated to give comment where appropriate and that zoning appeals will transferred to the Town Planning Appeals Board or alternatively the applicants required to commence de nova in terms of the KZN PDA.*

8.2 All Other Planning and Development Act Matters - Rezonings, Subdivisions, Restrictive Conditions, Closures

In the event of either the applicant and/or objectors being dissatisfied with any decision taken by the municipality in terms of the Planning and Development Act, 2008, the applicant or an objector(s) may within 28 days take the matter on appeal to the Planning and Development Appeal Tribunal as provided for in section 100 of Chapter 10 of the Act. This is done by lodging six copies of suitable memorandum of appeal with the tribunal registrar, a copy with the municipal manager and copying the all the other interested parties, all as required in terms of section 113.



The memorandum of appeal must: -

- provide the essential facts of the matter;
- state the grounds of appeal and the relief sought;
- raise any issues, which the appellant wants the Appeal Tribunal to consider in making its decision; and
- fully motivate an award of costs, if the relief sought includes a request for costs against the municipality, on the grounds that its decision is: -
  - * grossly unreasonable;
  - * manifestly in disregard of the procedures prescribed in terms of the Act; or
  - * manifestly in disregard of the provincial planning and development norms and standards.

NOTE: The period of the appeal notification and the lodging of the appeal memorandum, runs concurrently (both occur within a single 28 day period).

In the event of an appeal being lodged, counter arguments or a responding memorandum may be lodged within a further 28 days following the receipt of an appeal. Again six copies are required for the registrar and one for municipal manager and the other parties as above.

Any responding memorandum must: -

state whether the appeal is opposed or not, and, if opposed, the grounds of opposition;

- raise any issues or matters, which that party wants the Appeal Tribunal to consider in making its decision; and
- include any request for an order for costs against the appellant and the reasons for the request, including an order for costs on the grounds that the appeal is vexatious or frivolous.
- Ideally in both cases addition electronic copies of all memoranda above should be despatched to the respective parties to ensure both timeous receipt and, if appropriate, distribution.

The Appeal Tribunal has 21 days from the date of the expiry of the date for receiving responding memoranda to set a date for the hearing of the appeal, which may not be more than 90 days from the date of the appeal.

Following the conclusion of the hearing a decision is required to be made by the Appeal Tribunal within 7 days and the reasons compiled within 30 days and all parties advised of the outcome.

Note: Pending an appeal decision from the Planning and Development Appeal Tribunal, any authorisations issued by the municipality are suspended.

8.3 Building Plan Appeals

In terms of Section 9 of the National Building Regulations any person who: -

- feels aggrieved by the refusal of a municipality to grant approval in respect of the erection of a building;
- feels aggrieved by any notice of prohibition referred to in section 10; or
- Disputes the interpretation or application by a municipality of any national building regulation or any other building regulation or by-law,
- may, within the approval period*, in the manner and upon payment of the fees, appeal to a (SABS) review board.

** There is no specified period within which an appeal is to be lodged. However it would make sense to lodge an appeal as soon as it may be reasonably so done.*

9. ENVIRONMENTAL MATTERS

9.1 Background

The Environmental Planning and Climate Protection Department falls under the Development Planning Environment and Management Unit. The department is primarily responsible for environmental planning and climate protection. Its individual sections or branches are as follows: -

- Biodiversity Planning – its responsibilities include the management of the D'MOSS footprint or layer, the preparation of the systematic conservation plan (which informs the D'MOSS layer), matters relating to the town planning aspects of the environment, etc.
- Biodiversity Impact Assessment – its responsibilities include assessment of development applications, attending to enquiries and enforcement.
- Policy and Communication – its responsibilities include development of policy, dissemination of information, arranging conferences, etc.
- Climate Protection - its responsibilities include assessing the local impacts of climate change and possible responses including adaption planning, developing a tool box to enable the simulation, evaluation and comparison of strategic plans and policies in the context of climate change and mainstreaming climate change considerations into city planning and development.
- Biodiversity, Climate and Green Project Implementation - its responsibilities include alien invasive plant eradication via Working for Water, Working on Fire, etc.

Note that the Environmental Planning and Climate Protection Department is not responsible for environmental health matters, e.g. air pollution, noise pollution, water pollution, fish kills, illegal dumping and overgrown properties. The City's Health Department or Waste Water Department should be approached in this regard as appropriate.

9.2 Environmental Enquiries on Land Affected By D'MOSS and/or Split Zoning

The Council has adopted the Durban Metropolitan Open Space System (D'MOSS) control area or overlay which forms part of all the schemes within the city and as such is shown on the scheme maps. It should be noted that this is not a zoning as such, but does limit development within areas so designated. The D'MOSS control area or overlay may alternatively be viewed on the Council's GIS system accessible over the Internet at citymaps.durban.gov.za.

First click the Data Layers "Moss" box on the GIS and then click either the Data Layers top or lower refresh button to view the D'MOSS layer which is depicted in green.

The Council also has specific zones for environmentally sensitive areas which generally prohibit all development. The Environmental Conservation Reserve applies to publicly owned land, i.e. the Council and Ezemvelo KZN Wildlife. The Conservation Zone is put in place on privately owned split zoned sites where there is no intention to acquire the land so designated and the undesignated portion may still be used for development. In some instances it may still be possible to exercise the otherwise development potential of the affected portion of the land not designated as Conservation Zone.

All enquires on land affected both by the Durban Metropolitan Open Space System (D'MOSS) and the conservation zones should in the first instance be made on application forms obtainable from the Environmental Planning and Climate Protection Department. Following the registration of the enquiry, an environmental assessor will make contact and follow up on the specific issue. Persons contemplating development where there is any doubt about its environmental status are encouraged to make enquiries before otherwise making financial or other commitments.

An enquiry and a complaint form may be found in the annexures.

9.3 Environmentally Sensitive Land - Rates Rebates in terms of the Rates Policy

It may be possible in certain instances to obtain a rates rebate on land affected by D'MOSS. Generally this requires:-

- The land to be conservation worthy, must supply ecological goods and services and/or form part of a linkage between such land.
- The land to have a non-user conservation servitude registered over the environmentally sensitive portion or to have that portion of the land zoned Conservation Zone.
- There must be an approved environmental management plan (EMP) for the land – the Environmental Planning and Climate Protection Department has a basic EMP which may be suitably adapted. The EMP would include such matters as rehabilitation if necessary, the control and eradication of alien invasive plants over a period of time, the burning of fire breaks if the land in question is grassland, etc.
- Annual proof of observance of following the EMP.
- Periodic inspections by EPCPD staff.



9.4 Identification of the need for an Environmental Assessment in terms of NEMA

The competent authority for determining whether there is a need to undertake an environmental assessment in terms of NEMA and its listed activities in the associated regulations, is either the national Department of Environmental Affairs and Tourism (DEAT), if the matter carries national importance, or is the provincial Department of Agriculture and Environmental Affairs and Rural Development (DAEARD). Notwithstanding, if requested the Biodiversity Impact Assessment branch of EPCPD will give an opinion or give direction to any applicant on the need for an environmental assessment, or, in the case of an application already lodged, flag it as a matter in which an environmental authorisation is required prior to approval.

The EPCPD has prepared Development Assessment Guidelines to assist potential developers.
These and other useful documents may be downloaded from:-

http://www.durban.gov.za/City_Services/development_planning_management/environmental_planning_climate_protection/Publications/Documents/Forms/AllItems.aspx



ANNEXURES

1. Matters to consider when determining Merits of a Planning Application
2. Relevant National and Provincial Legislation , Schemes and Policy – a synopsis of some important aspects
3. Relevant Schemes and Policy
4. Contact Details of Development Planning Environment and Management offices
5. Other Useful Contact Details of other Parties (Water and Waste, KZN Department of Transport, DAEARD, SANRAL, Regional Land Commissioner, DRDLR, Appeal Tribunal, Town Planning Appeal Board, etc.)
6. Information available on the Internet relating to development and planning
7. Acronyms
8. Planning Terms
9. List of eThekwini Schemes
10. Planning Application Form
11. Building Application Form and Demolition and Hoarding Permit
12. Pro forma – Township/Subdivision Conditions of Establishment (an initial draft - inapplicable conditions to be deleted)
13. EPCPD Complaints Form
14. EPCPD Enquiry Form
15. Flow schedules
16. Township Design and Standards
17. ESKOM Service Area Map
18. Guideline Requirements for Chapter 3 Applications (Subdivisions and Townships)

ANNEXURE 1: MATTERS TO CONSIDER WHEN DETERMINING MERITS OF A PLANNING APPLICATION

Activity		Scheme Adoption. Replacement or Amendment	Subdivision & Consolidation of land	Development of Land Outside Area of Scheme	Cancellation of Approved Layout Plan for Subdivision or Development of Land	Alterations, Suspension & Deletion of Restrictions Related to Land	Permanent Closure of Municipal Roads & Public Places
Chapter		2	3	4	5	6	7
Other relevant information		Yes	Yes	Yes	Yes	Yes	Yes
Local practice or approach to LUMS consistent with National Law, Provincial Norms & Standards & IDP		Yes	Yes	Yes	Yes	Yes	
Municipality's Scheme		Yes	Yes	Yes	Yes	Yes	
Municipality's Integrated Development Plan (IDP)		Yes	Yes	Yes	Yes	Yes	
Provincial planning & Development Norms & Standards		Yes	Yes	Yes	Yes	Yes	
General Principles for Land Development in DFA & National Norms & Standards in SA Constitution		Yes	Yes	Yes	Yes	Yes	Yes
Prejudice suffered by other parties					Yes	Yes	Yes
Natural & Physical Qualities of area		Yes	Yes	Yes			
Protection & Preservation of Cultural & Natural Resources including Agricultural Resources, unique areas & features & Biodiversity		Yes	Yes	Yes		Yes	Yes
Historical effects of past Racial Discrimination		Yes	Yes	Yes			
Access to Public Transport, Health & Educational Facilities			Yes	Yes			
Benefits that will accrue compared to possible Compensation		Yes					
Available public transport, municipal services, sewage, water, electricity supply, waste management & removal, policing & security to implement & fiscal ability of municipality to compensate		Yes					
Provision & Standard of Engineering Services			Yes	Yes			
Potential impact on	Public transport, municipal services, sewage, water, electricity supply, waste management & removal, policing & security		Yes	Yes			
	National, Provincial & Local Road Network	Yes	Yes	Yes			
	Existing & Proposed Development or Mineral Rights	Yes	Yes	Yes		Yes	Yes
	Environment, Socio-Economic conditions & Cultural Heritage	Yes	Yes	Yes	Yes	Yes	Yes
Registered Planner's Evaluation & Recommendation		Yes	Yes	Yes	Yes	Yes	Yes
Public Comment received in writing		Yes	Yes	Yes	Yes	Yes	Yes
Application made in terms of item 1(2) of Schedule 1		Yes	Yes	Yes	Yes	Yes	Yes

ANNEXURE 2 - RELEVANT NATIONAL & PROVINCIAL LEGISLATION - A SYNOPSIS OF SOME OF THE MORE IMPORTANT ASPECTS

1. PLANNING LEGISLATION

A hierarchal approach has been adopted as far as possible in listing the legislation below with a view to providing a better understanding of how the one set of legislation sequentially links with the other sets.

1.1 NATIONAL PLANNING LEGISLATION

1) Municipal Systems Act No 32 of 2000 (IDP & SPF)

While not a planning act per se, one of the expressed purposes of the Municipal Systems Act is to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government. The act, which was introduced in 2000, was enacted with a view to totally restructure municipalities in a democratic South Africa into a developmental role as compared to the largely administrative role expected of municipalities in the past. The act provides for the core principles, mechanisms and processes so as to progressively provide for the social and economic upliftment of local communities. It spells out the functions and powers of municipalities and provides for community participation. The planning side of this is specifically provided for within Chapter 5 of the Act, and in particular in sections 23 to 37, which collectively deal with integrated development planning.

Integrated Development Plan or IDP

A municipality is required in terms of the act to undertake developmentally-oriented planning so as to ensure that it strives to achieve the objects of local government set out in section 152 of the Constitution; that it gives effect to its developmental duties as required by section 153 of the Constitution; and that together with other organs of state contribute to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution. These sections cover the headings of environment, property, housing, health care, food, water and social security and education respectively.

A newly elected municipal council is required to adopt a single, inclusive and strategic plan for the development of the municipality. This must link, integrate and co-ordinate plans and take into account proposals for the development of the municipality. It must align the resources and capacity of the municipality with the implementation of the plan and form the policy framework and general basis on which annual budget must be based. It must be compatible with such national and provincial development plans and planning requirements that are binding on the municipality in terms of legislation.

The contents of an integrated development plan is required to reflect the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs. The assessment must include the determination of the existing level of development in the municipality, including an identification of communities which do not have access to basic municipal services and the council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs. The council's development strategies must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation. The integrated development plan must also include a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality; the council's operational strategies; applicable disaster management plans; a financial plan including a budget projection for at least the next three years; and the key performance indicators and performance targets determined in terms of section 41.

Spatial Development Framework (SDF) aspects

While the Municipal Systems Act does not spell out the requirements for a Metropolitan Council in developing a Spatial Development Framework (SDF), it does specify requirements for a District Council requiring them to adopt a framework for integrated development after consultation with its constituent local councils (to which they will be bound) and to seek alignment both with national and provincial planning[39]. While not specified, clearly the Metropolitan council in framing its SDF should similarly seek alignment with any national and provincial planning that may affect its area.

2) Spatial Planning and Land Use Management Bill, 2012.

The Spatial Planning and Land Use Management Bill or SPLUMB was prepared as a result of a 2010 ruling by the Constitutional Court on the Development Facilitation Act No 67 of 1995 (DFA) that declared certain parts of it constitutionally invalid and gave the state a two year widow period to amend the DFA, or prepare new legislation, and which expired in mid June 2012.[40]

The SPLUMB however has much longer roots that go back to a Green Paper published in 1999 on Development and Planning, which was followed by a White Paper on Spatial Planning and Land Use Management in 2001 and then by a series of Land Use Management Bills from 2001/2 culminating in the Land Use Management Bill of April 2008. The latter was finally to lapse due to its non-enactment within 18 months. It finally took the Constitutional ruling of June 2010 to reactivate the process.

The lack of new order or post 1994 provincial planning legislation has also been a contributory driving factor as the old provincial ordinances have by and large continued to be utilised. Only in KwaZulu-Natal and in the Northern Cape has new provincial Planning and Development legislation been enacted, while in the Western Cape and Gauteng new Planning and development legislation has been under development for some time and not finalised. The Department of Rural Development and Land Reform has now itself initiated planning legislation for the other provinces given their respective lack of progress in this regard.

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[39] *Framework for integrated development planning*

27. (1) Each district municipality, within a prescribed period after the start of its elected term and after following a consultative process with the local municipalities within its area, must adopt a framework for integrated development planning in the area as a whole.

(2) A framework referred to in subsection (1) binds both the district municipality and the local municipalities in the area of the district municipality, and must at least

(a) identify the plans and planning requirements binding in terms of national and provincial legislation on the district municipality and the local municipalities or on any specific municipality;

(b) identify the matters to be included in the integrated development plans of the district municipality and the local municipalities that require alignment;

(c) specify the principles to be applied and co-ordinate the approach to be adopted in respect of those matters: and

{d) determine procedures—

(i) for consultation between the district municipality and the local municipalities during the process of drafting their respective integrated development plans; and

(ii) to effect essential amendments to the framework.

[40] *The Deputy Minister of Transport, Jeremy Cronin stated that, in June 2010, the Constitutional Court had declared invalid parts of Development Facilitation Act 67 of 1995. The Court gave government 24 months in which to remedy legislative defects in the statute. This has implications for land use management. According to Minister Cronin, one of the problems has been that the act was intended as an interim measure to deal with a legacy of "disjointed and discriminatory" spatial planning and land use management systems. It did not, however, repeal previously existing land use management legislation, resulting in many legal inconsistencies. "The Constitutional Court ruling has now helpfully prompted an effort on the side of government to produce fresh legislation," the minister said. "It is very heartening to note that it seeks to establish 'directive principles' that will guide all spheres of government in regard to spatial planning, land use management and regulation. These directive principles are likely to include, critically, the promotion of compact, sustainable human settlements; the discouraging of urban sprawl; and the promotion of close proximity between residences and workplaces." The minister said that the department of Rural Development and Land Reform is driving the work entailed, in close collaboration with the Planning Commission in the Presidency. "As the Department of Transport, we will be engaging with the development of this legislation: a process that must be completed over the next year-and-a-half," he continued. Ref. SabinetLaw: Update on Draft Land Use Management Bill, 22 September 2010.*

The Spatial Planning and Land Use Management Bill, while containing significant detail, broadly seeks to form overall arching or framework legislation. The Bill provides for Development Principles (replacing those contained within the Development Facilitation Act), for Norms and Standards, for Spatial Development Frameworks at national, provincial, regional, municipal levels and for Land Use Management and Land Development Management. As a framework in Schedule 1, it specifies in detail what may be contained within and to guide the respective provincial legislation. Of particular note with respect to Schedule 1 is that it provides for engineering services agreements and for the levying of Development Charges in respect of external engineering services and open space, something that has been largely missing from KZN planning legislation in the past. The Bill provides for the repeal of the Removal of Restrictions Act 84 of 1967, the two dated Physical Planning Acts of 1967 and 1991 (given that Chapter 5 of the Municipal Systems Act 32 of 2000 of? has made them superfluous) and the Development Facilitations Act 67 of 1995. It does not repeal the Less Formal Townships Act 113 of 1991, which is perhaps surprising as this legislation has fulfilled a fairly similar role to the Development Facilitation Act in facilitating the rapid roll out of housing and is probably even less constitutional than the latter and which led to its demise.

The Bill has been controversial in that it has been seen variously in some quarters as rushed given the mid June 2012 deadline for the lapsing of the Development Facilitation Act, as missing critical detail, as being overly prescriptive, as taking the decision making process away from the democratically elected Councillors, and for not providing for independent appeal authorities to adjudicate in the event of a dispute of a decision by either the land developer or objectors[41].

In chapter 4 of the Bill, section 19 deals with the Preparation of Municipal Spatial Development Frameworks. Section 20 deals with the Content of Municipal Spatial Development Frameworks and section 21 with the Status of Spatial Development Frameworks which now become fully binding on municipalities, i.e. planning decisions contrary to the SDF may NOT be taken.

Chapter 5 dealing with Land Use Management amongst other provides that the executive authority of a municipality must provide general policy and guidance on land use schemes. It further requires that a municipality must adopt and approve a single land use scheme for its entire area within five years of the commencement of the Act.

Chapter 6 of the Bill deals with Land Development Management, including the setting up and composition of Municipal Development Tribunals and provides for a system of internal appeals. While the Municipal Councils will still give overall planning direction and guide policy, specific planning decisions on applications are proposed to be taken by the Municipal Planning Tribunal, a body composed of both officials and nominated non-officials, but specifically excluding councillors, totalling at least five persons. While in the event of an Internal Appeal following dissatisfaction with a decision of the Municipal Planning Tribunal by an applicant or an objector, the matter is proposed to go to the Executive Committee of the Council, acting as an Appeal Authority, for a final decision. There is currently no external independent appeal body provision in the Bill. Proposals have however been made to do away with the internal appeal process and to have a series of Appeal Authorities nominated by groups of District Councils and/or Metro Councils. Such an arrangement should overcome any constitutional concerns with respect to bodies other than municipalities taking municipal planning decisions. In addition, there are also accompanying regulations, to be considered (which had not been published at the time of completion of this Guidebook).

The Bill was not enacted in mid June 2012 as originally envisaged, despite the Cabinet having already approved it, given that the Department of Rural Development and Land Reform had called for further comment by late May 2012 and that the National Council of Provinces was still to give its blessings after holding hearings, before the Bill could go back to Parliament for enactment and the lapsing Development Facilitation Act on 18 June 2012. It subsequently emerged that the Bill was erroneously introduced under the incorrect subsection of Section 76 of the Constitution of South Africa, 1996 and the entire process had to be recommenced.

[41] *The current appeal mechanism, available to land developers, as contained in Section 62 of the Municipal System Act is intended to be removed via SPLUMB.*

Following reintroduction, the National Assembly adopted the Spatial Planning and Land Use Management Bill [B14B-2012] on 26 February 2012. The Bill will now be required to be referred to the National Council of Provinces (NCOP) for comment. If the NCOP adopts the Bill without any further amendments, the Bill will be submitted to the President for assent. However, if the NCOP makes any changes to the Bill, which seems likely given a number of remaining controversial items, the amended Bill will be referred back to the National Assembly. If the National Assembly supports these changes, the Bill will be submitted to the President for his assent. However, if the National Assembly does not support the changes, the disagreement will be required to be resolved through a dispute resolution mechanism contained in the Constitution.

Whatever the final form of what will become the Spatial Planning and Land Use Management Act, clearly it will become very instrumental in directing future planning and development in South Africa and the respective provincial planning and development legislation which will have to follow the overall framework that it provides.

3) Less Formal Township Establishment Act No 113 of 1991

The Less Formal Township Establishment Act, commonly known as LeFTEA, was introduced in 1991 to deal with the rapid formalisation of informal development then occurring around South Africa following the relaxation of influx control post 1990. It also provided for shortened procedures for the establishment of townships for less formal forms of residential development and to regulate communal forms of development in tribal areas. While it is a national legislation, it has been administered by the respective provinces. While the act did not even require public advertisement (other than for designation of the respective areas) calling for comments, this procedure was introduced by the province. Clearly this act is now unconstitutional in that municipal planning decisions are taken by other than the municipalities involved, but to date this has not been challenged. It is furthermore not currently on the list of legislation proposed to be repealed by SPLUMB. The LeFTEA procedures have been used primarily by municipalities when developing low cost housing schemes and which is perhaps why it has not been challenged.

The KZN COGTA has till recently still processed LeFTEA applications. Unfortunately they have in some cases found that when they go on a site visit, the development in many cases has been already completed and people are in the houses. Section 3(1) of LeFTEA says the "When the Administrator is satisfied that in any area persons have an urgent need to obtain land ....." Similarly to the DFA, LeFTEA also has wide powers to get development going but if an application is lodged and a site inspection finds it is complete, then from COGTA's perspective there is no urgent need! Consequently, before anything commences on the ground, KZN COGTA needs to be approached.

It is currently proposed to provide for the retention of the use of this act in the KZN Planning and Development Act Amendment Bill, 2012. However, in the final form of the KZN Planning and Development Bill, 2012 will in all probability see a far more limited role with it only being used to amend any existing approved layout or to designate an area with the actual application being processed in terms of the Planning and Development Act.

4) Development Facilitation Act No 67 of 1995

The Development Facilitation Act No 67 of 1995 (DFA) and its accompanying regulations attempted to fill a gap to help facilitate rapid construction of RDP (Reconstruction and Development Programme) housing developments post 1994 and set certain planning principles, which were required to be observed not just in adjudicating applications made under it, but also to be applied in respect of other existing planning legislation. It was however at the outset intended as only being interim legislation eventually to be replaced. Although initially intended to facilitate low lost housing, the act was seized upon by the private sector to fast track all forms of development from petrol filling stations, to major shopping centres to upmarket gated estates.

The DFA was variously utilised around the country. This national legislation required the respective provinces to set up Development Tribunals and Development Appeal Tribunals, membership being composed of both officials (provincial and municipal) and from the private sector. In the Western Cape the act was never ever utilised in that a Development Tribunal was never set up by the provincial government. In Mpumalanga and Limpopo it was used extensively as these provinces lacked municipal planning capacity. While in Gauteng its common usage, sometimes contrary to adopted Spatial Development Frameworks, inevitably led to conflict eventuating in the Jo'burg Municipality taking the Gauteng Development Tribunal to the Constitutional Court to have the Act declared unconstitutional. In KwaZulu-Natal the DFA was used side by side with the Town Planning Ordinance and while not used as the primary legal mechanism, many planning decisions were taken in terms of it. Since the June 2010 Constitutional Court decision, it has not been possible to bring new applications in the eThekwini municipal area. As of early June 2012, a number of unfinalised DFA applications remained. SPLUMB has however made provision within it for such applications to be finalised. The Act finally lapsed on 18 June 2012 in accordance with the Constitutional Court judgment of 17 June 2010.

Following a judgement given by the Development Tribunal any changes may now, if necessary, be effected through the KZN Planning and Development Act. It is presumed that the Designated Officers may continue to perform their prior function, such as the issuing of the 38(1) certificate as they are Municipal officials even though section 38 is in chapter V which was found unconstitutional.

Note: The KZN PDA Amendment Act will deem the DFA decisions as PDA decisions and then the Municipal officials will then issue the 34(2) certificates enabling transfer as previously issued by the Designated Officer.

1.2 PROVINCIAL LEGISLATION

1) KZN Planning and Development Act No 6 of 2008

Planning and development in KwaZulu Natal was in the past controlled by the Natal Town Planning Ordinance No 27 of 1949, which underwent much amendment over the years. Post 1994 it was agreed at a provincial level that new planning legislation was appropriate and a KZN Planning and Development Act No 5 of 1998 was eventually enacted. Accompanying regulations, despite several attempts, were never promulgated and adopted so as a result the act never came into force.

Subsequently, a totally new approach was adopted in which the environmental aspects of the 1998 Act were omitted. This decision, as understood, was primarily due to the responsibility for planning and the environment being split departmentally at a provincial level. An initial new KwaZulu-Natal Development Bill was prepared in 2003. After a number of false starts, a "final" version was prepared in May 2006. This was eventually enacted as the KZN Planning and Development Act No 6 of 2008. It should be noted that this Act covers development in the entire province including the Ingonyama Trust or tribal areas.

While the environmental process aspects as originally intended were omitted, the new act contains provisions for the environmental aspects to be considered in making decisions. It also takes a somewhat unusual form in that many procedural aspects are repeated in the various chapters which deal with different aspects of development, namely: -

- the adoption, replacement and amendment of (town planning) schemes,
- the subdivision and consolidation of land
- the development of land outside schemes
- the phasing or cancellation of approved layout plans for the subdivision or development of land
- alteration, suspension and deletion of restrictions relating to land
- general principles for the permanent closure of municipal roads or public places (but not the actual closure).

The understood intention at the time was to simplify the application procedure so that all the relevant considerations for the particular aspect of development were to be found within the same chapter. It is however also possible to follow parallel processes when multiple aspects are required to be addressed within a single development application e.g. rezoning, subdivision and removal of restrictive conditions, thereby avoiding duplication of both effort and costs.

The Act makes provision for the establishment of a KwaZulu-Natal Planning and Development Appeal Tribunal and for the setting of provincial planning and development norms and standards. At the time of writing, while Steering Committees had been appointed for the norms and standards, they are yet to be prepared.

The act has been incrementally introduced in a number of trances or phases starting from March 2009 when the provisions for the removal or suspension of restrictive title deed conditions, the setting up of the Appeal Tribunal and the setting of norms and standards were brought into operation. The most significant however was in May 2010, which saw almost the entire remaining portions of the Act brought into effect.

Provisions of the Act which have not been brought into operation are:-

(a) Section 89(3) which was delayed in order to run a campaign to allow persons to regularise illegal development without incurring the penalty; and

(b) The repeal of special consent procedure of the Ordinance in Schedule 2 of the PDA which is only to be repealed after the promulgation of the KwaZulu-Natal Planning and Development Amendment Act).

Provisions which are still inactive are:

- any provision which requires a municipality to consider provincial planning and development norms and standards as no provincial planning and development norms and standards have as yet been adopted;
- the permanent closing of a municipal road or a public place because a municipality must first adopt a by-law to provide for compensation and to regulate the ownership of land following the permanent closure of a municipal road or a public place.[42]

It should be noted that the current Act makes no specific provision for special consent procedures, although providing general principles for consents.

The Act, similar to the provisions of SPLUMB, requires a municipality to adopt a scheme or schemes for its whole area of jurisdiction within five years, i.e. by 1 May 2015, provided that the MEC may grant an extension.

2) KZN Planning and Development Amendment Bill, 2012

A KZN Planning and Development Amendment Bill, involving well in excess of a hundred changes, was prepared to correct shortcomings in the 2008 Act. Although it reached an advanced stage and had been checked by the State Law Advisor, it was delayed on a number of occasions as the authorities were not keen to enact these changes in several tranches.

The most recent deferment related to the ongoing concerns over the constitutionality of the Planning and Development Appeal Tribunal and a need to overcome this specific matter before enacting the amendment bill. As outlined under SPLUMB above, a model based on series of appeal authorities nominated by groups of District Councils and/or Metro Council, but funded by the province, was proposed.

42 *Chapter 7 of the PDA that provides for the permanent closure of municipal roads and public places was designed as an outline for by- laws dealing with the permanent closure of municipal roads and public places. Chapter 7 of the PDA therefore contains the principles, not rules for the permanent closure of municipal roads and public places. It may be possible to apply some of the principles as procedures, but only to the point of subsequent ownership which is not regulated by the PDA. There has been a subsequent change of thinking and the PDA is to be amended to regulate the permanent closure of municipal roads and public places without the need for by-laws.*

The provisions of the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974) must be used in the interim for the permanent closure of municipal roads and public places. The PDA has not yet repealed these sections of the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974).

Amongst other matters, the amendment bill was to reintroduced the special consent procedures which was to be very similar to the rezoning procedures. It also did away with the need to notify all persons within 100 metres of an application, which has proved to be very onerous for developers for often almost inconsequential applications of various types.

The promulgation of SPLUMB as an Act and as overall framework legislation will need to see the KZN Planning and Development Act brought into alignment with the former. This will inevitably result in a whole host of further amendments being required.

3) KZN Planning and Development Bill, 2013

On 15 March 2013, a draft of a new KZN Planning and Development Bill was presented to members of the KZN Planning and Development Forum hosted by COGTA. It is intended that the main bill will replace both the KZN Planning and Development Act, 2008 and the much delayed KZN Planning and Development Act Amendment Bill, 2012. The latter bill having been considered unwieldy and excessive long and was consequently likely to be held up in the legislature plus in addition it has been identified as not meeting the evolving requirements of SPLUMB. The new bill on the other hand is expected to have a faster passage. The format of the KZN Planning and Development Bill has also been changed from the current Act by the elimination of existing duplication between the respective chapters dealing with different types of development applications. A noteworthy addition proposed is to allow for the setting of conditions when building plans are lodged. The earliest anticipated operational date has been identified by COGTA as March 2014, but this could in their view be optimistic.

4) KZN Planning and Development Amendment Bill, 2013

Also released on 15 March 2013 to members of the KZN Planning and Development Forum was a draft of a new KZN Planning and Development Amendment Bill. This bill is also known as the "Critical" Amendment Bill, 2013: The bill originally arose as a result of the July 2012 proposal to introduce the earlier proposed KZN Planning and Development Bill, 2012, and when concerns were expressed at the Forum that this initiative would yet further delay certain critical outstanding amendments to the Planning and Development Act, 2008 that were then holding up and/or frustrating development. This short term succinct bill is aimed at addressing specifically the most critical of matters. The amendments foreshadow certain items contained within the Planning and Development Bill, 2013. The earliest anticipated operational date for the Critical Amendment Bill has been identified by COGTA as being August 2013. Given the projected enactment of the full KZN Planning and Development Bill, 2013, some eight months later, there was initially some doubt that the former Bill would ever see the light of day. However, the possibility of the yet further modifications being required to the KZN Planning and Development Bill, 2013 as a result of the adoption of SPLUMB [B 14B-2012] by the National Assembly on 26 February 2013 and the processes to follow, will likely make the final implementation date for the former extend out beyond March 2014.

5) Town Planning Ordinance No 27 of 1949 - the remaining vestiges

Planning and development in KwaZulu Natal have been controlled since 1949 by the Natal Town Planning Ordinance No 27 of 1949, which has undergone considerable amendment over the last 60 odd years. It has for all intents and purposes now ceased to exist other than for Special Consents which are still required to follow section 67bis read with section 74ter in respect of giving public notice. This includes the hearing of special consent appeals in terms of section 67ter by the Town Planning Appeals Board.

However there are a number of scheme amendments initiated in terms of Section 47bis involving non-exempted municipalities that still require supportive comment from the currently non-existent KZN Planning and Development Commission and scheme amendment/rezoning appeals in terms of Section 47bisC which have to be heard by the same body. Until such time as the MEC reappoints the commission or the KZN Planning and Development Act or even the Town Planning Ordinance itself is amended to cater for such cases, they remain in limbo, to the detriment of development in KwaZulu-Natal.

6) KwaZulu Land Affairs Act 11 of 1992

The KwaZulu Land Affairs Act and its companion regulations governed development in the former KwaZulu areas. The KZN Rationalisation of Planning and Development Laws Act No 2 of 2008 repealed much of the KwaZulu Land Affairs Act 11 of 1992. It repealed GN 29 of 1994 (Township Establishment) and GN 30 of 1994 (town planning) but did not however repeal GN 32 of 1994 which deals with Permission-to-Occupy arrangements (PTO's) over land in the ownership of the Ingonyama Trust. The Ingonyama Trust Board are however in recent time moving more towards granting leases rather than PTO's, so it now has less significance than before.

3 OTHER RELEVANT LEGISLATION

1) Local Authorities Ordinance No 25 of 1974

(Road and public place closures),

While Chapter 7 of the Planning and Development Act (PDA) provides for the permanent closure of municipal roads and public places, it was designed as an outline for by-laws dealing with the permanent closure of municipal roads and public places. Chapter 7 of the PDA therefore presently contains only the principles, not the rules for the permanent closure of municipal roads and public places. The provincial position on this has however since changed with respect to the need for individual by-laws to be prepared by municipalities, and it is now intended that the PDA be amended accordingly. This amendment should be contained in the KZN Planning and Development Bill.

The provisions of sections 211 and 212 of the Local Authorities Ordinance No. 25 of 1974 must therefore be used in the interim for the permanent closure of municipal roads and public places respectively until such time as the PDA has been amended or replaced to facilitate this procedure, at which stage the PDA will repeal these sections of the Local Authorities Ordinance.[43]

2) Subdivision of Agricultural Land Act No 70 of 1970

In terms of Section 3 of the Subdivision of Agricultural Land Act 70 of 1070, the following activities, amongst others, are prohibited without the prior consent of the Minister of Agriculture: -

i.) The subdivision of agricultural land.

ii.) The selling or advertising for sale of any portion of agricultural land, whether surveyed or otherwise and with buildings or otherwise, except for the purposes of a mine.

iii.) The establishment or enlargement of an area of jurisdiction, local area, development area, peri-urban area or other area so as to include any land which is agricultural land.

iv.) The publishing of a notice to the effect that a scheme relating to agricultural land or any portion thereof has been prepared or submitted under a provincial Ordinance/Act, i.e. the preparation of a new or the extension of an existing scheme.

Section 4 of the Act provides for the seeking of the consent of the Minister. The Minister may either refuse or grant a consent application with conditions, including conditions as to the purpose or manner in which the land in question may be used, i.e. potentially controlling the future land use, if he is satisfied that the land in question is not to be used for agricultural purposes. Furthermore, after consultation with the MEC of the province, on such conditions as such MEC may require. The Minister or the MEC concerned may then enforce, vary or withdraw any such respective conditions imposed. If conditions are registered against the title deed of the land, the Minister may direct that they be varied or cancelled.

[43] *Section 213 of the Local Authorities Ordinance No. 25 of 1974 applies for the temporary closing of streets.*

Clearly the above raises issues of the constitutionality or otherwise of the Act as the Minister or even the MEC are granted powers in terms of the Act which infringe on the powers of municipalities with respect to municipal planning bearing in mind that municipalities are now, unlike in the past when the act was framed, established wall-to-wall. However until such time as a more compelling case is taken to the Constitutional Court for a ruling[44], the Act remains on the statute books. Accordingly, and despite the requirements of the KZN PDA and the SPLUMB for municipalities to prepare wall-to-wall schemes for their respective areas of jurisdiction, the subdivision of land, preparation or extension of schemes and determined land use outside the confines of the original areas of local authorities, development areas, peri-urban areas or non-agriculture transitional local council areas remain at the whim of the Minister of Agriculture.

3) KZN Provincial Roads Act No 4 of 2001

Several sections of the KZN Provincial Roads Act (KZN PRA) are particularly relevant to planning and development.

Section10 deals with **access to provincial main or district roads** where the Minister may refuse access, or issue an approval for such access subject to whatever conditions he may deem appropriate.

Section 19 provides that a **municipality preparing a development plan** in terms of the KZN Planning and Development Act must include a transport plan and specify the impact of the development plan on the provincial road network.

Section 20 requires that a municipality when considering **a subdivision application** either adjacent to, or within 500 metres of an intersection with, a provincial road to advise the Minister. The Minister is required to approve or refuse the application within 28 days. The municipality may not approve the application until



[44] *The Constitutional Court in the Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another (CCT78/07) case, in a split decision, has ruled that the Minister of Agriculture is still competent to use the Subdivision of Agricultural Land Act No 70/1970.*

the lapse of 28 days or in conflict with any conditions imposed by the Minister unless so modified by the Appeal Tribunal (in terms of the KZN PDA). Normally a 15 metre building line is imposed in the conditions of any approval).

Section 21 requires that a municipality when considering an application for a **change in land use** or a development proposal either adjacent to, or within 500 metres of an intersection with, a provincial road to advise the Minister within 14 days of receipt thereof. The Minister is required to approve or refuse the application within 28 days. The municipality may not approve the application until the lapse of 28 days or in conflict with any conditions imposed by the Minister unless modified by the Appeal Tribunal (in terms of the KZN PDA).

Section 32 prohibits the **erection of advertisements** on a provincial main road without the prior permission of the Minister, or within 500 metres of and visible from a provincial main road other than in terms of regulations. Similarly it may be prohibited in the case of a district or local road where an advertisement is considered a safety hazard.

4) The South African National Roads Agency Limited and National Roads Act No. 7 of 1998

The legislation under which the South African National Roads Agency Limited (SANRAL) operates is in many respects, with to planning matters, fairly similar as that found within the KZN Provincial Roads Act, i.e. controlling access, development and advertising in close proximity to their roads.

The SANRAL act defines a "building restriction area" as the land situated outside an urban area which is:-

- alongside a national road or within a distance of 60 metres from the boundary of the national road; or
- within a distance of 500 metres from any point of intersection.



In this regard an "urban area" it is defined in the act as any area comprising of a Township but excluding from it land which is either: -

- commonage land;
- used or intended for farming, horticulture or the keeping of animals; or
- other open space which has not been developed or is reserved for public purposes.

Section 44 of the Act excludes any access to or egress taken from a national road other than at the entrance/ exit facilities specifically provided for that purpose.

Section 47 of the act enables the Agency to divert storm-water from or under a national road onto any land but must pay compensation for any damage caused by the diversion of the storm-water. However, it goes on to provide that where a new township is established on land adjoining a national road. The person establishing the township is obliged to receive and dispose of the storm-water discharged or diverted from the national road, without the Agency being held liable for any damage caused in the township by the storm-water.

Section 48.controls the erection of structures and other works on, over or below the surface national roads or land in a building restriction area. Any approval, if given, may contain conditions.

In terms of Section 49, if any land or portion thereof is situated in a building restriction area, the surveyor-general may not approve a survey diagram or general plan of any subdivision or township without the Agency's prior written approval. The approval, if given, may contain conditions either: -

- prohibiting the subdivision or further subdivision of the land or of a specified portion;
- limiting the use to which such land may be put;
- limiting the number or extent of buildings or other structures which may be erected;
- prohibiting the erection, construction or establishment of any structure or other thing on or over, or below the surface of, the land, or on or over, or below the surface of, a specified portion of it, within a specified distance from the road concerned.

In terms of section 50 (1) no person may: -

- display an advertisement on a national road, or permit it to be displayed;
- display, outside an urban area, any advertisement visible from a national road, or permit any such advertisement to be so displayed;
- display any advertisement visible from a national road in an urban area, on any land adjoining the national road or on land separated from the national road by a street, or permit it to be displayed.

In terms of section 50 (2) the above does not apply to the displaying of any advertisement complying with the prescribed requirements (if any) as to the nature, contents or size of such an advertisement or the time, manner or place of its display, where the display is authorised by or under the regulations concerned, or the advertisement: -

- is displayed on a building in which a business or undertaking is carried on, and contains no more than the name of the business or undertaking or description of its nature as authorised by regulations concerned; or
- is displayed on any vehicle, other machine or implement and which contains no more than the trade name of that machine or implement and the name of its manufacturer, provided that the main purpose for which the vehicle, machine or implement is not the displaying of the advertisement; or

- is displayed in terms of an authorisation granted in terms of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940).
- is lawfully displayed at any place immediately prior to the road being declared a national road, or
- is displayed by the State.

In terms of section 52 no person may without the Agency's written permission carry on any trade or expose, offer or manufacture for sale any goods on a national road or in a building restriction area. This does not apply to any person who, following declaration of a national road continues, on land forming part of the national road or the building restriction area, any business or undertaking which was carried immediately before that date, unless that person has been specifically directed by the Agency to discontinue the business or undertaking.

Where the Agency has refused a person's application for an approval or permission to erect a structure or to establish a township or has granted a limited or conditional approval or permission, the person may appeal in terms of section 57 to the Minister who may dismiss the appeal or allow it in whole or in part, or take any other decision.

5) KZN Ingonyama Trust Act 3 of 1994 (as amended by the KZN Ingonyama Trust Amendment Act No 9 of 1997)

The KZN Ingonyama Trust Act established the Ingonyama Trust Board which consists of the Ingonyama (or King) or his nominee (who acts as the chairperson of the Board), four members appointed by the Minister for Rural Development and Land Reform (previously the Minister of Agriculture and Land Affairs) after consultation with the Ingonyama, the Premier of KZN and the chairperson of the House of Traditional Leaders of KwaZulu-Natal, and four members appointed by the Minister for Rural Development and Land Reform with due regard to regional interests, in consultation with the Premier; i.e. nine members[45] in total.

The Board is required to administer the affairs of the Trust and the trust land[46] and may decide on and implement any encumbrance, pledge, lease, alienation or other disposal of any trust land, or of any interest or real right in such land for the benefit, for material welfare and social well-being of the members of the respective tribes and communities as contemplated in the KwaZulu Amakhosi and Iziphakanyiswa Act, 1990 (Act 9 of 1990).

The Board may not encumber, pledge, lease, alienate or otherwise dispose of any of the land or any interest or real right in the land, without first obtaining the prior written consent of the traditional authority or the community authority concerned.

The Act does not apply to: -

- land in a Township (established and approved or proclaimed as such in terms of **any** law),
- private land, or
- land used for State domestic purposes prior to 24 April 1994.

If any group of pieces of land, or of subdivisions of a piece of land, which vests in the Trust, is combined with public places and used mainly for residential, industrial, business or similar purposes, the Board may after consultation with the Premier request the competent provincial authority to declare or proclaim such land a township.

[45] *The members, other than the Ingonyama or his nominee are required to be appointed from officers in the employ of the governments of the Republic of South Africa or the province of KwaZulu-Natal or from other persons who do not hold office in or on behalf of a political party or have a high political profile, who have knowledge and experience relevant to the administration of the trust land.*

[46] *The Ingonyama Trust Board administers some 2.79 million hectares of Ingonyama Trust land or approximately one third of the land area of KwaZulu-Natal.*

Any allocation, transfer, alienation, mortgage or other transaction in respect of tenure rights relating to land effected during the period 24 April 1994 to the date of commencement of the Amendment Act, 1997, in terms of: -

- the Regulations for the Administration and Control of Townships in Black Areas (Proclamation R.293 of 1962);
- the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992);
- a regulation issued in terms of that Act; or
- any other law,

is deemed to have been effected by the Board.

Any land or real right in such land which, prior to the Amendment Act, 1997, vested in the Board and which had not been registered in private ownership: -

- if the land was situated in a township, it vests in the municipality having jurisdiction over such township; and
- if the land was used for State domestic purposes before 24 April 1994, it vests in the national government or in the provincial government of KwaZulu-Natal.

Any land in a township or any real right in such land vests in the municipality having jurisdiction over a township:-

- if the township existed on the date of commencement of the Amendment Act, 1997, and
- if the township was established and approved or proclaimed after the date of commencement of the Amendment Act, 1997, upon the date of establishment and approval or proclamation of the township.

The Head: Real Estate of the Ingonyama Trust Board at a presentation given to the KZN PDA Forum on 25 January 2013 advised that the Board was phasing out Permissions-to-Occupy (PTO's) as a means of land tenure and would in the future alternatively only support short and long term leases - the freehold disposal of land equally not being supported. It was also advised that the Board was in the process of developing a "tool kit" to help accelerate the processing of applications.

6) Restitution of Land Rights Act 22 of 1994

The Restitution of Land Rights Act put in place a Land Claims Commission and a Land Claims Court with a view to achieving the restitution of rights in land to persons or communities who were previously dispossessed under any racially based discriminatory law.

The municipality may call upon a developer to furnish it with a certificate or letter from the Land Claims Commissioner to the effect that no land claim has been lodged over a property on which a development application has or is intended to be lodged, prior to taking a final decision on any development application.

It should be noted that in terms of Section 15 dealing with a Certificate of Feasibility and particularly subsection (6), when considering whether a restoration or acquisition of land by the State is feasible, the Minister in addition to any other factors, is required to take into account-

- whether the zoning of the land in question has since the dispossession been altered and whether the land has been transformed to such an extent that it is not practicable to restore the right in question;
- any relevant urban development plan;
- any other matter which makes the restoration or acquisition of the right in question unfeasible; and
- any physical or inherent defect in the land which may cause it to be hazardous for human habitation.

Other than restoring the land to the claimant parties, other state owned land or financial compensation may be considered as alternatives by the Land Claims Court.

4 ENVIRONMENTAL LEGISLATION

1) Environmental Conservation Act No 73 of 1989

Many portions of the Environmental Conservation Act (ECA) have been repealed since its original enactment and replaced by the National Environmental Management Act (NEMA), its regulations and the suite of NEM: Acts contained under it. Section 21 of the ECA however remains very relevant to municipalities as it gives them powers to intervene in matters where no environmental authorisation has been obtained and where no action has been initiated at the provincial or national level.

2) National Environmental Management Act No 107 of 1998 and its regulations (Environmental Authorisations)

The National Environmental Management Act, commonly known as NEMA, while primarily relating to matters of the environment also contains certain principles relating directly to planning where the environment may be affected. The Act requires sustainable development, i.e. where the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions, so as to ensure that development serves both present and future generations. The Act, amongst other, provides for the establishment of regulations listing activities that require an appropriate level environmental assessment and the extent of such assessment and to ensure that an integrated environmental management approach is followed. This then is to take the form of a basic assessment, a scoping report or a full environmental impact assessment report with specialist inputs. The most recent version of the regulations with contained listed activities, i.e., R543-547, came into effect on 2 August 2010.

Following the lodging of a suitable application to the appropriate competent authority, i.e. at national or provincial level, and assuming it is not refused outright, an environmental authorisation is normally issued with stipulated conditions which are required to be observed by the applicant.

The municipality, if it elected to support any related planning application made to it, would normally include compliance with the conditions of the environmental authorisation in its own conditions of approval or, if it so elected, even add to them if it deemed it necessary when independently assessing the environmental aspects of the application as required by the PDA.



3) The National Environmental Management: Protected Areas Act No 57 of 2003

The NEM: Protected Areas Act provides for the protection of natural areas such as game and nature reserves, whether in public or private ownership, and limits what activities may be undertaken in them. It also provides for the proclamation of such areas which amounts to the ultimate form of protection – even more so than that normally provided by scheme zoning.

4) National Environmental Management: Biodiversity Act No 10 of 2004

The National Environmental Management: Biodiversity Act provides inter alia for the Minister of Environment or the MEC for Environmental Affairs of a province to publish **bioregional plans** and **biodiversity management plans**. This may be done by them in concurrence or on request by and assisted by a municipality. It should be noted that the national biodiversity framework, a bioregional plan and a biodiversity management plan may not be in conflict with municipalities IDP, SDF or land use management systems. The act in its associated regulations lists threatened and endangered ecosystems which must be protected.

In terms of this act a national list of ecosystems that are threatened and are in need of protection was published in **GN 1002 in the Government Gazette of 9 December 2011**. This includes, for instance, the scarp forest and grassland that form part of the D'MOSS footprint in the eThekwini Municipal area.

5) National Environmental Management Act: Air Quality Act No 39 of 2004

The National Environmental Management: Air Quality Act provides for the declaration of priority areas by the relevant Minister or MEC and for the establishment of atmospheric licensing authorities by metropolitan and district municipalities, failing which this role is filled by the MEC. Note: An air quality management plan is required to be contained within an IDP.

6) National Environmental Management: Integrated Coastal Management Act No 24 of 2008

The National Environmental Management: Integrated Coastal Management Act makes provision for the preparation of coastal planning schemes in which the relevant environmental Minister or MEC and the municipality are required to collaborate on schemes and specified set back lines from the high water mark. The Act in Section 57(1) & (2) provides for a coastal planning scheme to be a part of a municipality's land use scheme. It further indicates that a land use scheme may not be adopted which is inconsistent with a coastal management plan. These schemes have to be approved by both the Minister and the municipality, although it may form part of the municipality's schemes.

7) National Environmental Management: Waste Act No 59 of 2008

The National Environmental Management: Waste Act is aimed at protecting health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. The Act requires a municipality to exercise its executive authority and perform its duty in relation to waste services, including waste collection, waste storage and waste disposal services, by adhering to national and provincial norms and standards, integrating its waste management plans with its integrated development plan and ensuring access for all to such services at an affordable price.

The Act makes provision, amongst other, for the issuing of licences for waste management activities. This is equivalent to the environmental authorisation previously obtained under NEMA and its regulations for waste plants. The licence may, in the spirit of cooperative governance, be issued as an integrated licence in association with another organ of state considering an application in terms of Chapter 5 of NEMA.

8) National Forestry Act No. 84 of 1998

The National Forests Act provides the mandate for the **protection of all natural forests** in South Africa. The principles of the Act in Section 3 states clearly that "… natural forests may not be destroyed save in exceptional circumstances where, in the opinion of the Minister, a proposed new land use is preferable in terms of its economic, social or environmental benefits". This prescribes that no development affecting forests may be allowed unless "exceptional circumstances" can be proven. Section 7 of the Act prohibits the cutting, disturbance, destruction or removal of any indigenous living or dead tree in a forest without a licence, while Section 15 places a similar prohibition on protected tree species listed under the Act, some of which are also forest species. The importance of forests has led to the development of a Memorandum of Understanding "Policy Principles and Guidelines for Co-operative Control of Development Affecting Natural Forests in KZN".

Forests are valuable as they act as carbon sinks, playing a key role in the mitigation of climate change. They also produce oxygen and detoxify the air by removing pollutants. Forests also provide a source of medicines and support a large variety of plant and animal life. Rural communities also use a variety of forest products to improve their livelihoods. Within river catchments, forests trap nutrients and sediment that could pollute rivers.

A licence in terms of Section 7(4) or Section 23 is required from the Department of Agriculture, Forestry and Fisheries to cut, damage or destroy a natural forest or any protected or temporarily protected tree, group of trees, particular woodland or species of tree in the event that they are affected by a development proposal. Such licence is unlikely to be granted unless there are very good reasons. Contravention of any declaration by the Minister[47] with respect to protected trees is regarded as a first category offence that may result in a person who is found guilty being sentenced to a fine or imprisonment for a period up to three years, or to both a fine and imprisonment.

9) National Water Act No 36 of 1998

The National Water Act deals comprehensively with all matters relating to water and its sustainable and equitable usage in South Africa. It adopts a catchment management approach and seeks to avoid pollution of the water resource. The Act sets out certain activities as controlled activities (including irrigation, modification of precipitation, hydroelectric power generation and recharging an aquifer with waste or water containing waste), provides for the obtaining of general authorisation for the use of water and for obtaining licences. It should be noted that water may only be used without a licence if the use is exempted (reasonable domestic usage, non-commercial gardening and the watering of flanking grazing animals excluding feedlots), is a pre-authorised use or a general authorisation has been obtained. It should be further noted that **a waste water licence is required for operation of a sewage works** for any development. This essentially involves an environmental impact assessment process that has to be followed.

The Act sets out the process to determine of the reserve of a river, consisting of both human and ecological parts, regarding what water may be extracted from a river or what may be added to it without causing harm.

In terms section 144 of the Act, for the purposes of ensuring that all persons who might be affected have access to the information regarding potential flood levels, **a township may not be established unless the 100 year flood level is shown on the layout plan in a form acceptable to the municipality**.

[47] *See Government Gazette No 34595 Notice No 734 Schedule A for list of declared protected trees.*

In terms of Regulation No 704 of 1999 made in terms of the Act, mining or related activities may not occur within 1:50 year flood line or within 100 metres of a watercourse or estuary, other than for sand winning.

10) Mineral and Petroleum Resources Development Act No. 28 of 2002

While the Mineral and Petroleum Resources Development Act (MPRDA) not unexpectedly deals primarily with mining, it does have planning and in particular environmental implications. No person may prospect, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without, amongst other, an approved environmental management programme or approved environmental management plan.

The Act provides that the principles set out in section 2 of the National Environmental Management Act (NEMA) apply to all prospecting and mining operations and serve as guidelines for the interpretation, administration and implementation of the environmental requirements. Further that any prospecting or mining operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that exploitation of mineral resources serves both present and future generations.

The Act requires the holder of a reconnaissance permission, prospecting right, mining right, mining permit or retention permit to: -

- give effect to the general objectives of integrated environmental management laid down in Chapter 5 of NEMA
- consider, investigate, assess and communicate the impact of prospecting or mining on the environment as contemplated in section 24 (7) of NEMA
- manage all environmental impacts
- rehabilitate the environment affected by the prospecting or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and
- to be responsible for any environmental damage, pollution or ecological degradation.

The Minister for Mineral Resources is now the competent authority for granting environmental authorisations in respect of operations involving prospecting, mining, exploration or "related activities." Previously this responsibility rested with the Minister of the Environment.[48]

[48] *The competency may in the future revert to the Minister for Water Affairs and the Environment*

Sand winning or mining often takes place along river courses or within estuaries. Quarrying or mining takes places wherever suitable materials may be found. This has in the past lead to conflict where a mining authorisation has been issued by the Minister for Mineral Resources but where erroneously no separate land use planning permission has been sought and/or obtained by the applicant from the municipality. The Minister for Mineral Resources has in the past contended that no such permission was necessary from the municipality, but following a judgement of the Constitutional Court[49] declaring a that law dealing with land use is indeed a relevant law[50] to be considered and abided by, this should no longer be an issue, i.e. joint authorisations are required before any mining operation may commence. Any party wishing to undertake any sand wining, mining or quarrying operation is therefore obliged, in addition to obtaining any necessary authority from the Minister for Mineral Resources, to obtain the necessary planning permission before commencing such operations.

11) National Heritage Resources Act No 25 of 1999

In terms of section 38 of the National Heritage Resources Act any person who intends to undertake a development categorised as:

(a) the construction of a road, wall, power line, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;

(b) the construction of a bridge or similar structure exceeding 50 m in length;

(c) any development or other activity which will change the character of a site: -

  (i) exceeding 5 000 m2 in extent; or

  (ii) involving three or more existing erven or subdivisions thereof; or

  (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or

  (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;

(d) the re-zoning of a site exceeding 10 000 m2 in extent; or

(e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority (AMAFA),

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority (AMAFA) and furnish it with details regarding the location, nature and extent of the proposed development.

In terms of section 27 (18) no person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the heritage resources authority responsible for the protection of such site.

[49] *Maccsands (Pty) Ltd verses City of Cape Town, et al*

[50] *Section 23 (6) of MPRDA - A mining right is subject to this Act, any relevant law, the terms and conditions stated in the right and the prescribed terms and conditions and is valid for the period specified in the right, which period may not exceed 30 years.*

In terms of Section 28 (6) a municipality may, with the agreement of the heritage resources authority which designated a protected area, make provision in its town planning scheme or in by-laws for the management of such area.

In terms of section 30(5) at the time of the compilation or revision of a scheme or a spatial development plan, or at any other time of its choosing, a planning authority is required to compile an inventory of the heritage resources which fall within its area of jurisdiction and submit the inventory to the provincial heritage resources authority (AMAFA), which is then required to list in the heritage register those heritage resources which fulfil the assessment criteria.

In terms of section 30 (11) within six months of the publication of a notice in the Gazette concerning the inclusion in the heritage register of a place falling within its area of jurisdiction, every municipality must make provision for the protection of such place through the provisions of its planning scheme or by-laws. Provided that: -

(a) the special consent of the municipality is required for any alteration to or development affecting a place listed in the heritage register;

(b) the municipality must, prior to the consideration of an application under (a), notify any conservation bodies which have, registered their interest in the geographical area or type of property concerned and give them a reasonable period in which to register an objection or make other representations with respect to the application;

(c) in assessing an application the municipality shall consider—

  (i) the cultural significance of the place and how this could be affected by the proposed alteration or development; and

  (ii) any objection or representations from any conservation bodies;

(d) Where the municipality resolves to approve an application which would materially affect the cultural significance of the place and an objection to such approval has been registered by a conservation body, unless the body concerned withdraws the objection, the objection is deemed to be an appeal and the municipality is required to submit the application and all relevant information to the relevant appeal body; and

(e) in the event of any alteration or development of a place listed in a heritage register being undertaken without the consent of the municipality, the municipality may require the owner to stop such work instantly and restore the site to its previous condition within a specified period. If the owner fails to comply with the municipality's requirements the municipality shall have the right to carry out such restoration work itself and recover the incurred cost from the owner.

In terms of section 31(1), a planning authority must at the time of revision of a scheme, or the compilation or revision of a spatial plan investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest. While in terms of section 31(7) A municipality is required to provide for the protection of a heritage area through the provisions of its planning scheme or by-laws under this Act.

In terms of section 40, the MEC or a municipality may in planning schemes or in by-laws under this Act or by any other means provide incentives for the conservation of heritage resources.



5.0 BUILDING LEGISLATION

1) National Building Regulations and Standards Act No 103 of 1977 and its regulations.

While the National Building Regulations and Standards Act deals with the submission and approval of building planning plans, building construction, etc. it does have relevance to planning matters. In particular a building plan in otherwise full compliance with the National Building Regulations for a free entry land use for a particular zone does not necessarily guarantee the automatic approval of the plan.

In terms of Section 7 National Building Regulations and Standards Act, a municipality after having considered the recommendation of the Building Control Officer, who is required to have considered any plans, specifications, documents and information submitted and any such particulars as may be required by the municipality for the carrying out of the objects and purposes of this Act.

(a) is satisfied that the application in question complies with the Act and any other applicable law[51], it shall grant its approval in respect thereof; or

(b) is not so satisfied; or is satisfied that the building to which the application in question relates-

- is to be erected in such manner or will be of such nature or appearance that-
    - the area in which it is to be erected will probably or in fact be disfigured thereby;
    - it will probably or in fact be unsightly or objectionable;
    - it will probably or in fact derogate from the value of adjoining or neighbouring properties;
- will probably or in fact be dangerous to life or property,

the municipality shall refuse[52] to grant its approval in respect thereof and give written reasons for such refusal.

In terms of Section 10, if any building or earthwork in the opinion of the municipality in question is being, or is to be, erected in such manner that it-

- will not be in the interest of good health or hygiene;
- will be unsightly or objectionable;
- will probably or in fact be a nuisance to the occupiers of adjoining or neighbouring properties; or
- will probably or in fact derogate from the value of adjoining or neighbouring properties.

Or is being or is to be erected on a site which is

- subject to flooding;
- on a site which or any portion of which in the opinion of the municipality in question does not drain properly; or
- is filled up or covered with refuse or material impregnated with matter liable to decomposition,

Then the municipality may by a notice in writing, served by post or delivered, prohibit the person erecting such building or earthwork or causing such building or earthwork to be erected from commencing or proceeding with the erection thereof or from so commencing or proceeding.

It is necessary that the extent and nature of any development within the 100-year floodplains as demarcated on the GIS be subject to stringent evaluation and control in the interests of public safety. In the area located between the 50 and 100-year flood lines, some developments or activities may be permitted, subject to the prior approval of the Coastal Engineering and Stormwater Management Department and any conditions that they may impose. Developments with particular evacuation or emergency response issues, e.g. residential development, and other high risk developments will only be permitted above the 100-year flood line.

[51] *This requires that the building plans submitted must comply with not only the National Building Regulations and its associated codes but also with the Planning and Development Act, the relevant scheme controls, environmental legislation etc.*

[52] *This is a mandatory requirement placed on the municipality to observed, not a simple matter to be dispensed with if the plans otherwise comply with the National Building Regulations.*

ANNEXURE 3 RELEVANT SCHEMES AND POLICIES

ETHEKWINI SCHEMES

Schemes, formerly known as town planning schemes when they were confined to largely urban areas, are legal mechanisms or tools adopted by municipalities, and akin to a by-law (town law), to manage land use contained within the boundaries of the respective municipalities and to assign development rights. A scheme normally consists of a document containing various scheme clauses, definitions, tables, annexures, zone development templates, etc. Linked to this document is a map, or series of maps of different districts, defining the zoning for specific, readily definable, erven. In terms of the zoning map read with the scheme clause specific rights are assigned to the individual properties. This is unlike broad policy level plans, such as a Spatial Development Framework (SDF) or Spatial Development Plans (SDP), which are normally not interpretable at the level of an individual erf and which do not in any event assign exercisable development rights.

Note: The expansion of the municipal areas post the 2000 re-demarcation of the country by the Municipal Demarcation Board, and involving boundary-to-boundary municipalities across the entire face of the country, requires the creating of complimentary wall-to-wall schemes.

1.1 Existing town planning schemes

Within the eThekwini municipal area there are a number of different types or models of schemes that may be found. See **Annexure 9** for a list of the then existing schemes of various types in August 2012.

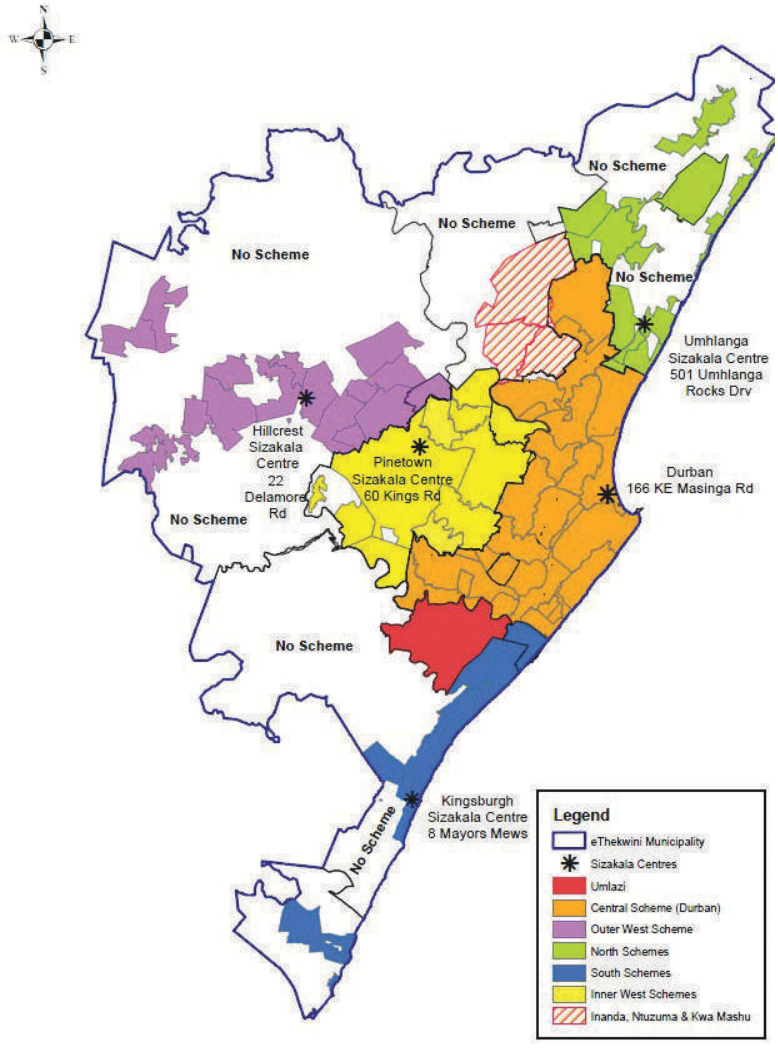

Figure 7 – Map showing the eThekwini Schemes throughout the different Regions & the Location of the Sizakala Regional Offices and the Central Office in Durban.

1.1.1 Durban model

The Durban or central model is unique among the eThekwini schemes and follows an earlier 1953 Durban town planning scheme. This scheme in turn had evolved from the "Report on the Regulation of Buildings and the Control of Land Use being part of the Town Planning Scheme" a document which was published in August 1950 by the then City and Water Engineers Department of the Corporation of the City of Durban. While the Durban scheme is a single scheme that covers a vast area comprising the entire erstwhile City of Durban and which is broken down into a number of separate Districts, each with their own individual zoning map.

The present Durban scheme, when it was first adopted in 1964 for the Berea (North and South) District under the guidance of the then City Engineer Cecil George Hands, was a significant break and simplification of the immediately past scheme. This new scheme was for but the first of the districts identified in the Outline Development Plan – an overall guiding document for future land use. The Berea scheme was progressively followed by district schemes for the Bluff and Umgeni South, each using the same scheme clauses but expanded as necessary to cater for any peculiarities and requirements of the respective areas. This process was progressively rolled out over the years until the entire City of Durban area was covered with district zoning maps with largely the same scheme controls but modified and expanded as appropriate. However in the nearly forty years that have since elapsed, the original clauses have become almost unrecognisable with the complexities that have arisen over time both with the introduction of additional areas and with enumerable scheme amendments addressing a variety of issues that have arisen over this time. From a very limited number of special zones in the early years the number of special zones has increased to one hundred and nine.

Portions of the Durban scheme were "exported" following the 1996 municipal demarcations when the Reunion and Reservoir Hills areas were hived off from the South Central and North Central Local Councils to the South and Inner West Local Councils respectively, the latter as the Westville II scheme; and in some cases they were further modified in due course.

1.1.2 Provincial model

The Town and Regional Planning Department of the erstwhile Natal Provincial Administration was originally responsible for the preparation of town planning schemes for the majority of towns in the balance of the erstwhile province of Natal. In this regard it had standard town planning scheme clauses, and which had varying degrees of complexity ranging from very simple, to intermediate to complex and which were utilised as appropriate for the circumstances of the particular town. The associated zoning maps obviously varied according to the layout and arrangement of the respective local authorities and development areas. These schemes were in due course taken over by the respective erstwhile entities and modified over time. The respective scheme clauses however all shared the same provincial roots and largely followed the same format.

1.1.3 Other schemes and regulations

A variety of simple schemes existed under various guises in the erstwhile **KwaZulu and in other areas designated for Black communities.** These mainly consisted of layout plans with designed land uses shown on the said plans and for which one would then have to refer to regulations framed under the various acts for guidance on development potential, e.g. under the KwaZulu Land Affairs Act No 11 of 1992 read with the KwaZulu Land Affairs (Township Establishment) Regulations GN 29 of 1994, the KwaZulu Land Affairs (Town Planning) Regulations GN 30 of 1994, the KwaZulu Land Affairs (Conversion of Certain Tenure) Regulations GN 31 of 1994 and the Black Communities Development Act No 4 of 1984 read with its regulations R1897/1986 (and specifically Annexure F).

In some of the erstwhile **Development and Services Board development and regulated areas**, where no town planning schemes existed, development was controlled purely in terms of the DSB Regulations and/or where a resolution to prepare a scheme had been approved by the Town and Regional Planning Commission and no scheme adopted, in terms of section 67 of the Town Planning Ordinance perhaps guided by either a draft scheme or a policy plan.

The province in the nineties began exploring **alternative Land Use Management Systems** (LUMS) and in particular schemes associated with these LUMS. This involved amongst other, different terminology for land uses and zones, the use of layers e.g. depicting different densities, and presentation of the control parameters for any particular zone on a single sheet or page where ever possible rather than, as was the case, at various locations to be found throughout the entire scheme clauses. In the late nineties and early 2000's a number of pilot LUMS schemes of this sort were initiated, e.g. at Cliffdale, Stockville and the Hillcrest Gillitts Activity Corridor Local Area Plan and which were eventually adopted as components of the Consolidated Outer West Scheme.

1.2 Consolidated Schemes

While the variances between individual schemes under the erstwhile local authorities were perfectly acceptable, when these areas amalgamated in 1996 on the re-demarcation of the province, the rationale for maintaining the often subtle differences between the schemes was increasingly hard to defend or to rationalise. On the one hand to the residents of the now common municipal area, who might live on either side of a common road or even share common boundaries, while on the other hand from an administrative point of view in that it was complicated with a strong possibility of errors occurring when giving town planning advice or adjudicating applications. Hence ideally it was deemed desirable to consolidate schemes where ever possible. This position was however not initially shared equally by officials of the former entities that sometimes clung to their existing schemes or sought to make largely cosmetic changes to all their schemes so as to bring them into closer alignment.

1.2.1 Consolidated Outer West Town Planning Scheme

The Outer West Local Council in 1999 initiated a process to consolidate its then fourteen separate town planning schemes into a single scheme. The Consolidated Outer West Town Planning Scheme (COWTPS) after following due process was duly adopted by the Council in September of 2000 and, following endorsement from the KZN Planning and Development Commission, became operational in late 2000. This scheme was based on the complex provincial model scheme but with a considerably expanded suite of zones to accommodate the wide variety of former, but now rationalised, zones.

This Consolidated Outer West Scheme was revised during 2012 with a view to bringing its format into line with replacement or consolidated schemes then proposed for the North, South and Inner West. The new Outer West Scheme (OWS) was advertised in November of 2012[54] with final adoption anticipated in early 2013.

[54] *Comments closed on 10 December 2012.*

1.2.2 North, South and Inner West Replacement Schemes

The eThekwini Municipality in late 2011 endorsed the consolidation and replacement of the multiplicity of schemes respectively for the North, South and Inner West areas. These consolidated proposals were advertised for comment during 2012. The schemes, after receiving comments, were duly adopted in September 2012 and became effective on 25 October 2012. It should be noted that these three schemes have broken with the past provincial model of their constituent schemes and have broadly adopted the LUMS template model of displaying the majority of the respective zone control data on a single or at most two pages.

Continuing on from the above process; it is intended (as previously mentioned) to revisit both the Consolidated Outer West scheme and the Durban scheme and transform them both into the same LUMS template format. The Durban scheme in particular is likely to be very complicated, given the significant amount of changes that have occurred to the Durban scheme since 1964 when the then Berea District scheme was first adopted and used as a model over the years for the role out of all the other district "schemes" of the erstwhile City of Durban and was then in this process almost unrecognisably transformed.

1.2.3 A Future Single eThekwini Consolidated Scheme?

It is anticipated that eventually, once all the major issues have been resolved including the incorporation of tribal areas and commercial farm areas in achieving wall to wall schemes as now required by both the PDA and SPLUMB, but still resisted by the National Department of Agriculture Forestry and Fisheries (DAFF), a single consolidated scheme will be created for the entire eThekwini metropolitan area. Obviously such a scheme will inevitably need to be very complex given the nuances between the different areas of a very diverse city and the existing great variety of zones.

Inevitably such a scheme will in all probability need to encode a variety of rural zones associated with different de facto desirable farming activities so as to ensure both the sustainability of agriculture and the security of food supply for the nation as a whole. This is in total contrast to the current generic "Agriculture" zone found in many schemes that is often in reality little more often than a variety of rural residential zones, i.e. containing erven not designed for productive agriculture having relatively small unsustainable minimum site areas of 1.5 to 2 hectares, and apparently more appropriately designed for country estates, the keeping of horses and part time farming. This current agricultural zoning with its associated controls is no doubt partially responsible for some of the scepticism and opposition displayed by DAFF at the suggestion of the proposed expansion of existing schemes to create wall-to-wall schemes.

The tribal areas in particular, given the de facto system of tribal administration of the land by the amakhosi and izinduna under the umbrella of the Ingonyama Trust Board, the latter who sees its primary role as the economic protector of the most vulnerable parties looking after their social and economic well being, present a significant challenge if much more than generic zones are to be instituted and, in particular, enforced by the municipality. The pilot scheme being prepared at Umnini in the South should however help lead the way.

The creation of such a unifying scheme document is however not likely to occur for a number of years.

2. POLICIES

2.1 Sewage Policy

The Council has formally adopted a number of sewage policies relating to waste water package plants, septic tanks and evapo-transpiration areas conservancy tanks, etc. For example with the latter where full water borne waste water disposal is not possible or where treatment at an existing wastewater treatment works is possible but there no or limited spare capacity available at the works, on redevelopment of a site any additional sewage generated may have to be removed by tanker services from an appropriately sized conservancy tank. These policies, termed guidelines, may be downloaded from **www.durban.gov.za/City_Services/water_sanitation/Policies_Plans_Guidelines/Pages/Guidelines-.aspx**

2.2 Tavern Policy

While a draft policy relating to the minimum requirements for the establishment of a tavern in a residential area and the procedures to be followed to obtain the necessary approval was prepared at the request of Council, this policy is yet to be adopted.

2.3 Container Policy

The Council has adopted a policy relating to the placement of containers for informal trading. The structures included within this policy include Caravans, Containers, Marquees, Wendy Houses, Trailers and/or any other roofed movable structure used for informal trading. The policy includes for management and monitoring of trading activities and the registration of traders.

This policy document, including the street trading by-law, may be downloaded from **http://www.durban.gov.za/City_Services/BST_MU/Documents/Container_Policy.pdf**

2.4 Advertising Policy

Advertising policy is guided by the South African Manual for Outdoor Advertising Control (SAMOAC).

2.5 Stormwater Management Policy

Succinctly, the primary policy is that the amount of stormwater emanating from a site post development shall not be any larger than the amount of water generated pre-development. A suitable stormwater management plan is required to be prepared by a registered professional engineer when a significant change may be anticipated from the status quo. Greater details on this policy and other information and related documents may be downloaded from **www.durban.gov.za/City_Services/engineering%20unit/Coastal_Engineering_Stormwater_Catchment_Management/Documents_Policies/Pages/default.aspx**

2.6 Official Languages & Newspapers of Record

In terms of Section 21(2) of the Municipal Systems Act 2000, English and Zulu are the official languages of the Council. In terms of Section 21(1)(b) of the Municipal Systems Act 2000, the newspapers of record are the Daily News, Mercury, UmAfrika, Ilanga, Sunday Tribune and Sunday Times.

Adopted by Exco 7 June 2001.

2.7 Language Policy for the Municipality.

IsiZulu and English are required to be used for both internal and external oral and written communication, e.g. in the drawing up and dissemination of circulars, memoranda, policies, bylaws, advertisements, notices, correspondence and identification signs, in conducting meetings, as well as in its interaction with customers; if necessary with the help of translators and interpreters. If members of the public wish to use a language other than these two, they can request that communication take place with them in their preferred language, and translation and interpreting may be provided, where necessary.

City Manager Circular 8/2007- 28 May 2007.

2.8 D'MOSS

D'MOSS is a policy that is now effectively been integrated into the schemes as a controlled area or overlay. However, where there is currently still no scheme in place the policy still applies.

2.9 Development in the Ingonyama Trust Board Areas

There is a need to differentiate between when a proposed development is considered as an umuzi (the basic traditional Zulu homestead comprised of a number of individual huts[55] or structures) and where no development application is required in terms of Chapter 4 of the PDA and when it is so required. The erection of very substantial residential structures under the guise of an umuzi and without obtaining any formal planning/building plan approval is unacceptable.[56] A clear and detailed policy in the future will avoid any grey areas in this regard.

55 *An individual hut is known asan indlu in isiZulu*

56 *This is especially true in the metropolitan areas where most so-called "rural" dwellings being built are formal structures and in many cases substantial multi-storey structures. In a recent example a training centre, comprised of several buildings, was erected under the guise of being a private residential bulding and was consequently erected without any development application or building plans. In this particualr case, one of the buildings collapsed leading to a loss of life, serious environmental transgressions and a potential negative impact on the Council's adjacent tourism project.*

ANNEXURE 4 CONTACT DETAILS OF DEVELOPMENT PLANNING ENVIRONMENTAL & MANAGEMENT OFFICES

POSTAL ADDRESS - CENTRAL & ALL REGIONAL OFFICES

Development Planning Environment and Management Unit

PO Box 680
Durban 4000

CENTRAL OFFICES:

City Engineers & Planning and Development Building

166 KE Masinga (Old Fort) Road,
Durban 4001

Information Centre:

Ground Floor - East End Mezzanine
Phone: 031-311-7257 or 031-311-7572
Customer Care: 031-311-7148
Fax: 031-311-7721
Email: rita.moir@durban.gov.za

Land Use Management Systems (LUMS) Enquiries

Ground Floor - East End
Phone: 031-311-7790
Fax: 031-311-7859
Email: Lekha.Allopi@durban.gov.za

Framework Planning Enquiries

2nd Floor - East End Foyer
Phone: 031-311-7450
Fax: 031-311-7279
Email: siauree.dehal@durban.gov.za

Building Plan Enquiries (Submissions)

Ground Floor - East End
Phone: 031-311-7070/7069/7619/7073
Fax: 031-311-7871
Email: Stanley.Mkhwanazi@durban.gov.za

Building Plan Enquiries (Assessments)

Ground Floor - East End
Phone: 031-311- 7069
Fax: 031-311-7843
Email: Denashree.Naidoo@durban.gov.za

Archived Building Plan Enquiries

Phone: 031-311-7083
Email: microfilm@durban.gov.za

Building Inspector Enquiries

Ist Floor. Team, 1 & 2, Room 123; Team 3 & 4, Room 126 ; Team 5 & 6, Room 132.

Phone:
031-311-7584/ 7615/ 7577/ 7345/ 7269/ 7587

Fax: 031-311-7684

Email:
T1: NtuliZ@durban.gov.za
T2: Thandeka.Khumalo@durban.gov.za
T3: Bongiwe.Mngadi@durban.gov.za
T4: GumedeD@durban.gov.za
T5: Ramesh.Bhagalu@durban.gov.za
T6: Thanda.Madikizela@durban.gov.za

Signage and Hoarding Enquiries

Ist Floor, Room 117
Phone: 031-311-7055
Fax: 031-311-7684
Email: Ntomb.Mbonambi@durban.gov.za

Enforcement and Prosecution Enquiries

Ground Floor, West end, Mezzanine level
Phone: 031-311-7140
Fax: 086-501-2353
Email: Nonkululeko.Hlongwa@durban.gov.za

Environmental Enquiries:

Room 224 2nd Floor
Phone: 031-311-7471
Fax: 031-311-7134
Email: Pam.Ramnarain@durban.gov.za

Environmentally Sensitive Land Rates Rebates Enquiries

Room 224 2nd Floor
Phone: 031-311-7171
Fax: 031-311-7134
Email: Rashieda.Davids@durban.gov.za

NORTH REGIONAL OFFICES:

Sizakala Regional Office
327 Umhlanga Rocks Drive
Umhlanga

Planning Enquiries

Phone: 031-311-6061/311-6063
Fax: 031-311-6034
Email: Cindy.Webster@durban.gov.za
Nancy. Moonsamy@durban.gov.za

Building Plan Enquiries (Submissions)

Umhlanga Office
Phone: 031-311-6074/ 6076 / 6079 / 6080
Fax: 031-311-6075
Email: Lauren.Vorster@durban.gov.za
Desiree.Govender@durban.gov.za
Nirvana.Harilall@durban.gov.za
Zandile.Mthethwa@durban.gov.za

Verulam Office

151 Wicks Street
Phone: 031-322-1761
Fax: 031-322 1754
Email: Hasina.Khan@durban.gov.za

Tongaat Office

Phone: 031-322-1646
Fax: 031-322 1605
Email: Prem.Moodley@durban.gov.za

Building Inspector Enquiries

Umhlanga Office
Phone: 031-311-6093
Fax: 031-311-6075
Email: Lyona.Johnson@durban.gov.za

Verulam Office

Phone: 031-3221845/3221761
Fax: 031-322 1754
Email: Matshidiso Liphoko
liphokom@durban.gov.za

The Tongaat Office

Phone: 031-322-1647

SOUTH REGIONAL OFFICES:

Sizakala Regional Office
Gracedale Road off Winklespruit Road
Kingsburgh

Planning Enquiries

Phone: 031-311- 5834
Fax: 031-311-6034
Email: Logie.Moodley@durban.gov.za
Thandi.Sishi@durban.gov.za

Building Plan Enquiries

Phone: 031-311-5860
Email: Wendy.McAllister@durban.gov.za

Building Inspector Enquiries

Phone: 031-311-5450/ 5785/ 5787/ 5789/ 5791/ 5792/ 5799/ 5806/ 5807/ 5812/ 5819/ 5841/ 5965
Email: Philile.Mlotshwa@durban.gov.za
Nomali.Ntombela@durban.gov.za

INNER WEST REGIONAL OFFICES:

Sizakala Regional Office

60 Kings Road - cnr. Josiah Gumede (Old Main) Road and Crompton Street – access off Kings Road
Pinetown

Planning Enquiriesnuthan

Phone: 031-311-6265
Fax: 031-701-8863
Email: Gonnie.Govender@durban.gov.za

Building Plan Enquiries

Phone: 031-322-1933
Fax: 031-322-1948
Email: Ashna.Seebran@durban.gov.za

Building Inspector Enquiries

Phone: 031-322-1939
Fax: 031-322-1948
Email: Nontokozo.Mkhize@durban.gov.za

OUTER WEST REGIONAL OFFICES:

Sizakala Regional Office
22 Delamore Road
Hillcrest

Planning Enquiries

Phone: 031- 311-2763
Fax: 031-765-5389
Email: Neela.Clifford@durban.gov.za

Zoning Certificate Enquiries

Phone: 031-311-2714
Fax: 031-311-2672
Email: Nimmy.Rampersad@durban.gov.za

Building Plan Enquiries

Phone: 031-311-2764
Fax: 031-765-5389
Email: Louisa.Marnewick@durban.gov.za

Building Inspector Enquiries

Phone: 031-311-2702
Fax: 031-765-5389
Email: Ashbey.Sikakane@durban.gov.za

ANNEXURE 5
OTHER USEFUL CONTACT DETAILS

eThekwini Water and Waste Department

3 Prior Road (off Ordnance Road)
Durban 4001
P O Box 1038
Durban, 4000
Tel: 031-311-1111
Web site: durban.gov.za/City_Services/water_sanitation/Pages/default.aspx

Western Area Office

14 Scott Road, Pinetown.

Northern Area Office

501 Umhlanga Rocks Drive, Umhlanga.

Southern Area Office

423 Kingsway, Amanzimtoti.

eThekwini Transport Authority

PO Box, Durban 4000
Archie Gumede (Old Fort) Place
off KE Masinga (Old Fort) Road
Durban 4001
Tel: 031-311-7351
Fax: 031-305-5871
Website: durban.gov.za/City_Services/ethekwini_transport_authority/Pages/default.aspx

eThekwini Coastal Engineering and Stormwater Catchment Management Department

PO Box 680
Durban 4000
166 KE Masinga (Old Fort) Road
Durban 4001
Web site: www.durban.gov.za/City_Services/engineering%20unit/Coastal_Engineering_Stormwater_Catchment_Management/Pages/default.aspx

eThekwini (Durban Metro) Electricity

1 Jelf Taylor Crescent
cnr. Mashabalala Yengwe (NMR) Avenue
Durban
PO Box 147
Durban 4000
Tel: 031-311-1111
Fax: 031-311-9056
Email: CustoCare@elec.durban.gov.za
Website: www.durban.gov.za/City_Services/electricity/Pages/default.aspx

KZN Department of Transport

Private Bag X9043
Pietermaritzburg 3200
172 Burger Street
Pietermaritzburg 3201
Tel: 033-355-8600
Fax: 033-355-8092

South African National Road Agency Limited (SANRAL)

58 Van Eck Place
Mkondeni
Pietermaritzburg 3201

PO Box 100410
Scottsville 3209
Tel: 033-392-8100
Fax: 033-386-6284
Website: www.nra.co.za

KZN Department of Agriculture Environmental Affairs and Rural Development

Cedara Office (Agriculture)

No.1 Cedara, Executive Building
Cedara College
Pietermaritzburg, 3201
Private Bag X9059
Pietermaritzburg, 3200
Tel: 033-355-9100 (Dept.)
033-343-8240 (Ministry)
Fax: 033-355-9122 (Dept.)
033-343-8255 (Ministry)
Website: www.kzndae.gov.za

KZN Department of Agriculture Environmental Affairs and Rural Development

Pietermaritzburg Office (Environment)
8 Warwick Road
Cascades
Pietermaritzburg 3201
Private Bag X06
Cascades 3202
Tel: 033 – 347-1820
Fax: 033 – 347-1826

KZN Department of Agriculture Environmental Affairs and Rural Development

Durban Office (Environment)
8th Floor Truro House
17 Margaret Mncadi Boulevard
(Victoria Embankment)
Durban 4001
PO Box 2132
Durban 4000
Tel: 031-368-2223
Fax: 031-368-1601

Regional Land Commissioner

2nd floor African Life Building
200 Church Street
Pietermaritzburg 3201
Private Bag X9120
Pietermaritzburg 3200
Tel: 033-355-8400
Fax: 033-842-0409

Department of Rural Development and Land Reform – Spatial Planning

Kelly Centre Building
Upper Ground Floor
83 Peter Kercoff Street
Pietermaritzburg 3200
Private Bag X9028
Pietermaritzburg 3200

KZN Planning & Development Appeal Tribunal (PDA) & Town Planning Appeal Board (TPO) both share secretariat

The Registrar - KZN Planning and Development Appeal Tribunal

or

The Secretary - Town Planning Appeals Board

1st Floor, Southern Life Plaza
Private Bag X9123/271 Church Street
Pietermaritzburg
3200/3201
Registrar: Mr. Dejond Chetty
Attention: Mrs Vijay Jugmohan
Phone: 033-355-6104
Email: Vijay.Jungmohan@kzncogta.gov.za

National Building Regulations Review Board

SABS Campus
1 Dr Lategan Road
Groenkloof
Pretoria
Private Bag X25
Brooklyn 0075
Telephone: 012-428-5000
Sharecall: 0860-722-700
Fax: 012-428-5199
Website: www.nrcs.org.za

Surveyor General

4th Floor New Supreme Court Building
300 Pietermaritz Street
Pietermaritzburg 3201
PO Box 396
Pietermaritzburg 3200
Tel: 033-355-2900
Fax: 033-355-4300
Website: http://csg.dla.gov.za/scanpmb.html

Registrar of Deeds

Deeds Office

4th Floor New Supreme Court Building
300 Pietermaritz Street
Pietermaritzburg 3201
Private Bag X9028
Pietermaritzburg 3200
Tel: 033-355-6800
Fax: 033-345-5501
Website: http://www.deeds.gov.za

Ingonyama Trust Board (ITB)

65 Trelawney Road
Southgate
Pietermaritzburg 3201
P.O. Box 601
Pietermaritzburg 3200
Tel: 033-846-9900/1/2/3
Fax: 033-386-2528
Email: info@ingonyamatrust.org.za
realestate@ingonyamatrust.org.za
Website: www.ingonyamatrust.org.za

National Department of Agriculture Forestry and Fisheries (DAFF)

20 Steve Biko (Beatrix) Street
Arcadia
Pretoria 0002
Tel: (012) 319 6000
Fax: (012) 319 0000

Private Bag x250
Pretoria 0001
Website: www.nda.agric.za/

South African Council for the Architectural Profession (SACAP)

First Floor
Lakeside Place
Cnr Ernest Oppenheimer and Queen Streets
Bruma, Johannesburg

P O Box 408
Bruma 2026
Tel: 011 479 5000/5001
Fax: 011 479 5100
Website: http://www.sacapsa.com

South African Council for Planners (SACAP)

International Business Gateway Park
cnr. New Road & 6th Street
Midridge Office Park
1st Floor Block G,
Midrand 1685
P.O. Box 1084
Halfway House
Midrand 1685
Tel: 011-318-0460/0437
Fax: 011-318-0405/086-549-4802
Email: planner@sacplan.co.za
Website: www.sacplan.org.za

South African Planning Institute (SAPI)

49 New Road
Halfway House
Midrand 1685
Private Bag X15
Halfway House 1685
Tel: 011-312-5171
Fax: 011-312-5161 or 086-514-9673
Email: info@sapi.org.za
Website: www.sapi.org.za

Umgeni Water: Planning Services

310 Burger Street
Pietermaritzburg 3201

PO Box 9
Pietermaritzburg 3200
Tel: 033-341-1115
Fax: 033-341-1218
Email: alka.ramnath@umgeni.co.za
Website: http://www.umgeni.co.za/

Eskom: Network Planning KZN

1 Portland Road
Mkondeni
Pietermaritzburg 3212

PO Box 5
Pietermaritzburg 3212

Tel: 033-395-3851
Fax: 086-667-4973
Email: kajeea@eskom.co.za
Website: http://www.eskom.co.za/

Eskom: Eastern Output Unit Land Development Manager

P O Box 66
New Germany
3620

Tel: 031-710-5404
Fax: 086-667-2564/ 031-710-5146
Email: nicolm@eskom.co.za
Website: http://www.eskom.co.za/

NOTE: Applications outside ESKOM's assigned service area should still be referred to them as their electric transmission power lines cross through all areas. See Annexure 17 for map.

Telkom SA Limited
Network Infrastructure Provisioning

Wayleave Management
Private Bag X54326
Durban
4000

Tel: 031-363-3342
Fax: 031-363-3589
Fax to Mail: 086-522-1822
Email: wayleaves2@telkom.co.za

Transnet Pipelines

Room 807
202 Anton Lembede Street
Durban 4001
PO Box 3113
Durban 4000
Tel: 031-361-1454
Fax: 031-361-1534/1341
Website: http://www.transnet.net

Ilanga: Classified Advertisements

(Town Planning)
19 Timeball Boulevard
Point Water Front
Durban 4001

P.O. Box 2159, Durban, 4000
Tel: 031-334-6700
All legal notices may be submitted by
Fax to: 031-337-9821

or by Email to:
Nqobile Phakati nqobile@ilanganews.co.za

Website: http://www.ilanganews.co.za/

Notes.

All Town Planning notices are published in the Ilanga newspaper on a Thursday morning (Thursday-Saturday paper).

The advertising deadline for legal advertisements for a Thursday publication is 11h00 on the Wednesday prior to publication (if no translation is necessary).

The Mercury (Independent Newspapers) Classified Advertisements (Town Planning)

18 Osborne Road
Greyville
Durban 4001

Tel: 031-308-2004 (call center)

All legal notices may be submitted by
Fax to: Wendy Ludlow 086-262-9342
Sagren Pillay 086-681-5424
Bob Moodley 086-262-7191

or by Email to:
wendy.ludlow@inl.co.za
bob.moodley@inl.co.za
sagren.pillay@inl.co.za

Website: http://www.iol.co.za/mercury

Notes.

All Town Planning notices are published in the Mercury newspaper on a Friday morning.

The advertising deadline for legal advertisements for a Friday publication is 12 noon on the Thursday prior to publication.

The Independent Newspapers advertising rate for standard Town Planning Special Consent Notices from 1 January 2013 is R856.93 inclusive of VAT. Rezoning and similar notices are charged out per single column centimetre (rate/cm), based on the wording within the notice. No exact prior costing is therefore available.

Isolezwe Newspaper (Independent Newspapers): Classified Advertisements (Town Planning).

For contact details see The Mercury (Independent Newspapers).

Website: http://www.iol.co.za/isolezwe

ANNEXURE 6
INFORMATION AVAILABLE ON THE INTERNET

A significant amount of information for a landowner or an aspiring developer is available via the internet for those with this facility. Relevant information contained on the Council's Geographic Information System (GIS) is available directly via the site http://citymaps.durban.gov.za/website/master/viewer.htm. This information includes:

- Cadastral descriptions
- Road names
- Erf areas (approximate)
- Property address[57]
- Aerial photographic backgrounds (normally updated annually)
- D'MOSS (Durban Metropolitan Open Space System) foot print – designated as MOSS on the web page.
- 100-year flood lines
- Zoning[58]
- Zone controls (FAR, Coverage, height, parking, etc.) – this data is currently only available in the Central area but will be expanded to the other areas of the city in due .
- Servitudes
- 2 metre contours
- Coastal Erosion Line
- Etc.

The various data layers and active layers may be turned on or off by ticking the appropriate box or circle respectively on the right of the screen. Where after relevant layer is displayed with additional information available via the Identify facility (located on the left of the screen). Note the four mrsid_*.sid data layers refer to the photographic background layers covering the entire city and they are best, in the interest of improved downloading speed, only turned on after zooming in to the relevant site(s).

It is possible to download survey diagrams and general plans via http://citymaps.durban.gov.za/internetwebsite/index.html (and which also leads on to the GIS)

Another useful source of mapping information, including cadastral data, and covering the whole of South Africa, is 1Map or One Map for All. It is accessible from http://www.1map.co.za/. Prior registration on the site is required in order to access the information. The photographic background is obtained from the Google Maps which are not always as up-to-date as City Maps.

The Development Planning Environment and Management Unit web site located at http://www.durban.gov.za/City_Services/development_planning_management/Pages/default.aspx provides a starting point for accessing various departments within the unit and for accessing information on signage, application forms, zoning certificates, etc.

Information on the 2012 valuation of properties, including the registered extent or area of erven, may be located at http://www.durban.gov.za:84/propertysearch.htm. It should be noted that the Use Code, the Rating Category and/or Property Type as contained in the Valuation Roll GV 2012 do not necessarily equate to the zoning of a site as found on the relevant scheme map. Note: The previous Valuation Roll GV 2008, at the time of writing, could still be seen on the web page http://ethekwini.evaluations.co.za/

57 *The GIS assigned street address may vary from that on the COINS data base. The latter should preferably be used for notification of adjacent or property owners within 100 metres. This information may be obtained from the respective regional offices.*

58 *N.B. The zoning as reflected on the GIS should not be used as a final deciding factor when purchasing or selling land or when preparing a development application. No responsibility can be accepted for any errors or omissions in the data. Ideally a zoning certificate should be obtained from the Info Centre in the Central offices in KE Masinga Road or from the respective Sizakala Regional offices depending on the location of the site(s). Note: It is also possible in some instances to obtain a zoning certificate via the web.*

ANNEXURE 7
ACRONYMS

AMAFA..... Amafa / Heritage KwaZulu Natali - provincial heritage conservation agency for KwaZulu Natal.

COGTA..... National Department of Cooperative Governance and Traditional Affairs

CSIR..... Council for Scientific and Industrial Research

DAEARD ..... KZN Department of Agriculture and Environmental Affairs and Rural Development

DAFF..... National Department of Agriculture, Forestry and Fisheries

DEAT..... National Department of Environment and Tourism

DFA..... Development Facilitation Act & Regulations

DMEA..... National Department of Mineral and Energy Affairs

D'MOSS..... Durban Metropolitan Open Space System

DRDLR..... National Department of Rural Development and Land Reform

EIA..... Environmental Impact Assessment

EMP..... Environmental Management Plan

GIPO..... Geographical Information and Policy Office of the eThekwini Municipality

GIS..... Geographic Information System

KZN..... KwaZulu-Natal

KZN COGTA ..... KZN Department of Cooperative Governance and Traditional Affairs

LeFTEA ..... Less Formal Township Establishment Act

NBRBSA (or NBRs) .. National Building Regulations and Building Standards Act & Regulations

NCOP..... National Council of Provinces

NEMA..... National Environmental Management Act & Regulations

PDA..... Planning and Development Act

SABS..... South African Bureau of Standards

SACAP ..... South African Council of Architectural Professionals

SPLUMB ..... Spatial Planning and Land Use Management Bill

TPO..... (Natal) Town Planning Ordinance

ANNEXURE 8
PLANNING TERMS

- **Allotment** - Area allocated to an individual in terms of the KwaZulu legislation and normally of an agricultural nature.
- **Cluster Housing** - Housing that is clustered together on a site and which may be freestanding or detached. Ownership would normally be held by sectional title. Height would not normally exceed two storeys. The respective zoning controls would determine the density, which would not normally exceed medium.
- **Common Property** – Property, be it land or buildings, within a sectional title development that is jointly owned by all owners within the development. It would be normally be indivisible and would include the exterior of the sectional title individually owned buildings.
- **Conservancy** – this is not a form of housing, land ownership system or normally even a zone, but is rather an association formed in a rural or urban neighbourhood where the collective aim of the members is to protect, promote and enhance the natural environment of the designated area. However due to confusion in the past a so-called Conservancy zone was established in Alverstone, near Assagay and Bothas Hill. The latter is however effectively a Rural Residential zone in which, while it has a minimum erf size of 15 hectares, the subdivisions, which occurred prior to the zoning being put in place, are normally considerably smaller. As a result it is a de facto non-subdivisable Rural Residential zone! (See Rural Residential below).
- **Curtilage** – Refers to the area of ground directly associated with a unit within a multi-unit development. It could be an exclusive use area within sectional title development or it could be a freehold site.
- **Deeds of Grant (DOG)** – This is a form of bondable title over an erf granted within the erstwhile KwaZulu areas and that may be registered in the Deeds Office.
- Development without Subdivision – This is a provision which was introduced into town planning schemes in the 1970's to enable multi-unit development with a common entrance to occur where normally conventional subdivision would be expected to minimum areas as specified in terms of the town planning scheme. In respect of areas outside of a town planning scheme area this form of development could also occur following the conclusion of procedures provided for in terms of Section 11(2) of the Town Planning Ordinance. Normally ownership would be by sectional title and the total number of permitted units would be determined by dividing the developable site area by the otherwise minimum site area.

Note: Within some town planning schemes a variant of "Development without Subdivision" may provide for the exclusive use areas to be subdivided off as freehold sites below the otherwise minimum erf size, i.e. miniature-subdivisions or so-called mini-subs. This obviously involves subdivision but the principles are otherwise identical.

- **Erf or Erven (plural)** – A term now universally applied South Africa for Lot or Lots. It is of Dutch origin and was originally used in the erstwhile Cape Province of South Africa. From 1 June 1997 the use of the word Lot and Lots in KwaZulu-Natal were replaced by the words Erf and Erven as directed by the Surveyor General. Normally applied to the original lots within a township.
- **Exclusive Use Area** – This is an Area that is set aside within a sectional title development for the exclusive use of the (normally) adjacent section owner. The area may be defined in terms of the rules of the complex or it may be beaconed by a land surveyor and shown on the sectional plan.

- Extended Residential – implies a number of residential units within one structure, usually no more than three, which collectively have the physical appearance of a single detached unit, albeit large, on an individual site and normally not more than two storeys in height. It was originally a form of Special Residential that was designed specifically to cater for the extended family form of living as practiced in some cultures, where there are several generations living in one household, but while still affording a greater degree of privacy to the individual nuclear families contained within the household.
- Fractional Ownership – This form of ownership is very similar to time share (see below) in that persons purchase a share or a fraction of a unit for its occupation for a proportion of a year. The time period is for four weeks, i.e. 1/13 of the year.
- Freehold - This is from the financial institutes' perspective, the most preferred form of bondable title over an individual erf that may be registered in the Deeds Office.
- General Residential – While the term is normally associated with high-rise blocks of flats or apartments at a relatively high density depending on the actual zoning controls, in reality it covers all lesser forms of residential development from individual detached houses upwards and usually also including hotels, boarding houses, hostels, etc.
- Group Housing – This housing form is very similar to Cluster Housing, but unlike the latter where ownership is by sectional title with the common property being held in joint indivisible ownership, ownership of each curtilage is by freehold title while the roads and open space are both owned and maintained by the local authority. Similarly the development density would normally be medium.
- Intermediate Residential – This term is applicable to housing areas that are zoned to cater for residential developments falling between high density, and often high rise, residential and low density detached housing, i.e. it is of a medium density nature.
- Leasehold – This is a form of ownership whereby an individual obtains possession of a portion of land for development purposes for a limited period of time, normally between twenty and ninety nine years. Approval of the "subdivisions" would have still to be obtained prior to registration in the Deeds Office. Many longer-term leasehold ownerships have been converted in time to freehold title.
- Medium Density Housing – While the comments applicable to Intermediate Residential above should be fully interchangeable, Medium Density Housing was a term mistakenly also used for multi-unit developments or development without subdivision within Special Residential zones, where NO increase in density was permitted by the zoning and the controls, i.e. total number of units was determined by developable area being divided by the otherwise minimum erf area. The term Multi-Unit Development is therefore seen as being more appropriate in these circumstances.
- Mini-Subs – Subdivisions smaller than the minimum subdivisional area required for a parent erf in a zone permitting Multi-Unit Development.

  Within a Multi-Unit development in the past, ownership would have normally been by sectional title and the total number of permitted residential units determined by the applicable density allowed in an Intermediate Residential zone or, in the case of Special Residential zoning, by dividing the developable site area by the otherwise minimum subdivisional area for the particular zone.

  There are a number of problems associated with sectional title including that the sectional unit has to be completed before the section may be registered and be transferable, lack of flexibility in the end product sought by a future owner and difficulty in securing approval to extend an existing section by an existing owner. Most of the problems may be resolved if the "exclusive use" area, including the section's footprint, may become a bondable freehold site. Visually on the ground there is no obvious difference between the two land ownership concepts, which does not affect density in any way.

  This has led in recent time to a switch in the market place for a requirement for miniature subdivisions, less than that normally permitted for the parent site. This subdivision may be sold off to individual owners, who would then be obliged to build, or have built, to a development theme and to become joint owners of the common property or land. This common property is then held by a Homeowners Association; similar in concept to that of a Body Corporate in a Sectional Title scheme.

- **Multi Unit Development** – Means a development in which more than a single unit may be developed on a site. There is NO density connotation. The applicable zoning and controls would determine density. The land ownership of the individual units may be by either Sectional Title or by Mini-Subs.
- **Permission-to-Occupy (PTO)** - A loose form of tenure usually associated with the tribal areas of the erstwhile KwaZulu. Individual prospective homebuilders would normally approach the tribal council of the inkosi and his indunas (chief and elders) in a particular tribal area for permission to build. The tribal council would keep a register of where permission to occupy land has been given and the building will proceed on un-demarcated land. In more significant developments the Ingonyama (Lion) Trust, as the custodian of all ex-KwaZulu land would be approached for permission to occupy land and survey diagrams, following beaconing, would eventually be prepared for successful applicants. Permission-to-Occupy rights would not normally be bondable.

  This term is also applicable to where permission may be granted by a landowner in other areas for certain public or other works to be undertaken prior to the formal acquisition of land.
- **Planned Unit Development** – Means development within a zone, which provides for an infinitely flexible approach to housing provision depending on market demand. The only limits set in the zone controls are the number of permitted units and the height. It is then up to the developer to determine the housing typology, floor area controls, coverage and building lines. The zone would, prior to building plans being approved, require the submission of an overall site development plan to the local authority, which may require opportunity for public comment prior to approval. The site development plan effectively takes on the role of a mini-town planning scheme, which may include matters such as minimum building lines and maximum coverage and floor area. The zone may, in addition to allowing residential development, provide for limited commercial and community facilities with a view to serving primarily the inhabitants of a particular development and their guests.
- **Portion** – means a subdivision of an erf. From 1 June 1997 the use of the word Subdivision or Sub in KwaZulu-Natal have been replaced by the words Portion or Port. as directed by the Surveyor General.
- **Real Rights** means legal rights to develop in terms of the Sectional Title Act No 95 of 1986 on a designated area of land and registered with the Register of Deeds.

This does not necessarily imply that such development may be possible from either the local authority's or the environmental authority's perspective!

When a developer in the past developed a sectional title scheme, he/she may, due to the significant cost implications in completing all units, have elected to defer development of certain units or phases of units. The remaining land becomes common property in which all the new unit owners have a common undivided share and who might not agree to further development. To overcome this potential clash of interests the Sectional Title Act provides for developers to develop further units at a later stage by registering Real Rights over the land for the additional units. He/she is also able to secure development bonds from financial institutions on these Real Rights. Similarly the Real Right may be sold in its entirety to a further developer, who may then exercise the right to develop further units. The local authority has no role in this approval process. Generally, this provision has worked reasonably well for such scenarios and where a real right usually provided for a number of units within a designated area.

However in the early 2000s an alternative use of the Sectional Title Act provision has been made use of by certain developers who have used it as a vehicle to register one real right for each individual projected unit. These Real Right areas are then beaconed on the land and sold off to individual "developers" who have in turn developed their individual houses on the "site" and fenced them off. Effectively such a development becomes a de facto conventional residential township, but which has not gone through either the local or provincial authority's approval processes for township development. As a result there are no conditions of establishment and consequently no minimum standards are set for the provision of services etc.

The public have often not fully understood the concept and have considered that they have bought a building site within a conventional township. The strong possibility also exists in these circumstances that the completion of the Section Title processes involving the measuring up of the finished units, or alterations and additions thereto, ongoing determination of the Participation Quota or registration in the Deeds Office will not be effected. It is understood that in recent time that some financial institutes have become reluctant to bond units in such developments.

- Rural Residential – a term commonly used with respect to zones rather than any particular type of residential unit. The residential structure erected within such a zone would normally be an individual detached unit on an individual site and normally not higher than two storeys. Rural Residential is of a low density nature and such zones may be expected to be found on the periphery of the urban areas. It may be expected that "country type" activities, e.g. keeping of horses, including stables, and low-key or part-time farming, will take place on such sites rather than boundary to boundary manicured gardens as may be found on large sites in Special Residential areas. Density is normally designated by a simple number used as a suffix to the zone, e.g. Rural Residential 1, and reference needs to be made to an appropriate clause in the town planning scheme to ascertain the minimum erf size e.g. 4000 m2.

While not termed officially Rural Residential, a number of other zones may be found which are also effectively Rural Residential in nature. This includes Agriculture zones with minimum erf sizes of 1.5 hectares or 2 hectares and the so-called Conservancy zone in Alverstone, which while it has a minimum erf size of 15 hectares, the subdivisions, which occurred prior to the zoning being put in place, are normally considerably smaller. The use of land in these areas on the urban periphery, such as at Shongweni, is being used less and less for true commercial agriculture purposes as, when subdivided down, the erf sizes are generally not viable for such use, but alternatively lend themselves for country mansions and the stabling of horses.

- Sectional Title – A Sectional Title development is a development, which may be multi-storey and/or even high rise, undertaken in terms of the Sectional Title Act No 95 of 1986 and where a land surveyor or architect has to measure up the completed units, termed sections, and prepare plans reflecting the sections which extend to the centre of walls, floors and ceilings. Based on the areas of the respective Sections, Participation Quotas (decimal fractions of one) are prepared which sets out the respective proportional contribution of each individual future owner towards common costs incurred by the development. These costs as reflected in the monthly levy and possible special levies. The Surveyor General approves the Sectional Plans and the sections are then registered with the Registrar of Deeds, and which process then permits the transfer of ownership of sections. All other land and building is designated Common Property and in which each individual owner has an undivided share and responsibility. The development as a whole is administered by a Body Corporate, which elects a Chairman and Trustees to handle the day-to-day matters. In the event of any individual owner wishing to extend an existing sectional title unit, the approval of the Body Corporate has first to be obtained. On completion of the particular extension the above processes need to be revisited to reflect the new status quo. This may in practice be very onerous for a variety of reasons and often as a result the correct procedures are not undertaken.

- Special Residential – implies a special type of residential unit, i.e. an individual detached unit on an individual site and normally not higher than two storeys. This is opposed to say a general residential development, which may encompass any form of residential unit from the single to multi storied and contain any number of units on the site in question. Special Residential is usually of a relatively low density. Density is normally contained in the zoning designation attached as a suffix indicating the minimum erf size, e.g. Special Residential 1800m2. The minimum areas in the zones may however vary considerably from say 200 m2 to 8000 m2, which implies a considerable variance in density! Alternatively a simple number is used as a suffix, e.g. Special Residential 2, and reference needs to be made to an appropriate clause or template in the scheme to ascertain the minimum erf size.

- Sustainable Development – development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. It is a concept that embraces the social, economic, environmental, geographic and technological aspects and dimensions of a complex total system as it changes over time.

- Time Share - persons purchase a share in the ownership of a unit in blocks of weeks with guaranteed occupation. This share may, or may not be "bankable" and/or tradable for alternative accommodation in other locations.



ANNEXURE 9
LIST OF FORMER ETHEKWINI SCHEMES
(AS AT AUGUST 2012)

Amanzimtoti (S)

Bothas Hill (OW)

Canelands (N)

Clansthal (S)

Clermont (IW)

Consolidated Outer West (OW)

Craigieburn (S)

Dassenhoek (IW)

Development Areas (DSB Regulations)

Durban (former City of Durban) (C)

Folweni

Gillitts (OW)

Glen Anil (N)

Hillcrest (OW)

Inanda

Isipingo (incl. Isipingo Beach) (S),

Kingsburgh (S)

Klaarwater (IW)

KwaDabeka (IW)

KwaDinabukubu (OW)

Lovu (S)

Lower Illovu (S)

Lower Langefontein (OW)

Mariannhill (IW)

Mount Edgecombe (N)

New Germany (IW)

Pinetown (IW)

Queensburgh (IW)

R293 Areas : -

KwaDabeka, KwaMakhutha, KwaMashu, KwaNdengezi, Magabeni, Mpumalanga, Ntuzuma and Umlazi

Redcliffe (N)

Reunion (originally part of the Durban scheme, but shifted to the South following the re-demarcation in 1996) (S)

Shallcross (IW)

Tongaat (Incl. Tongaat Beach) (N)

Umbogintwini (S)

Umbumbulu

Umdloti (N)

Umhlanga No.1 (Umhlanga Rocks, King Shaka International Airport/Dube Tradeport & Mount Moreland) (N)

Umhlanga No.2 (Sunningdale) (N)

Umhlanga No.3 (Umhlanga Ridge) (N)

Umkomaas (S)

Verulam (N)

Waterloo (N)

Welbedagt (IW)

Westville No 1 (IW)

Westville No.2 (Reservoir Hills - originally part of the Durban scheme, but shifted to the Inner West following the re-demarcation in 1996) (IW)

Widenham (S)

NOTE: Consolidated/replacement schemes for the North, South and Inner West were adopted in September 2012 and became effective on 25th October 2012 for those regions. Outer West scheme was advertised and closed on 10 December 2012 but is still to be adopted. Above in brackets C = Central Scheme, N = North Scheme, S= South Scheme, IW = Inner West Scheme and OW = Outer West Scheme

ANNEXURE 10
PLANNING APPLICATION FORM

Development Planning, Environment & Management Unit
Environmental Planning & Climate Protection Department
166 K.E Masinga Road, Durban, 4001 • PO Box 680, Durban, 4000
Tel: 031 311 7875 • Fax: 031 311 7134
Deputy Head: Dr D Roberts

APPLICATION NO. ……..

STATUTORY APPLICATION FORM FOR CONSIDERATION BY THE ETHEKWINI MUNICIPALITY LODGED IN TERMS OF THE KWAZULU-NATAL PLANNING AND DEVELOPMENT ACT, 2008 (ACT NO. 6 OF 2008) AND THE APPLICABLE SCHEME

Please note that ALL sections of this form MUST be completed.

PLEASE TICK APPROPRIATE APPLICATION TYPE

	TYPE OF APPLICATION	√	TARIFF
1.	ALTERATION, SUSPENSION AND DELETION OF RESTRICTIONS RELATING TO LAND		
2.	CANCELLATION OF CONSENT		
3.	CLOSURE OF ROADS OR PUBLIC PLACES		
4.	CONSENT		
5.	CONSOLIDATION OF LAND		
6.	DEVELOPMENT OF LAND OUTSIDE SCHEME AREA		
7.	FORMAL AUTHORITY		
8.	LODGING OF APPEAL i.t.o. MUNICIPAL SYSTEMS ACT		
9.	PHASING / CANCELLATION OF APPROVED LAYOUT PLAN		
10.	RELAXATION		
11.	REZONING		
12.	SCHEME AMENDMENT		
13.	SITE DEVELOPMENT PLAN		
14.	SUBDIVISION OF LAND		
15.	ANY OTHER STATUTORY APPLICATION NOT LISTED ABOVE (State Type) ……		

IS THIS A COMBINED APPLICATION? (Tick the appropriate box)	YES		NO	

PLEASE TICK APPROPRIATE SCHEME TO WHICH THE APPLICATION APPLIES

SCHEME	TICK WHERE APPLICABLE	SCHEME	TICK WHERE APPLICABLE
Amanzimtoti Scheme		**Redcliffe Scheme**	
Canelands Scheme		**Reservoir Scheme**	
Clansthal Scheme		**Shallcross Scheme**	
Craigieburn Scheme		**Tongaat Scheme**	
Consolidated Outer West Scheme		**Umbogintwini Scheme**	
Dassenhoek Scheme		**Umdloti Beach Scheme**	
Durban Scheme		**Umhlanga Scheme No 1**	
Gillitts Scheme (Activity Corridor Only)		**Umhlanga Scheme No 2**	
Glen Anil Scheme		**Umhlanga Scheme No 3**	
Hillcrest Scheme (Activity Corridor Only)		**Umkomaas Scheme**	
Isipingo Scheme		**Verulam Scheme**	
Kingsburgh Scheme		**Welbedagt Scheme**	
Lower Illovo Scheme		**Westville No. 1 Scheme**	
Mariannhill Scheme		**Widenham Scheme**	
Mount Edgecombe Scheme			
New Germany Scheme			
Pinetown Scheme		**Part 5 of the DSB Regulations**	
Queensburgh Scheme		**Outside A Scheme**	

PARTICULARS OF SITE

Cadastral Description/ Erf No.: .....

.....

.....

Street Address:

.....

Area of Land: .....

Title Deed No.: .....

In the case of Alteration, Suspension or Deletion of Restrictive Conditions Relating to Land, is the property

Bonded: .....

PARTICULARS OF APPLICANT

Name and Postal Address of Applicant: .....

.....Code: .....

Cell Number: .....Land Line: .....

Fax Number: .....Email: .....

Signature of Applicant: .....

PARTICULARS OF REGISTERED OWNER

Name and Postal Address of Registered Owner: .....

.....Code: .....

Cell Number: .....Land Line: .....

Fax Number: .....Email: .....

Signature of Registered Ower: .....

NAME AND ADDRESS OF DULY AUTHORIZED AGENT:.....

.....

.....

Cell Number:..... Land Line: .....

Fax Number: ..... Email: .....

Signature of Duly Authorized Agent: .....

DETAILS OF APPLICATION:

(detail what the application is for. Any exclusions render the application null and void)

.....

.....

.....

.....

ATTACHED to this application is the following documentation: Please tick:

1.	Owners Consent	
2.	Copy of Title Deeds & S-G Diagram	
3.	Required number of Copies of Planning Motivation	
4.	Site/Layout Plans	
5.	Zoning Certificate and locality Plans	
6.	On site Parking Provision	
7.	Approved Traffic Impact Assessment (where applicable)	
8.	Copy of ROD (where applicable)	
9.	Service Level Agreement (where applicable)	
10.	Geotech report (where applicable)	
11.	Body Corporate Consent/ Home/Property Owners Consent etc. (where applicable)	
12.	In the case of a Trust- a resolution authorising such application be made (where applicable)	
13.	Power of Attorney / Authorization (if not signed by the Registered Owner)	
14.	Clearance from Provincial Department of Transport or SANRAL, whichever is applicable (where applicable)	
15.	In the case of an application for the Alteration, Suspension or Deletion of Restrictions relating to Land, which creates a servitude in favour of another property, the names & contact details of all servitude holders	
	Any other information that may be considered by either yourself or the Municipality as being in support of your application:	

I/We ..... do hereby agree, in terms of Schedule1, Item 6(2), to give public notice of this/these applications where required within fourteen (14) days of the date of being notified that the application/s hereby submitted, is/are complete.

Signature of Applicant .....OR

Signature of Agent .....

(Where the Agent is signing on behalf of the Applicant in this regard, a letter of authority from the Applicant must be attached)

FOR OFFICIAL USE:

Clause reference: .....

Responsible official: .....

Application the result of enforcement: YES NO

TARIFF

RECEIPT NUMBER:..... DATE:.....

Alteration, Suspension, Deletion of Restrictive Conditions of Title	R.....
Cancellation of Consent.....	R.....
Closure of a Public Road or Public Place.....	R.....
Consent.....	R.....
Consolidation.....	R.....
Development of Land Outside Scheme Area.....	R.....
Formal Authority	R.....
Phasing or Cancellation of Approved Layout Plan	R.....
Relaxation Application	R.....
Rezoning.....	R.....
Scheme Amendment	R.....
Site Development Plan	R.....
Subdivision	R.....
Total fee.....	**R**.....

ANNEXURE 11 - Building Plan Application Form

ETHEKWINI MUNICIPALITY - SUSTAINABLE DEVELOPMENT AND CITY ENTERPRISES

Development Planning, Environment & Management Unit
Development Application & Approvals

APPLICATION IN TERMS OF SEC. 4(2) OF ACT NO. 103 OF 1977
Please Tick (✓) the Appropriate boxs &
Complete all documentation in BLACK INK only

		Related LUM Authorization:	LUM Application No: FOR OFFICIAL USE ONLY	
Proposal:	New	Additional / Alterations	M.B.W (Minor Building Work)	Deviation to Approved plan number:
Residential:	Dwelling	Townhouse	Flat	Tourism / Accommodation / Casino
	No. of Units (specify) (where Townhouse or Flats selected above): (Units)		No. of Buildings (specify) (where Townhouse/Flats/Tourism/ Accommodation/Casino selected above): (Blogs)	
	Other Residential (specify)			
Non-Residential:	Office / Banking	Industrial / Warehousing / Workshop	Shopping Space	Worship / Sports / Recreational Clubs
	Hospital / Clinics		School / Creche / University / Technikon / Library	
	Other Non-Residential (specify)			
Within:	Ethekwini	Former Township / R293 Areas	Council Strategic Project	Government / Courtesy application
Proposed:	Value: R :		Projected cost of proposed building work - required for statistical purposes for Statistics SA, not for valuation purposes	
Proposal contains:	Encroachments into/over/under Council property or servitude area in favour of the Local Authority		Yes	No
Description of Works Proposed				

New and / or Additional Floor Area:
(For fee calculation only)

Additional schedule on separate sheet may be submitted where space or categories is not adequate. Format to be as shown to right.

Site Area		m^2
Basement 1		m^2
Lower / Ground Storey		m^2
Upper / Ground Storey		m^2
1st Storey		m^2
2nd Storey		m^2
3rd Storey		m^2
4th Storey		m^2
5th Storey		m^2
Penthouse Storey		m^2
Plant / Lift Motor Rm		m^2
Total Floor Area		m^2

Definition:
Floor Area - means the total covered plan area of all floors contained within the outer extremities of a building.

Explanation:
The floor area for Submission fee calculation is determined as follows:
The floor area is taken as the total plan area of every floor measured from the external face of the external walls (and the face of retaining wall in contact with the ground) ie: overall dimensions of building are used for calculation of floor area, NOT internal room dimensions.

F.A.R / P.A.R / Coverage areas are NOT to be used in calculating the proposed new or additional areas.

Exceptions:
Lift shafts, service and areas are excluded on each floor except the lowest floor except on multi- stored building where service ducts are required to be sealed between floors due to fire requirements, then such service ducts are included into the floor area

Calculation:
Staircases, travelators, escalators, ect. are included on all floors except the last or upper most floor served by such service.

Property details:	Street Address:	
	Age of Exist Building's yrs	Suburb:
	Cadastral Description (Erf number):	
	NOTE: The OWNER is responsible for ensuring compliance with the National Heritage Resources Act, 1999, National Environmental Management Act, 1999, Local Government Municipal Systems, Act, 2000, ect. Is complied with prior to submitting an application to the Local Authority for consideration. In respect of the National Heritage Resources Act, 1999, ANY & ALL development, but not limited to new structures, the demotion of and / or alteration or additions to structures, on sites that contain existing buildings older than 50 years, require permits to be contained from Ama's aKwa-Zulu Natal prior to council approval.	

Author's details:	[Non-compliance with the Submission Checklist will result in the Application being refused creating un-necessary delays for the Owner / Applicant]	
Note: Person responsible for design to complete and submit SANS 10400-A Form 1	Name / Arch Practitioner:	Profession:
	SACAP Reg. number:	SACAP Architectural Compliance Certificate, fully completed to accompany this form upon submission.
	Contact Details: (W) (Cell)	
	Signature:	Date
	NOTE: The owner & Author are responsible for tracking the status of the application once submitted to the council.	

ANNEXURE 12

Proforma Township Conditions of Establishment

Subdivision and Consolidation of Land (choose)

REF. NO .....: PDA .....

PROPERTY: PORTION.....

TITLE DEED: T...../20 .....

REGISTRATION AREA: FT

POSTAL ADDRESS: .....

SUBMITTED BY:.....

ON BEHALF OF: .....

REGISTERED OWNER: .....

PROPOSAL: CREATION OF PORTION.....AND REM OF

.....

ETHEKWINI REQUIREMENTS :

In terms of Section 26 (3) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008), the Plan No. S10/7/27 dated 29 September 2010 of the above subdivisional application, is approved subject to the following conditions:-

A. CONDITIONS OF ESTABLISHMENT (APPROVAL)

1. Subdivisional layout (Minimum lot area, frontage and accessways to hatchet shaped subdivisions)

The area of each of Portion.....and the Remainder shall not be less than.....m² in extent (exclusive of accessways in hatchet subdivisions) and the street frontage to Portion.....and the Remainder shall not be less than 18m. The access strip serving Portion.....is to be not less than 4m in width, and is to be included wholly within and form part of such Portion.

2. Lodging of diagrams

The owner shall lodge diagrams relating to the proposed subdivision with the Surveyor-General for approval in terms of section 32 within five years of the date of the approval of the subdivision as contemplated in terms of section 29 of the Act. No certificate as required in terms of Section 31(5) shall be issued unless the said SG diagrams have been approved by the Surveyor General.

3. Lodging in Deeds Office

When the first registration is sought, a copy of this letter, signed by the Head : Development Planning, Environmental Planning and Climate Protection and Management, the certificate contemplated by Section 31(5) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008) and the approved diagrams together with the deeds and other documents that the Registrar of Deeds may require for the registration of the subdivision or consolidation of the land as required in terms of Section 34(1) of the

KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008) shall be lodged with the Registrar of Deeds.

4. Acceptance of Conditions

The owner's attention is drawn to the provisions of section 26(6) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008) and is advised to signify in writing to the Head : Development Planning, Environmental Planning and Climate Protection and Management, formal acceptance of the conditions subject to which the application is granted. Alternatively the owner is advised to exercise his / her right of appeal in terms of .....must be lodged within the appeal period stipulated in the Act, should the conditions not be acceptable.

Combined applications: Written undertaking required from owner with respect to withdrawal of SG diagram should rezoning not be successful.

5. Sale prior to transfer

In terms of Section 31(1) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008), a person may not (a) and (b).....until such time as the Head: Development Planning, Environmental Planning and Climate Protection and Management, has certified that conditions .....of approval have been complied with.

6. Building prior to transfer

In terms of Section 31(3) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008), you may not develop the property until such time as the Head: Development Planning, Environmental Planning and Climate Protection and Management, has certified that conditions .....of approval have been complied with.

The compliance with Condition (1) does not prohibit the occupation of the buildings or structures existing on the property at the time of application for which building plan approval has been granted prior to the approval of this application to subdivide / consolidate the land.

7. Water supply

Prior to the approval of the township, the owner shall lodge with the Head : Development Planning, Environmental Planning and Climate Protection and Management, a certificate furnished by eThekwini Water, P O Box 1038, Durban, 4000 to the effect that arrangements to its satisfaction have been made for the provision and conduct of a water supply to the private township. A copy of the approved subdivisional diagrams, or the General Plan, shall be lodged with Metro Water.

8. Sewage disposal

Prior to the approval of the township, the owner shall lodge with the Head : Development Planning, Environmental Planning and Climate Protection and Management, a certificate furnished by the eThekwini Wastewater Management Department, P O Box 1038, Durban, 4000 to the effect that arrangements have been made to its satisfaction for the disposal and/or purification of sewage and waste water which will result from the occupation of the township in terms of the clauses of the Water Act No. 36 of 1998. Such certificate shall be issued in terms of the requirements of Durban Metro Wastewater Management Department.

9. Amendment of the town planning scheme

Prior to the certificate as contemplated in terms of section 34(2) being issued, notification that the necessary **amendment** to the .....Scheme has been adopted by eThekwini Municipality in terms of Section 13(4) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No.6 of 2008) and is not subject to any order of Court or appeal in terms of Section 28 of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008).

10. New road

A road not less than.....metres in width is to be established in the layout as shown in pink on the approved plan of the township. The divergence from the boundary to the radius of the curve at any point is not to exceed 2% of the width of the road. Such road is to be beaconed and registered as a road sub in favour of the eThekwini Municipality, simultaneously with, or prior to the first/subdivisional registration.

11. Temporary turning space

A temporary turning space/portion of a temporary turning space which, if it is in the form of a turning circle, shall have a diameter of not less than 21 m, is to be established as shown on the approved plan of the township. The turning space is to be registered in the relevant subdivisional transfer(s) as a road servitude in favour of the eThekwini Municipality in such a manner, that it may be cancelled with the consent of the eThekwini Municipality, as soon as the public street has been extended to form a through route linking with another public street, or to a point where a permanent turning space has been provided.

12. Temporary road access

A temporary road not less than .... metres in width is to be established in the layout/straddling the common boundary of ..... along the ..... boundary of ..... Such temporary road is to be registered as a road servitude in favour of .... in such a manner in the relevant subdivisional transfer(s) that it shall lapse when the road along .... boundary/ies to serve such subdivision/s has been satisfactorily constructed and is linked with a constructed road.

13. Stormwater drainage (Department of Transport: KwaZulu-Natal)

Attention is drawn to the conditions imposed by the Department of Transport: Kwazulu-Natal as set out in their minute, reference , dated , addressed to .....

14. Stormwater (Transnet)

Attention is drawn to the conditions imposed by Transnet as set out in their minute, reference , dated , addressed to .....

15. Closure of public places and roads

Prior to the certificate as contemplated in terms of section 34(2) being issued, notification that the necessary application for the closure of a public place / road has been adopted by eThekwini Municipality in terms of section 74(3) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No.6 of 2008) and is not subject to any order or appeal in terms of Section 62 of the Local Government: Municipal Systems Act of 2000 (Act No. 32, 2000).

16. Servitude along riverward boundary

A servitude not less than .... metres in width is to be established along the riverward boundary of the property; such servitude shall be registered in favour of the eThekwini Municipality prior to, or simultaneously with the first subdivisional registration as set out in section C.

17. Servitude along a watercourse

A servitude not less than .... metres in width, and covering the natural drainage line(s) traversing Portion/s and Remainder is to be surveyed in accordance with the Survey Regulations and registered in favour of the eThekwini Municipality prior to, or simultaneously with the first subdivisional registration, as set out in section C.

18. Servitude indicated on the plan

A servitude not less than ..... metres in width, as shown in on the approved plan of the township, and traversing Portion/s and the Remainder is to be surveyed in accordance with the Survey Regulations and

registered in favour of the eThekwini Municipality prior to, or simultaneously with the first subdivisional registration, as set out in section C.

OR

A conservation servitude not less than …. metres in width, as shown in on the approved plan of the township, and traversing Portion/s and the Remainder is to be surveyed in accordance with the Survey Regulations and registered in favour of the eThekwini Municipality prior to, or simultaneously with the first subdivisional registration, as set out in section C.

The land shall not be for the use of the general public, but shall be for the sole benefit of the property owner.

OR

A conservation servitude not less than …. metres in width, as shown in on the approved plan of the township, and traversing Portion/s and the Remainder is to be surveyed in accordance with the Survey Regulations and registered in favour of the Property Owners Association (POA) and the eThekwini Municipality prior to, or simultaneously with the first subdivisional registration, as set out in section C.

The conservation servitudes as indicated on the layout plan are to be fenced off. The conservation areas are to be rehabilitated and a construction and operation Environmental Management Plan (EMP) is to be prepared for approval and adopted as part of the Property Owners Association (POA) rules and to govern its usage and plan for their rehabilitation. An Environmental Control Officer (ECO) is to be appointed to monitor compliance with such EMP during construction.

The land shall not be for the use of the general public, but shall be for the sole benefit of the property owner(s).

19. Right-of-way servitude

A right-of-way servitude not less than …. metres in width, as shown in pink on the approved plan of the township, and traversing Portion/Erven is to be surveyed in accordance with the Survey Regulations and registered in favour of the Portion/Erven in order to ensure access to such Portion/Erven.

20. Petroleum pipeline servitude

Attention is drawn to the existence of the petroleum pipeline servitude crossing the property and to the regulations governing the erection of buildings or other improvements in its vicinity. Details of these regulations may be obtained from the Regional Manager, Petronet.

21. Telkom

A Telkom plant may be affected by the proposal and alterations to the existing plant may be necessary. An estimate of the cost involved will be furnished upon receipt of a written request to Telkom. A request to relocate the plant shall be undertaken at the owners request and cost. Telkom cannot accept responsibility for any re-instatement costs and the plant should be accessible at all times.

22. Eskom

Eskom services will be affected as there is a wayleave agreement in favour of Eskom over the property. This constitutes a building restriction of metres over Portion/s which may not be encroached upon by the owner/s. Should these lines need to be moved an application must be made to Eskom's office (tel.) and the cost of such removal shall be borne by the developer.

OR

Attention is drawn to Eskom's requirement that should any of their assets have to be relocated the cost shall be borne by the owner. Should assistance be required when excavation starts, the Office (Tel. No.) can be contacted.

23. Withdrawal of previous approval

The approval granted by the Department of Local Government and Traditional Affairs in respect of ...., as set out in the Grant of Application PTB 200 / , dated , addressed to , is to be withdrawn.

OR

The approval granted by the Head: Development Planning, Environmental Planning and Climate Protection and Management in respect of ...., as set out in the Grant of Application S 200 / , dated , addressed to , is to be withdrawn.

24. Earlier application to be finalised

Prior to the certificate as contemplated in terms of section 34(2) being issued the Grant of Application P.T.B. /DSP /S , dated , addressed to , is to be finalised.

25. Separate registration

Prior to the registration of any of the proposed subdivisions, Portion is to be separately registered in accordance with the conditions imposed in the Grant of Application P.T.B. , DSP / S .....dated , addressed to .....

26. Withdrawal of diagrams

The owner shall have diagram/s S.G. No./s. withdrawn.

27. Cancellation of conditions of title

Prior to the certificate as contemplated in terms of section 34(2) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008), being issued, the owner is to have condition(s) removed from Deed of Transfer No. or any subsequent registration of such deed.

28. Subsequent consolidation because of subdivision

(* Subdivide first then consolidate)

Simultaneously with the registration of Portion , such Portion and Portion/Erf are to be transferred into common ownership and a Certificate of Consolidated Title registered in respect of the consolidated figure, which is to be designated , Registration Division.

29. Electricity sub-station

An electricity sub-station site is to be established on Portion to the satisfaction of eThekwini Municipality / ESKOM. Such sub-station site is to be beaconed on the ground and registered as a servitude in favour of , prior to, or simultaneously with the first subdivisional registration/ in the relevant subdivisional registration.

OR

Attention is drawn to Eskom's requirement that no building or structure are to be permitted within .... metres of the overhead power lines.

30. Reserved subdivisions (* Road portions)

Portion is to be transferred to the eThekwini Municipality for road/public place purposes prior to, or simultaneously with the first subdivisional registration.

31. Notarial deed in restraint of free alienation

Portion is to be transferred into the same ownership as ..... and simultaneously therewith a Notarial Deed in Restraint of Free Alienation stipulating that Portion and Portion shall not be sold, alienated, mortgaged, leased, dealt with or disposed of in any manner separately. Such condition shall be in

favour of eThekwini Municipality.

32. South African National Roads Agency (SANRAL)

Attention is drawn to the conditions imposed by the The South African National Roads Agency Limited and National Roads Act, Act 7 of 1998 as set out in the minute, reference, dated, addressed to .....

33. Omnibus servitudes

The owner's attention is drawn to the omnibus servitudes along the common boundaries of ..... that will remain on consolidation. If it is likely that such servitudes will hamper future development of the consolidated lot, the owner is advised to have the servitudes cancelled through a removal of restrictions application.

34. Access (Department of Transport: Kwazulu-Natal)

Attention is drawn to the conditions imposed by the Department of Transport: Kwazulu-Natal as set out in their minute, reference, dated, addressed to .....

35. Soil instability

The owner shall lodge with the Manager : Land Use Management a report by a professional engineer who specialises in soil mechanics, indicating the work, if any, which will require to be done to make Portion/s /the road and road cuttings/ stable, and a certificate that sufficient geological data has been obtained, or is known to identify those areas, if any, which are or which are liable to become unstable or unsuitable for normal building purposes due to soil instability, and the township lots, if any, thereby affected shall be identified and listed in said certificate.

Such report shall have been approved by the eThekwini Municipality and the requirements and recommendations thereof will be monitored by the eThekwini Municipality throughout the development of the township in order to ensure that said requirements and recommendations are implemented to the satisfaction of the eThekwini Municipality.

36. Flood line

Prior to the certificate as contemplated in terms of section 34(2) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008) being issued, the eThekwini Municipality shall ensure that the information pertaining to the calculation of the 1 in 50 year Flood line has been submitted and that the position of the Flood line has been depicted on the layout plan by a Professional Engineer. No development may occur below the 1 in 50 year Flood line.

OR

The owner is warned that in respect of those portions of the subdivisions that are likely to be affected by flood waters on an average every 100 years, the Head : Development Planning, Environmental Planning and Climate Protection and Management reserves the right to restrict development or to impose special conditions relating to the erection of a building thereon.

37. Flood warning

Prior to the certificate as contemplated in terms of section 34(2) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008) being issued, the owner shall lodge with the eThekwini Municipality a copy of the agreed upon deed of sale for Portion which shall include a condition drawing the purchaser's attention to the fact that the properties are subject to flooding and that the construction of any building will be subject to the relevant controls of the eThekwini Municipality bylaws and building regulations.

38. eThekwini Electricity requirements

The owner shall comply with the requirements of eThekwini Electricity as set out in their letter dated . (Ref.)

39. Department: Agriculture, Environmental Affairs and Rural Development

The owner shall comply with the conditions imposed in the Record of Decision EIA/5740 dated 29 May 2007, prior to development commencing on the land.

40. Compliance with the National Department of Agriculture

The owner shall comply with the conditions imposed by the National Department of Agriculture as set out in their letter dated ..... (Ref. No. .....), prior to development commencing on the land.

B. CONDITIONS TO BE COMPLIED WITH PRIOR TO APPROVAL IN TERMS OF SECTION 34(2)

Prior to the issuing of the certificate contemplated by section 34(2) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008), the owner shall, in addition, comply with the following conditions, in respect of each subdivision to be registered, to the satisfaction of the eThekwini Municipality or, where the eThekwini Municipality is not the supplier of a particular service, to the satisfaction of the relevant service authority. Written proof of compliance, from the authority concerned, will be required in respect of each condition. The owner shall act on the advice of a professional engineer in respect of any work done in compliance with condition B.

For the purpose of these conditions a "professional engineer" shall mean:-

> A person who is registered as a professional engineer in terms of Act No. 81 of 1968 and who possesses cognate experience in the particular branch of engineering applicable to the service under consideration.

Alternative --- Entering into an agreement with the eThekwini Municipality re. deposit with Council for construction of roads, stormwater etc. Condition 11 below

1. Building line and buildings

Prior to the transfer of the erven the owner is to ensure that:

(a) no buildings other than those permitted in terms of the by-laws or town planning scheme exist on any one proposed lot;

(b) dilapidated buildings have been renovated; and

(c) unauthorised structures have been demolished,

provided that in exceptional circumstances an agreement may be entered into between the applicant and the eThekwini Municipality, exempting specified buildings under circumstances which must be stated by the municipality in an agreement.

2. Water supply

A supply of potable water shall be provided to within the normal connection distance of the boundary of each subdivision to be registered, in accordance with the arrangement made in terms of condition A.

3. Sewage disposal

An efficient and sanitary system for the disposal of sewage and waste water shall be provided for each of the subdivisions to be registered, in accordance with the arrangement made in terms of condition A.

4. Electricity

The owner shall provide an efficient supply of electricity to within the normal connection distance of the boundary of each subdivision to be registered.

5. Roads

The owner shall construct the road referred to in Condition A / to the satisfaction of the Head : Engineering and shall furnish an undertaking that the said road be maintained in good order and repair until it is taken over by the eThekwini Municipality.

6. Stormwater drainage

The owner shall construct such facilities as are necessary for the control and disposal of storm-water from the township.

7. Platform for steep land

The owner shall lodge with the Manager: Land Use Management drawings to a suitable scale showing how the driveway, house and outbuildings can be constructed on Portion/s, including earthworks and/or retaining walls and such drawings shall have been approved by a professional engineer and the eThekwini Municipality.

8. Relocation of services

The owner shall relocate shown in on the approved plan of the township so that they are within the/ omnibus servitude/ specific servitude to be registered.

9. Adequate vehicular access

Adequate, all weather vehicular access must be provided to Portion/s. This requirement refers to the normal access to a subdivision via a public road, or a temporary access pending the provision of the future public road. It does not include the usual access from the street onto each subdivision.

10. Clearing of obstructions

All obstructions on the road widening strip/s/ and splayed corner/s referred to in Condition A, including fencing buildings and other structures and trees and hedges, shall be removed by the owner at his expense; provided that such fencing, buildings and other structures and trees and hedges or any part thereof, may remain on the road widening strip/s/ and splayed corner/s if the municipality so agrees, and if such an agreement is entered into between the township owner and the eThekwini Municipality.

11. Access (Department of Transport: Kwazulu-Natal)

Attention is drawn to the conditions imposed by the Department of Transport: Kwazulu-Natal as set out in their minute, reference, dated, addressed to ……

12. Roads and stormwater drainage

The owner shall deposit with the eThekwini Municipality a sum of money, the amount of which is to be determined by the municipality, to cover the cost of construction of the road/s and storm-water drainage referred to in condition/s A …….. . The certificate issued in terms of Section 34(2) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No.6 of 2008), shall not be issued until such sum has been paid and the local municipality has lodged with the Development Planning, Environmental Planning and Climate Protection and Management, a certificate that this has been done and that it assumes full responsibility for the provision of such road/s and storm-water drainage.

13. Development contribution levy (Outer West only)

Prior to the certificate as contemplated in terms of Section 34(2) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No.6 of 2008), being issued, the R11 500.00 (Eleven Thousand Five Hundred Rand) development contribution levy shall be paid to the eThekwini Municipality in terms of …… in respect of the subdivision/s prior to/ or simultaneously with the transfer of such portion. The Remainder is excluded from this levy.

C. CONDITIONS OF TITLE

(a) PDA

1. Portion/s shall be subject to the following condition:-

Omnibus servitude for services

The land shall be subject to a servitude for the provision of storm-water drainage, water supply, irrigation, sewerage, electricity, over or under the land, along any boundary thereof, other than a road frontage and within a distance of 2 metres from such boundary. Reasonable access shall be provided to such servitude at all times for the purpose of installation, maintenance, removal or extension of such services. The owner of the land shall without compensation be obliged to allow the servicing of any other land or street to be conveyed along such servitude.

Maintenance shall include cutting, trimming or otherwise dealing with vegetation so as to prevent interference with any service. The right conferred by this condition shall be exercised by the eThekwini Municipality or any other body or person legally authorised to provide such services for the benefit of the inhabitants of the township.

OR

2. Portion/s shall be subject to the following condition:-

General servitude for Municipal services

"The eThekwini Municipality reserves in perpetuity the right, without compensation, to erect, lay, maintain, use and remove any Municipal service, inclusive of standards, lines, cables, pipes, drainage channels, poles, pole stays and the like under, on and over the said land for the purpose of providing a Municipal service to the said land and other land, including the conveying of electric current, water, wastewater (sewerage), drainage and the like. The owner of the said land agrees to the servicing of the said land and any other land and street by such Municipal service as described, and further agrees not to obstruct or interfere with or allow any obstruction or interference with any Municipal service as described, or to erect any building or other permanent structure within 1 (one) metre of any such Municipal service as described, unless express consent in writing is obtained from the relevant authority within the eThekwini Municipality. Any damage done to the said property whilst in the process of erecting, laying, maintaining, using and removing the described Municipal services outside of 1 (one) metre from all sides of the said service shall be made good by the eThekwini Municipality. The owner also agrees that the eThekwini Municipality, by itself, or others appointed on behalf of, or by the eThekwini Municipality, may enter upon the said land at all reasonable times for the purpose of carrying out and enforcing the rights reserved and obligations accepted in this clause."

3. Portion/s shall be subject to the following condition:-

Omnibus servitude for services

The eThekwini Municipality or any other body or person authorised thereto by it shall without compensation have the right to construct, alter, extend, inspect and maintain any service including the provision of storm-water drainage, water supply, irrigation, sewerage, electricity, gas/or fuel supply, telecommunications, radio and television services, over or under the land in such position as may reasonably from time to time be considered necessary; provided, however, that they shall not be entitled to require the demolition of any existing building for the purpose of exercising the rights hereby conferred and provided further that after completing the works so undertaken, the property shall be restored to the condition in which it was prior to the commencement of such works.

4. Portion/s shall be subject to the following condition:-

Deposit of material

The owner of the land shall without compensation be obliged to permit such deposit of material or excavation on the land as may in connection with the formation of any street in the township and owing to differences in level between the land and the street, be deemed necessary by the eThekwini Municipality, in order to provide a safe and proper slope to the cut and fill commencing from the boundary of the land, unless he shall elect, at his own cost, to build a retaining wall.

5. Portion/s shall be subject to the following condition:-

Building line (Transnet)

No building or structure whatsoever shall be erected on the land within a distance of ..... m from its boundary abutting the Transnet Reserve, except with the consent of Transnet.

6. Portion/s shall be subject to the following condition:-

Reserved subdivisions and public places

In the event of the land, or any portion thereof, being registered in the name of any person other than the eThekwini Municipality, a public service authority or the State, such land shall, thereupon become subject to such conditions as may be decided by the Municipality

7. Portion/s shall be subject to the following condition:-

Servitudes

The land shall be subject to a servitude in favour of ..... as depicted on the diagram SG No. .

The eThekwini Municipality shall without compensation have the right to construct, alter, extend and maintain ..... within the boundary of the servitude, and shall have reasonable access thereto for the purpose of maintenance, removal or extension, and the owner of the land shall without compensation be obliged to allow services from any other land or street to be conveyed along such servitude; provided that if the owner of the land be aggrieved by the unreasonable exercise of these rights he shall have the right of appeal to the Appeal Tribunal whose decision shall be final.

Maintenance shall include trimming, cutting or otherwise dealing with vegetation so as to prevent interferences with such services. The right conferred by this condition shall be exercisable by any eThekwini Municipality or other body or person legally authorised to provide services for the benefit of the inhabitants of the township.

8. Portion/s shall be subject to the following condition:-

Conservation servitude

The land shall be subject to a conservation servitude in favour of the eThekwini Municipality as depicted on the diagram S.G. No. ...../.....

The eThekwini Municipality shall without compensation have the right to forbid any building, structure, drainage, terracing or cultivation of exotic species of vegetation and forbid the damage, destruction or removal of any indigenous vegetation within the boundaries of the servitude, except with its written consent.

Such that:

1. No earthworks or the erection of any structure, building, fencing, swimming pools, wastewater and stormwater infrastructure (including evapo-transpiration areas for on-site sanitation will be permitted in the servitude;
2. No construction of roads, tracks, driveways or dams will be permitted in the servitude area unless a dam was a feature prior to the registration of the servitude;

3. No landscaping or planting of any vegetation, unless it is a requirement for the rehabilitation of the environment in terms of a management plan agreed with the municipality, shall be permitted within the servitude;
4. No illegal harvesting, collecting, cutting, hunting or otherwise damaging of flora or fauna and soil and water resources, shall be permitted within the servitude;
5. No vehicles, motorised or unmotorised, shall be permitted within the servitude;
6. No domestic animals such as horses, cattle, goat, sheep, etc. (grazers) shall be permitted within the servitude;
7. The servitude area shall not be utilised for any purpose other than that approved by the municipality or provided for in terms of a management plan approved by the municipality.
8. The land shall not be for the general public, but shall be used for the sole benefit of the property owner.

9. Portion/s shall be bound by the following condition:-

Party wall servitudes

(i) Subject to a half width party wall servitude(s) in favour of the adjoining lot(s), as shown on the Diagram S.G.No.; and

(ii) With the benefit of a half width party wall servitude(s) over the adjoining lot(s), as shown on the Diagram S.G.No.

10. Portion/s shall be subject to the following condition:-

Flood warning

The property/ies is/are subject to flooding as shown by the 1 in 100 year flood line on the layout plan ……. dated……..and prepared by ……. Construction of any building will be subject to the relevant controls of the eThekwini Municipality bylaws and building regulations and no development may occur below the 1 in 50 year flood line.

(b) THE KWAZULU-NATAL PROVINCIAL ROADS ACT, 2001 (ACT NO. 4 OF 2001)

You are advised that the Minister as Controlling Authority in terms of section 20 of the Kwazulu-Natal Provincial Roads Act No. 4 of 2001, has approved the layout as represented on the accompanying plan 200/ without imposing any further conditions/subject to the following conditions:-

(c) SOUTH AFRICAN NATIONAL ROAD AGENCY LIMITED & NATIONAL ROADS ACT, 1998,

You are advised that the ……. as Controlling Authority in terms of section …. of the South African National Road Agency Limited & National Roads Act No 7 of 1998, has approved the layout as represented on the accompanying plan ……..without imposing any further conditions/subject to the following conditions:-

D. SECTION 34(2) CERTIFICATE

The owner's attention is drawn to the fact that no certificate as required in terms of section 34(2) of the KwaZulu Natal Planning and Development Act 6 of 2008, shall be issued until the owner has complied with Conditions A.4, A.8 and B.1 above.

DATE :

HEAD: DEVELOPMENT PLANNING, ENVIRONMENT PLANNING AND CLIMATE PROTECTION AND MANAGEMENT

Development Planning, Environment & Management Unit
Development Application & Approvals
166 K.E Masinga Road, Durban, 4001 • PO Box 680, Durban, 4000
Tel: 031 311 7875 • Fax: 031 311 7134
Deputy Head: Dr D Roberts

ANNEXURE 13 - EPCPD Complaints Form

ENVIRONMENTAL PLANNING AND CLIMATE PROTECTION DEPARTMENT COMPLAINTS FORM

COMPLAINANT DETAILS

(NOTE: Complainants may remain anonymous if they choose to be, however, for the purposes of clarity or for obtaining further information it is imperative that there is a way of contacting them. It must also be made clear that the complainant's identity will be safeguarded by this office, unless the case goes to court and they are needed to give evidence)

Name: .....Email:.....

Address:.....

.....

.....

Telephone: .....

Nature of Complaint /Incident: .....

DETAILS OF ALLEGED PERPETRATOR (IF AVAILABLE)

Name/Company name/ telephone number/ vehicle registration, etc.:

.....

.....

.....

.....

.....

Street Address/Property Description /Details of how to access the site:

.....

.....

.....

.....

.....

.....

DETAILS OF ACTION TAKEN /REFERRAL

(NOTE: if the matter is referred to another Department, supply details of the Department and official's details. Append any supporting documentation, if necessary.)

.....

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Date at Closure: ..... Signature: .....

ANNEXURE 14
EPCPD Enquiry Form

Development Planning, Environment & Management Unit
Development Application & Approvals
166 K.E Masinga Road, Durban, 4001 • PO Box 680, Durban, 4000
Tel: 031 311 7875 • Fax: 031 311 7134
Deputy Head: Dr D Roberts

ENVIRONMENTAL PLANNING AND CLIMATE PROTECTION DEPARTMENT ENQUIRY FORM

Please complete and return via Fax to 031 311 7134 or Pam.Ramnarain@durban.gov.za

Name: .....

Telephone: ..... Fax No: Email: .....

Property Description: .....

.....

Street Address: .....

Zoning: .....

Interest in the Property e.g. owner/estate agent etc: .....

Nature of Enquiry/Complaint: .....

.....

.....

.....

.....

.....

NB: A locality plan must be included with this fax/email submission.

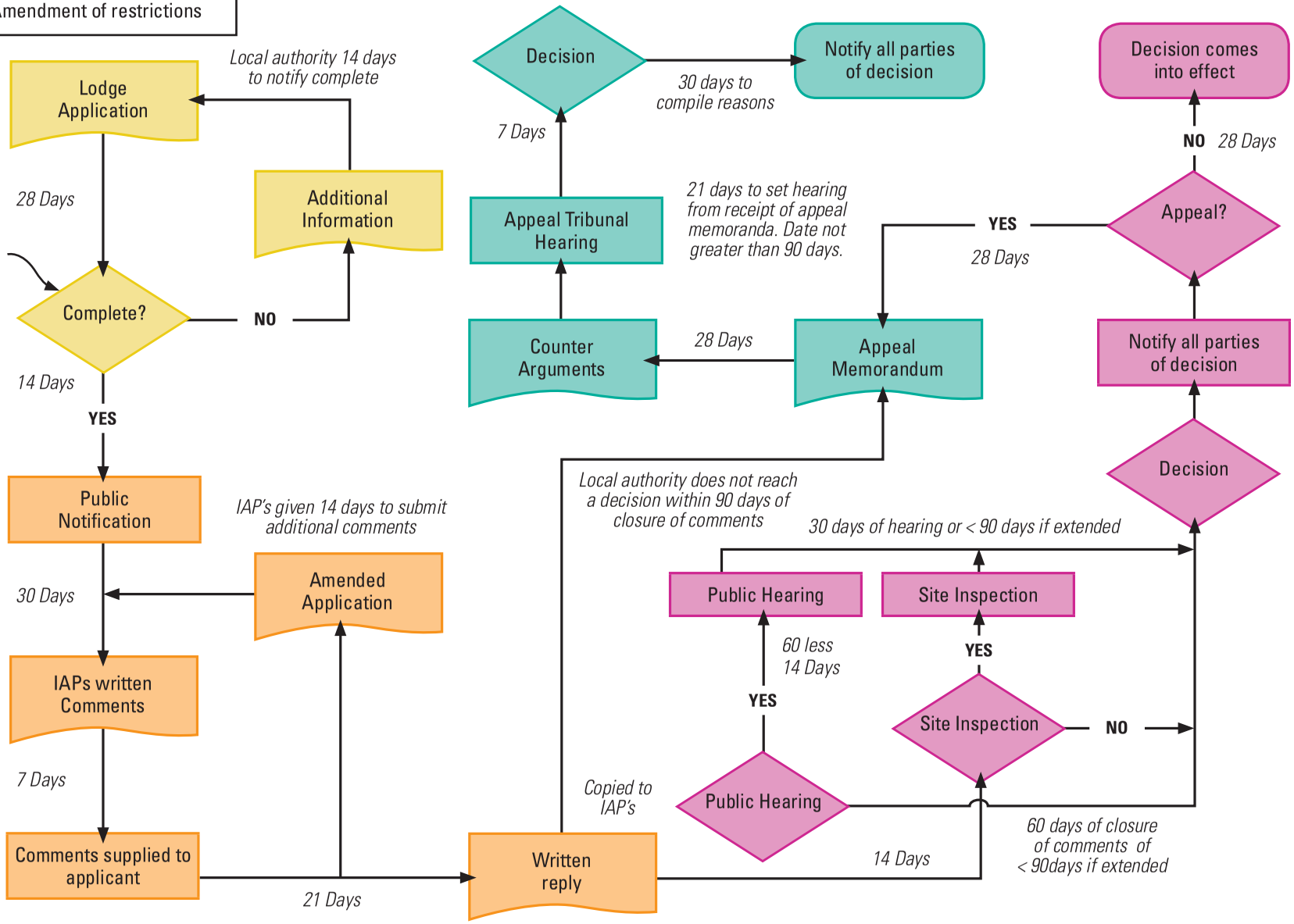
ANNEXURE 15
VARIOUS FLOW SCHEDULES
IN A4 FORMAT

KZN POA, 2006 Application Process

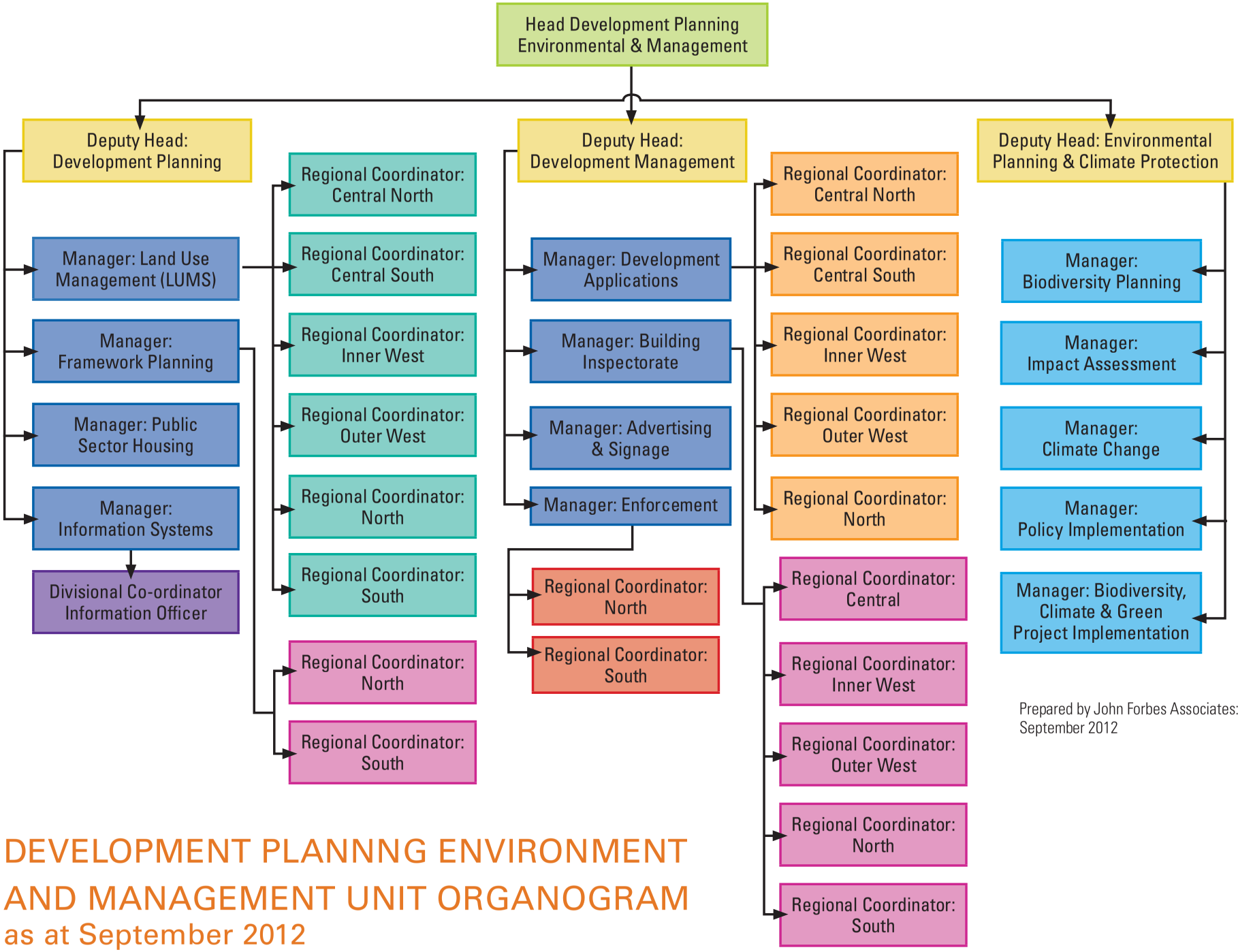
Scheme Amendment, Subdivision & Consolidation. Development Outside of Scheme. Phasing/ Cancellation of Layout Plan, Road/Open Space Closure, Removal/Amendment of restrictions

Note: Land use changes & relaxation of scheme controls consent applications controlled in terms of Town Planning Ordinance, 1949 and NOT the KZN Planning & Develmopment Act, 2008

A pre-submission process is alternatively being followed by the eThekwini Municipality which is substantially the same as set out in the KZN PDA but without the set time frames. Following the application being adjudged complete the public notification process commences.



Prepared by John Forbes Associates: September 2012



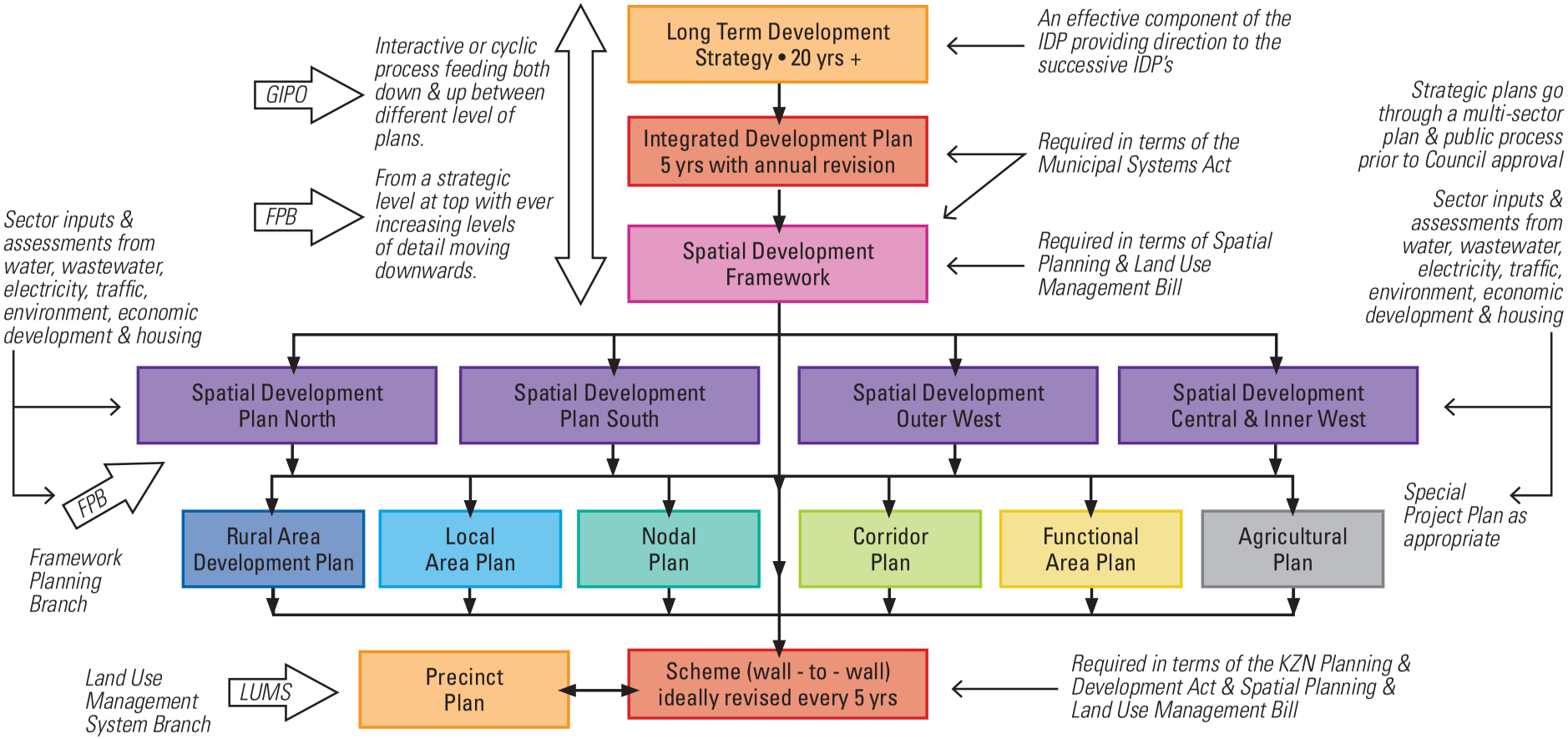
Prepared by John Forbes Associates: September 2012

DEVELOPMENT PLANNNG ENVIRONMENT AND MANAGEMENT UNIT ORGANOGRAM

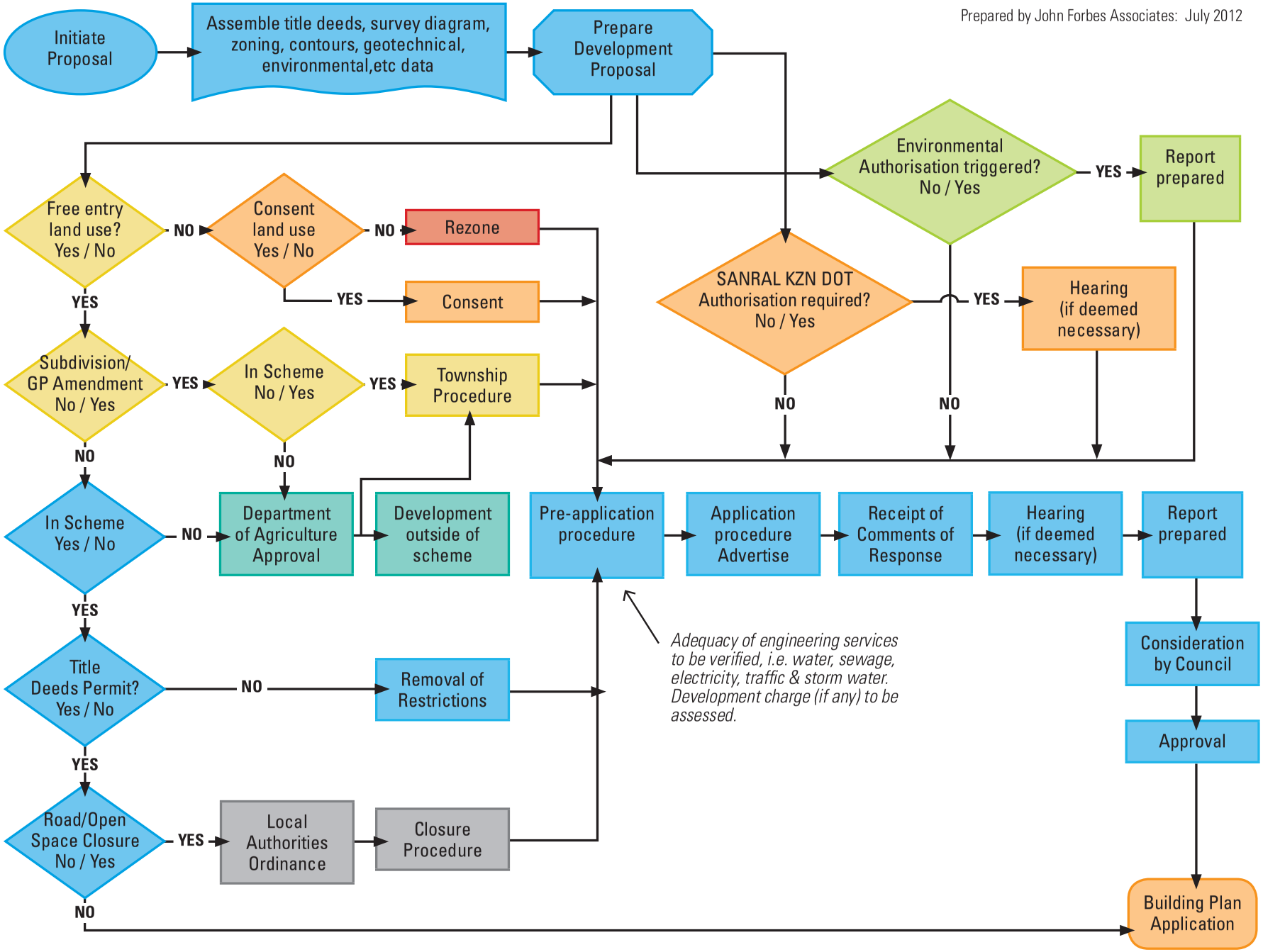
as at September 2012

SCHEMATIC HIERARCHY OF PLANS

Prepared by John Forbes Associates:
September 2012



DEVELOPMENT APPLICATION FLOW CHART





ANNEXURE 16
TOWNSHIP DESIGN & STANDARDS

It is not intended that detailed design standards be spelt in a document such as this. Suffice to state that township layouts should guided by well acknowledged design norms and standards, which should be utilised by the professional planner. The layout should be an iterative team effort with all the other professionals involved, be they from the environmental, geotechnical, engineering or social realms. A township layout should not be based purely on engineering aspects and considerations, but cognisance must be taken by the planner of the physical and ecological characteristic of the site and whatever enhancing ambience and aesthetics attributes that the site may have, while constantly being aware of the social requirements of its future inhabitants. People who will after all have to live there for many years long after the planner and the engineers have moved on.

The "Guidelines for Human Settlement Planning and Design", the so-called Red Book, produced by the CSIR for the Department of Housing has now been around for many years building on both their early work the "Blue Book" - the "Guidelines for the Provisions of Engineering Services in Residential Townships" - and the follow-up so-called "Green Book". The "Red Book" updated in 2005 may be downloaded at www.csir.co.za/Built_environment/RedBook/. Volume 1 (chapters 1 to 5) of the "Red Book" deals with planning issues and Volume 2 (chapters 6 to 12) deals with engineering services and is an essential background for good township design norms and standards.

The conclusion taken from Chapter 1 of the "Red Book" is worth repeating:-

The concept of sustainability is a philosophy common to all sections of this guideline document. Sustainability should always be the main concern in any type of development.

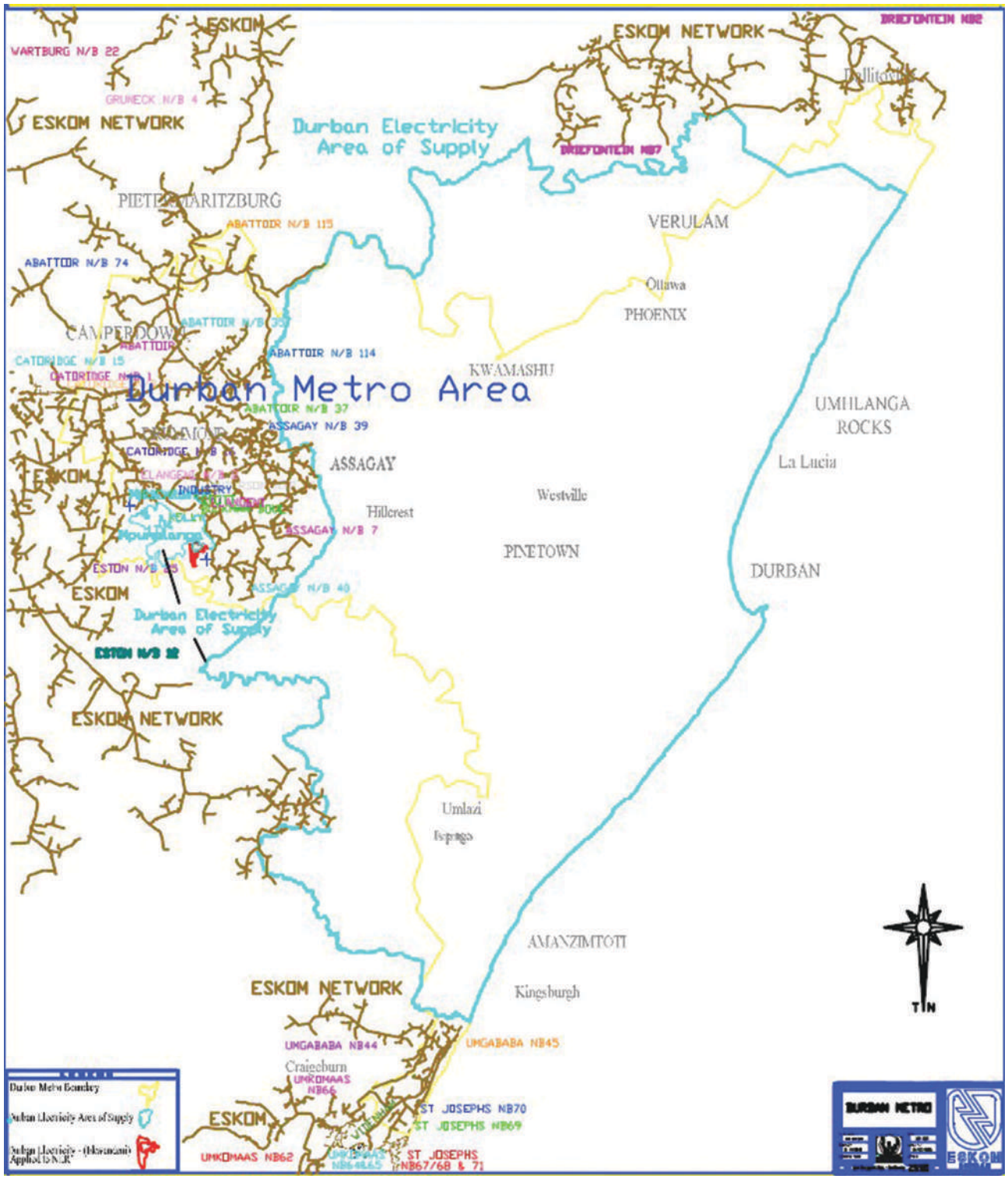
This has the following implications (Miles 1995):-

- *development projects should contribute to technology transfer and skills development;*
- *beneficiaries must have effective control of their environment;*
- *an operational and sustainable product or system must be delivered; and*
- *systems should be capable of being operated and maintained using local resources.*

The emphasis has shifted from merely providing serviced erven in the most cost-effective manner to the creation of sustainable living environments and thriving communities. New demands are being placed on professionals involved with the development of human settlements, from the application of unfamiliar technologies to social science and community organising skills, as well as technology transfer and skills development. It is expected that such professionals will increasingly turn to guideline-type documents in order to obtain the required information. It is thus imperative that the revised Red Book remains a living document; constant input by practitioners and researchers will ensure that this goal is achieved. Constructive criticism and comment from users of the document will therefore be welcomed.

All that remains is for the professional planner to take these concepts and philosophies to heart and not produced yet another lifeless and monotonous two dimensional layout; obviously designed with a set square and without any cognisance taken of either the site or the people who are expected to live there. Sadly the enlightened approach does not always take place; maximising of the yield often been the driving factor of demanding developers, ignoring the fact that a lesser number of erven may produce a higher return if there is good design and if nature is enhanced. In such cases, it is then up to the evaluator of the township layout application in municipal employment to demand and ensure that high standards of township design are both strived for and obtained.

ANNEXURE 17
DURBAN METRO ELECTRICITY SUPPLY AREA



Map supplied by ESKOM Land Development Department, New Germany 5 November 2012.

ANNEXURE 18
GUIDELINE REQUIREMENTS FOR CHAPTER 3 PDA APPLICATIONS (SUBDIVISIONS AND TOWNSHIPS)

A minimum of ten or more copies of the layout plan are to be supplied (as may be required for circulation) showing the full extent of the township bordered green including the remainder in minor townships (less than 20 portions or erven). The remainder may be shown in an inset at a smaller scale if it is large in comparison with the subdivisions.

(1) Size of Plans A4, A3, A2, A1 or A0 (folded concertina fashion to A4 size (210 by 297 mm) so that the clear top right hand corner of the plan, measuring 100 by 100 millimetres, is exposed when folded.)

(2) Clear spaces of 25mm on left hand edge and 10mm on the top, right and bottom edges and a 100mm square in the top right hand corner.

(3) Standard information catalogued in the 100mm column below the 100mm square.

(a) proposed use of each portion or erf

(b) township owner's full name(s).

(c) title deed number and year.

(d) S.G.O. reference to diagram(s).

(e) Street Address

(f) additional notes regarding consolidations, adjoining applications, road status, servitudes, origin of topographical data and the like; including reference to any other applications that will be running concurrently with the subdivisional application such as, but not limited to, rezoning or removal applications.

(4) Signature and date. The Agent's (Registered Planner or Land Surveyor) or owner's signature in bottom right hand corner plus Agent's plan/drawing reference, date and any amending dates, .

(5) Registered designation of the property(ies) under subdivision in a prominent position on the plan together with the Surveyor-General's designation for each new portion or erf . Reference may be made to unregistered names/local descriptions of the land in brackets under the registered/SG-allocated descriptions.

(6) North Point in the same orientation as the locality plan or inset and preferably facing up the paper. .

(7) Scales of the plan, locality plan, and inset to be shown close to each drawing.

(8) Dimensions in metres and the area of each portion or erf (exclusive of public road servitudes) and widths of streets. Gross and net areas of panhandle subdivisions must be shown.

(9) Contours at 3 metre vertical intervals (or at such lesser intervals as the topography of the land dictates). A greater interval may be used, if practical, with the consent of the municipality in the case of large farm subdivisions or subdivisions over 2 hectares in extent.

(10) All buildings and permanent structures to be shown including type of construction, e.g., "wattle and daub", "brick and tile", "concrete block and asbestos", "wood and iron" etc. (This may be abbreviated if necessary).

(11) Colour Roads burnt sienna if existing, pink if proposed, show widths, centre lines or edges of existing carriage ways, state type of road construction and how the status of the road is registered, e.g., shown on the diagram or General Plan registered in Title, etc.

(12) Surrounding properties - show designation of all surrounding properties, including properties across a road and nearby roads suitable to link to in the future.

(13) Areas or zones allocated for residential, commercial, industrial or other purposes suitably coloured and in full townships tabulated as areas and percentage of township area.

(14) Land unsuitable for development, water courses, streams, swampy land, pipe lines (blue), rail or tramways (black), power lines (red), telephone and telegraph lines (green), existing roads, servitudes, etc.

(15) The portions or erven proposed to be reserved for education, health and other government or municipal purposes. These should be coloured distinctively so there can be no confusion with other portions or erven.

(16) Commonage (if any).

(17) All existing and proposed drainage.

(18) Where the land comprises two or more component properties which have been or are to be consolidated, the boundaries of such components shall be indicated on the plan by dotted lettering and lines.

(19) A locality plan as an inset on the township plan which must be sufficiently detailed to guide an outsider to the area, to the property.

(20) If the subdivisional layout relates to a set of primary subdivisions and/or consolidations, then appropriate insets at practical scales must be shown on the plan.

NOTE 1: The attention of applicants is drawn to Section 75(1) of the Planning and Development Act No 6 of 2008 which states that a person is guilty of an offence when developing, subdividing or consolidating land contrary to a provision of a scheme. In this regard the information depicted on the plan should be a true reflection of what is existing on the site and/or what is proposed on the site. In terms of Section 75(2) a person who is convicted of an offence under this section may be sentenced to a fine or imprisonment for a period not exceeding five years, or to both a fine and a period of imprisonment.

NOTE 2: While not essential at the outset, it is desirable that the future portion or erven designations are obtained in advance from the Surveyor General so they may be correctly depicted on the final plan against which the conditions of establishment will be issued.

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