

**GUIDELINE DOCUMENT**

**SUBMISSION OF LAND DEVELOPMENT APPLICATIONS IN TRADITIONAL  
SETTLEMENT AREAS IN TERMS OF THE UMHLATHUZE SPATIAL PLANNING  
AND LAND USE MANAGEMENT BYLAW, 2017**

**APRIL 2018**



## GUIDELINE DOCUMENT

### SUBMISSION OF LAND DEVELOPMENT APPLICATIONS, EXCLUDING THE ERECTION OF A HOUSEHOLD DWELLING, IN TRADITIONAL SETTLEMENT AREAS IN TERMS OF THE UMHLATHUZE SPATIAL PLANNING AND LAND USE MANAGEMENT BYLAW, 2017

#### 1. BACKGROUND AND PURPOSE

The uMhlathuze Spatial Planning and Land Use Management Bylaw, 2017 (“the Bylaw”), commenced on 21 September 2017.

A copy of the Bylaw is available on the Municipality’s website at [www.umhlathuze.gov.za](http://www.umhlathuze.gov.za) under the quick menu - “By-laws”.

In terms of Section 27(1)(n) of the Bylaw, planning applications within traditional settlement areas are required for *“any land development activity in a traditional settlement area, excluding the erection of a household dwelling”*.

The purpose of this document is to provide guidance to Traditional Leaders, applicants and consultants for the submission of land development applications within traditional settlement areas, with the proviso that planning applications are not necessary for household dwellings (as defined in the Bylaw).

#### SECTION A – ROLES AND RESPONSIBILITIES

##### 1. THE ROLE OF TRADITIONAL LEADERS IN THE PLANNING PROCESS

Chapter 12 of the Constitution of the Republic of South Africa (Act No.10 of 1996) recognizes traditional leadership and stipulates the roles of traditional leadership. The status and roles of traditional leadership, according to customary law, are recognised subject to the Constitution. The Constitution provides for a role for traditional leadership as an institution at local level on matters affecting local communities.

Under customary law and practice, the Inkosi and Induna of the Traditional Area have the power to administer the land, control its use and to allot portions to members of the tribe.

In terms of the Ingonyama Trust Act, 1994 (Act No. 3 KZ of 1994) as amended by Act 9 of 1997, the Ingonyama Trust owns portions of land in KwaZulu Natal. The

Ingonyama Trust Board, created in terms of the Ingonyama Trust Act, is responsible for dealing with the selling, occupying or leasing of tribal land which it cannot do without the written consent from the Traditional Leaders.

Traditional Leaders are therefore the first step in the land allocation and planning process, whereby the applicant must follow due process to obtain written authorisation from the Traditional Leaders to develop a specific site for the proposed use.

The Traditional Leader must then advise an applicant to apply to the Municipality for land use rights, should the applicant wish to construct any use other than a *“household dwelling”*. A household dwelling is defined in Section 1 of the uMhlathuze Spatial Planning and Land Use Management Bylaw, 2017 as: *“a habitable dwelling/s in a recognised traditional settlement area”*.

Thus, no development other than a household/residential dwelling may take place until the Municipality has provided the applicant with the required land use rights.

## **2. THE ROLE OF THE MUNICIPALITY IN THE PLANNING PROCESS**

Section 152(1) of the Constitution of the Republic of South Africa (Act No.10 of 1996) states that the objects of local government are:

- To provide democratic and accountable government for local communities;
- To ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.

A Municipality has the functions and powers assigned to it in terms of Sections 156, read with Part B of Schedule 4 and Part B of Schedule 5 of the constitution. *“Municipal Planning”* is one of the functions assigned to it.

Functions of Municipalities are further defined in the Local Government: Municipal Systems Act, No. 32 of 2000.

The core function of a municipality is service delivery within its municipal area, and all other activities are seen to be supportive. Therefore the Municipality is not involved in the allocation of communal land, but is the planning authority responsible to ensure that relevant land use rights and compliance are realised.

### **3. MAINTENANCE OF PLANS AND RECORDS**

Traditional Councils, the Ingonyama Trust Board and the Municipality in working together can make better use of available resources and capacity to ensure seamless development of communities in safe locations with secure access to land and services.

In coordinating effort between the Traditional Councils, the Ingonyama Trust Board and the Municipality, the Bylaw in Section 104 provides for the following:

- The Municipality and the Ingonyama Trust Board may assist the Traditional Councils and community land holding entities to develop a register of non-residential land allocations and land use rights in the traditional settlement areas.
- A Traditional Council and management of the communal land holding entities should notify a Municipality in writing on a quarterly basis of any allocation and re-allocation of land for land development activity, except land allocation for household dwellings in terms of their customary law powers.
- The Traditional Councils and management of the communal land holding entities should provide a Municipality with the name and contact details of the person to whom non-residential land has been allocated or re-allocated”.

This is re-emphasised in Item 7 Schedule 5B which states that “*A municipal planning approval for land development in a recognised traditional settlement area may be transferred, but such transfer must be approved by the Municipality after consultation with the Traditional Council or land holding entity*”.

## **SECTION B – THE UMHLATHUZE LAND USE SCHEME**

### **1. IS THE UMHLATHUZE LAND USE SCHEME APPLICABLE TO TRADITIONAL AREAS?**

The uMhlathuze Land Use Scheme is applicable to all Traditional Council areas, except for the area of Ntambanana that was recently incorporated into the uMhlathuze Municipal area. The Municipality is in the process to extend its Scheme to also incorporate this area, and Section 23 of the Bylaw would apply to this process.

Importantly, Section 23 provides that a land use scheme must not unnecessarily disrupt accepted indigenous land use patterns and management known and practiced by the community. The regulation of land use, controls associated therewith and the enforcement thereof must be introduced incrementally as, in the

opinion of the Municipality, adherence to the land use scheme warrants their introduction.

Generally, land in Traditional Council areas is zoned for the following purposes:

- The zoning “*Agriculture 2*” provides for land that is used for low intensity agricultural practices in association with other uses and may include market gardening, wood lots and land allocated under customary law;
- The zoning “*Rapid Urbanisation Management Zone*” is a zone in a Traditional Settlement Area that demarcates areas that have been settled adjacent to or near to formal urban areas. Generally, these areas are densely populated.
- The zoning “*Rural Node*” is a node within a rural area identified in the Municipal Spatial Development Framework as a node, that may include land uses which would support the community in their day-to-day needs such as commercial, educational, health facilities, petrol filling station, etc.

## **SECTION C – PLANNING APPLICATIONS IN TRADITIONAL SETTLEMENT AREAS**

### **1. WHEN IS A PLANNING APPLICATION REQUIRED?**

Planning applications required for approval by the Municipality is listed in Section 27(1) of the Bylaw.

In terms of Section 27(1)(n), planning applications are required for “*any land development activity in a traditional settlement area, excluding the erection of a household dwelling*”.

Combined applications may be submitted, for example: an application in terms of Section 27(1)(a) and (n) of the Bylaw for rezoning and development within a traditional settlement area.

### **2. WHAT IS A “HOUSEHOLD DWELLING”**

A household dwelling is defined in Section 1 of the Bylaw as: “*a habitable dwelling/s in a recognised traditional settlement area*”.

### **3. WHAT IS A “TRADITIONAL SETTLEMENT AREA”**

A traditional settlement area is defined in Section 1 of the Bylaw as: “*the area which falls within the area of the Municipality and which is occupied by traditional communities or people who own land communally through a land holding entity or*

*people who occupy land without a formal layout plan, and recognised by the Municipality in terms of Section 112 of this By-law”.*

The Municipality, in accordance with Council Resolution 11670 of 20 June 2017, identified the following areas as “*Traditional Settlement Areas*” for inclusion in its Spatial Development Framework:

1.1 All areas within the Municipal boundary of uMhlathuze, recognised in terms of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act 5 of 2005) as traditional communities, including the areas under the following Traditional Councils:

- 1.1.1 Khoza/Bhejane;
- 1.1.2 Dube;
- 1.1.3 Mkhwanazi;
- 1.1.4 Zungu/Madlebe;
- 1.1.5 Mthembu/Somopho;
- 1.1.6 Cebekhulu/Obizo; and
- 1.1.7 Ndhrazi/Mambuka.

1.2 Mandlazini and Mzingazi Agri-Villages.

Thus, planning applications must be submitted for any development within these areas, other than the development of a household dwelling.

#### **4. WHO MAY COMPILE AND SUBMIT A PLANNING APPLICATION?**

The Municipality may request that an application and supporting documentation be compiled by a person who has relevant skills, knowledge, expertise or qualifications.

In terms of Section 45 (1) of the Spatial Planning and Land Use Management Act, 2013, a land development application may only be submitted by:

- an owner, including the State, of the land concerned;
- a person acting as the duly authorised agent of the owner;
- a person to whom the land concerned has been made available for development in writing by an organ of state or such person’s duly authorised agent; or
- a service provider responsible for the provision of infrastructure, utilities or other related services.

In terms of the Bylaw, an “*owner*” is defined as follows:

- “(a) the person in whose name land is registered in the Deeds Registry for KwaZulu-Natal;

- (b) the beneficial holder of a real right in land or a holder of a registered long term lease;
- (c) an Organ of State in whom land vests, or if it has given notice of its intention to expropriate the land;
- (d) a person who is a beneficial occupier of land in accordance with the customary law or practice or community rules adopted by the community members in terms of the adopted constitution of the land holding entity.”

## **5. WHERE CAN I ACCESS PLANNING LEGISLATION AND OTHER DOCUMENTS RELATING TO THE UMHLATHUZE MUNICIPALITY?**

Relevant planning legislation and other documents are generally available on the internet. Documents relevant to the uMhlathuze Municipality may be accessed at [www.umhlathuze.gov.za](http://www.umhlathuze.gov.za) under the quick menu:

- The Bylaw – under “By-laws”
- The uMhlathuze Land Use Scheme Regulations and Zoning Mapping under “uMhlathuze Land Use Scheme”
- The uMhlathuze Spatial Development Framework under “Spatial Development Framework”
- The uMhlathuze Integrated Development Plan under “Integrated Development Plan”
- Application fees/tariff of charges under “Tariffs”

## **6. THE DEVELOPMENT ADMINISTRATION SECTION**

The Municipality’s City Development Department consists of various sections. One of the sections under this Department is the Development Administration Section. The section is (amongst other matters) responsible for the administration of planning applications submitted in terms of Section 27(1) of the Bylaw.

The Section consists of:

Mrs Thea Jordan – Manager

Tel: 035 907 5427

Email: JordanT@umhlathuze.gov.za

Mr Themba Mdumela – Professional Planner

Tel: 035 907 5608

Email: MdumelaT@umhlathuze.gov.za

Mrs Elbe Brummer – Chief Administrative Officer

Tel: 035 907 5950

Email: BrummerE@umhlathuze.gov.za

## **SECTION C – THE PLANNING PROCESS**

All planning applications, apart from applications for consent required in terms of Section 27(1)(b) of the Bylaw, are administered by the Development Administration Section of the City of uMhlatuze.

### **1. THE PRE-APPLICATION PROCEDURE**

#### **1.1 PRE-APPLICATION ENGAGEMENTS AND MEETINGS**

Any owner as defined in the Bylaw (including a person who is a beneficial occupier of land in accordance with the customary law or practice), or a consultant acting with the consent of the owner, is welcome to contact the Development Administration Section for guidance relating to the procedure to compile and submit planning applications, requirements in terms of documentation to be submitted, applicable fees, timeframes, etc.

It is beneficial to do so in a structured manner by means of a pre-application meeting. During this meeting, the section will complete a checklist detailing the document requirements for the application to be submitted.

#### **1.2 THE PRE-APPLICATION SUBMISSION**

Once an application is ready for submission to the Municipality, the applicant must first provide the Municipality with a complete electronic copy of the application (via email or CD/DVD).

The purpose of the pre-application submission is to check if the application would comply with the Municipality's requirements, prior to expenses regarding application fees and hardcopies. This is a free service to the applicant.

Once a pre-application submission has been received, the application will be circulated to the relevant sections for inputs / comments. The application is considered during a meeting of the City Development Liaison and Planning Applications Committee. This Committee meets on a fortnightly basis to determine if planning applications may be considered complete and in line with the Municipality's requirements.



The Municipality will give feedback to the applicant within 30 days of receipt of the pre-application, detailing:

- Additional aspects that must be addressed / information that must be submitted; or
- That the application is complete and may be submitted in hardcopy format. At this stage the Municipality will provide an applicant with a formal quotation for application fees, which must be paid prior to submission of the formal application.

## **2. THE FORMAL APPLICATION PROCEDURE**

The formal application procedure for planning applications in traditional settlement areas are outlined in Schedule 5B of the uMhlathuze Spatial Planning and Land Use Management Bylaw.

In terms of this Schedule, an application for municipal planning approval for land development in recognised traditional settlement areas must include –

- The name and contact details of the applicant;
- The name of the household which the applicant represents;
- The name of the Traditional Council or Community;
- The name of the Inkosi of such traditional area and of the Induna of such isiGodi, or the name of the land holding entity, if applicable;
- A letter in support of the application, signed by the Traditional Council or the land holding entity or other community leaders;
- The GPS co-ordinates for the site to which the application applies with sufficient details to indicate its approximate extent or a survey diagram;
- The written motivation for the proposed land development;
- Photographic evidence of the site;
- Confirmation from the relevant Traditional Council or community leader that surrounding land occupiers and/or neighbours were consulted; and
- Any other document or information which the Municipality may require.

It would be beneficial to also submit proof that the Ingonyama Trust (as the land owner) has consented to the application, either by means of a lease agreement or letter in support of the application if the lease agreement has not yet been concluded.

An application for municipal planning approval for land development in recognised traditional settlement areas must be lodged with the Municipal Planning Registrar (Development Administration Section).

The applicant must submit 4x hardcopies and one digital copy of the application.

Proof of payment of the application fee must be submitted.

Once a formal application submission has been received, the application will be circulated to the relevant sections for inputs.

The application is considered during a meeting of the City Development Liaison and Planning Applications Committee. This Committee meets on a fortnightly basis to determine if planning applications may be considered complete and in line with the Municipality's requirements.

The Municipality will give feedback to the applicant within 30 days of receipt of the application, detailing:

- Additional aspects that must be addressed / information that must be submitted; or
- That the applicant may commence with the public participation phase.

### **3. THE PUBLIC PARTICIPATION PROCEDURE**

The applicant shall finalise the public participation process as instructed by the Municipality, and provide the Municipality with written proof of the outcomes within 90 days, or such further period as may be agreed upon.

Should the applicant fail to do so, the application is deemed to have been withdrawn.

### **4. DECISIONS RELATING TO PLANNING APPLICATIONS**

Upon conclusion of the public participation process, the Municipality will evaluate the application, including any comments/objections received during the public participation process and responses thereto.

Item 5(1) of Schedule 5B of the Bylaw specifies that the Registered Planner must evaluate the application and refer the application within 60 days, or such further period as agreed upon with the applicant, to the Municipal Planning Approval Authority for consideration and approval in terms of this By-law if :

- a) The application is complete;
- b) The land forms part of a recognised traditional settlement area;
- c) The land has not been claimed by any other person;
- d) The land is not required for engineering services or public facilities;
- e) The land is not prone to flooding or any other conditions that make it unsafe for human habitation;
- f) The land has not been identified by the Minister responsible for Agriculture as high value agricultural land that is required for national food security;
- g) The land is not environmentally sensitive;
- h) The application is not contrary to the provisions of the land use scheme;

- i) The Ingonyama Trust Board or any other land holding entity has no objection to the land being used for proposed land development or use; and
- j) The required public participation process has been finalised by the applicant and proof of such process has been submitted to the Municipality.

Schedule 3 of the Bylaw categorises planning applications for the purposes of decision-making by the Municipal Planning Approval Authority.

In terms of Schedule 3 Item 2, it is stated that:

- Category 1 applications shall be considered by the Municipal Planning Tribunal;
- Category 2 applications shall be considered by the Municipal Planning Authorised Official; and
- Category 3 applications shall be considered by the Municipal Council.

In terms of categorisation of planning applications, Schedule 3 Item 8 of the Bylaw identifies “*Any land development activity in the traditional settlement areas, excluding the erection of a household dwelling*” as a Category 2 application, which may be considered by the Municipal Planning Authorised Official.

In terms of Section 42(3) of the Bylaw, the Municipal Planning Approval Authority (in this instance the Authorised Official) may approve the application in whole or in part, approve the application subject to conditions, postpone its decision, refuse an application or refer the application.

The Municipality must, within 30 days after a decision relating to a planning application, serve notice of the decision on the applicant, the relevant Traditional Council or management of the communal land holding entity within which the land development application is located, and every person who lodged a written comment.

An approval for land development in a recognised traditional settlement area may be transferred from one person to another, but such transfer must be approved by the Municipality after consultation with the Traditional Council or land holding entity.

## **5. THE APPEAL PROCEDURE**

If an applicant or any relevant stakeholder is not satisfied with the decision relating to a planning application, the relevant party has a right to appeal the decision in terms of Section 67, read with Schedule 6 of the uMhlathuze Spatial Planning and Land Use Management Bylaw.

Written notice of the appeal and the grounds thereof must reach the Municipal Manager / Appeal Authority Registrar and relevant parties to the appeal within 21

days of the date of notification of this decision, and must address the matters as set out in Schedule 6 Item 2 of the Bylaw.

With regards to the calculation of number of days, applicants are advised to familiarize themselves with Section 113 of the Bylaw.

In line with the provisions of Section 67(3) of the Bylaw, the submission of an appeal shall be subject to an appeal fee of R250,00 (2017/2018 budget year).

A memorandum of appeal and proof of payment of the relevant R250,00 appeal fee must be submitted to:

- a) The Municipal Manager / Appeal Authority Registrar:
- In person to the Municipality's Registry Department, 1<sup>st</sup> floor Richards Bay Civic Centre; or
  - Via email to [creg@umhlathuze.gov.za](mailto:creg@umhlathuze.gov.za) , [SibekoNJ@umhlathuze.gov.za](mailto:SibekoNJ@umhlathuze.gov.za); [MiyaN@umhlathuze.gov.za](mailto:MiyaN@umhlathuze.gov.za); [NgcoboTB@umhlathuze.gov.za](mailto:NgcoboTB@umhlathuze.gov.za); and [jordant@umhlathuze.gov.za](mailto:jordant@umhlathuze.gov.za).

AND

- b) Relevant parties to the appeal

Contact information relating to relevant parties to an appeal may be obtained from Ms. Thea Jordan at telephone number 035 907 5427 or email [jordant@umhlathuze.gov.za](mailto:jordant@umhlathuze.gov.za) .

Any enquiries with regards to the Appeal Procedure may be directed to Ms. Nokwazi Miya at telephone number 035 907 5063 or email [MiyaN@umhlathuze.gov.za](mailto:MiyaN@umhlathuze.gov.za) .

## 6. FEEDBACK

Was this guideline document helpful? Please give us your feedback and suggestions:

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Mrs Elbe Brummer – Chief Administrative Officer  
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**ANNEXURE A – GUIDANCE REGARDING PLANNING MOTIVATION DOCUMENTS AND SUPPORTING DOCUMENTATION**

**1. GUIDEDANCE REGARDING THE PLANNING MOTIVATION**

The Planning Motivation is a document which sets out who the applicant is, the need and desirability of the application and the approval required.

It is important to remember that the motivation is not only submitted to the Municipality, but also to members of the public. Therefore, the motivation must be easy to understand.

Although the Municipality cannot prescribe the exact format of the planning motivation, the following matters must be addressed:

<b>ASPECT</b>
Heading / Application : Correct reference to relevant sections of legislation in terms of which the application is submitted
<p>The Applicant</p> <ul style="list-style-type: none"> <li>- reference to name of owner and applicant &amp; power of attorney granted (if relevant)</li> <li>- explanation of the communal rights to the property</li> <li>- the consent from the relevant Traditional Council supporting the communal right to the property and the application (<i>*Please note that consents/power of attorney should not be older than 12 months</i>)</li> </ul>
<p>The application site:</p> <ul style="list-style-type: none"> <li>- Location</li> <li>- Reference to Title Deed / Valid Lease Agreement and SG Diagram / General Plan (include copies)</li> <li>- Current access to the site</li> <li>- Current land use and surrounding land uses</li> <li>- Current zoning of the site</li> </ul> <p>(include a locality plan with coordinates to identify the application site and a site development plan showing existing access and buildings)</p>
Reasons / Need for the application
History relating to the application site, application submitted, or relevant previous approvals granted (if relevant)
<p>Possible Impacts of the application (address each impact, if relevant):</p> <ul style="list-style-type: none"> <li>- Geotechnical conditions</li> <li>- Access and Traffic Generation (if specialist study is attached, summarise</li> </ul>

impacts and recommendations in the planning motivation)

- Engineering Services
  - Impact on Civil Services and level of services required (water, sewer, roads and storm water: if a specialist study is attached, summarise services requirements and impacts in the planning motivation. Address internal and bulk service impacts and requirements)
  - Impact on Electrical Services and level of services required (if a specialist study is attached, summarise services requirements and impacts in the planning motivation. Address internal and bulk service impacts and requirements)
  - Impact on Waste Management
  - Other services
- Environment, heritage and agricultural resources
- Access to community facilities (for large developments – address “Red Book Standards”)
- Socio-Economic Impacts
- Others (project specific)

Compliance Matters (Describe how the application addresses these matters):

- Compliance with National Legislation, Policies, etc.
- Compliance with the Municipality’s Intergrated Development Plan (IDP) & Spatial Development Framework (SDF)
- Compliance with Section 7 of the Spatial Planning and Land Use Management Act - Development Principles (list relevant principles and state how the application complies)
- Compliance with the uMhlathuze Land Use Scheme
- Compliance with the National Building Regulations (for developed sites)
- Compliance with Title Deed Conditions (if relevant)
- Compliance with any other relevant municipal plans, policies, guidelines, etc.

Conclusion

## **2. GUIDEDANCE REGARDING THE SUBMISSION OF SPECIALIST STUDIES**

Specialist Studies may not always be required, and the Municipality will advise during the pre-application meeting whether specialist studies must be submitted.

Specialist studies may include:

- A Traffic Impact Assessment (including a Site Impact Assessment should deliveries take place);
- A Geotechnical Assessment;
- A Floodline Assessment;
- An Environmental Impact Assessment;
- Civil Engineering Design Report (water, sewer, stormwater, roads);

- Electrical Engineering Design Report;
- Etc.

Specialist studies are only valid for a period of 5 years.

### **3. GUIDEDANCE REGARDING APPROVALS/COMMENTS FROM RELEVANT DEPARTMENTS / SECTIONS / ORGANS OF STATE**

In terms of Section 33(1) of the Bylaw, relevant organs of state who may be affected by an application shall be consulted by the applicant prior to the application being submitted to the Municipality.

The Municipality will advise during the pre-application meeting whether comments by relevant organs of state must be submitted.

Organs of state or organisations may include:

- KZN Department of Transport;
- SANRAL;
- KZN Department of Health;
- KZN Department of Education;
- Servitude owners affected by the application;
- KZN Department of Economic Development, Tourism and Environmental Affairs;
- KZN Land Claims Commissioner;
- Telkom;
- Eskom;
- Transnet;
- Department of Agriculture;
- Etc.

In terms of Section 33(3) of the Bylaw, the Municipality may refuse to determine that an application is complete if the applicant fails to submit comment from an organ of state or organisation the Municipality considers relevant.