



NDLAMBE MUNICIPALITY

TOWN PLANNING SECTION

**OPERATIONAL POLICY FOR
LAND USE MANAGEMENT
APPLICATIONS**

FEBRUARY 2018

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1. INTRODUCTION

The Bill of Rights in the Constitution stipulates that everybody has the right to administrative action that is lawful, reasonable and procedurally fair. The Promotion of Administrative Justice Act (PAJA) sets out the requirements for fair and reasonable administrative action and the regulations promulgated in terms of PAJA determines the provisions for notifying a person/s which might be affected by such an action. A person whose rights or legitimate expectations may potentially be materially and adversely affected should therefore be notified of development proposals and provided with the opportunity to input into decisions.

2. POLICY ISSUES

With the promulgation and implementation of SPLUMA, it has been apparent that a need for a policy to fully complement the requirements of the Bylaw and to ensure that a uniform and standard approach when dealing with land use applications must be adopted. Almost 80% of major land use applications are referred back to applicants for lack planning motivation/information in the kind of applications submitted by applicants. Secondly the planning officials within the Municipality spend much more time assisting applicants in doing the applications and in some instances even assisting with motivation for the reports expected to be submitted.

Furthermore it has been realised that public participation process is not used to its maximum purpose and there is currently no uniform approach in terms of public participation process, hence a standardised approach when it comes to advertising of land used applications needs to be adopted.

3. PURPOSE

The new era in the town planning field calls for standardised and reasonable procedures when it comes to land use management. Ndlambe Municipality also want to ensure that public participation is rather a consultative process and not to rubber stamp decisions and that those affected by any land use application are well notified. Ndlambe Municipality has therefore formulated this operational policy to provide for **uniform, appropriate and adequate land use application submission and advertising guidelines** for land use and development applications, and as such, to facilitate public participation and notification procedures in the development process.

This operational policy intends to:

- State the submission requirement in terms of certain land use application;
- Assist applicants in terms of pre-consultation to ensure good quality submission;
- State the minimum level of advertising as required by relevant planning law. It should be noted that some applications, because of its nature and potential wider impact, might require more than the minimum required advertising as is provided for in this operational policy;
- Assist property owners and users of land in the advertising of their land use and development applications;
- Inform parties whose rights or legitimate expectations may potentially be materially and adversely affected by development and give them an opportunity to comment/object/appeal on development proposals, and
- Provide guidelines to delegated officials and the Municipal Planning Tribunal in exercising their discretion and in so doing ensure that uniform and consistent decisions are made relating to the advertising and notification of development applications.

This policy must be read in conjunction with relevant Planning Bylaw; the SPLUMA and SPLUM Regulation and all other applicable planning law.

4. LEGISLATIVE FRAMEWORK

The primary purpose for advertising is to notify a person whose rights or legitimate expectations may potentially be materially and adversely affected by a proposal. The type of application determines the advertising procedure and who is eligible to submit and who is within the Municipality eligible to write an assessment report.

2.1 The Constitution

152 Objects of local government (1) the objects of local government are- (e) to encourage the involvement of communities and community organisations in the matters of local government.”

2.2 Municipal Systems Act (MSA)

Section “16(1) A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose- (a) Encourage, and create conditions for, the local community to participate in the affairs of the municipality. (b) Contribute to building the capacity of- (i) The local community to enable it to participate in the affairs of the municipality; and (ii) Councillors and staff to foster community participation; and...”

Furthermore Section 11(3) (a) of the Municipal Systems Act no 32 of 2000, entitles a municipality to exercise its executive authority by inter alia creating developing and adopting policies. This policy contributes to the fulfilment of this duty.

2.3 Spatial Planning and Land Use Management Act, 2013 (SPLUMA)

SPLUMA does not provide direct direction on how public participation should be conducted, but rather forms the enabling national legislation for Provinces and Local Authorities to draft their own planning legislation and in such provide direction on advertising procedures required.

In terms of the submission process of land use applications, the Act stipulates in section 45 (1) that:

A development application may only be submitted by

- (a) an owner, including the State, of the land concerned;
- (b) a person acting as the duly authorised agent of the owner;
- (c) 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
- (d) a service provider responsible for the provision of infrastructure, utilities or other related services.

2.4 Spatial Planning and Land Use Management Regulations, 2015

In terms of section 14 of the SPLUM Regulations A municipality must at least determine, amongst others, the following in terms of land development applications:

- The manner and format in which a land development and land use application must be submitted;
- Timeframes applicable to each component of the phases as outlined in Regulation 16;
- The level of participation required, and
- The manner and extent of intergovernmental participation as part of the land development application.

2.5 Ndlambe Municipal Planning By-Law, 2015 (NMPBL)

Section 93 to 96 of the NMPBL deals in detail with public participation for land use applications and specifies which applications need to be advertised in the media; notices and additional forms of notification. Section 93 states the following on a notice of an application: (1) The Municipality must cause notice to be given in the media and cause notice to be served, in accordance with section 94 , of the following applications:

- (a) an application for a rezoning or a rezoning on the initiative of the Municipality;

- (b) the subdivision of land larger than five hectares inside the urban edge as reflected in its municipal spatial development framework;
- (c) the subdivision of land larger than one hectare outside the urban edge as reflected in its municipal spatial development framework;
- (d) if the Municipality has no approved municipal spatial development framework or urban edge depicted for the area in question, the subdivision of land larger than five hectares inside the physical edge, including existing urban land use approvals, of the existing urban area;
- (e) if the Municipality has no approved municipal spatial development framework or urban edge depicted for the area in question, the subdivision of land larger than one hectare outside the physical edge, including existing urban land use approvals, of the existing urban area;
- (f) the closure of a public place;
- (g) an application in respect of a restrictive condition;
- (h) an application for a special consent;
- (i) an application for a temporary land use departure;
- (j) other applications that will materially affect the public interest or the interests of the community if approved.

2.6 Promotion of Administrative Justice Act, No 3 of 2000 (PAJA)

In terms of the provisions of sections 3 and 4 of PAJA all administrative actions affecting a person or the public must be procedurally fair. If an application will materially and adversely affect the rights or legitimate expectations of any person it must be procedurally fair.

5. SUBMISSION OF A LAND USE APPLICATION PROCESS

All land development applications must be submitted to the Municipality as the authority of first instance. Should any land development application submitted to the municipality require any other authorisation in terms of any other legislation related to land use, such application should also be made or such an authorisation be obtained of the specific legislation.

5.1 Pre-application consultation

It is encouraged that before formally submitting an application to the Municipality, that the applicant first discuss the details of the proposed development with the designated town planning official.

The purpose of this pre-application consultation is to enable the Municipality to inform the applicant of the anticipated extent of advertising, and to make sure that the applicant knows what the process entails and what information and documentation is required for proper advertising. At this stage, the parties may also agree to whether the advertising can be conducted by the applicant or whether the Municipality will conduct the advertising.

5.2 Eligibility of application submissions

The following applications may only be accepted by the Municipality if they are accompanied by a detailed report and supporting documents from a professional planner that is registered in terms of the Planning Profession Act 36 of 2002.

- a rezoning;
- a subdivision of more than 20 cadastral units;
- a removal, suspension or amendment of a restrictive condition, if it relates to a change of land use.
- an amendment, deletion or introduction of additional conditions in respect of an existing approval, listed in this paragraph;
- an approval of an overlay zone as provided in the land use scheme;
- a phasing, amendment or cancellation of a plan of subdivision or a part thereof;
- a determination of a zoning as contemplated in section 181 of the Municipal Planning Bylaw;
- Departure (Temporal or Permanent), that relates to a change of land use; and
- a closure of a public place or part thereof;

6. ADVERTISING PROCESS

Land use and development applications must go through an advertising process to notify a person whose rights or legitimate expectations may potentially be materially and adversely affected by a proposal. The extent to which an application is advertised should depend on the type of application, the complexity of the application and the potential impact of the proposed development. The minimum extent for such advertising will be indicated in this policy. Advertising or the notice and comment procedure has a preparation phase and actual advertising phase. It is considered important that a well-structured and complete application be submitted for advertising as this will ensure better and quicker outcomes of the process for all parties concerned. The following prescribed process will therefore apply:

6.1 Advertising by applicant

When the applicant conducts the advertising, this may only be done after the Municipality has drafted or vetted the notices and such notices are in accordance with the Municipality's standard letters and requirements. The starting and closing date for comments and objections must be in accordance with this policy. A separate notice of the application(s) must in all cases be served on each of the affected owners in accordance with the Municipality's prescribed standard notification letter, giving detailed notice of the relevant applications applied for as well as the time period allowed for submitting comments/objections and include relevant plans and further information, where applicable.

Notified owners must sign for receipt of such notice and note the date of receipt thereof in cases where the applicant can serve a notice on such owners. In cases where the applicant has to forward notices by registered mail, necessary proof must be submitted. Once such notice has been served on the relevant owner(s), the applicant (or his/her representative) may discuss the application with the notified owner(s) and if the owner agrees to it, he/she can sign the prescribed Notice of no objection and the relevant plan(s), consenting to the application and agreeing to waive any further right to object.

The Municipality shall provide the applicant with a complete list of names and addresses of people whose rights or legitimate expectations may potentially be materially and adversely affected, to be served notice on where the Municipality is legally obligated to cause such application to be advertised. In any other case the Municipality may require the applicant to obtain names and addresses.

- Whenever the applicant advertises, proof of compliance must be submitted to the Municipality within 7 days from the date of commencement of the advertising. It must be made clear to the applicant that in the event that the Municipality is not satisfied with the advertising conducted by the applicant, the Municipality may require that the application be re-advertised. All expenses as a result of any re-advertising will be for the account of the applicant.

6.2 Advertising by the Municipality

- The Municipality may elect to undertake the advertising process (or part thereof); or allow the applicant to undertake the advertising. As a general rule, the Municipality will undertake advertising of the more complex applications where notification in the press is required and where the applicant has no track record of having successfully conducted advertising of development applications on this level.
- The Municipality may require that a new notice of an application be given if more than 18 months has elapsed since the first public notice of the application and if the application has not been considered by the Municipality.
- The Municipality may, at any stage during the processing of the application— (a) require notice of an application to be republished or to be served again; and (b) an application to be resent to municipal departments for comment, if new information comes to its attention which is material to the consideration of the application.

6.3 Availability of information on submitted applications

- All files and plans regarding formally submitted applications are open to the public for inspection during the advertising process at the relevant Town Planning Office, in some instances applicants will be required to place copies of the applications in the

applicable area where the application is made. E.g. for Kenton on Sea certain application that appear in the press, should be available at the Kenton on Sea Office.

- The period required for comments and objections and all the dates thereof must be displayed on the relevant files and must be captured on the relevant administrative system.

6.4 Submission of comments / objections

- A person who has been invited to comment or object, or any person in response to a public invitation to comment or object, may object to, comment on or make representations about the application. This must be done in accordance with section 98 of the NMPBL.
- A person whose rights or legitimate expectations may potentially be materially and adversely affected must be given at least 30 days to comment or object to a proposal and the time period must be clearly indicated on the letter of notification. A person may apply in writing for an extension of time to submit comments, before the closing date. The final closing date for comments and objections must be given on all documentation.
- The Municipality may advise/ notify any objector to resubmit proper / valid objections if the objections submitted do not meet the requirements of section 98 of the Bylaw.
- After the closing date, all comments and/or objections are sent to the applicant 14 days after the closing date for public, who has the right to respond to these. The applicant may amend the application accordingly or motivate why the objections are not relevant or applicable. The response from the applicant must reach the Municipality within the time specified in the notice. If no response has been received within this period, the Municipality may assume that the applicant has no comment and proceed with processing the application.
- In cases where an application is substantially amended, which leads to a more adverse impact, the Municipality must advise the applicant that such application will need to be re- advertised as a new application after determining the extent of advertising of the new application in terms of the guidelines of this policy.
- It is not a requirement that the response from the applicant should be sent to the objectors at any given stage, unless otherwise the official processing the application sees the necessity, in progressing the application further. This is solely to the discretion of the Manager: Town Planning.

6.5 Assessment and approval / refusal

- Comments and/or objections and the applicant's response to these must be incorporated into a departmental report which is submitted for a decision to the relevant decision-making structure.
- After a decision has been taken, the applicant and objectors (if any) must be notified of the decision.

7. EXTENT OF ADVERTISING

Table 1 below indicates the level of informing parties for each type of application that requires advertising and should be read in conjunction with the remainder of the document, SPLUMA, SPLUM Regulations and the Ndlambe Municipal Planning Bylaw. Wider advertising may be required by the delegated official if the complexity and impact of the development application warrants it. Information regarding the advertising of applications not listed in Table 1 should be dealt with on advice from the Manager: Town Planning. Final advertising instructions should therefore only be issued by the delegated official after assessing the full impact of each particular application.

TABLE 1

MINIMUM EXTENT OF ADVERTISING								
Type of application	Notice in the media	Site notice	Notice to affected person	Notice to a ward councillor	Notice to Ratepayers Association	Notice to the Provincial Government	Notice of no objection	Notes
An application for a rezoning or a rezoning on the initiative of the Municipality	YES	YES (If rezoning to any other zone besides (Single Residential & Residential 1 Zone)	Yes, as indicated by the delegated town planning official	YES	YES	YES for land zoned for agricultural or conservation purposes or Public Open Space)	Depending on availability of the affected persons.	If a registered notice has been sent to the affected person, the no objection form is not necessary.
Permanent departure, relating to:								
Coverage	N/A	N/A	YES	YES	YES	N/A	YES	Discretion of the delegated official applies.
Floor factor	N/A	N/A	YES	YES	YES	N/A	YES	
Building lines	N/A	N/A	YES	YES	YES	N/A	YES	
Heights /Number of Storeys	N/A (Unless the proposed exceeds 10%)	N/A	YES	YES	YES	N/A	YES	
Parking	N/A	N/A	YES	YES	YES	N/A	YES	
Any other permanent departure	YES	N/A Discretion of the delegated official applies.	YES	YES	YES	N/A	YES	
Temporary departure	YES	N/A (Unless otherwise specified by the delegated official)	YES	YES	YES	No	YES	
Subdivision								
Amendment of subdivision/ Cancellation	N/A	N/A	YES	YES	YES	N/A	YES	
Subdivision of land larger than 5 hectares inside the urban edge as reflected in its SDF	Yes	Yes	YES	YES	YES	Yes for land zoned for agricultural or conservation purposes or Public Open Space)	YES	

Subdivision of land larger than 1 hectare outside the urban edge as reflected in SDF	YES	YES	YES	YES	YES	Yes for land zoned for agricultural or conservation purposes or Public Open Space)	YES	
Subdivision of land less than 1 hectare inside urban edge as reflected in the SDF	N/A	N/A	YES	YES	YES	N/A	YES	
Consolidation of land	N/A	N/A	YES	YES	YES	N/A	YES	
An application in respect of a restrictive condition	YES	N/A	YES	YES	YES	N/A (Unless the restriction is in favour or affects the provincial sphere)	YES	
An application for special consent/consent use	YES	N/A	YES	YES	YES	N/A	YES	
Amendment, deletion or addition of conditions in respect of an existing approval granted.	N/A	N/A	N/A (Unless the condition to be amended affects the neighbours)	N/A (Unless the condition to be amended affects the neighbours)	N/A (Unless the condition to be amended affects the neighbours)	N/A (Unless the condition to be amended affects the neighbours)	N/A (Unless the condition to be amended affects the neighbours)	Discretion of the delegated official applies.
Extension of the period of validity of an approval,	N/A	N/A	N/A	N/A	N/A	N/A	N/A	The application would need to be circulated to the relevant departments for comment.
Approval/Amendment of a Home owners' association constitution	N/A	N/A	N/A (Resolution of the Homeowners Association must accompany application)	N/A	N/A	N/A	N/A	Discretion of the delegated official applies
Permanent Closure of Public Open Space	YES	YES	YES	YES	YES	YES	YES	
Determination of a zoning as contemplated in section 181 of bylaw	YES	N/A	YES	YES	YES	YES	YES	

NB: Notice of no objection may be served. Where a notice of no objection cannot be obtained, other levels of advertising listed must be adhered to for specific application type.

NOTES REGARDING DETERMINATION OF APPROPRIATE ADVERTISING LEVEL

Table 1 must be read in conjunction with the following notes: **Specific notes**

- 1 Notice of no objection may be served. Where a notice of no objection cannot be obtained, other levels of advertising listed must be adhered to for specific application type.
- 2 Notices also to be served on:
 - any provincial or national department if referred to in the title deed restriction;
 - any person mentioned in the title deed for whose benefit the restrictive condition was imposed.
- 3 Height departures exceeding the requirement of the Development Management Scheme or allowed rights by more than 10% require advertising in the paper.
- 4 No advertising for subdivisions are required when a rezoning to subdivisional area has already been advertised and such subdivision is in line with the proposals as was advertised during the rezoning process.

General notes:

In cases of multiple applications the level of advertising will be determined by the application with the highest required level of advertising.

Where indicated as a minimum requirement in Table 1 above, a notice to the ward councillor or ratepayers association organisation of the application is mandatory except where the ward councillor or ratepayers association advises not to be notified.

All applications involving impact assessments requires a site notice.

Where any component of the application requires on-site display of notices as per the above, the entire application must be set out on such site notice. Where on-site display of notices is required as per the above, this is additional to any other form of advertising that may be required, including the signing of no-objection letters by neighbours.

8. GENERAL REQUIREMENTS

Time permitted for commenting/objecting

- The time permitted for comments / objections will be specified in the advertisement and/or notice. Persons who are notified must be given at least 30 days and according to the Municipal Planning Bylaw
- Advertising of development applications that do not require advert in the paper will not be allowed during the peak summer holiday period from 16 December to 2 January (including both the 16th and the 2nd), which will be called “dead period”.
- For all other development applications as well as those that require advertisements in the press and provincial gazette the “dead period” will be 15 December until 15 January of the following year.
- In circumstances where advertising of an application has already commenced and the 30 day period ends within the above “dead periods”, the normal 30 day time period to comment/object shall be extended by the number of days that the advertising period has fallen within the “dead period”.

Circulation to internal branches & departments

- Applications must be circulated to relevant internal service departments and branches for technical and relevant comments. In cases where the relevant Land Use Management Office circulates applications to other service departments for comment, such office co-ordinates the circulation and assesses the application after the comments have been considered, on condition that comments were submitted.

Standard minimum requirements for onsite display of notices

Where on-site display of notices is required as per Table 1, this is additional to any other form of advertising that might be required, including the signing of notices of no objection.

- The size of at least 60 cm by 42 cm on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf, provided that—
- the notice must be displayed for a minimum of 30 days during the period that the public may comment on the application;
- the applicant must, within 21 days from the last day of display of the notice, submit to the Municipality— a sworn affidavit confirming the maintenance of the notice for the prescribed period.
- Notice content must include the following information:
 - details of the applicant and the owner of the land unit (if different from the applicant);
 - description and physical address of the land unit;
 - the purpose of the application to which the notice relates;
 - details of where and when particulars of the application of which notice is given are available for inspection;
 - an invitation to members of the public to lodge with the Municipality written comment or objection with reasons;
 - details of the procedure for a person to submit written comment or objection and the date by when it must be lodged (which may not be a date less than 30 days from the date of the notice);
 - a statement that no late comment or objection will be considered unless the Municipality Manager has agreed in writing; and
- Applicant / property owner exempts Council from any liability attributable directly or indirectly as a result of construction / placing on-site or removal of above notice or any damage incidental thereto resulting from these requirements.

The applicant will be responsible to display the notice as per the undertaking and provide the land use management office with photographic proof thereof, with the date displayed on the photograph, which must be taken on the commencement date of the advertising period. The photograph must be kept on file for record purposes. All costs for the display of notices will have to be borne by the applicant. Notwithstanding the above and the requirement that it will be expected from the applicant to endeavour to keep the display in good condition during the advertising period, the fact remains that the display might be damaged or removed due to reasons beyond the control of the applicant. In such an event, it will not constitute grounds for non-compliance with this policy. However, where such an event or any other breach of this section or the above undertaking can indeed in Council's reasonable opinion be ascribed to the neglect or otherwise of the applicant or responsible person, the delegated official may in its discretion require that re- or further advertising be undertaken to ensure procedural compliance, the further cost of which will also be borne by the applicant.

Advertising of a “scaled down” development proposal

The Municipality in general supports and encourages negotiations between objectors and an applicant to find an amicable solution to reasonable objections to mitigate the impact of a development proposal. An advantage of such an approach is that it can potentially remove objections against an application resulting in a decision that could be made under delegated (Authorised Official) powers (if the proposal is not in conflict with a policy or other conditions restricting such delegated powers) thereby removing the possibility of a lengthy appeal process.

In cases where an application was advertised and during this process and after consultation with the objectors or commenting parties who have responded to the advertising (this include an internal service department or external government department), the applicant submits a scaled down (“scaled down” in this context means reducing the total impact of the development proposal and excludes the amendment of the proposal by for example moving, relocating or re-organising parts of a building/s and/or land uses) development proposal for the specific purpose to mitigate the impact on the surrounding properties and built environment, the delegated official may decide after careful consideration of the impacts of the scaled down development proposal that further advertising is not required.

If the delegated official is of the opinion that the scaled down development proposal may impact on the rights of other parties or it has triggered a further application, then the development proposal or the further application or both, may have to be re-advertised in terms of the provisions of PAJA and the guidelines of this policy.

In the event that the applicant cannot obtain the written withdrawal of the objections against the original as well as the scaled down development proposal and wants to proceed with the scaled down development proposal, all standing objections will remain valid and the application will have to be processed in accordance with the directions of the approved categorisation of application.

Note that the scaled down development proposal must be submitted by the applicant to the relevant town planning office together with a covering letter clearly stating that the original application has been replaced by the scaled down development proposal. No application fees will be payable except if the scaled down development proposal triggers a further application for which a fee must be charged. Normal advertising fees will be payable in the event that it is required to re-advertise the amended application. It should be further noted that an applicant may elect not to pursue this option and may request or inform the Municipality to continue processing the original application.

Additional methods of public notice

If the Municipality considers notice in accordance with sections 93 or 94 to be ineffective or the Municipality decides to give notice of any application in terms of this By-law, the Municipality may on its own initiative or on request require an applicant to follow one or more of the following methods to give additional public notice of an application:

- (a) Site Notice
- (b) to convene a meeting for the purpose of informing the affected members of the public of the application;

- (c) to broadcast information regarding the application on a local radio station in a specified language;
- (d) to hold an open day or public meeting to notify and inform the affected members of the public of the application;
- (e) to publish the application on the Municipality's website for the duration of the period that the public may comment on the application; or
- (f) to obtain letters of consent or objection to the application.

(2) Where an applicant has given additional public notice of an application on behalf of a Municipality, the applicant must provide proof that the additional public notice has been given as required.

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