



## MKHAMBATHINI MUNICIPALITY

### **SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT 16 OF 2013) (SPLUMA): RESOLUTION TO INITIATE THE PROCESS OF AMENDING THE MUNICIPALITY'S SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAWS.**

#### **1. THE PROPOSED AMENDMENTS TO THE BY-LAWS**

- 1.1 The proposed amendments to the By-Laws were discussed and approved by the District's Planning and Environment sub-Cluster. The Amendment By-Law was drafted by Mr Gert Roos of the Legal Section of the Province's Department of COGTA, in consultation with a Work Group consisting of two members of the JMPT, and the Chief Planner of the Development Planning Shared Services.
- 1.2 The following is a brief explanation of the rationale behind the proposed amendments in the same order that they appear in the Amendment By-Law, except for minor amendments dealing with corrections or omissions, and which require no further explanation:
  - 1.2.1 **The name of the By-Law as well as the definition of "municipality"** in Section 1 and the wording of Section 128 must be changed to make it clear that each of the six municipalities have their own By-Laws, even if they are identical and became effective on the same date.
  - 1.2.2 **Changes to Sections 57 and 77 and Schedule 11**, to reduce the period allowed for the lodging of an appeal from 30 to 21 days, as specified in the Act.
  - 1.2.3 **Amendments to Section 100:** In its present form, even though the By-Laws allow a municipality to approve a subsequent application, the municipality is obliged to impose a civil penalty on the Applicant which must be between 5% and 100% of the value of the development. The proposed amendment gives the municipality the discretion to decide whether to impose a civil penalty at all, and the amount of the penalty. It also sets out what needs to be taken into account when taking this decision, and how the amount of the penalty is to be determined. The reason for this change is that a number of unauthorized developments - especially in the rural parts of municipalities – occurred in genuine ignorance of the planning requirements. Municipalities generally want to encourage landowners to regularize unauthorized developments, but the present provisions in the By-Laws could prove to be counter-productive. It is for the same reason that the amendments allow a municipality to declare an amnesty period during which it will not impose an administrative penalty.

**1.2.4 Amendments to Schedule 2** to revise the categorisation of applications: The Municipal Planning Approval Authority consists of the Municipal Planning Authorised Officer (MPAO), the Joint Municipal Planning Tribunal (JMPT) and the Municipal Council. The types of application to be decided by each of the components of the Municipal Planning Approval Authority are set out in Schedule 2 of the By-Laws. The categories reserved for the Municipal Council are derived from the Act, and consist mainly of the adoption of a land use scheme; any amendment to the wording of a land use scheme or the creation of a new zone, and a rezoning by the municipality to achieve the goals and objectives of the SDF. These will not change.

The proposed amendments will only affect the categories which apply to the MPAO and the Tribunal. The principle behind the categories reserved for the MPAO and the Tribunal is that small and routine applications are decided by the MPAO, while more complex and controversial applications are referred to the Tribunal. The following applications will now also be decided by the MPAO:

- Development situated outside the area of a land use scheme if the floor area is 400 m<sup>2</sup> or less.
- The notarial tying of adjacent properties.

It must be noted that the MPAO can at any time refer an application to the Tribunal. The other proposed changes to Schedule 2 are necessary to ensure alignment between the two categories, and to avoid overlap and duplication.

**1.2.5 Amendments to Schedule 4** to allow only parties to an application to make representations at a hearing on an application for municipal planning approval. As presently worded, any member of the public is allowed to attend and make representations at a hearing, even if they had not submitted written input when the application was originally advertised for public comment. Reference to a public hearing is also removed.

**1.2.6 Amendment to Schedule 11:** As presently worded, an application for the late lodging of a memorandum of Appeal only has to be served on the Appeal Registrar, the Municipality and the Applicant. This amendment will require it to also be served on all parties who commented on the application.

**1.3** The passing of, and amendments to, By-Laws is one of the means by which a municipality exercises its legislative and executive power, and is regulated through Chapter 3 of the Municipal Systems Act. It is essentially a two-step process, whereby Council firstly notifies the public of its intention to adopt the By-Law and invites comment, after which it is passed by Council. Once it has been passed by Council, it “must be published promptly in the *Provincial Gazette*...” (Section 13), and only takes effect after it has been published.