



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SAKWAZULU-NATALI

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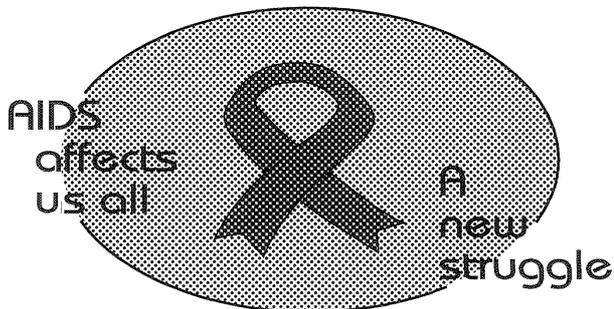
Vol. 5

PIETERMARITZBURG,

10 FEBRUARY 2011
10 FEBRUARIE 2011
10 kuNHLOLANJA 2011

No. 549

We all have the power to prevent AIDS



**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH

Prevention is the cure

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PROVINCIAL NOTICE

No. 19

10 February 2011

**KWAZULU-NATAL PLANNING AND DEVELOPMENT ACT, 2008:
DELEGATIONS, NKANDLA MUNICIPALITY.**

The Nkandla Municipality adopted the delegation set out in the Schedule to this notice in terms of section 156(1) of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008) and section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

MR. N. Mnyandu, Acting Municipal Manager: Nkandla Municipality

KEY TO DELEGATIONS OF POWER

DESCRIPTION	ABBREVIATION
Chief Financial Officer	CFO
Chief Planner (Registered Planner) – uThungulu Development Planning Shared Service)	CP(DPSS)
Development Administration Officer (Development Planning Shared Service)	DAO (DPSS)
Executive Committee	EXCO
Municipal Manager	MM
Planner (Development Planning Shared Service)	P (DPSS)

1. DEFINITIONS

Control measure: A control measure is a condition of a delegation that is not contained in legislation.

Note: A note alerts the person to whom a power has been delegated to important information contained in the legislation. This includes: a reference to a related power, criteria that has to be considered when making a decision, and persons who need to be consulted before the power can be exercised.

"registered planner" means a person registered as a registered planner or a technical planner contemplated in section 13(4) of the Planning Profession Act, unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of this Act for a particular category of registered persons in terms of section 16(2) of the Planning Profession Act, in which case a registered planner shall mean that category of registered persons for which the work has been reserved.

2. PRINCIPLES

- (1) The document deals with delegation of powers by Council in respect of the following laws:
- (a) The KwaZulu-Natal Planning and Development Act, 2008 (Act 6 of 2008);
 - (b) The Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);
 - (c) The Land Survey Act, 1997 (Act No 8 of 1997).

KWAZULU-NATAL PLANNING AND DEVELOPMENT ACT, 2008

(ACT 6 OF 2008)

PART 1

JUNE 2010

Commencement dates:

1 March 2009	Chapters 6, 10 and 11, item 15 of Schedule 2 and Schedule 5 of the Act and Chapters 1, 8, 9 and 12 and Schedule 1 of the Act in as far as it relates to the alteration, suspension and deletion of restrictions relating to land; the KwaZulu-Natal Planning and Development Appeal Tribunal and provincial planning and development norms and standards
1 May 2010	Remainder of the Act, except for section 89(3), 161(1), and the repeal of Chapter 1 of the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949)
7 November 2010	Repeal of Chapter 1 of the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949) relating to the KwaZulu-Natal Planning and Development Commission
To be announced	Section 89(3): civil penalty that must be paid before illegal development may be regularised Section 161(1): Prohibition on applications for planning and development approval in terms of the Development Facilitation Act, 1995 (Act No. 67 of 1995)

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
1	Section 4(2): To apply to the Member of the Executive Council for an extension of the period in which to adopt a scheme or schemes for its whole area of jurisdiction.	Note: - Accompanied by a written motivation and an request specifying the amount of additional time required in terms of section 4(3)	EXCO
2	Section 7: To review schemes within six months after Council adopted an Integrated Development Plan for its elected term.		EXCO
3	Section 8: To compile and maintain an up-to-date version of the Scheme and make it available for inspection and copying at all reasonable times by any person		MM CP(DPSS) DAO (DPSS) P (DPSS)

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
4	<p>Section 9(1), 22(1), 39(1), 51(1) and 61(1): To initiate proposals on behalf of the Municipality</p>	<p>Notes:</p> <ul style="list-style-type: none"> - Proposals to: <ul style="list-style-type: none"> • Adopt or replace a scheme • Amend a scheme • Subdivide and consolidate land • Develop land situated outside the area of a scheme • Phase or cancel an approved layout • Alter, suspend or delete a restriction relating to land - The Municipality must be the land owner or act with the owner's consent in the case for the subdivision of land, the consolidation of land and the development of land situated outside the area of a scheme - Process in accordance with Part 2 of Schedule 1, except for the phasing or cancellation of an approved layout - Process for the phasing or cancellation of an approved layout in accordance with section 52 - Provision for combined proposals in terms of section 10(4), 23(3), 40(2) and 62(3) - Right to amend a proposal after notice has been given thereof in terms of Schedule 1 item 17(1) - Right to amend scheme to avoid having to pay compensation in section 95(2) 	EXCO

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
5	Sections 9(2), 22(2), 39(2), 51(2) and 61(2): To receive and administer applications	Notes: <ul style="list-style-type: none"> - Applications to: <ul style="list-style-type: none"> • Amend a scheme • Subdivide and consolidate land • Develop land situated outside the area of a scheme • Phase or cancel an approved layout • Alter, suspend or delete a restriction relating to land - Process in accordance with Part 1 of Schedule 1, except for the phasing or cancellation of an approved layout - Process for the phasing or cancellation of an approved layout in accordance with section 52 - Status of legal successor-in-title in accordance with section 9(3) - Provision for combined proposals in terms of section 10(4), 23(3), 40(2) and 62(3) 	MM CP(DPSS) DAO (DPSS) P (DPSS)
6	Sections 11, 24, 41, 53, and 63: To evaluate and make recommendations on proposals or applications in terms of the Act, and to issue certificates confirming that the proposals or applications comply with the Act	Note: <ul style="list-style-type: none"> - Matters relevant in determining the merits of proposals or applications are contained in sections 12, 25, 42, 54, and 64 	CP(DPSS)

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
7	<p>Section 13(1): To approve, with or without alterations, or to refuse the <u>adoption</u> or <u>replacement</u> of a scheme</p>	<p>Notes:</p> <ul style="list-style-type: none"> - Decision must be informed by a registered planner or on advice of a registered planner in accordance with section 11 - Decision may not be in conflict with provincial planning and development norms and standards or the municipality's IDP as per section 13(2) and 13(3) - Decision may not be delegated to a committee of council, an official or another municipality in terms of section 156(1) - Timeframes in accordance with items 12 and 21 of Schedule 1 - Effective date of decision as per section 16 	<p>NOT DELEGATED See notes</p>

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
8	<p>Section 13(1), 26(1), 43(1), 55(1) and 65(1): To approve, with or without alterations, or to refuse a proposal or an application</p>	<p>Notes:</p> <ul style="list-style-type: none"> - Applications to: <ul style="list-style-type: none"> • Amend a scheme • Subdivide and consolidate land • Develop land situated outside the area of a scheme • Phase or cancel an approved layout • Alter, suspend or delete a restriction relating to land - Decision must be informed by advice of a registered planner in accordance with section 11, 24, 41, 53 and 63 - Decision to: <ul style="list-style-type: none"> • Amend a scheme • Subdivide and consolidate land • Develop land situated outside the area of a scheme • Alter, suspend or delete a restriction relating to land <p>may not be in conflict with provincial planning and development norms and standards or the municipality's IDP as per section 13(2), 26(2), 43(2) and 65(2)</p> - Decision to: <ul style="list-style-type: none"> • Subdivide and consolidate land • Alter, suspend or delete a restriction relating to land <p>may not be in conflict with scheme as per section 26(2) and 65(2)</p> - Timeframes in accordance with items 12 and 21 of Schedule 1 - EXCO may impose conditions in accordance with section 13(4), 26(3) and (4), 43(3) and (4), 55(2) and 65(3) - Reasons for decision must comply with section 13(5), 26(5), 43(5), 55(3) and 65(4) - Effective date of decision as per section 16, 29, 46, 58 and 68 - Section 59 relating to the legal effect of approval of phasing or cancellation of approved layout plans (including transfer of land and ownership) - May not suspend or remove a mineral right registered against the title of any land in accordance with section 60(3) 	EXCO

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
9	Section 13(6), 26(6), 43(6), 55(4), 65(5): To correct an error in the wording of the Municipality's decision on a proposal or an application	Note: The correction may not constitute a change in its decision or an alteration, suspension or deletion of a condition of its approval	EXCO
10	Section 14(1), 27(1), 44(1), 56(1), 66(1): To inform persons who have commented on a proposal or an application of Municipality's decision	Notes: - Notices must comply with section 14(2)-(4), 27(2)-(4), 44(2)-(4), 56(2)-(4), 66(2)-(4) - Serving of notices must comply with section 158	MM CP(DPSS) DAO (DPSS) P (DPSS)
11	Section 14(5), 27(5), 44(5), 56(5), 66(5): To provide upon request a copy of the reasons for the Municipality's decision on a proposal or an application and the conditions of approval	Notes: - Notices must comply with section 14(2)-(4), 27(2)-(4), 44(2)-(4), 56(2)-(4), 66(2)-(4) - Serving of notices must comply with section 158	MM CP(DPSS) DAO (DPSS) P (DPSS)
	Section 17: To receive and administer an application for consent, approval or permission	Control measure: Not delegated. Provisions of the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949) for special consent remains in operation, until the Act is amended	NA
	Sections 18: To evaluate and make recommendations on proposals or applications for permission in terms of a scheme, and to issue certificates confirming that the proposals or applications comply with the Act	Control measure: Not delegated. Provisions of the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949) for special consent remains in operation, until the Act is amended	NA
	Section 20: To approve, with or without alterations, or to refuse proposals or applications for permission in terms of a scheme	Control measure: Not delegated. Provisions of the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949) for special consent remains in operation, until the Act is amended	NA
Section 22(1): See delegation 4			
Section 22(2): See delegation 5			

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
Section 26(1): See delegation 8			
Section 26(6): See delegation 9			
Section 27(1): See delegation 10			
Section 27(5): See delegation 11			
12	Sections 31(1), 31(3), 31(5), 34(2), 48(1), 48(3), and 48(5): To issue certificates of compliance with conditions of approval	Control measure: In consultation with MM: Notes: - Referring to conditions imposed in accordance with sections 26(4), 43(4) and 65(3); - Provisions of section 31(4) and 48(4) relating to occupation of a building/structure	MM CP(DPSS) DAO (DPSS) P (DPSS)
Sections 31(3): See delegation 12			
Sections 31(5): See delegation 12			
13	Section 32(1)(b): To receive certified copies of the approved diagrams or general plan		MM CP(DPSS) DAO (DPSS) P (DPSS)
14	Sections 33(1), 35 and 70: To lodge plans and documents with the Surveyor General's and Deeds Offices in cases where land is subdivided or consolidated, or where application is made for the alteration, suspension or deletion of restriction relating to land by the Municipality	Note: - Section 33(2) and 37(2) relating to lapsing of approval.	MM CP(DPSS) DAO (DPSS) P (DPSS)
Section 34(2): See delegation 12			
Section 35: See delegation 14			

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
15	Section 37(3), 37(4), 49(1) and 49(2): To give an applicant a specified amount of time to complete a development	Notes: - Section 37(5) and 49(3) relating to cancel the part of the approved layout plan for which the rights have not been fully exercised, and which has been cancelled - Notices must comply with section 37(3) or 49(1) - Serving of notices must comply with section 158	EXCO
16	Section 37(4): To withdraw a notice giving an applicant a specified amount of time to complete a development		EXCO
17	Section 37(5) and 49(3): To initiate the cancellation of the part of the approved layout plan for which the rights have not been fully exercised, and which has been cancelled in accordance with sections 37(3) and 49(1)		EXCO
Section 39(1): See delegation 4			
Section 39(2): See delegation 5			
Section 43(1): See delegation 8			
Section 43(6): See delegation 9			
Section 44(1): See delegation 10			
Section 44(5): See delegation 11			
Section 48(1): See delegation 12			
Section 48(3): See delegation 12			
Section 48(5): See delegation 12			
Section 49(1): See delegation 15			
Section 49(2): See delegation 16			
Section 49(3): See delegation 17			
Section 51(1): See delegation 4			

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
Section 51(2): See delegation 5			
18	Section 52(2): To administer the giving of public notice of an application for the phasing or cancellation of an approved layout plan	Note: - Notice must comply with section 52(3)-(4)	MM CP(DPSS) DAO (DPSS) P (DPSS)
Section 55(1): See delegation 8			
Section 55(4): See delegation 9			
Section 56(1): See delegation 10			
Section 56(5): See delegation 11			
Section 61(1): See delegation 4			
Section 61(2): See delegation 5			
Section 65(1): See delegation 8			
Section 65(5): See delegation 9			
Section 66(1): See delegation 10			
Section 66(5): See delegation 11			
Section 70: See delegation 14			
	Section 71(1): To initiate an application for the permanent closure of municipal roads or public places	Control measure: Not delegated. Provisions of the Local Authority's Ordinance, 1974 (Ordinance No. 25 of 1974) for the permanent closure of municipal roads and public places remains in force, until the Act is amended	NA
	Section 71(2): To receive and administer an application for the permanent closure of municipal roads or public places	Control measure: Not delegated. Provisions of the Local Authority's Ordinance, 1974 (Ordinance No. 25 of 1974) for the permanent closure of municipal roads and public places remains in force, until the Act is amended	NA

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
	Section 71(2)(e): To approve, with or without alterations, or to refuse the permanent closure of municipal roads or public places	Control measure: Not delegated. Provisions of the Local Authority's Ordinance, 1974 (Ordinance No. 25 of 1974) for the permanent closure of municipal roads and public places remains in force, until the Act is amended	NA
	Sections 72: To evaluate and make recommendations on proposals or applications for the permanent closure of municipal roads an public places, and to issue certificates confirming that the proposals or applications comply with the Act	Control measure: Not delegated. Provisions of the Local Authority's Ordinance, 1974 (Ordinance No. 25 of 1974) for the permanent closure of municipal roads and public places remains in force, until the Act is amended	NA
19	Section 76(1): To request the court to summarily enquire into and determine the monetary value of any advantage which a person may have gained as a result of an offence		EXCO
20	Section 79(1): To issue and withdraw contravention notices	Notes: - Offences listed as per section 75(1), 77(1), 78(1), 90(7) and Schedule 1 item 10(6) - Contents of contravention notices as per section 79(2) and 80	EXCO MM CP(DPSS) DAO (DPSS) P (DPSS)
21	Section 79(1): To serve contravention notices on persons suspected of certain offences	Note: - Serving of notices must comply with section 158	MM CP(DPSS) DAO (DPSS) P (DPSS)
22	Section 81(1): To consider comments lodged in response to a contravention notice		EXCO MM CP(DPSS) DAO (DPSS) P (DPSS)
23	Section 81(2): To issue a prohibition order	Notes: - Offences listed as per section 75(1), 77(1), 78(1), 90(7) and Schedule 1 item 10(6) - Contents of prohibition orders as per section 81(2) and 82 - Consider section 81(3)-(5)	EXCO

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
24	Section 81(2)(a): To serve a prohibition order	Note: - Serving of orders must comply with section 158	MM CP(DPSS) DAO (DPSS) P (DPSS)
25	Section 81(2)(b), 84(1), 84(2) and 94: To apply to the High Court for the issuing or withdrawal of an order restraining a person from continuing an illegal activity or for a demolition order	Notes: - Consider section 84 - Consider section 98 - Notices must comply with section 85	EXCO MM
26	Section 83 and 86: To display order on site		MM CP(DPSS) DAO (DPSS) P (DPSS)
27	Section 84(1): To serve urgent prevention orders issued by the High Court and to display orders on site	Note: - Serving of orders must comply with section 158	MM CP(DPSS) DAO (DPSS) P (DPSS)
28	Section 84(3): To apply to the High Court for the withdrawal of an urgent prevention order		EXCO MM
29	Section 84(4): To serve a notice on the person on whom the urgent prevention order was served, if the order is withdrawn	Note: - Serving of notices must comply with section 158	MM CP(DPSS) DAO (DPSS) P (DPSS)
Section 86: See delegation 26			
30	Section 89(2): To receive and administer subsequent applications for authorisation	Note: - Purpose of a subsequent application in terms of section 89(1)	MM CP(DPSS) DAO (DPSS) P (DPSS)
31	Section 89(3): To approve, with or without alterations, or to refuse subsequent applications for authorisation and impose civil penalties	Notes: - Approvals must include conditions as set out in section 89(3) - EXCO may impose other conditions in accordance with 89(3)	EXCO
32	Section 90(1): To carry out site inspections for enforcement purposes	Note: - Inspector must adhere to sections 90(1)-(6) and section 92	EXCO MM CP(DPSS) DAO (DPSS) P (DPSS)

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
33	Section 90(2): To issue a certificate stating that a person has been designated as a town planning inspector		MM
34	Section 91(1): To apply to the Magistrate's Court for the issuing of a warrant of entry for enforcement purposes	Note: - Conditions listed in section 91(1) to (3)	EXCO MM
35	Section 94: To authorise an application to court for the demolition, removal or alteration of buildings, structures or works, or for rehabilitation of land		EXCO
36	Section 95(1), 96(1), 97(1), and 98: To receive, administer and negotiate applications for compensation	Note: (In consultation with CFO) Compensation arising from: • Adoption or implementation of provisions of schemes • Wrongful and intentional or negligent service of urgent prevention orders • Suspension or removal of restrictions	EXCO MM
37	Section 95(1), 96(1), 97(1), and 98: To consider applications for compensation	Note: (In consultation with CFO) Compensation arising from: • adoption or implementation of provisions of schemes • wrongful and intentional or negligent service of urgent prevention orders suspension or removal of restrictions	EXCO
Section 96(1): See delegations 36 and 37			
Section 97(1): See delegations 36 and 37			
Section 98: See delegations 36 and 37			
38	Section 99(1): To agree on the amount of compensation	Note: In consultation with CFO Compensation arising from: • Adoption or implementation of provisions of schemes • Wrongful and intentional or negligent service of urgent prevention orders • Suspension or removal of restrictions	EXCO

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
	Section 113(2)(a): To receive memoranda of appeals	Note: - In relation to appeals under section 15, section 28, section 45, section 57, section 67 - Act requires memorandum to be served on the Municipal Manager	MM See notes
39	Section 114(1) and (3) and 116(2): To lodge a responding memorandum	Notes: - Contents of a responding memorandum in accordance with section 114(2) - Responding memorandum must be served in accordance with section 114(3)	EXCO MM CP(DPSS) DAO (DPSS) P (DPSS)
40	Section 116(2): To withdraw a responding memorandum		EXCO MM CP(DPSS) DAO (DPSS) P (DPSS)
41	Section 117(2): To represent Council during a KwaZulu-Natal Planning and Development Appeal Tribunal site visit		EXCO MM CP(DPSS) DAO (DPSS) P (DPSS)
42	Section 120: To represent Council at a KwaZulu-Natal Planning and Development Appeal Tribunal hearing		MM CP(DPSS) DAO (DPSS) P (DPSS)
43	Section 120(2)(a): To appoint legal counsel to represent Council during a KwaZulu-Natal Planning and Development Appeal Tribunal hearing		EXCO MM
44	Section 123: To decide the manner in which the Municipality must be notified of the decision of the KwaZulu-Natal Planning and Development Appeal Tribunal		MM CP(DPSS) DAO (DPSS) P (DPSS)
45	Section 125(2)(c)(i): To receive an affidavit from an applicant for the late lodging of an appeal		MM

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
46	Section 126: To prepare a written notice of opposition to late lodging of appeal, including opposing affidavit		MM CP(DPSS) DAO (DPSS) P (DPSS)
47	Section 126: To lodge with the registrar a written notice of opposition to late lodging of appeal, including opposing affidavit		MM CP(DPSS) DAO (DPSS) P (DPSS)
48	Section 129: To receive notice of the ruling in relation to the late lodging of an appeal		MM CP(DPSS) DAO (DPSS) P (DPSS)
49	Section 132(3): To prepare oral or written representation with regards to an order of costs or a penalty awarded in terms of section 132(2)		MM CFO CP(DPSS) DAO (DPSS) P (DPSS)
50	Section 132(3): To lodge written representation with regards to an order of costs or a penalty awarded in terms of section 132(2)		MM
	Section 156(1) and (8): To delegate, amend or revoke any power conferred on the Municipality in terms of the Act to any official employed by it	Notes: - Council cannot delegate the power to delegate - Council may not delegate the responsibility to adopt or replace a scheme as contemplated in section 13 - Council may impose conditions in accordance with section 156(2). - Delegation or amendment comes into effect upon the publication of a notice in the Gazette, or if a later date is stated, from that date in accordance with section 156(7)(c)	NOT DELEGATED See notes
51	Section 156(7)(b) and 156(9): Placing of notices in the Gazette		MM

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
	Section 157(1): To enter into agency agreements for performance of functions	<p>Control measure: Power not delegated.</p> <p>EXCO will enter into agency agreements, if necessary.</p> <p>Notes: - After it has applied the criteria contemplated in section 78 of the Municipal Systems Act, 2000 (Act No. 32 of 2000)</p>	EXCO See control measure
52	Section 160: To maintain access to information	<p>Notes: Including:</p> <ul style="list-style-type: none"> • Proposals and applications • Comments on proposals and applications • Evaluation by registered planner • Certificate by registered planner that proposal or application complies with the Act • Decision on proposal or application 	MM CP(DPSS) DAO (DPSS) P (DPSS)
53	Schedule 1 item 2(1)(a), 4(1), 9(1), 10(2), 11(2), 19(1), 20(4): To serve and request additional documents	<p>Notes:</p> <ul style="list-style-type: none"> - Serving of documents: <ul style="list-style-type: none"> • Request additional information • Extension of time for additional information • Notice application complete • Copies of comments on proposal or application to applicant • Notice of site inspection • Notice of hearing - Serving of notices must comply with section 158 - Calculation of number of days in accordance with section 159 - Notice of a hearing must comply with Schedule 1 item 11(3) and 20(2) and 20(5) 	MM CP(DPSS) DAO (DPSS) P (DPSS)
Schedule 1 item 4(1): See delegation 53			

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
54	Schedule 1 item 5(1), 6(1), 8(2) and (3), 14(1), 15(1) and 17(2) and 17(3): To give public notice	Notes: - Including: <ul style="list-style-type: none"> • Site notice • Personal notice • Newspaper notice • Obtaining proof of notice • Notice of amendment to proposal or application - Notices must comply with Schedule 1 items 5(2)-(3), 6(1), 7(1), 14(2)-(3), 15(3), 16. - Public notice not required in cases listed in terms of section 10(3), 23(2), 62(2)	MM CP(DPSS) DAO (DPSS) P (DPSS)
Schedule 1 item 6(1): See delegation 54			
55	Schedule 1 item 6(2)-(3): To agree with a person who has an interest in any specific matter to give notice on behalf of the Municipality and to request proof from that person that public notice has been given as required		MM CP(DPSS) DAO (DPSS) P (DPSS)
56	Schedule 1 items 6(4) and 15(2): To convene and represent Council during a public meeting for the purpose of informing the public of a proposal or an application		MM CP(DPSS) DAO (DPSS) P (DPSS)
57	Schedule 1 item 8(1)(b): To request an amendment of an application prior to approval		CP(DPSS)
Schedule 1 item 8(2) and (3): See delegation 54			
Schedule 1 item 9(1): See delegation 53			
58	Schedule 1 item 10(1): To decide whether a site inspection is necessary.		MM CP(DPSS) DAO (DPSS) P (DPSS)
59	Schedule 1 item 10(1) and 11(4): To represent Council during a site visit or public hearing	Note: - Conditions contained in section 10(3)-(5)	MM CP(DPSS) DAO (DPSS) P (DPSS)
Schedule 1 item 10(2): See delegation 53			

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
60	Schedule 1 item 11(1) and 20(1): To decide whether a public hearing is necessary.		MM CP(DPSS) DAO (DPSS) P (DPSS)
Schedule 1 item 11(2): See delegation 53			
Schedule 1 item 14(1): See delegation 54			
Schedule 1 item 15(1): See delegation 54			
Schedule 1 items 15(2): See delegation 56			
61	Schedule 1 item 17(1): To amend proposals for council-owned land prior to approval by the Municipality	Note: - Subject to Schedule 1 item 17(2)-(3)	EXCO
Schedule 1 item 17(2): See delegation 54			
Schedule 1 item 17(3): See delegation 54			
62	Schedule 1 item 18: To reply to a person who submitted comments on an application		EXCO MM CP(DPSS) DAO (DPSS) P (DPSS)
Schedule 1 item 19(1): See delegation 53 for notice of site inspection			
Schedule 1 item 19(1): See delegation 58 for decision to conduct site inspection			
Schedule 1 item 20(1): See delegation 60			
Schedule 1 item 20(4): See delegation 53			

SUBDIVISION OF AGRICULTURAL LAND ACT (ACT NO. 70 OF 1970)

PART 2

National legislation

Date of commencement: 2 January 1971

*Note: The provisions of the act have not been assigned to the
province of KwaZulu-Natal*

NO	SCOPE	CONTROL MEASURE/ NOTE	LEVEL
1	Section 4(2)(b): To advise the Minister of Agriculture on the subdivision of agricultural land, if the Minister of Agriculture is satisfied that the land is not to be used for agricultural purposes	Control measure: Advice must be given by a registered planner or on advice of a registered planner.	EXCO MM CP(DPSS)
2	Section 4(2)(b): To determine conditions subject to which land may be used, if the Minister of Agriculture is satisfied that the land is not to be used for agricultural purposes	Control measure: Decision must be made by a registered planner or on advice of a registered planner.	EXCO MM CP(DPSS)
3	Section 4(3): To enforce a condition subject to which land may be used, if the Minister of Agriculture is satisfied that the land is not to be used for agricultural purposes	Note: Condition imposed in terms of section 4(2)(b) of the Act.	EXCO
4	Section 4(4): To vary or withdraw a condition subject to which land may be used, if the Minister of Agriculture is satisfied that the land is not to be used for agricultural purposes	Control measure: Decision must be made by a registered planner or on advice of a registered planner. Note: Condition imposed in terms of section 4(2)(b) of the Act.	EXCO MM CP(DPSS)

**LAND SURVEY ACT, 1997
(ACT NO. 8 OF 1997)**

PART 3

National legislation

Date of commencement: 11 April 1997

NO	SCOPE	CONTROL MEASURE / NOTE	LEVEL
1	Section 37(2): To receive a request for the alteration, amendment, partial cancellation or total cancellation of a general plan	Notes: Read with section 37(3) of the Act. *Delegation by the Premier.	MM CP(DPSS)
2	Section 37(2): To consent to the alteration, amendment, partial cancellation or total cancellation of a general plan	Control measure: Decision must be made by a registered planner or on advice of a registered planner. Notes: The delegate may impose conditions. Read with section 37(3) of the Act and section 30 of the KwaZulu-Natal Planning and Development Act, 2008 (Act No. 6 of 2008) *Delegation by the Premier.	EXCO
3	Section 37(2): To advise the Surveyor General that the provisions of the laws relating to the permanent closing of any public place or part thereof have been complied with	Notes: In relation to the alteration, amendment, partial cancellation or total cancellation of a general plan. Read with section 37(3) of the Act. *Delegation by the Premier.	EXCO MM CP(DPSS)

LEGAL RULES GOVERNING THE DELEGATION OF POWERS (COMMON LAW)

ANNEXURE A**JANUARY 2010**

Based on L. Baxter, Administrative Law (1984), Y. Burns, Administrative Law Under The 1996 Constitution and M. Wiechers, Administrative Law (1985)

1. A power that has been "assignment" is fully transferred. A functionary who assigned a power may not exercise the power that has been assigned. The functionary to whom a power has been assigned is fully responsible for the exercising thereof. "Assignment" of powers is sometimes also referred to as the decentralisation of powers.
2. A power that has been "delegated" is not fully transferred. A functionary who delegated a power (delegator/ delegans) may exercise the power himself or herself and remains fully responsible for the exercising thereof. However, once the functionary who the power have been delegated to (delegatee/ delegate) has exercised the power in relation to a particular case the delegator may no longer exercise the power in relation to that instance. "Delegation" of powers is sometimes also referred to as the deconcentration of powers.
3. A power is not conferred upon a government department generally. A power is conferred upon a functionary, for example, "the Administrator", "the MEC responsible for Local Government", "the Head of Department" or "the Development Tribunal".
4. A power that is conferred upon a functionary may as a rule only be exercised by that functionary. This is because there is a danger that if delegations are allowed the power may be exercised by a person who is not as qualified or as politically or otherwise responsible as the person who the legislature has in mind. The delegation of powers in the absence of express or implied authority in a law is considered to be the abdication of authority.
5. Powers delegated to a functionary may not be delegated further by that functionary. This does not prevent the functionary from obtaining the assistance of others in exercising the power or making the decision and obtaining the assistance of other with the implementation of the decision.
6. Where a discretionary power has been conferred upon an organ of state, the organ of state may not delegate that power unless expressly empowered to do so in a law. A statutory body may therefore not

delegate its powers further. The Town Planning Ordinance, 1949, provides expressly for the further delegation of certain powers of the KZNPDC.

7. Abdication of powers can occur in three ways: Acting through unlawful delegation, acting under dictation from another person or body and failure to act.
8. A power may not be delegated to more than one functionary in the absence of an express provision in an empowering law.
9. Where the law provides for institutional separation it must be honoured. A functionary cannot monitor itself or make a recommendation to itself.
10. A functionary must be appointed properly and must meet all the prescribed requirements relating qualifications, experience, conditions of the delegation etc. An action taken by a functionary who has not been appointed properly or who did not meet all the requirements and conditions of the delegation is invalid.
11. Where an appointment is personal, like the appointment of a member of a statutory body or a designated officer, another person may not exercise the appointees powers.
12. Where several persons are appointed to exercise a power, for example a statutory body, they must act together as a body, unless the law expressly provides otherwise. The body may appoint a subcommittee to investigate certain facts but must exercise the discretionary power itself. The law often specifies a quorum of members who must be present when a decision is taken.
13. A statutory body cannot take over the powers of another functionary. Where the law empowers a designated officer to extend the time in which plans must be lodged with the Surveyor General the Development Tribunal cannot grant the extension of time.
14. The existence of an implied power to delegate depends on the following factors:
 - (a) the degree of devolution of the power;
 - (b) the importance of the original delegatee;
 - (c) the complexity and extent of discretion;
 - (d) the impact of the power; and
 - (e) practical necessity.
15. A power may be delegated where a delegation is limited and the delegator retains full control over the final decision.

16. A power may be delegated where the delegation will ensure that the decision is taken by a better qualified or experienced functionary.
 17. Powers which require little or no discretion are usually delegable (mechanical acts).
 18. Powers which require significant discretion are usually not delegable, especially in the case of unguided discretions (no criteria in the law, no standards, no recommendation that must be considered etc).
 19. Powers which may infringe on a persons rights are usually not delegable.
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