



KWAZULU-NATAL PROVINCE

HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

Policy Communiqué

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REVISED ADDITIONAL RURAL GUIDELINES

The Revised Additional Rural Guidelines were approved by the Honourable MEC for Human Settlements and Public Works for implementation with effect from 02 February 2023.

The Province of KwaZulu-Natal has successfully delivered housing on traditional authority land in terms of the Additional Rural Guidelines since 2003. The document was designed to accommodate the peculiar nature of tenure in rural areas in the province as the National policy could not be implemented in the province in the prescribed format. Since the introduction of the Guidelines in 2003, several administrative changes have taken place in addition to the introduction of the Spatial Planning and Land Use Management Act in 2013, which has demanded a review of the existing Guidelines in terms of procedures and processes which need to be adhered to, to effectively implement rural housing projects in the Province.

1. APPLICATION OF THE GUIDELINE

The Guideline is applicable to the KwaZulu-Natal Ingonyama Trust Board land and excludes any state-owned land.

2. TENURE

The form of functional tenure that is currently in existence in a specific traditional community may be used. The developer ideally the Department i.e., depending on their capacity to undertake such projects, will be the Municipality. The local municipality, in consultation with the Traditional Authority will provide the Department with the following information:

- a) The details of the beneficiary
- b) The tenure that the beneficiary currently holds
- c) The GPS (Global Positioning System) co-ordinates per beneficiary site
- d) The consent/signature of the Traditional Authority confirming that the beneficiary has been allocated a plot that exists in the GPS/certificate of allocation
- e) The GPS fixed co-ordinates for the outer boundary of the beneficiary area

If the beneficiary vacates the property occupied by him/her for any reason whatsoever, his or her name will be removed from the National Housing Database so that he or she will once again qualify for a subsidy. The Department/Municipality must ensure that Amakhosi reallocates the property to another qualifying beneficiary. This provision must be contained in the Social compact agreement between the Department/Municipality and the traditional authority.

3. PRODUCT NORMS AND STANDARDS

The top structure must comply with the National minimum norms and standards, in that the house must be:

- a) 40m² gross floor area, accompanied by technical specifications as provided by the NHBC;

- b) designed as a minimum to include: 2 bedrooms; 1 separate bathroom with a shower, hand basin and toilet;
- c) 1 combined kitchen living area; and
- d) a ready board electricity installation where electricity is available.

In addition, the typology of a 45m² dwelling designed to cater for the needs of disabled persons who are wheelchair dependant, and a 50m² dwelling for Military Veterans are applicable as required.

Any habitable room, bathroom, shower-room, and room containing a WC shall be provided with a means of lighting and ventilation which will enable such room to be used, without detriment to health and safety or causing any nuisance, for the purpose for which it is designed.

The enhanced Norms and Standards of 2014 based on the revised National Building Regulations; South African National Standard (SANS) 10400 XA-Energy usage in Buildings must be adhered to.

Minimum services in the form of a VIP and a rainwater harvesting system (2500 L water tank) must be provided in a rural housing project.

4. SUBSIDY MECHANISM

The National Housing Code, 2009, Rural Housing Subsidy: Communal Land Rights Programme provides that CLARA applies to beneficiaries of communal land or land tenure rights and supports the provision for legal security of tenure by transferring communal land including land vested with the KwaZulu-Natal Ingonyama Trust to a person or community. However, in view of rural development in this province largely taking place on traditional authority land and due to the sensitive nature of tenure arrangements in traditional authority areas, the National Rural Housing Subsidy: Communal Land Rights Programme cannot be implemented in its entirety within the prescribed format in the province. In terms of the KZN Ingonyama Trust Act of 1994 as amended, land may not be disposed of to individuals by sale or lease with an option to purchase. Such land remains in the ownership of the Ingonyama Trust Board (ITB) and may only be administered by way of functional tenure by issuing Permissions to Occupy (PTO).

In view thereof, projects must be undertaken and submitted using the Revised Additional Rural Guidelines and business plan formats in conjunction with the provisions provided for the establishment of a system of functional tenure as set out in the Rural Housing Subsidy: Communal Land Rights chapter of the Housing Code, 2009. The National Rural Housing Subsidy will be used to fund projects packaged in terms of these guidelines. The Revised Additional Rural Guidelines is specifically intended to facilitate housing development on KwaZulu-Natal Ingonyama Trust land.

For the purposes of the rural subsidy guidelines, functional security of tenure refers to the special circumstances prevailing in traditional authority areas in KwaZulu-Natal where formal tenure of land in the form of title deeds are not possible but where beneficiaries are permitted to reside and use land in accordance with traditional arrangements. Thus, to prevent any tenure challenges, the preference to a Permission to Occupy on KwaZulu-

Natal Ingonyama Trust land is the sole option for rural housing development as per the Guidelines.

Any housing development undertaken in terms of these Guidelines must be preceded by an agreement between the municipality and the traditional authority. This agreement will highlight and define their respective roles and responsibilities in terms of the proposed housing development.

The traditional authority must consent to the development in terms of S2 (5) of the KwaZulu-Natal Ingonyama Trust Act 3 of 1994 namely; the Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the traditional authority or community authority concerned.

5. ROLE PLAYERS

5.1 Provincial Department

- a) Development of the Additional Rural Guidelines and review the Guideline as and when required.
- b) Oversee compliance in respect of the implementation of the guideline.
- c) Ensure the conclusion of a social compact agreement among stakeholders.
- d) Provide funding for rural housing development through the National Rural Housing Subsidy.
- e) Evaluation and approval of rural housing projects.

5.2 Municipality

The local municipality, with the support of the District Municipality where required will:

- a) Act as a developer. In circumstances where the municipality does not the capacity then the Department will fulfil the role of developer.
- b) Manage the project funds in terms of the required contractual agreement.
- c) Provide the bulk services to the project with the funding that it would receive from the water services authority or Municipal Infrastructure Grant (MIG).
- d) Provide technical assistance in the planning and control of the installation of any services in the project.
- e) Manage the provision of water supply to the project in terms of the arrangements as agreed between the municipality and the traditional authority.
- f) Provide support with the management of technical and planning functions requirements for the establishment of the project.
- g) Obtain statutory approval for all or any development.

5.3 Traditional Authority

The traditional authority would, with the assistance of the Department of Traditional Affairs where required:

- a) Allocate the sites to be occupied and administer a system whereby functional tenure will be given to beneficiaries of the project. The allocations must be in compliance with the Department's Revised Policy Directive on the limitation of allocation of Housing per Umuzi.
- b) Ensure the involvement of the community in the implementation arrangements of the project.
- c) Reach agreement with the Municipality on the level of services to be installed in the project and the administrative mechanisms where applicable for the collection of any service charges that are payable by beneficiaries.
- d) Protect the development area and prevent any unlawful occupation thereof.

5.4 Implementing Agent

- a) Support the establishment of a project steering committee.
- b) Undertake the management of housing delivery on behalf of the Department/Municipality in terms of the applicable policy.

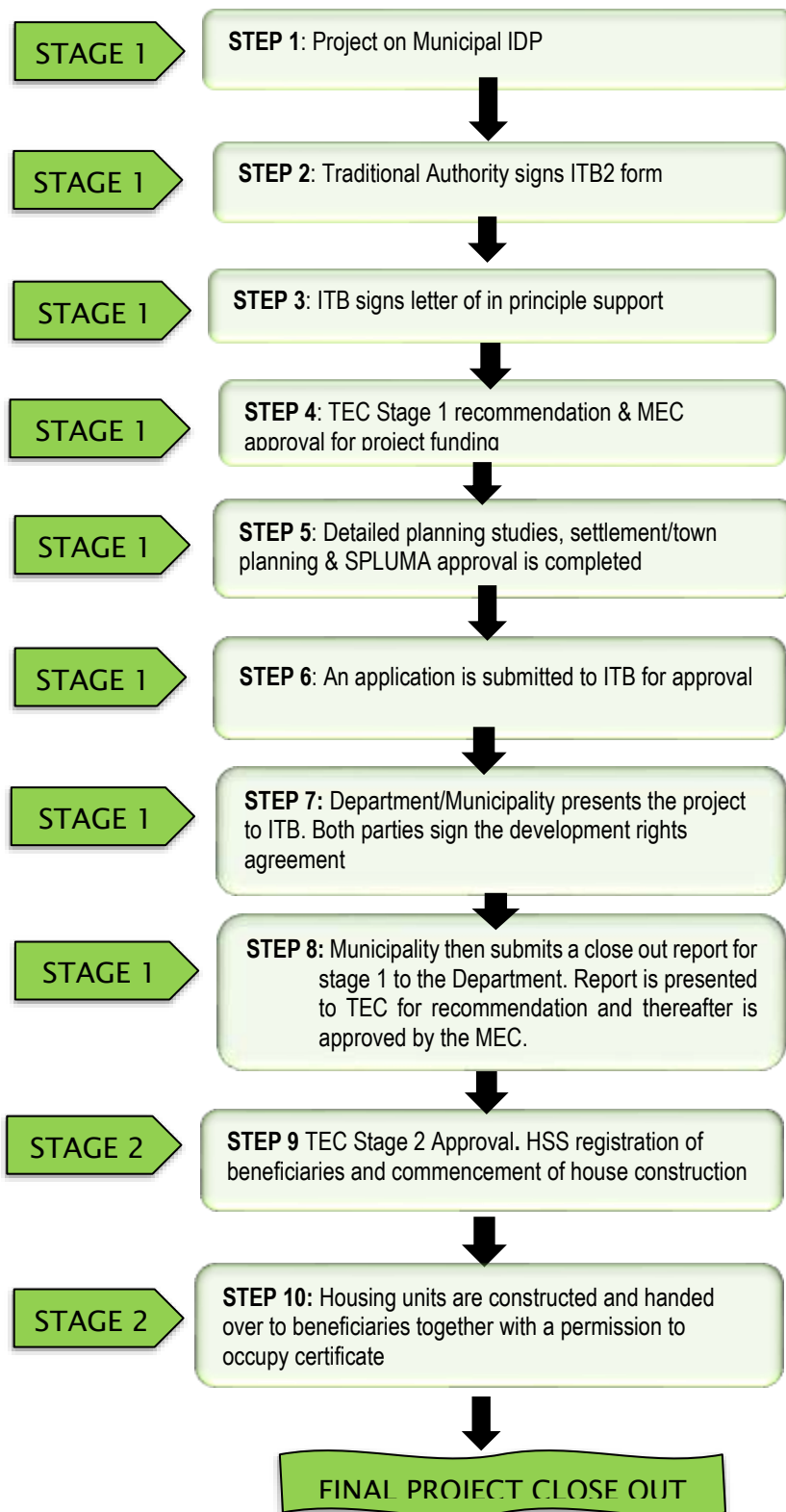
6. PROJECT APPLICATION PROCEDURE

The following is the synopsis of the procedure to be followed for the application of a rural housing project:

- 6.1 The project is included in the municipality's Integrated Development Plan (IDP).
- 6.2 The Department/Municipality obtains Traditional Council consent via the ITB2 form. A copy is attached as **Annexure A**. This form is signed by the traditional authority consenting to and confirming that the identified land may be used for a housing project
- 6.3 After the traditional authority has consented, the Department/Municipality then obtains a letter of in-principle support from the ITB for the housing project. This letter is signed by the KwaZulu-Natal Igonyama Trust Board confirming that they do not have any objection to the housing project. In order to obtain the in-principle support, the following documents must be submitted to KwaZulu-Natal Igonyama Trust Board namely:
 - a) Traditional council consent
 - b) List of beneficiaries co-signed by induna and Nkosi
 - c) Municipal officials' authority to sign document
 - d) Confirmation of funding
 - e) Shape files
 - f) Land audit
 - g) Any service and infrastructure programme roll-out
 - h) Environmental/geological/planning consents
 - i) Settlement plan indicating beneficiary location data/project footprint
 - j) Details of development/professional team
 - k) Presentation in PowerPoint format

- 6.4 Upon receipt of the confirmation from the ITB, the Municipality seeks recommendation from the Department's Technical Evaluation Committee (TEC) for Stage 1. The TEC submission must include the ITB2 form and a letter of in-principle support from the ITB. The MEC then approves the funding for the project based on the TEC recommendation.
- 6.5 Thereafter a detail planning study commences, this study includes geo technical investigations, social facilitation, land surveying, identifying of project boundary, GPS co-ordinates of each household, bulk services report, and settlement/town planning. The town planning process must be completed prior to project being presented to the KwaZulu-Natal Ingonyama Trust Board. This process entails obtaining approval as per Chapter 6 of the Spatial Planning and Land Use Management Act 16 of 2013. Chapter 6 Section 33 to Section 52 guide the process for land development applications including the required documentation and stipulated timeframes per application. The Municipality must ensure that each application adheres to the legislated timeframes in terms of SPLUMA.
- 6.6 The Department/Municipality submits the application to the KwaZulu-Natal Ingonyama Trust Board. The application contains all investigations undertaken as well as the relevant supporting documents which is required for approval. The supporting documents include those listed in point 10.3 above.
- 6.7 The KwaZulu-Natal Ingonyama Trust Board then advises the Department/Municipality of the date for presentation to the Board. The Department/Municipality presents the project to the Ingonyama Trust Board. Once the Board is satisfied with the project presentation, the development rights agreement is prepared and signed by both parties.
- 6.8 The Municipality then submits a close out report for stage 1 to the Department together with supporting documents. The report is presented to TEC for recommendation and thereafter is approved by the MEC.
- 6.9 The Municipality then submits an application for stage 2 funding to the Department. Upon approval by the MEC, the project contract is signed. Subsequently beneficiaries are registered on the Housing Subsidy System (HSS) and house construction commences.
- 6.10 Upon completion of construction, housing units are handed over to beneficiaries together with a permission to occupy certificate.

PROCESS FLOW DIAGRAM OF PROJECT APPLICATION PROCEDURE



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REVISED GUIDELINE ON THE IMPLEMENTATION OF PROJECTS AND TERMS AND CONDITIONS FOR A TRIPARTITE AGREEMENT

The Tripartite Agreement Guidelines introduced in 2005, amended the roles and responsibilities of the Department, Municipality and Project Manager/Implementing Agent (IA) as follows:

The municipality/project manager/implementing agent together with the Department would appoint professionals. Tender adjudication was done by the municipality jointly with the Department. The appointment of project managers/professionals/emerging developers was done from the Department's database. The project agreement was between the Department, Municipality, and the Project Manager/Implementing Agent

Since 2005, municipalities undertook the implementation of human settlements projects by outsourcing their work to external service providers through their supply chain management processes. A tripartite agreement was entered into to clarify the roles and responsibilities of all stakeholders in the housing delivery process. However, during 2016 it was revealed that Municipalities were not undertaking their roles as per the agreement in respect of Supply Chain Management (SCM) compliance resulting in the tripartite agreements being changed to bilaterals to ensure accountability by municipalities. In 2020, Cabinet supported the Province to assume the role of developer on a per project basis. As a result, the tripartite agreements have been reinstated to enable the Department to disburse funds directly to service providers as required, on the value of work done. The Department together with the municipality and in some cases, the project manager/IA will monitor and manage the performance of service providers.

A Revised Guideline on the Implementation of Projects and Terms and Conditions for a Tripartite Agreement was approved by the Honourable MEC for Human Settlements and Public Works for implementation with effect from 07 March 2023.

1. OBJECTIVE OF THE GUIDELINE

The purpose of the tripartite agreement is to address the following factors:

- a) Define the roles & responsibilities of the Department of Human Settlements (DoHS), Municipalities and Project Manager/IA. The defined roles and responsibilities will facilitate remedial measures against parties who do not comply with their obligations.
- b) Address the issue of strengthening the capacity of Municipalities: guidance, advice and transfer of skills will be provided by the Project Management Component where required in the implementation of projects.
- c) Alleviate the problem associated with blocked projects: the obligation of being part of the tripartite agreement will enforce the proper monitoring and management of the performance of those involved in the project process and ensure that activities are performed within the projected time frames.
- d) The effective use of funds to ensure value for money.
- e) The DoHS will be involved in the adjudication of tenders and the appointment of the required built environment professionals.

2. CONCLUSION OF A TRIPARTITE AGREEMENT

The following is a summary of the project process reflecting when the conclusion of a tripartite agreement takes place:

- a) MEC receives provincial subsidy allocation from National Housing Fund.
- b) Municipality applies for reservation of subsidies in terms of their approved Spatial Development Framework (SDF's)/Housing Sector Plan/ Council Resolution/approved & agreed priorities.
- c) Municipality calls for land availability proposals where required
- d) Developer undertakes prefeasibility/ Risk assessment: Planning, Land Audit, EIA, Bulks, Social. Geotech prepares project description and compiles acquisition agreements. Municipality secures land.
- e) Municipality finalizes acquisition of land
- f) Municipality/Project Manager and DoHS compile the pre-feasibility report for approval. This report is submitted to the MEC via Technical Evaluation Committee (TEC) for approval. Tripartite Agreement is entered into if the municipality lacks the capacity and appoints a project manager/IA to conduct prefeasibility investigations.
- g) **First Tripartite Agreement** entered into by the DoHS, Municipality and IA.
- h) Municipality submits application to NHBRC for project enrolment
- i) Municipality/project manager undertakes preliminary engineering design and costs
- j) Municipality submits application to NHBRC for home enrolment, applicable in rural projects
- k) Submitted by the municipality via DoHS for final approval based on the relevant reports
- l) **Second Tripartite Agreement** entered into by the DoHS, Municipality and IA.
- m) Implementation of the project
- n) Project is closed out

3. ROLES AND RESPONSIBILITIES

3.1 Municipality

- a) Adjudication of proposals in relation to SDF's/Housing Sector Plan/ Council Resolution/approved & agreed priorities
- b) Secure the land for project development and finalizing land acquisition agreement.
- c) Manage the project manager/IA and other professionals.
- d) Jointly with the DoHS, select and appoint professionals required.
- e) Registration with the NHBRC.
- f) Oversee socio-survey.
- g) Preparation of feasibility report.
- h) Prepare preliminary town planning layout/preliminary engineering design and costs.
- i) Preparation of planning and development plan.
- j) Undertaking SPLUMA compliance processes.
- k) Engineering Design.
- l) Procurement of professionals.
- m) Completion and verification of handover certificates.

- n) Manage and monitor the appointed project manager/IA and professionals.
- o) Training and selection of local builders.
- p) Building inspection.
- q) Issuing of foundation certificate, structural certificates, and occupation certificates.

3.2 Department of Human Settlements

- a) Provide funding.
- b) Provide guidance and advice on project description and pre-feasibility report for approval.
- c) Manage the project manager/IA and other professionals.
- d) Jointly with the municipality, select and appoint professionals required.
- e) Assessment of integrated planning.
- f) Make payment to professionals.
- g) Prepare service level agreements/MOA
- h) Approval of planning and development plan.
- i) Verification of SPLUMA compliance processes.
- j) Verification and issuing of handover certificates.
- k) Procurement of professionals.
- l) Prepare tripartite agreements
- m) Training and selection of local builders Beneficiaries sign building agreements with Community Resource Organisation (CRO), if applicable
- n) Ensure that all terms and obligations have been discharged in respect of the Department, Municipality, IA, Beneficiary Committee and Community Resource Organisation (CRO) Memorandum of Understanding, if applicable

3.3 Project Manager/Implementing Agent

- a) Prepare project description where municipality lacks capacity and provide guidance and advice on pre-feasibility report for approval.
- b) Manage professionals appointed.
- c) Compile feasibility report where municipality lacks capacity.
- d) Ensure project is compliant with the development programme in terms of time frames.

4. KEY RESPONSIBILITIES

The following are key responsibilities that will be undertaken by all parties contracted to a Tripartite Agreement:

- a) Ensure overall compliance in terms of undertaken obligations, duties, and role as per the agreement.
- b) To assess the performance of the contracted parties as per the agreed timeframes of the agreement.
- c) To monitor the performance of the contracted parties in providing the services specified in the agreement and to enforce the payment or penalty mechanism associated with the performance monitoring.
- d) To liaise with the relevant stakeholder/s and contracted party in achieving the project objectives.

- e) To manage any disputes that may arise under the agreement.
- f) To manage the changes, variations, and amendments to the agreement in accordance with the relevant legislation.
- g) To oversee the management of the project and ensure the objectives are being realised.
- h) To report on the financial performance of the project in accordance with generally accepted accounting practices applicable.
- i) To monitor, evaluate, and report on the progress of the project as per the agreement.

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The complete Revised Additional Rural Guidelines and Guideline on the Implementation of Projects & Terms and Conditions for a Tripartite Agreement may be accessed on the Department's website using the following link:
<https://www.kzndhs.gov.za/index.php/features/policy-documents/provincial-policies>

ANNEXURE A

ITB2 FORM

TRADITIONAL COUNCIL CONSENT

1. Description of site -

2. At a meeting held on _____ at the _____ Traditional Council Office, the _____ Traditional Council resolved that it had no objection to the application to acquire rights to land by _____

_____ (give full particulars of the applicant) The form of tenure thereof to be agreed between the applicant and the Ingonyama Trust Board as land owner-in-law in terms of section 3 of the Ingonyama Trust Act, Act 3 of 1994, as amended. This consent is given in terms of section 2 (5) of that Act.

3. The Traditional Council confirms that all persons occupying or having an interest in the said Land have been consulted and have no objections to the proposals.

4. The applicant has been advised and confirms that he/she/it will not do anything or erect any structure on land until an appropriate tenure right has been agreed to and the necessary documents have been signed with the Ingonyama Trust Board.

Signed:

CHAIRMAN

MEMBER

MEMBER

SECRETARY

Notes:

1. The consent submitted to the Trust must be an original, on Traditional Council headed notepaper and with a Traditional Council date stamp.
2. Please provide a full legal description supported if possible, by a site plan and co-ordinates.
3. This consent together with the Ingonyama Trust Board standard application form (ITB1) must be submitted timeously to the Secretariat, Ingonyama Trust Board 65 Trelawney Road / P.O. Box 601, Pietermaritzburg 3201.