



KWAZULU-NATAL PROVINCE

HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

REVISED ADDITIONAL RURAL GUIDELINES

DECEMBER 2022

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ACRONYMS/ABBREVIATIONS

ITB: INGONYAMA TRUST BOARD

SPLUMA: SPATIAL PLANNING AND LAND USE MANAGEMENT ACT

VIP: VENTILATED IMPROVED PIT

CLARA: COMMUNAL LAND RIGHTS ACT

NHBRC: NATIONAL HOME BUILDERS REGISTRATION COUNCIL

GPS: GLOBAL POSITIONING SYSTEM

SANS: SOUTH AFRICAN NATIONAL STANDARD

PTO: PERMISSION TO OCCUPY

IDP: INTEGRATED DEVELOPMENT PLAN

TEC: TECHNICAL EVALUATION COMMITTEE

MEC: MEMBER OF THE EXECUTIVE COUNCIL

1. INTRODUCTION

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.

The National Housing Code, 2009, introduced the Rural Housing Subsidy: Communal Land Rights Programme. However, in view of rural development in this province largely taking place on traditional authority land, which is administered through the, KZN Ingonyama Trust Act of 1994 as amended, and due to the sensitive nature of tenure arrangements in traditional authority areas, the National Rural Housing Subsidy: Communal Land Rights Programme could not be implemented in its entirety in the province. Rural projects have continued to be undertaken using the KwaZulu-Natal Additional Rural Guidelines.

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.

2. OBJECTIVES

The objective of this Guideline is to facilitate an efficient, equitable and fair manner of delivering rural housing to qualifying beneficiaries by:

- 2.1 Dealing with the development aspects on rural or communal land and more specifically land registered in favour of the KwaZulu-Natal Ingonyama Trust Board;
- 2.2 Providing a structure in determining the allocation procedure for rural housing beneficiaries; and
- 2.3 Promoting equal access and secure housing opportunities to qualifying beneficiaries.

3. APPLICATION OF THE GUIDELINE

The Guideline is applicable to the KwaZulu-Natal Ingonyama Trust Board land and excludes any state-owned land. State owned land will be dealt with in terms of the relevant legislative frameworks and housing programmes governing housing development within the province.

4. KEY PRINCIPLES OF THE GUIDELINE:

- 4.1 In view of the fact that a majority of KwaZulu-Natal's population reside in rural areas, housing assistance must be addressed in these communities.
- 4.2 Rural communities' property rights and obligations are adequately conversed to them thereby preventing possible property disputes.
- 4.3 Accommodating the peculiar dynamics of KwaZulu-Natal Ingonyama Trust Land in the delivery of human settlements.
- 4.4 Progressively realizing the right to adequate housing by targeting the most vulnerable and poorest households as per the Constitution of the Republic of South Africa.

5. LEGISLATIVE FRAMEWORK

The Policy is informed by the following Legislation:

5.1 Section 26 of the Constitution of the Republic of South Africa of 1996 provides that:

- (1) Everyone has the right to have access to adequate housing
- (2) The State must take reasonable legislative and other measures, within its available resources to achieve the progressive realisation of this right.

5.2 Section 36 of the Constitution of the Republic of South Africa of 1996 provides that:

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom, taking into account all relevant factors, including

- a) the nature of the right;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relation between the limitation and its purpose; and
- e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

5.3 Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013

In terms of **Section 3** of the Spatial Planning and Land Use Management Act, the objectives of the Act are as follows:

- (a) to provide a uniform, effective and comprehensive system of spatial planning and land use management for the Republic
- (b) ensure that the system of spatial planning and land use management promotes social and economic inclusion.

While **Section 4** of the Spatial Planning System in the Republic consists of the following components:

- (a) Spatial development frameworks to be prepared and adopted by national, provincial and municipal spheres of government
- (b) development principles norms and standards, that must guide spatial planning, land use management and land development
- (c) the management and facilitation of land use through the mechanism of land use schemes
- (d) procedures and processes for the preparation, submission and consideration of land development applications and related processes

Section 8.2 (b) the norms and standards must promote social inclusion, spatial equity, desirable settlement patterns, rural revitalisation urban regeneration and sustainable development.

Section 12. 1 (h) the national and provincial spheres of government and each municipality must prepare spatial development frameworks that; include previously disadvantaged areas including areas under traditional leadership and rural areas.

All development including rural development must be undertaken in a planned and integrated manner in accordance with the regulations as per the Spatial Planning and Land Use Management Act 16 of 2013 namely Chapter Six which guides the land development application process.

5.4 The National Housing Act 107 of 1997, Republic of South Africa provides for:

The facilitation of a sustainable housing process and thus outlines the general principles applicable to housing development in all spheres of government. This Act further defines the functions of national, provincial and local governments in respect of housing development. All development including rural development must be supported by the municipality having jurisdiction over the project area. In order to ensure that development proceeds in a co-ordinated, sustainable and integrated basis, the Department requires housing developments to ideally be driven by municipalities. The department may in certain instances act as developer and drive such rural developments, in such cases the municipality will provide support to the development

5.5 Public Finance Management Act of 1999, Republic of South Africa

Section 38 and 45 of the Act deals with general responsibilities of the accounting officers. The said responsibilities include the effective, efficient, economic, and transparent use of the resources of the Department. Rural subsidies are public monies, and the expenditure thereof must be undertaken in compliance with the principles of the Public Finance Management Act 1 of 1999.

5.6 Ingonyama Trust Act 3 of 1994, as amended

Section 5 of the act provides that the Ingonyama Trust Board 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, and otherwise than in accordance with the provisions of any applicable law

6. TENURE

6.1 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

6.2 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.

7. 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.

8. 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.

9. ROLE PLAYERS

9.1 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.

9.2 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.

9.3 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.

9.4 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.

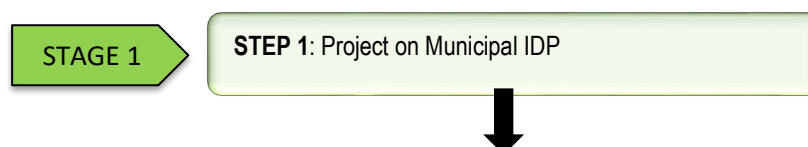
10. PROJECT APPLICATION PROCEDURE

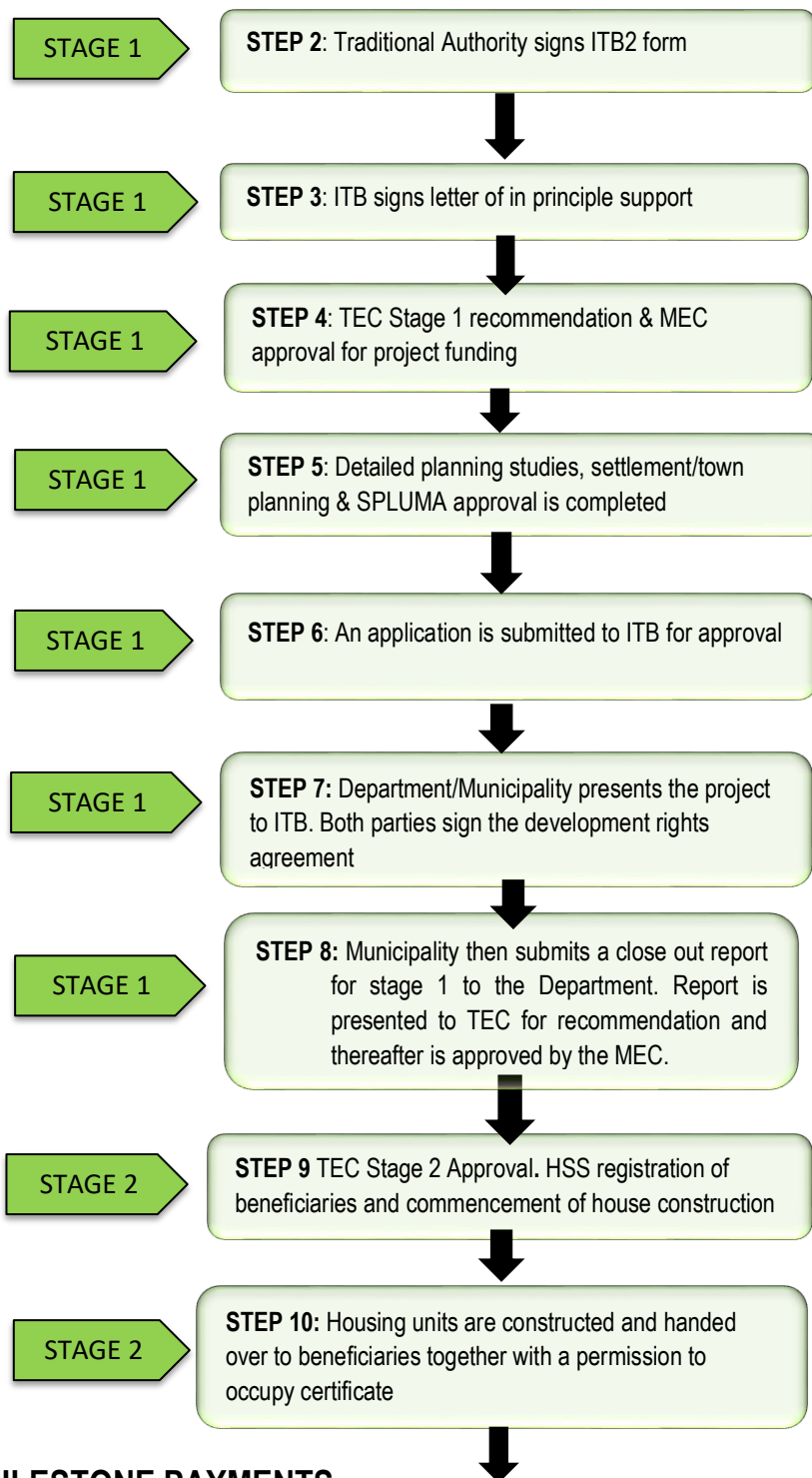
The following is the synopsis of the procedure to be followed for the application of a rural housing project:

- 10.1 The project is included in the municipality's Integrated Development Plan (IDP).
- 10.2 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
- 10.3 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

- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 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





11. MILESTONE PAYMENTS

The milestones must be completed in line with the Progress Payment Milestones as outlined in the Annexure D of the Department’s Rural Project Application Pack.

12. EFFECTIVE DATE

The effective date of the Revised Additional Rural Guideline will be the date of signature by the MEC.

13. MONITORING AND EVALUATION

The Department's Policy, Research and Product Development Directorate will undertake the monitoring and evaluation of the Guideline and will review it after 3 years or as and when required.