



## **KWAZULU-NATAL PROVINCE**

**HUMAN SETTLEMENTS**  
REPUBLIC OF SOUTH AFRICA

# **Policy Communiqué**

**Circular No. 1/2025**

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## **REVISED GUIDELINES FOR THE ADVANCE (TRANCHE) PAYMENT SYSTEM**

Since the introduction of the initial Guideline for the Tranche Payment System for Advance Payments in 2009, difficulties were consistently experienced where stakeholders were not adhering to the guideline. The revised Guidelines for the Advance (Tranche) Payment System was approved by the MEC for implementation with effect from March 2024. It is intended to enhance the previous guidelines to improve control and enforce compliance.

Over the years, the Department has minimized the use of advance payments to municipalities in an effort to manage payments in a more accountable manner and based on the value of work done. In addition, where the Department takes on the role of developer on behalf of a municipality, the need for advance payment is further reduced. However, in some instances, the circumstances of projects necessitate payments to be made in advance. In recent years the department has provided bulk infrastructure funding from the Human Settlements Development Grant (HSDG) to the local municipalities that do not receive the Urban Settlements Development Grant (USDG). Monies for this purpose is paid in advance to the respective municipalities.

The revised Guideline seeks to address the gaps identified through the years to ensure that the system of advance payment prevents adverse cash flow implications for contractors and helps to ensure that all payments are based on deliverables and value for money is achieved.

### **1. GUIDELINES FOR THE ADVANCE (TRANCHE) PAYMENT SYSTEM**

These guidelines are applicable to all instances where funding is advanced for works still to be done, irrespective of the subsidy instrument, (Enhanced People's Housing Process, Integrated Residential Development Programme, Rural, etc.), and the installation of bulk infrastructure services identified through appropriate planning processes and approval. The Department can assist the non-metropolitan municipalities with the implementation of bulk infrastructure projects through the HSDG and ISUPG where necessary. Advance payments can only be done to organs of state and in terms of the relevant financial laws, prescripts, and regulations. The following provincial requirements, in addition to those defined in terms of National Housing policy are to be considered in ensuring the efficient implementation of the advance system of payments to municipalities or state entities.

## **1.1 GENERAL REQUIREMENTS**

- a) Planned allocation of funding must be published by notice in the gazette before payment is made.
- b) The municipality/state entity must open a separate account for each project.
- c) Advance payments and sub-milestone payments will be paid into the primary bank account and must be immediately transferred to the separate project account.
- d) Interest less bank charges must be transferred to the Municipal Housing Operating Account (MHOA).

## **1.2 REQUIREMENTS FOR PAYMENTS**

- a) All payments to service providers, including contractors will be from the funds advanced and only in respect of the value of work done to ensure that value for money is achieved.
- b) An implementing agent may claim for interim payments for the various stage of the housing project in the achievement of sub-milestones within an advance up to the maximum amount allocated in the respective stage.

## **1.3 REQUIREMENTS FOR ADVANCE PAYMENTS**

### **1.3.1 Housing Projects**

- a) In instances where advance payments are made, the Project Management Directorate (or component responsible for managing the implementation of the contract) must submit a motivation based on the criteria that was assessed and must include a realistic development programme and cash flow on a phased approach.
- b) Funds transferred to municipalities must be spent in the financial year (1 April to 31 March), as required in terms of the Division of Revenue Act (DORA). The project budget must be within the required provincial budget prepared by the Provincial Treasury. The allocation must be approved as per the budget of the Provincial Department and be in the form of an agreement. A copy of the agreement must be submitted to the transferring officer. Any funds not spent will have to be recovered as required in terms of the DORA. Care must thus be taken to ensure realistic development programmes and project budgets are in place, and this should be properly certified. Municipalities can make an application for rollover of funds which should be motivated with legitimate reasons. (See paragraph (c) below).

- c) The project Contract/Memorandum of Agreement must specify the terms of the advance payments and the unit responsible for monitoring the Municipal Housing Operating Account must be informed of such terms. Furthermore, all parties involved must be informed, particularly the Accounting Officer, to guide against any wasteful and fruitless expenditure. The contract must include Section 38 (1) (h) of the PFMA which states that appropriate disciplinary steps must be taken against any official in the department who commits an act which undermines financial management and internal control systems.
- d) Prior to the release of advance funds, a certificate will be submitted by the municipality signed by the Municipal Manager or delegated person, confirming the balance of funds in the particular project account, its development programme, and its projected monthly expenditure for the financial year (1 April to 31 March). These documents should be sent to the Regional Director or project monitor responsible for overseeing the project on behalf of the Department, who will forward the document to the Finance Directorate for endorsement.
- e) The Director responsible for Finance or his/her delegate, will confirm in writing the balance of funds in the project specific account. A written assurance may be obtained prior to transfer of funds in the absence of such, the transfer may be subjected to conditions and remedial measures (PFMA section 38 (1) (i).
- f) The responsible Director for the component implementing and/or overseeing the project, will confirm in writing that his/her component has assessed the application, and based on performance trends that the release of funds is supported.
- g) Further advance payments for housing projects will be released only on proof that at least 80% of the work is done in terms of the programme for the previous advance, and relevant obligations in terms of the Contract/Memorandum of Agreement in respect of the said milestones has been completed. This provision applies to the completion of milestones within a stage only. Advance funds for further stages can only be released once all milestones have been completed, as stipulated in terms of the agreement and in terms of policy, and provided all the required certificates for proof of completion are attached and comply with the provisions of the policy.

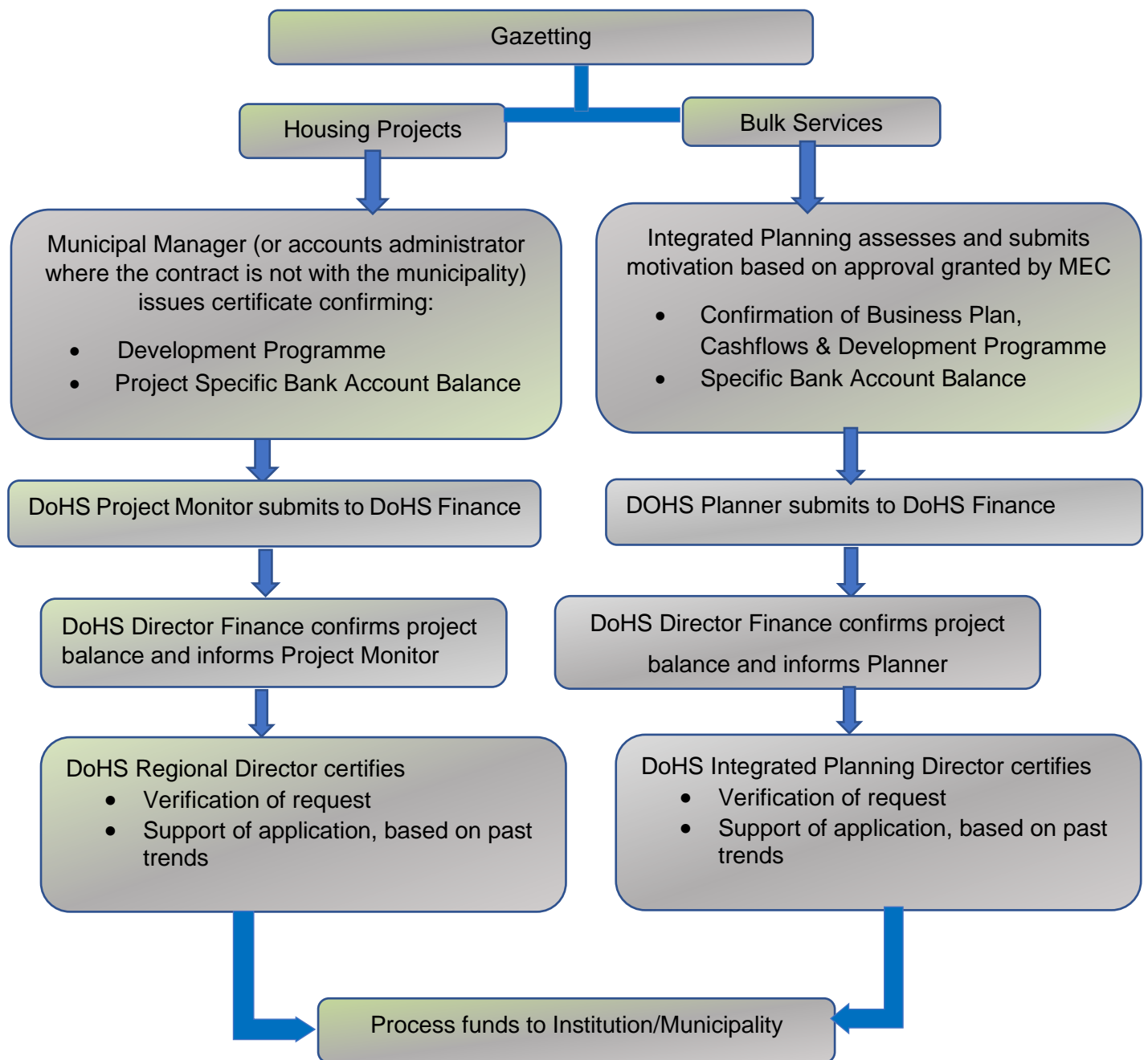
### **1.3.2 Bulks Infrastructure Services**

- a) Where advance payments are to be made, the Integrated Planning Directorate must submit motivation based on approval granted by the MEC.
- b) Funds transferred to municipalities must be spent in the financial year (1 April to 31 March), as required in terms of the Division of Revenue Act (DORA). The budget allocation must be approved as per the budget of the provincial department and be

in the form of Service Level Agreement (SLA) /contract. A copy of the SLA/contract must be submitted to the transferring officer. Municipalities can make an application for rollover of funds which should be motivated with legitimate reasons. Any funds not spent will have to be recovered as required in terms of the DORA.

- c) The SLA must specify the terms of the advance payments and the unit responsible for monitoring the Municipal Housing Operating Account must be informed of such terms. Furthermore, all parties involved must be informed, particularly the Accounting Officer, to guide against any wasteful and fruitless expenditure. The contract must include Section 38 (1) (h) of the PFMA as stated above.
- d) The Director responsible for Finance or his/her delegate, will confirm in writing the available balance of funds. **Municipal Financial Viability Assessment** must be undertaken as per the form attached as **Annexure 1**. A written assurance may be obtained prior to transfer of funds in the absence of such, the transfer may be subjected to conditions and remedial measures (PFMA section 38 (1) (i).
- e) The responsible Director for the component implementing and/or overseeing the project, will confirm in writing that his/her component has assessed the application, and based on performance trends that the release of funds is supported. This process is mapped in the diagram below.

### 1.3.3 PROCESS FOR RELEASE OF ADVANCE FUNDS



## **1.4 ASSESSMENT CRITERIA FOR ADVANCE PAYMENTS**

- 1.4.1 The municipality's capacity must be formally assessed and signed off by the Chief Operating Officer and the Chief Financial Officer, in terms of the criteria listed below, before being approved to receive advance payments on a housing project or bulk services funding.
- 1.4.2 This assessment must be conducted at the inception of each project and be updated on an annual basis within 3 months of receiving the audit report for the preceding financial year. In the case of existing projects, this report will be required before any further advance payments are made.
- 1.4.3 Should the municipality or organ of state not be able to satisfy the criteria listed below for housing projects, the normal progress draw system for payment of completed work would apply (subject to the approval of the project).
  - a) The performance trend over a three-year cycle in terms of previous housing project development programmes, correct reconciliations, and a dedicated and functioning housing unit.
  - b) If there was any non-performance by the municipality over the three-year cycle and this was due to circumstances beyond their control, then reasons for such non-performance must be taken into consideration.
  - c) In instances where it is not possible to obtain records over a three-year cycle, financial records gathered from the municipality, institutions or from Department of Cooperative Governance and Traditional Affairs and/or Office of the Auditor-General should be considered.
  - d) The component responsible for monitoring the Municipal Housing Operating Account (MHOA) must provide comment on the manner in which the municipality manages its financial records. The municipality must have proper accounting systems and procedures in place to manage advance and sub-milestone payments.
  - e) In instances where a municipality has not undertaken a housing project, the Department of Water and Sanitation or Department of Cooperative Governance and Traditional Affairs in respect of MIG funding must be consulted to determine the performance of the municipality in their projects.
- 1.4.4 The audit report from the Auditor-General for the 3 preceding financial years must be unqualified specifically with regard to financial issues. A "Going Concern" qualification paragraph in the audit report will automatically result in the disqualification from receiving advance payments.



## **1.5 REQUIREMENTS FOR RELEASE OF PAYMENTS**

### **1.5.1 Housing Projects**

Once the project agreement has been signed, the following will apply:

- a) Payments will be released according to the Guideline i.e., advance and milestone payments will be paid by the municipality to the service provider only upon authority from the department.
- b) The Project Management Regional Office (or office responsible for monitoring the implementation of the contract) will notify the Subsidy Administration Directorate. The Subsidy Administration Directorate will capture the relevant information and submit the request for payment to the Finance Directorate in order for the required funds to be released to the municipality.
- c) The release of payments for milestones will be based on an invoice submitted to the Regional Office which will determine compliance with the project agreement and confirm that the work has been completed. Thereafter, the claim must be submitted to the Subsidy Administration Directorate that will capture the relevant information and issue a letter of release to the Regional Office which will then forward the letter to the municipality to authorize payment. The notice of the issued letter of release must be given to the Housing Fund Monitoring and Reconciliation unit.
- d) In instances where advance payments have been released in terms of the development programme, proof of completion of the milestones linked to the particular advance payment must be submitted to the Finance Directorate prior to the release of the next advance payment.

### **1.5.2 Bulk Services**

Once the service Level agreement has been signed, the following will apply:

- a) The payments for bulk services provision will be released according to the Guideline.

## **1.6 CONTROL OF ADVANCE PAYMENTS**

- a) The project monitor/planner, or official responsible for monitoring the project, will be responsible for ensuring that all supporting documents for the release of sub-milestones are submitted by the Municipality/State Entity.
- b) Prior to certifying the documentation for payment, the project monitor must conduct a site inspection to confirm that the respective sub-milestone(s) have been achieved.
- c) In instances where advance payments have been released, the project monitor must ensure that the development programme milestones linked to the respective

advance payment is complete prior to approving the release of the next advance payment.

- d) Non-compliance must be assessed against the agreed development programme. Justifiable reasons for deviation must be stated and monitored of their legitimacy in writing and a programme of corrective action must be formally recorded by the Regional Office and Integrated Planning. The deviating contractor may also be subjected to certain prerequisites i.e., completion of work within a certain period to mitigate against the risks of non-performance.
- e) If the project becomes blocked, no further advance payments will be released until the project is unblocked. If the blocking of the project is the fault of the municipality/state entity, the municipality/state entity will bear all escalations linked to the particular advance payment.
- f) In a case of bulk services, the planner must monitor that the funds are used for the intended purpose and will support new human settlements projects to be delivered.

## **1.7 MONITORING OF PAYMENTS**

1.7.1 The Housing Fund Monitoring and Reconciliation unit will be responsible for monitoring payments by ensuring that:

- a) Funds advanced are kept in a separate account.
- b) Proper reconciliation of such funds for housing projects is done on a monthly basis.
- c) Interest accumulated on the funds less bank charges are transferred to the MHOA.
- d) Ensure that funds are paid out for activities authorised by the Department.
- e) Report any irregularities relating to the finances to the Regional Director responsible for overseeing the implementation of the contract for necessary action to be undertaken against the municipality/state entity.
- f) The Regional/Integrated Planning Director must within 30 days notify the municipality of the irregularity, and the consequences should this not be corrected.
- g) Any irregularities not corrected within 3 months of being reported, will result in any advance funds held by the municipality being recalled by the Department.

1.7.2 Integrated Planning/Project Management, or the component responsible for managing and/or overseeing the implementation of the contract, must ensure that advance payments are used for the purpose as indicated in the development programme.

## **1.8 REPORTING FOR ADVANCE PAYMENTS**

1.8.1 The municipality must maintain proper financial records of the separate project account. The supporting documents must be maintained in an orderly manner and

must be readily available for audit by the Housing Fund Monitoring and Reconciliation unit.

- 1.8.2 The municipality must submit financial reconciliation reports by the 7<sup>th</sup> working day of the next month to the Housing Fund Monitoring and Reconciliation unit.
- 1.8.3 When the project is completed the municipality must submit a close out report by the 7<sup>th</sup> working day of the next quarter to Project Management/Integrated Planning and the Housing Fund Monitoring and Reconciliation unit.

## **1.9 CONTRACTUAL ARRANGEMENTS**

- a) The agreement between the Department of Human Settlements and the municipality/government entity must be project specific.
- b) Contracts must be managed, and penalty clauses must be implemented where monies are not used for their intended purpose as stated in the development programme.

## **2. ROLES AND RESPONSIBILITIES**

The various activities in respect of advance payments for housing projects and bulk services, and the relevant roles and responsibilities of the municipality, implementing agent, and KZN Human Settlements units are provided in detail in the Revised Guidelines for the Advance (Tranche) Payment System accessible on the Department's website.

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# REVISED GUIDELINE ON THE EXPROPRIATION OF LAND BY MUNICIPALITIES FOR HUMAN SETTLEMENTS DEVELOPMENT

Post-apartheid South Africa faced a variety of challenges that emanated from the injustices caused by apartheid. One of the earliest challenges tackled by the first democratically elected government was systems to address the unequal distribution of land in the country. The KwaZulu-Natal Department of Human Settlements thus committed itself to eradicate the inequalities and injustices of the past with the introduction of the Guideline on the Expropriation of Land by Municipalities for human settlements(housing) development. The Guideline is drafted in accordance with the requirements set out by the South African Constitution and the National Housing Act 107 of 1997.

The main objective of the Guideline is to inform the process which needs to be followed to ensure legislative compliance in the expropriation of land for human settlements development. The Revised Guideline on the Expropriation of land by Municipalities for Human Settlements Development was approved by the MEC for implementation with effect from 20 February 2024.

## 1. APPLICATION OF THE GUIDELINE

The Guideline is applicable to the following circumstances but not limited thereto, these include:

- a) **Failed Negotiations:** No consensus between the Municipality and the landowner on the purchase price of the property. This is due to the landowner seeking an asking price for an amount higher than the highest valuation received.
- b) **Deceased Estate:** The registered landowner is deceased, and the late estate has either not been reported to the Master of the High Court or has not yet been wound up. Accordingly, there is no legal representative to transact and conclude a Deed of Sale.
- c) **Landowners cannot be located or found:** the registered landowner/s could not be located despite the Municipality making various attempts to locate them.
- d) **Properties subject to Land Title Adjust Commissioners (“LTAC”)** are unknown or their appointments could not be confirmed. Trustee or liquidator, in the insolvent state of an owner:- the trustee/ liquidator has not been appointed hence no legal representative to transact with.

## **2. EXPROPRIATION PROCESS**

**STEP 1:** All housing projects must be included in the Municipalities IDP. The municipality must also identify land in its multi-year housing plan and spatial development plan.

**STEP 2:** The municipality then applies for the reservation of project funding in terms of approved Spatial Development Framework/ Housing Sector Plan/Council resolution/approved IDP and agreed project priorities.

**STEP 3:** The MEC confirms the reservation of project funding

**STEP 4:** The municipality puts out a call for land availability proposals

**STEP 5:** The land availability proposals must be evaluated and adjudicated. Land availability proposals should be adjudicated in terms of the available information on the land and in terms of the suitability of the land. If no land is offered or the price is not appropriate, expropriation may occur. Expropriation should be resorted to as a last means of securing the land and subject to the Integrated Planning Directorate confirming that the land is required for human settlements delivery. As per Section 6 (1) of the Expropriation Act, upon receiving consent from the occupier/owner and permission by the MEC, the following methods can be undertaken to determine if the said land is suitable for human settlement delivery. The procedure includes:

- Enter the land with the necessary workmen, equipment, and vehicle
- Survey and determine the area and levels of the land
- Dig or bore on or into the land
- Construct and maintain a measuring weir in any river or stream
- In so far as it may be necessary to gain access to the said land, enter upon and go across any other land with the necessary workmen, equipment, and vehicle and;
- Authorize any person to demarcate the boundaries of any land required for the said purpose or use

**STEP 6:** A suspensive land acquisition agreement is secured. At this stage a land status investigation (land audit) is conducted, to confirm factors such as

ownership encumbrances, mineral rights, servitudes, and expropriations, if applicable.

**STEP 7: Pre-Approval Process:** The municipality's role prior to seeking permission of MEC: The Municipality must engage with the landowner/s for the procurement of the property required for the development of human settlements projects.

- a) In cases where the landowner cannot be found or located, a public notice is to be published in the local newspaper circulating in the area where the property is situated calling on landowners to engage with the Municipality regarding the proposed land acquisition for the implementation of human settlements development. The notice must be published in English and the language spoken within the said area and must furthermore contain a clear and full description of the property.
- b) Publication of Notice of Intention to Expropriate in the Provincial Gazette and two local newspapers circulating in the area where the property is situated. A 30 (thirty) day waiting period is provided calling on affected landowner/s to lodge any comments or objections to the proposed expropriation.
- c) Upon lapse of the 30 (thirty) day waiting period, the Municipality must address any objections received in respect of the proposed expropriation. Should the Municipality in its discretion deem the objection unreasonable e.g., where the landowners are still demanding a higher purchase price, the Municipality may proceed to seek permission from the MEC for Human Settlements and Public Works on the grounds of failed negotiations.
- d) Submission of the application letter enclosing a council resolution and supporting documentation to the Department to seek the MEC's permission to expropriate properties required for human settlements development purposes.
- e) Application letter to motivate for the expropriation and the purpose as to why property/ies are being expropriated. This letter is to contain project information e.g., type of project; project yield; priority housing project, etc. The letter should further contain whether the Municipality received any objections to the proposed expropriation. The application must enclose the supporting documentation listed below:

### **Supporting Documentation:**

- Council Resolution;
- Latest deed search confirming current owner of the property;
- Copy of Deed of Transfer (not mandatory);
- Proposed layout plan of the Project;
- Two valuation certificates provided by two independent Valuer's registered with the South African Valuation Authority (SAVA) required. A third valuation will be required in the event that there is a discrepancy of 10% in the valuations;
- Proof of Notice of Intention to Expropriate being served on the expropriate; and
- Proof of negotiations with landowner/s i.e., minutes of meetings, letters sent to landowners and any other correspondences that confirm negotiations taken place.

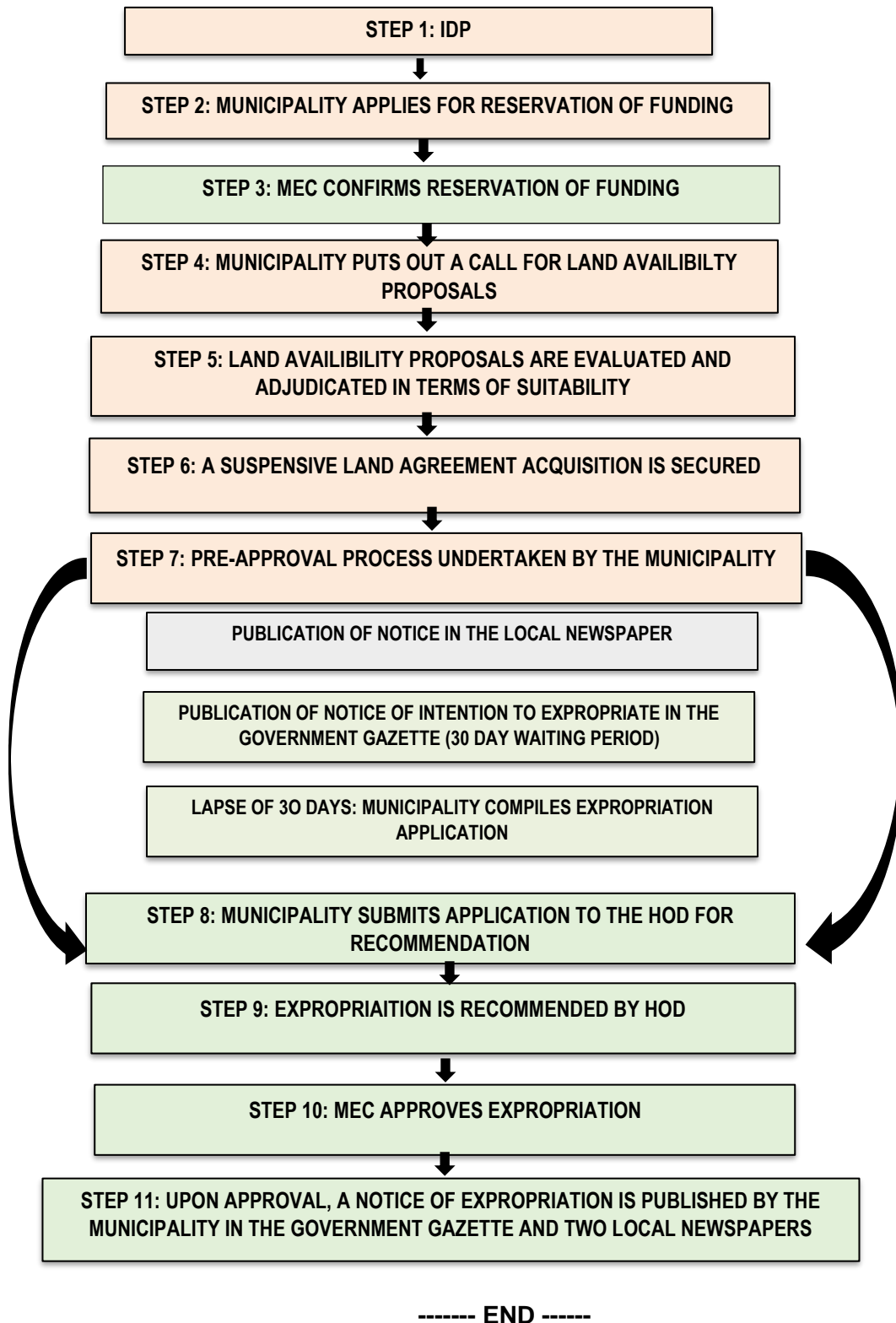
**STEP 8:** The municipality submits the project application and request for expropriation to the HOD together with all the supporting documents as mentioned above.

**STEP 9:** The request for expropriation is recommended by the HOD for approval by the MEC.

**STEP 10:** The MEC approves the recommendation.

**STEP 11:** Once the approval has been received by the municipality, the notice of expropriation as per Section 7 of the Expropriation Act must be published in the Provincial Gazette and two local newspapers within six months of the date of the MECs approval.

### 3. FLOW DIAGRAM OF EXPROPRIATION PROCESS







**KWAZULU-NATAL PROVINCE**

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## **ANNEXURE 1**

# **MUNICIPAL FINANCIAL VIABILITY ASSESSMENT FORM**

MUNICIPAL FINANCIAL VIABILITY ASSESSMENT FORM				
		Yes	No	Action
1.	Are the required Sections 71 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA) reports produced?			
2.	Is there adherence to Division of Revenue Act (DORA) reporting requirements?			
3.	Is there a Supply Chain Management policy in place?			
4.	Are the required Supply Chain Management committees in place? (Bid Specification, evaluation and adjudication)			
5.	Did the municipality receive a clean audit report by Auditor General in the past financial year? If not, what are material findings (emphasis of the matter).			
6.	In recent years, has the provincial department needed to shift Human Settlement Development Grant (HSDG) or any other human settlement funds away from the municipality, due to slow delivery or inability to spend?			
7.	Does the municipality have a track record of significant cost escalations on projects and/or project expenditure?			

MUNICIPAL FINANCIAL VIABILITY ASSESSMENT FORM				
		Yes	No	Action
8.	Is there alignment of HSDG with USDG (where applicable) funding allocation?			
9.	Is the municipality financially viable? (from the Auditor General Report)			
10.	Does the municipality have an appointed Chief Financial Officer?			
11.	Is there a “going concern” in your municipality? If yes what is the going concern of the municipality?			
12.	Is there a Compliance with section 65 (2) (e) of the Municipal Finance Management Act (MFMA) - Payment of invoices within 30 days of receipt?			
13.	Has the municipality received tranche funding in the past? If so, what has been compliance with the Memorandum of Agreement in relation to those tranches? (e.g. opening a dedicated account for the funds, projects implemented as per agreed timeframes, reporting)			
<b>NB! FINANCE SECTION MUST DO AN ASSESSMENT OF MUNICIPAL FINANCIAL VIABILITY WITHIN 30 DAYS OF RECEIPT OF THE APPLICATION</b>				

The detailed policies/documents included in this edition of the Policy Communique may be accessed on the Department's website using the following link: <https://www.kzndhs.gov.za/index.php/features/policy-documents/provincial-policies>