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# **LAND USE MANAGEMENT: INSTITUTIONAL SUPPORT: SPLUMA: APPEALS AUTHORITY SUPPORT PROGRAMME**

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## OVERVIEW OF PRESENTATION

- SPLUMA AND KZNSPLUMB... *WHAT ARE THE IMPLICATIONS.....*
- PURPOSE OF SPLUMA
- THE KEY CHANGES BROUGHT IN BY SPLUMA 2013
- INTERVENER STATUS
- APPEAL AUTHORITY OPTIONS AVAILABLE
- SPLUMA INSTITUTIONAL REQUIREMENTS
- THE APPLICATION PROCESS AND COMPLIANCE
- THE APPEAL PROCESS AND STATUTORY TIME FRAMES
- STRUCTURE OF APPEAL AUTHORITY
- THE APPEALS AUTHORITY
- DEFINING THE APPELLANT IN TERMS OF SPLUMA
- MUNICIPAL DECISION MAKING STRUCTURES
- SUMMARY (APPEAL PROCESS)
- THE APPLICATION ON APPEAL
- THE VENUE
- PROCEEDINGS AT SITE INSPECTIONS
- PROCEEDING AT HEARINGS
- DECISIONS AND LEGALITY OF DECISIONS
- QUESTIONS AND CLOSURE



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## SPLUMA and KZNSPLUMB... What are the implications.....

- ✓ Complete turn around due to the Constitutional Conflict... DFA, and Tronox ConCourt
- ✓ Spheres of Government Roles and Responsibilities
- ✓ Habitat Judgment... Call for applications of Provincial Interest
- ✓ Emphasis on “Oversight”
- ✓ What Now? ... Realignment, Rehashing, and Reinvent

# Purpose of SPLUMA

- **SPLUMA** provides a **framework for spatial planning and land use management in South Africa**
- Ensures that the system of spatial planning and land use management promoted **social and economic inclusion**
- Provides for development principles and **norms and standards**
- Provides for the **sustainable and efficient use of land**
- Provides for **cooperative government** and intergovernmental relations amongst the national, provincial and local spheres of government
- **Redresses the imbalance of the past** and to ensure that there is **equity** in the application of spatial development planning and land use management systems
- SPLUMA applies to the **whole of South Africa (urban and rural areas)** and governs informal and traditional land use development processes.

# The Key changes brought in by SPLUMA 2013

- **Municipalities are authorities** of first instance w.r.t the development authorisations
- The concept of the 'National and Provincial Interest'
- Municipal Planning Tribunals
- The 'intervener' Status
- **Municipal Appeals Authority**



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# Intervener Status

## The Intervener-:

- **S45(2)** introduces the concept of an Intervener
- An Interested person may **petition to intervene**
- Must relate to an **existing application** considered by J/MPT or Appeal authority
- **Status to be proven by interested person** to become an “Intervener”
- AO and/or Chairperson/Presiding Officer of J/MPT or Appeal Authority determines if the petitioner qualifies as “Intervener”
- **After consideration**, if not demonstrated fully, the participation **may be limited to issues** where interest is established



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## APPEAL AUTHORITY OPTIONS AVAILABLE

There are **three options** in terms of establishing an Appeals Authority for a Municipality.

### **OPTION 1: Executive Authority** as the Appeal Authority ( Section 51(2))

The Municipal Manager must within a prescribed period submit the appeal to the Executive Authority of the Municipality as the Appeal Authority.

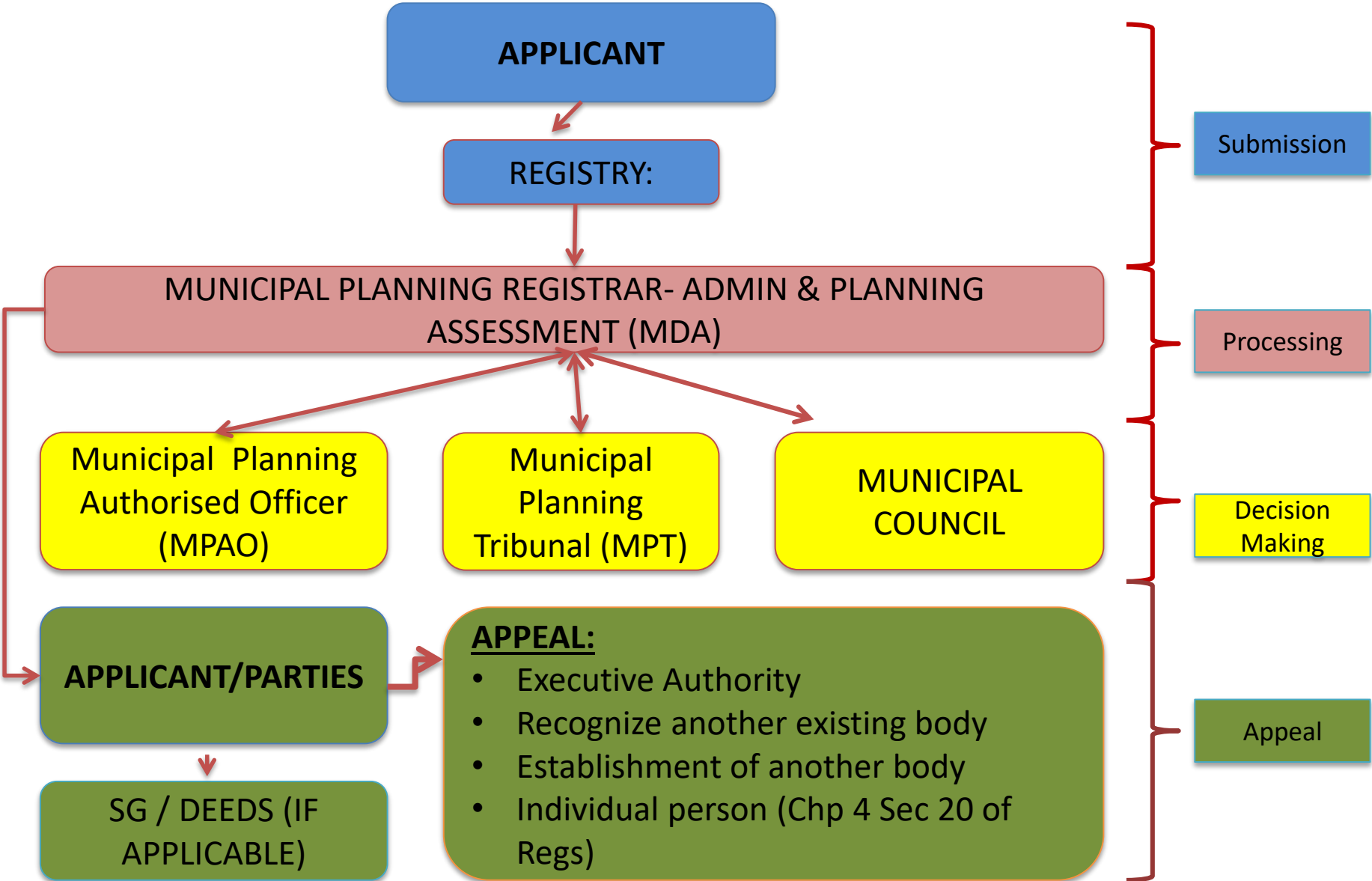
### **OPTION 2: Body or Institution outside the Municipality** (Section 51(6))

The Municipality may authorize a body or institution outside the Municipality or in a manner as regulated in the provincial Legislation, to assume the obligation of an Appeal Authority. Such Body need to be published in the Provincial Gazette.

### **OPTION 3: Appeal Delegated to an Official or Panel of Officials** (Section 56)

Any power, except the power to make the regulations and the power to determine land use and land development applications as contemplated in Section 35, conferred in the Act or a Municipality, may, in general or in cases of a particular nature, be delegated by the person or body entrusted with that power to a political office holder or an official in the employ or service of the relevant sphere of Government. Provided delegation must be in writing and must specify full particulars and the limitations of such a delegation.

# SPLUMA INSTITUTIONAL REQUIREMENTS





# The Application Process Compliance

## Applicant

Pre-Application Process

Complete Application confirmed  
**CLOCK** starts ticking (MP Registrar)

## Municipal Application Process

Planners Evaluation

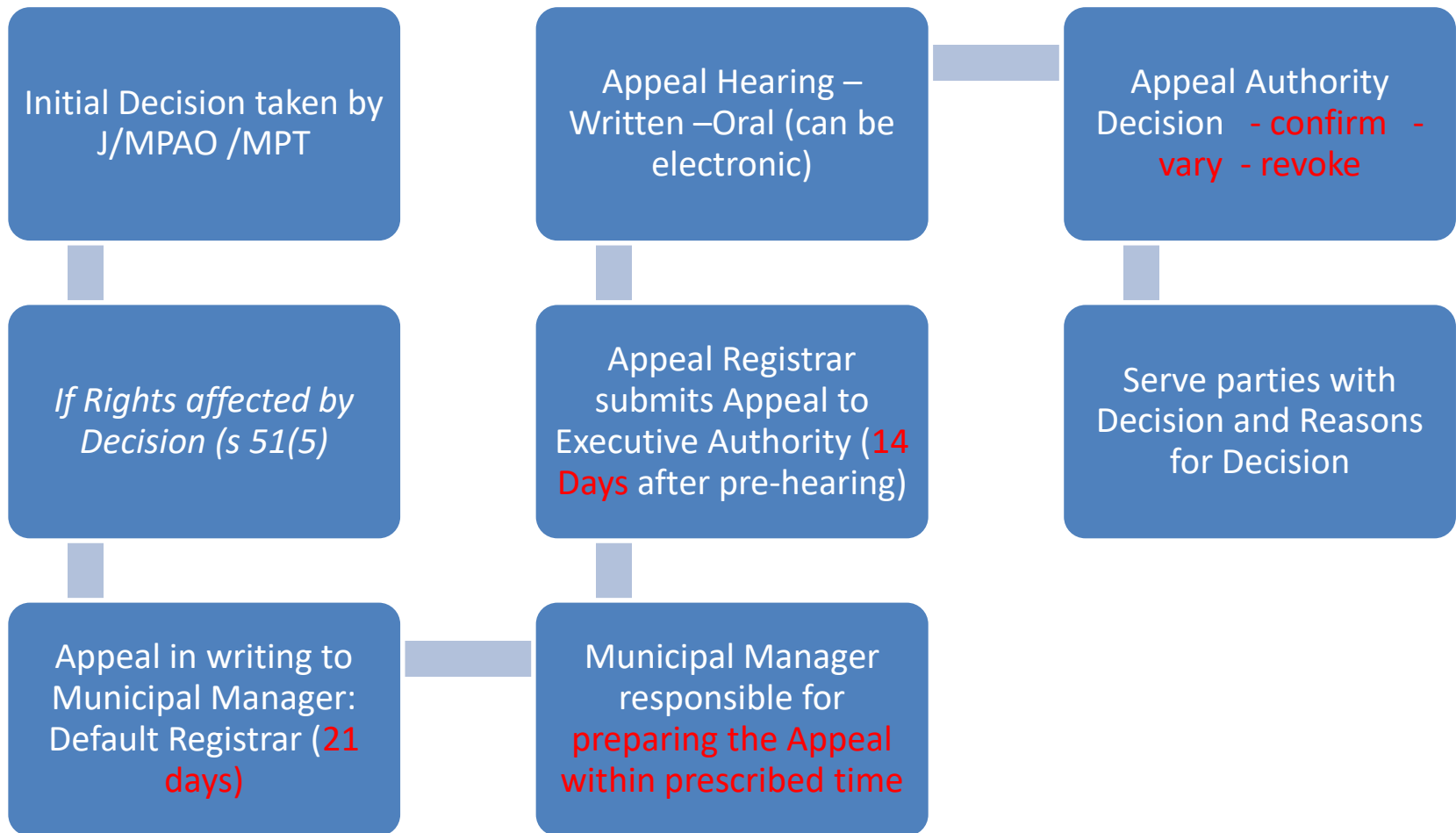
Check for Compliance, public  
comment, N/P Departments etc.

## MPAO/MPT Decision – making Process

Vote within the prescribed time period

Final Decision and Reasons for  
Decision must be provided

# The Appeal Process and statutory time frames



# Structure of Appeal Authority

## **Executive Authority:**

- Mayor
- Deputy Mayor
- Portfolio Committee Chairpersons

## Supporting Capacity:

- **Technical Advisors**
  - \*s39(1) of the Act
  - \*Reg26(3) of the Regulations

# The Appeal Authority

## The Appeal Authority

- exercise their powers in an **independent manner**, free from governmental or any other **outside interference or influence**
- accordance with the **highest** standards of **integrity, impartiality, objectivity and professional ethics**

NB. No person, **Municipality** or organ of state may **interfere** with the **functioning** of the Appeal Authority



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## DEFINING THE APPELLANT IN TERMS OF SPLUMA

- **Persons whose rights are affected may appeal** to the Municipal Manager within 21 days of notification of the decision Section 51(4)
- **Appellant must give written notice & reasons** for the appeal
- **Municipal Manager must**, within the prescribed period, submit an appeal to the Appeal Authority
- **The Appeal Authority** must consider appeals & **confirm, vary or revoke** the decision
- **An interested person who may reasonably be expected to be affected** by the outcome of the land development application proceedings must be a person having **pecuniary** or **proprietary** interest who is adversely affected or able to demonstrate that he will be affected by the decision of the planning Tribunal or an appeal in respect of such a decision



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## DEFINING THE APPELLANT IN TERMS OF SPLUMA

### PECUNIARY INTEREST:

It is an interest that a person has in a matter because of a reasonable likelihood or expectation of **appreciable financial gain** or loss to the person or another person with whom the person is associated with.

The proposal must influence your **INCOME** (NOT an increase in expenditure, could include **TRADE OBJECTIONS**)

### PROPIETARY INTEREST:

Are **profits, rights, ownership shares or advantages** held by the full or partial owner of a tangible or intangible asset or property.

The proposal must influence your **PROPERTY** (NOT in your vicinity, BUT YOUR PROPERTY)



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## MUNICIPAL DECISION-MAKING STRUCTURES

- All land Use / Development applications must be considered by an Municipal Planning Tribunal or an Authorised Officer depending how a Municipality categorises its Land Use / Development applications.
- Both the decisions of the Municipal Planning Tribunal (MPT) and Authorised Officer (AO) can be appealed.



# SUMMARY (APPEAL PROCESS)

- Lodging of appeals limited to applicant; municipality and demonstrated interested persons.
- Appeal authority is either executive authority or external nominated body
- All appeal applications submitted to MM who in turn submits to appeal authority
- Appeal authority **may appoint a technical advisor**
- An interested person may petition to intervene in an existing application





**APPLICATION  
REFUSED**

## Appealed

- The MPT (or relevant delegated authority ) decisions to be **appealed to Executive Authority** within the Municipality.
- Anyone **whose rights are affected may appeal**- hence the need to widen the group to which the development application is advertised in order identify interested parties.
- Once the **appeal process is concluded, then only can the development either proceed or halt**



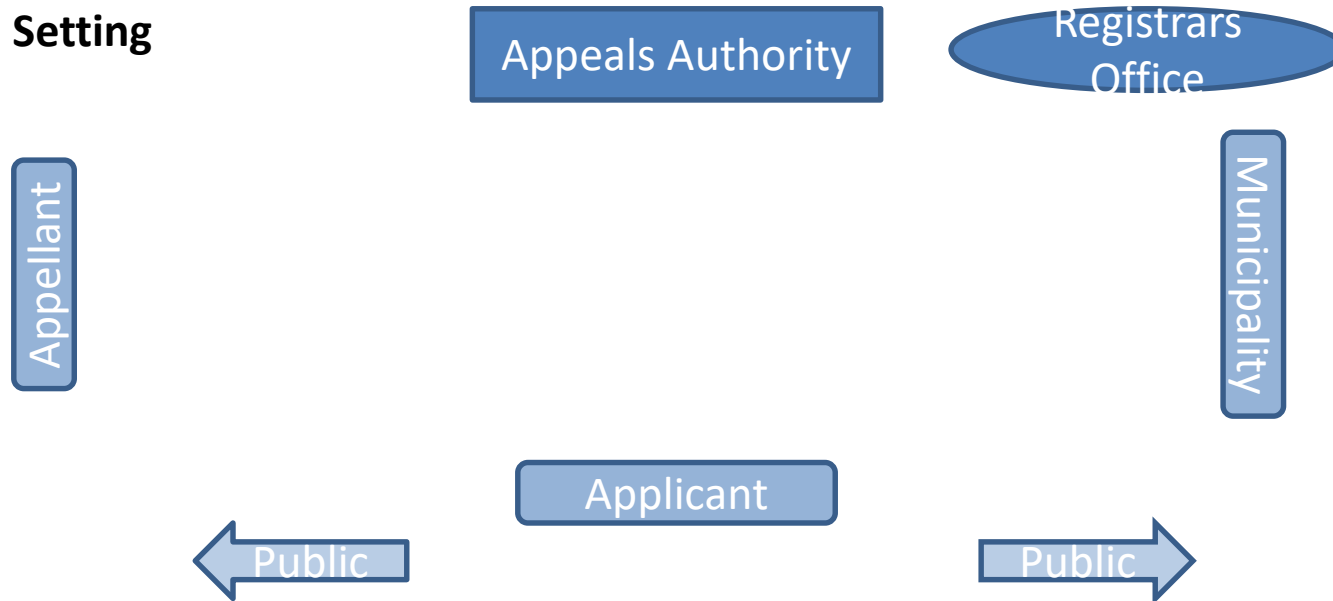
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# The VENUE

## VENUE:-

- Must allow the different parties to be located at **different points** in the Hearing Room **(avoids conflicts)**
- **Setting**





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## PROCEEDINGS at Site Inspections

### PROCEEDINGS:-

#### The Chair then-:

- **Confirms the Site** and **provides directions and the procedure** as to what will occur while on the Site Inspection
- **Attendance Register** must be used to keep a record of attendees (**no need for recording/drafting of minutes**)
- **Parties** are given an opportunity to provided **salient points, points of interest and physical attributes**
- Parties **must not** discuss/debate/argue any matter relating to their reports they have provided (**the inspection allows Parties to point out physical attributes which they can then refer to at the Hearing**)

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# PROCEEDINGS AT HEARINGS

## LOGISTICS:-

- Parties to be notified of **DATE, TIME and VENUE** of the Hearing
- This NOTICE must observe the statutory times required to notify parties
- Registrars Office to prepare **Speakers List, Attendance Register and Recording Sheet**
- NB. the Hearing must be **electronically recorded** (a **Recording Sheet** must capture the **change of speaker** and the time as reflected on recording device)
- **IMPORTANT:** This is required whenever there is a request for the **recording** (eg: for transcripts to Courts, Members wanting to recall verbatim ***(the actual)*** arguments presented)

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## PROCEEDINGS AT HEARINGS *cont...*

### PROCEEDINGS:-

- **Chair Person** to confirm that Members of the Appeals Authority have no cause to recuse themselves from **sitting on this Quorum**
- Confirming the Quorum (members appointed as Appeals Authority)
- **Confirm the parties** and whom are they **represented by** (these names are recorded by the recording assistant to then place onto the time sheet)
- **Confirmation of Documents and receipt of them** (Memorandum of Appeal, Responding Memorandums and Heads of Arguments)



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## PROCEEDINGS AT HEARINGS *cont...*

### PROCEEDINGS:-

#### The Chair then-:

- Allows the **proceedings to continue**
- **Right to be party** to the Appeal (locus standi)
- Legal **questions** (relates to any other law that the parties may quote as also being affected by the Application and Appeal or proceedings)
- Points ***in limine*** (procedural or statutory defects in the Application or procedures) **Statutory time frames** of the Application and Appeal and the lodging of the Objection and Appellants)



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# PROCEEDINGS AT HEARINGS cont...

## Merits:-

- **Re-Confirming** the Speakers List
- The Application Decision and Reasons are then argued in terms of the **Appeal Heads of Argument**
- **Parties** are given an opportunity to be **heard**



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# PROCEEDINGS AT HEARINGS *cont...*

## Parties May:-

- **State** their case
- **Call witnesses** to testify and to present other evidence to support their case
- **Cross-examine any person** called as a witness by any opposite party
- **Have access to documents** produced in evidence
- **Address on the merits** of the application for municipal planning approval





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# Decisions & Legality of Decisions

- Appeals Authority takes a decision in accordance with **majority vote** within the prescribed period (Chairperson in the event there is a tie thus will provide the **deciding vote**)
- A **decision** is rendered after the end of the hearing/s within **legal Time Frame**
- **Chairperson** prepares written **Reasons for Decision** within legal Time Frame
- All parties are **served Decision** and **Reasons for Decision** which is binding on all parties including the municipality



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*Thank  
you*



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