

# UMHLATHUZE SPATIAL PLANNING AND LAND USE MANAGEMENT BYLAW, 2017



PRESENTATION TO THE SPLUMA  
FORUM – ROYAL HOTEL,  
DURBAN

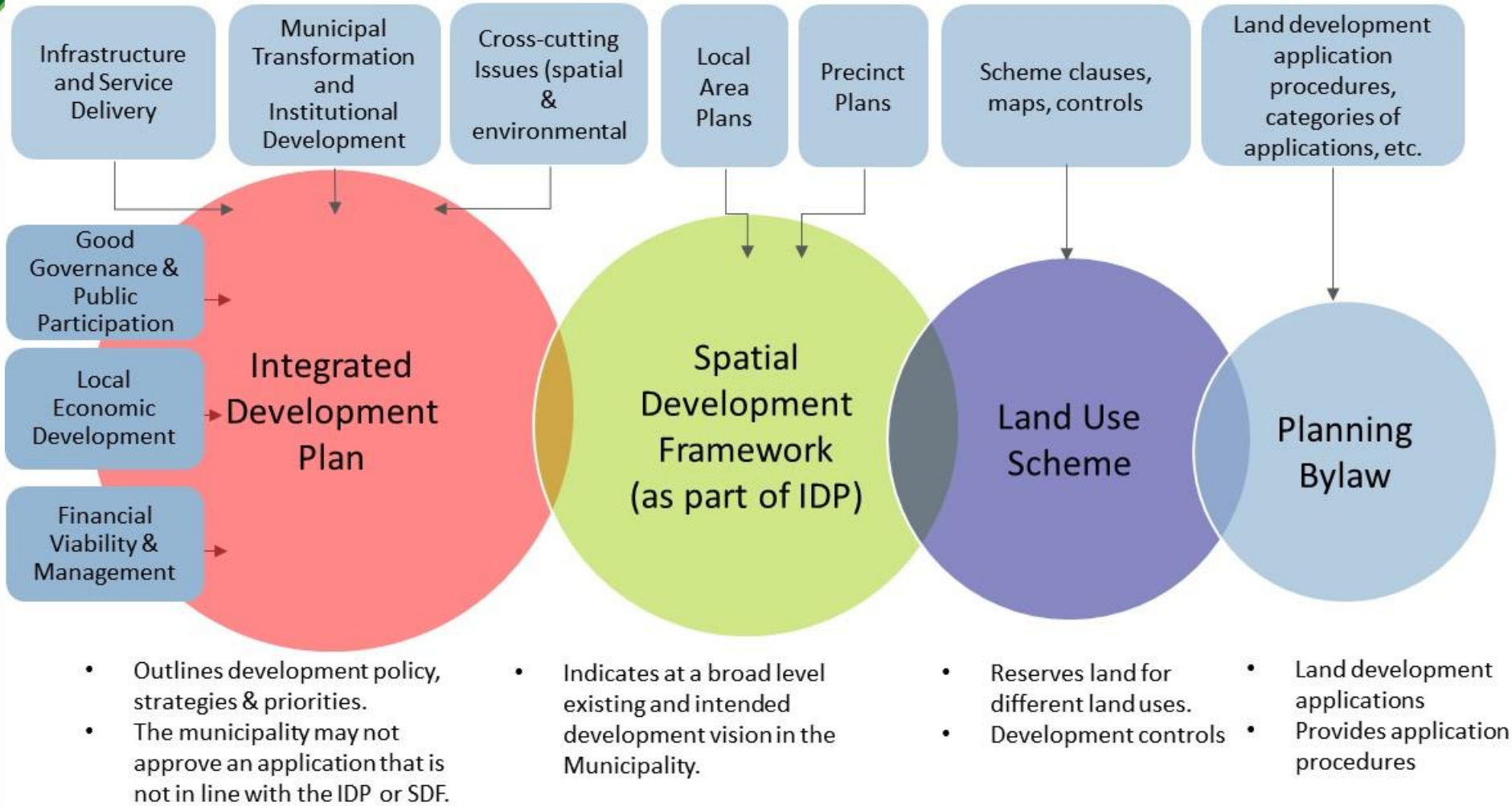
*25 AUGUST 2017*

*DMS1205216*

# Background

- Municipality has executive authority in respect of Municipal Planning (Section 156 read with Part B of Schedule 4 – Constitution RSA)
- Interim Arrangement - SPLUMA (2013) and the KZN PDA (2008)
- Planning Bylaw
  - Give effect to the provisions of SPLUMA, read with Regulations.
- July 2016, the municipality appointed a Service Provider to work with us in drafting the Bylaw
  - Raise awareness
  - Public participation
  - First Planning related By-law for the Municipality

# What is Municipal Planning?



# Developing the uMhlathuze SPLUM Bylaw



# Overview of Public Participation

- Draft Bylaw adopted by Council on 24 January 2017 for Public Participation purposes
  - ✓ 09 February – 15 March 2017
- Public Participation report
  - ✓ Council
  - ✓ Traditional Leaders
  - ✓ Key Stakeholders and Government Departments (*Liquor Authority, KCDM, DRDLR, SAPPI, etc.*)
  - ✓ Public Meetings:
    - Professionals and Business Community (Richards Bay)
    - Professionals and Business Community (Empangeni)
    - Ngwelezane / Empangeni / Ntambanana
    - eSikhaleni / Vulindlela / Felixton
    - eNseleni / Richards Bay
  - ✓ Ingonyama Trust Board
  - ✓ PSC Meetings + Technical Workshop (COGTA, DRDLR, KCDM)

# Inputs/Comment: Public Meetings

- Act 70 of 1970 (SALA) seen as hindering development.
- Would the bylaw assist with preventing people settling in floodline areas?
- Discounts on installation of Services in rural areas?
- Cost implications of this bylaw for those who do not have money (i.e. fees, penalties).
- Illegal businesses in the townships?
- Bylaw vs customary practices?
- Are Municipalities using the same bylaw across KZN?
- How will applications in Traditional Authority areas be handled?
- Bylaw vs land claims?
- Applications not finalised prior commencement?

# Written Inputs/Comment

- **SAACPP**
  - ✓ Inputs were technical in nature (*Adjacent Property vs Adjoining Owner; Administrative Penalty*)
- **TNPA & Transnet Group Capital**
  - ✓ Application of bylaw in Port Limit and Area of jurisdiction (applications and building plan submission)
  - ✓ Application fees for SOE
  - ✓ Possible delays should they submit planning applications
  - ✓ Alignment of planning and other legislative processes

# Inputs/Comment: Amakhosi

- Major Concerns:
  - ❖ Taverns;
  - ❖ Land Allocations;
  - ❖ Environmentally Sensitive area.
- Proposal for co-operation in drafting Rural Development Frameworks
- Continued consultation with TCs was recommended



# Inputs/Comment: Ingonyama Trust Board

- Why do we have different/separate planning systems for Traditional Council areas?
- Land Uses and definitions: deeds registry and township
- We should not legislate for an organ of state.
- Land Use Register – cost implications
- There are other methods of proving ownership other than Title Deed.
- Harmony between Municipality, ITB and TCs.
- Questioned our Consultation Process with Traditional Leaders.
- Composition of Tribunal? How are the interests of uBukhosi represented.
- Presentation of the final Bylaw to iSilo Samabandla

# Structure of the Bylaw

Chapter 1: Definitions, Application of By-law, Principles, norms and standards and policies

Chapter 2: Municipal Planning Approval Authority Institutions

Chapter 3: Land Use Scheme

Chapter 4: Land Development Applications For Municipal Planning Approvals

Chapter 5: Appeals

Chapter 6: Enforcement

Chapter 7: Service Of Documents

Chapter 8: Delegations And Agency Agreements

Chapter 9: Keeping Of Records And Access To Information

Chapter 10: General Provisions



# Chapter 1: Definitions, Application of By-law, Principles, norms and standards and policies

- Preamble
  - Gives the broad description of the objectives of the By-Law.
- Definitions
  - Owner; beneficial occupier, household dwelling, traditional settlement area.
- Application of By-law
  - Prohibits any person to use or develop land, unless the use or land development is permitted in terms of the Municipality's adopted land use scheme
- Principles, norms and standards and policies
  - The Bylaw adopts principles, norms & standards and policies applicable to spatial planning, land development and land use management made in terms of national or provincial legislation.

# Chapter 2: Municipal Planning Approval Authority Institutions

## Part 1: Establishment, Functions, and Powers of Municipal Planning Approval Authority

- Three Approval Authorities:
  - **Municipal Planning Tribunal (JMPT)**
    - Includes King Cetshwayo DM, uMhlathuze LM and uMfolozi LM
    - Must comprise of Municipal officials and persons who are from both the private and public sectors.
  - **Municipal Planning Authorised Official**
    - Municipal Planning Authorised Official (must be a registered planner) – DMM:CD
  - **Council** (adoption of Scheme, SDF, etc.).

## Part 2: Support for Municipal Planning Approval Authority

- Appointment, Functions and Powers of a Municipal Planning Registrar and Deputy Municipal Planning Registrar

# Chapter 3: Land Use Scheme

- Purpose
  - to determine development rights in the Municipality
- Contents
  - Must include clauses, maps and controls.
- Legal effect of land use scheme
  - Has the force of law
- **Provision for the repeal, adoption, review and extension of the Land Use Scheme**
- Land Use Scheme includes all areas (all traditional settlement areas) but excludes Agricultural land (subject to SALA, Act 70 of 1970) and the area inherited as a result of the re-demarcation.

# Chapter 4: Land Development Applications For Municipal Planning Approval

- Part 1: Categorisation of Land Development Applications – as per Approval Authority (schedule 3)
- Part 2: Application for Municipal Planning Approval
  - Schedule 2 – areas outside the scheme (on Act 70 of 1970 land)
  - Schedule 4 - Public Participation (Level 1; 2 & 3 – No PP, Limited PP & Full PP)
  - Schedule 5A – Formal Areas
  - Schedule 5B – Traditional Settlement Areas
- Part 3: Municipal Planning Approval Authority’s Decision
  - In line with IDP/SDF, LUS, other approvals,
  - Impose Conditions of Approval.
- Part 4: Compliance with Conditions of Approval
  - Certificate of Compliance with CoA,
  - Lapsing of decision after 5 years.
- Part 5: Amendments to or Cancellation of Existing Approvals
  - Correct an error in wording, spelling, property description, reference to a law, person, institution, place name or street name.
  - Non-material amendment

# Chapter 5: Appeals

- Part 1: Appeal Authority
  - Executive Council is the appeal authority to decide all appeals.
  - MM - Appeal Authority Registrar – administrative support
  - Delegated to any person not involved in the planning application process (outside City Development).
- Part 2: Appeal processes and procedures
  - Provides for the application process for appeals against the decision of the Municipal Planning Approval Authority.
  - Appeal fee.
- Schedule 6 of the Bylaw
  - Lodging of written appeal,
  - extension of period to lodge,
  - application for intervener status,
  - Pre-hearing process,
  - Serving of subpoenas,
  - withdrawal of appeal,
  - Appeal hearing,

Appeal decision (timeframe)



CITY OF  
**UMHATHUZE**  
VISION INTO ACTION

25/08/2017

UMHATHUZE MUNICIPALITY PLANNING BYLAW - FINAL

# Chapter 6: Enforcement

- Part 1: Appointment, Functions and Powers of the Municipal Planning Enforcement Officer
  - To effect compliance with this By-law, land use scheme or municipal planning approval – contraventions
- Part 2: Offences, penalties, reduction and disconnection of services
- Part 3: Prosecution
  - Lodging of complaints;
  - Warrant of entry;
  - relief by the court
- Part 4: Subsequent application for municipal planning approval
  - To rectify contravention
- Part 5: Offence and misconduct by a municipal official
  - Authorise land use/development activity **not** in line with provisions
- The procedure for the investigation of contraventions is outlined in Schedule 7 of the bylaw.



# Chapter 6: Enforcement conti....

- The following new **contravention penalty charges** are proposed:

ZONING	LAND USE / CONTRAVENTION	PENALTY CHARGE (PER MONTH FOR THE FIRST THREE MONTHS)	SLIDING SCALE
Agriculture 1 and Smallholdings	All	R1 000,00	Double the charge every three months
Agriculture 2, Rapid Urbanisation Management Zone, (excluding household dwellings as defined in the Bylaw)	Commercial and industrial contraventions	R500,00	
	All other contraventions	R250,00	
Education; Institution; Worship; Municipal Health and Government 1 & 2; and Undetermined	Commercial and industrial contraventions	R1000,00	
	All other contraventions	R500,00	
Public Open Space; Private Open Space; and Conservation; Coastal Access Land;	All	R500,00	
Commercial 1; 2 & 3; Mixed Use Medium Impact; Mixed Use Low Impact; Lifestyle Centre; Business Park; Professional Office, Office 1 & 2; Service Station; Direct Access Filling Station; Hotels; Resort High Impact; Resort Low Impact; and Harbour Resort.	All	R5 000,00	
Special Residential	Contravention uses that may be considered "home activity" and "home business", where the residential component is still present	R500,00	
	All other contraventions (where the residential component is no longer present)	R1000,00	
Medium Density Residential 1 & 2; High Density Residential 1, 2 & 3; Waterfront Residential; Residential Estate; and Retirement Village	All	R1000,00	
Harbour; Quarrying and Mining; High Impact Industry; Harbour Bound Industrial; Industrial Development Zone; General Industry 1 & 2; and Light Industry 1 & 2	All	R5 000,00	
Railways; Existing Public Road; Proposed Road; Private Road; Airport / Airfield; Intermodal Facility; Truck Terminus; Railway Terminus, Passenger Liner Terminus; Parking Area / Parkade; Services; Refuse Site; Wastewater Treatment; Water works and Reservoir; and Cemetery	All	R1 000,00	

# Chapter 7: Service of Documents

- Describes manner in which documents are to be served on:
- Documents may be served:
  - By delivering the document by hand;
  - By successful electronic transmission (e-mail or fax)
  - By sending the document via registered mail or signature on delivery.

# Chapter 8: Delegations And Agency Agreements

- Agency agreement between municipalities for performance of functions in terms of Act
  - JMPT Agreement – Schedule 1
- Delegations by Municipality
  - The By-law specifies powers that may not be delegated.
  - Council may not delegate its power to amend, repeal, adopt and/or review the LUS and SDF.
  - Since Bylaw is gazetted the relevant delegations in terms of the By-Law will also be submitted for consideration.

# Chapter 9: Keeping Records and Access to Information

- Record of a land use scheme
- Record of applications for municipal planning approval
- Notice of approval of sectional title plan, diagram and general plan
- Notice of allocation of land for land development in traditional settlement areas in terms of customary law
- Access to information held by :
  - Municipal Planning Registrar and Municipal Planning Appeals Authority Registrar
  - Access to information held by Municipal Manager - interests of members of the Municipal Planning Approval Authority, Appeal Authority and Enforcement Officer, Agency Agreements and any delegation are records that are automatically available as contemplated in PAIA (Act 2. of 2000)

# Chapter 10: General Provisions

- Independence of the Municipal Planning Approval Authority and Appeal Authority
- Declaration of Interest
- Liability of Municipal Planning Approval Authority, Appeal Authority and their support staff
- Legal indemnification
- Appointment of Expert Technical Advisor
- Recognition of certain land as traditional settlement areas
- Calculation of number of days for performing an action
- Effect of change of ownership of land to which an application for municipal planning approval relates
- Ceding of rights associated with a person who commented on an application for municipal planning approval to new property owner
- Application for leave to intervener status in land development applications or appeals
- Short title and commencement

# Schedules

## Schedule 1

- Matters That Must Be Addressed In An Agreement To Establish A Joint Municipal Planning Tribunal

## Schedule 2

- Activities In Areas Situated Outside The Area Of A Land Use Scheme That Require Municipal Planning Approval

## Schedule 3

- Categorisation Of Land Development Applications For Municipal Planning Approval

## Schedule 4

- Categorisation Of Land Development Applications For Municipal Planning Approval For Purposes Of Public Participation

# Schedules continued...

## Schedule 5

- Part A: Application Process For A Municipal Planning Approval For Land Development Or Use In Formal Areas
- Part B: Application Process For A Municipal Planning Approval For Land Development Or Use In Traditional Settlement Areas

## Schedule 6

- Application Process For Appeals Against The Decision Of The Municipal Planning Approval Authority

## Schedule 7

- Procedure For The Investigation Of Contraventions

## Schedule 8

- Transitional Arrangements

# Adoption by Council

## *Executive Management Committee (EMCO)*

- 29 May 2017

## *Bylaws Committee*

- 07 June 2017

## *City Development Portfolio Committee*

- 14 June 2017 – To be rescheduled (item directly to Exco?)

## *Executive Committee (EXCO)*

- 20 June 2017 (10h00 – 14h00)

## *Municipal Council*

- 20 June 2017 (17h00 – 20h00)

## *Gazetting*

- 14 July 2017





# Lessons Learned

- Valuable experience gained in Drafting Bylaw
- Skills Transfer to Planning Team
- Service Provider: Town Planning, Land Legal and Social Facilitation Expertise
- Chapter on Enforcement – shared interdepartmental responsibility
- PSC – Weakened by \_\_\_ non-attendance
- Involvement of Internal Municipal Departments

THANK YOU

