

- (2) If an applicant or a person whose rights or legitimate expectations will be affected by the approval of an application requests to make a verbal representation at a meeting of the Tribunal, he or she must submit a written request to the Administrator at least 14 days before that meeting.
- (3) The chairperson may approve a request contemplated in subsection (2), subject to reasonable conditions.
- (4) An application may be considered by the Tribunal by means of—
  - (a) the consideration of the written application and comments; or
  - (b) an oral hearing.
- (5) The application may be considered in terms of subsection (4)(a) if it appears to the Tribunal that the issues for determination of the application can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
- (6) An oral hearing may be held—
  - (a) if it appears to the Tribunal that the issues for determination of the application cannot be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it; or
  - (b) if such hearing would assist in the expeditious and fair disposal of the application.
- (7) If appropriate in the circumstances, the oral hearing may be held by electronic means.

## Appeals

- 79.**
- (1) The Executive Mayor of the Municipality is the Appeal Authority in respect of decisions-
    - (a) of the Tribunal;
    - (b) of an authorised employee; or
    - (c) in case of a failure to decide on an application as contemplated in section 58.
  - (2) The Appeal Authority referred to in section 62(3) of the Municipal Systems Act applies where an appeal has been lodged against a decision of the Executive Director in respect of applications referred to in section 68(c).
  - (3) A person whose rights are affected by a decision contemplated in subsection (1) may appeal in writing to the Appeal Authority within 21 days of notification of the decision.

- (4) An applicant may appeal in writing to the Appeal Authority in respect of the failure of the Tribunal or an authorised employee to make a decision within the period contemplated in section 57(1), (2) or (3), any time after the expiry of the period contemplated in those sections.
- (5) An appeal is lodged by serving the appeal on the City Manager in the form determined by the Municipality and subject to section 80(1).
- (6) When the Appeal Authority considers an appeal, it must have regard to—
  - (a) the provisions of section 65, read with the necessary changes; and
  - (b) the comments of the Provincial Minister contemplated in section 52 of the Land Use Planning Act.

#### **Procedure for appeal**

- 80.**
- (1) An appeal may be refused if—
    - (a) in the case of an appeal contemplated in section 79(2), it is not lodged within the period referred to in that section; or
    - (b) it does not comply with sections 79(2) - (4) and 80(2) - (7).
  - (2) An appeal must set out the following—
    - (a) the grounds for the appeal which may include the following-
      - (i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
      - (ii) grounds relating to the merits of the land development or land use application on which the appellant believes the Tribunal or authorised employee erred in making the decision concerned;
    - (b) whether the appeal is lodged against the whole decision or a part of the decision;
    - (c) if the appeal is lodged against a part of the decision, a description of the part;
    - (d) if the appeal is lodged against a condition of approval, a description of the condition;
    - (e) the factual or legal findings that the appellant relies on;
    - (f) the relief sought by the appellant; and

- (g) any issue that the appellant wishes the Appeal Authority to consider in making its decision;  
or
  - (h) in the case of an appeal in respect of the failure of a decision-maker to make a decision, the facts that prove the failure;
- (3) An appeal must be lodged with the City Manager within the period referred to in subsection 79(2), together with proof of payment of appeal fees, as determined by the Municipality.
- (4) An applicant who lodges an appeal must simultaneously serve notice of the appeal on any person who commented on the application concerned and any other person as the Municipality may determine.
- (5) The notice must be served in accordance with section 35.
- (6) The notice contemplated in subsection (5) must invite persons to comment on the appeal within 21 days of the date of notification.
- (7) The appellant must submit proof of service of the notice as contemplated in subsection (5) to the City Manager within 14 days of the date of notification.
- (8) If a person other than the applicant lodges an appeal, the City Manager must give written notice of the appeal to the applicant within 14 days of receipt thereof.
- (9) An applicant who has received notice of an appeal in terms of subsection (8) may submit comment on the appeal to the City Manager within 21 days of the date of notification.
- (10) The Appeal Authority may refuse to accept any comments on an appeal submitted after the closing date for comments on an appeal.
- (11) The Appeal Authority—
  - (a) may request the Provincial Minister within 14 days of the receipt of an appeal to comment in writing on the appeal within 60 days of the date of notification of the request;
  - (b) may notify and request the Provincial Minister within 14 days of the receipt of an appeal to comment on the appeal within 60 days of the date of notification in respect of appeals relating to the following applications:
    - (i) a development outside the Municipality's planned outer limit of urban expansion as reflected in its municipal spatial development framework;
    - (ii) if the Municipality has no approved municipal spatial development framework, a development outside the physical edge;

- (iii) a rezoning of land zoned for agricultural or conservation purposes;
    - (iv) any category of land use applications as may be prescribed by the Provincial Minister; and
  - (c) must on receipt of an appeal in terms of this section notify the applicant in writing whether or not the implementation of the approval of the application is suspended.
- (12) The authorised employee must draft a report assessing an appeal and must submit it to the City Manager within—
  - (a) 60 days of the closing date for comment requested in terms of subsections (6) and (9), if no comment was requested in terms of subsection (11); or
  - (b) 60 days of the closing date for comments requested in terms of subsection (11).
- (13) The City Manager must within 30 days of receiving the report contemplated in subsection (12) submit the appeal to the Appeal Authority.
- (14) The City Manager or an employee designated by him or her must—
  - (a) liaise with the Appeal Authority and the parties concerned regarding any appeal lodged with the Appeal Authority;
  - (b) maintain a diary of meetings of the Appeal Authority;
  - (c) allocate a meeting date for, and appeal number to, an appeal;
  - (d) arrange the attendance of members of the Appeal Authority at meetings;
  - (e) arrange venues for the Appeal Authority;
  - (f) perform the administrative functions in connection with the proceedings of the Appeal Authority;
  - (g) ensure that the proceedings of the Appeal Authority are conducted efficiently and in accordance with the directions of the Appeal Authority;
  - (h) arrange the affairs of the Appeal Authority so as to ensure that time is available to liaise with other organs of state regarding the alignment of integrated appeal procedures;
  - (i) notify the parties concerned of decisions and procedural directives given by the Appeal Authority;
  - (j) keep a record of all appeals lodged as well as the outcome of each, including—

- (i) decisions of the Appeal Authority;
  - (ii) on-site inspections and any matter recorded as a result thereof;
  - (iii) reasons for decisions;
  - (iv) proceedings of the Appeal Authority; and
  - (v) keep records by any means as the Appeal Authority may deem expedient.
- (15) An appellant may, at any time before the Appeal Authority makes a decision on an appeal submitted by the appellant, withdraw the appeal by giving written notice of the withdrawal to the Authorised Employee.
- (16) The appellant must in writing inform the Appeal Authority if he or she has withdrawn the power of attorney given to his or her former agent and confirm whether he or she will personally proceed with the appeal.

#### **Consideration by Appeal Authority**

- 81.**
- (1) The Appeal Authority may consider the written appeal and comments if it appears that the issues for determination of the appeal can be adequately determined in the absence of the parties by considering the documents or other material lodged with or provided to it.
  - (2) An oral hearing may be held—
    - (a) if it appears that the issues for determination of the appeal cannot be adequately determined in the absence of the parties by only considering the documents or other material lodged with or provided to it; or
    - (b) if such hearing would assist in the expeditious and fair disposal of the appeal.
  - (3) The oral hearing may be held by electronic means.
  - (4) If the Appeal Authority decides to hold an oral hearing, any party to the appeal proceedings may appear in person or may be represented by another person.
  - (5) The Appeal Authority must ensure that every party to proceedings before the Appeal Authority is given an opportunity to present his or her case, whether in writing or orally as contemplated in subsections (2) and (3) and, in particular, to inspect any documents to which the appeal authority proposes to have regard in reaching a decision in the proceeding and to submit comments thereon in accordance with this Chapter or, in the case of an oral hearing, to make submissions in relation to those documents.
  - (6) The Appeal Authority must—