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POLICY ON INFRASTRUCTURE AND CAPITAL PROJECTS

THEMBELIHLE LOCAL MUNICIPALITY
POLICY ON INFRASTRUCTURE INVESTMENT AND CAPITAL PROJECTS
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1. Preamble

- 1.1 The progressive realization of fundamental constitutional rights *inter alia* requires township development. Township development in turn requires the provision of engineering services.
- 1.2 Local government must ensure the provision of engineering services to communities and promote social and economic development in a sustainable manner. As a general principle local government should within budgetary constraints accept responsibility for the installation and financing of external engineering services.
- 1.3 As a general principle township developers should accept responsibility for the installation and financing of internal engineering services.
- 1.4 Local government has the discretionary power when granting development approvals to impose conditions in relation to the provision of engineering services and the payment of money which is directly related to requirements resulting from those approvals in respect of the provision of the necessary services to the land to be developed.
- 1.5 Local government must act in accordance with the law when exercising those powers.

2. Purpose of Policy

- 2.1 The adoption of policy guidelines by state organs to assist decision-makers in the exercise of their discretionary powers has long been accepted as legally permissible and eminently sensible.
- 2.2 The purpose of this policy document is first to assist and guide municipal decision-makers in:
 - The exercise of their discretionary powers when considering appropriate conditions of approval to be imposed under the Land Used Planning Ordinance.
 - Their negotiations with developers relating to their payment of development contributions and the division of engineering services cost between the Municipality and applicants; and
 - The application of the calculation methods for development Contributions as outlined in the reports defined below.



2.3 The purpose of this policy document is also to:

- Inform interested and affected parties regarding the principles and calculation methods of development contributions and the process to be followed in reaching and recording agreements in respect thereof; and
- Ensure the provision of adequate engineering services and/or payment of development contributions in respect of new developments.

3. Definitions

In this policy document, unless inconsistent with the context:

“Applicant” means a person who has applied for approval under the Ordinance and includes the person or entity implementing such an approval;

“Brownfields type Development” means development of land where use can be made to spare capacity in existing bulk services, and where additional bulk services are also required.

“Development Contributions” means financial contributions calculated in accordance with this policy document, which an Applicant is required to make in terms of conditions of approval imposed by the Municipality when granting approvals under the Ordinance and which relate to requirements resulting from those approvals in respect of the provision of the necessary engineering services to the land to be developed.

“Engineering services” means services installed in the process of developing land for the provision of water, sewerage and electricity, handling of solid waste, and the building of streets, roads and storm water drainage systems, including all related services and equipment;

“Greenfields type Development” means development of land where no bulk services are available to serve the proposed development, and completely new bulk services are required.

“Municipal Area” means the area as reflected in the map appearing in Provincial Notice 478/2000 published in Provincial Gazette Extraordinary No 5587 of 19 September 2000;

“Municipality” means the Thembilehle Municipality (NC076) established in terms of the Provincial Notice 489 of 22 September 2000 in terms of the Local Government: Municipal Structures Act, 117 of 1998, and includes all political structures or office bearers and municipal staff members to whom authority has been delegated to take decisions under the Ordinance or to give effect to conditions of approval imposed under the Ordinance;

“Ordinance” means the Land Use Planning Ordinance, 15 of 1985 (Northern Cape)



“Reports” means the so-called “Thembelihle Development Contributions Report”, the “Thembelihle: Levies for Bulk Electrical Services Report” as approved by the Municipality.

“Service agreement” means a written agreement concluded between an Applicant and the Municipality, and in terms of which *inter alia* the respective responsibilities of the two parties for the planning, design, provision, installation, financing and maintenance of the internal and external engineering services and the standard of such services are determined.

4. Legislative Framework

4.1 The principle of legality enshrined in the Constitution, dictates that everyone has the fundamental right to administrative action

4.2 Planning and development must take place within a dense legislative environment.

Suffice it to say that included amongst the pieces of legislation that find application in this field are the Constitution of the Republic of South Africa Act, the Ordinance, the Local Government: Municipal System Act 32 of 2000 (MSA) and the Local Government: Municipal Finance management Act 56 of 2003 (MFMA).

4.3 In terms of the Ordinance the Municipality is empowered to impose conditions requiring the payment of Development Contributions, when granting development approvals under the Ordinance. In terms of section 42(2) of the Ordinance the Municipality is required to regard *inter alia* to public expenditure incurred in the past or which arise from such approvals which facilitates or will facilitate such developments, when requiring Development Contributions.

4.4 Section 42(2) of the Ordinance must be understood against the backdrop of the following principle enunciated in the second Report of the Venter Parliamentary Commission of Inquiry into Housing and Related Matters, 1983:

“It is important that any formula recommended in respect of the cost of the provision of services should ensure equal treatment and that the residents of the old town should not subsidise the new township, unless a deliberate decision to the contrary is taken”

4.5 In terms of the MSA, development within the Municipality and its expenditure on engineering services infrastructure must be guided by an approved Integrated Development Plan. The Municipality is enjoined to give priority to providing basic services and improving the quality of life for all within its financial means. Therefore if an Applicant intends to develop land before the necessary bulk engineering service have



been installed or where existing bulk services are inadequate to serve the proposed development, and the Municipality is not in a position to provide such at that time. The Applicant will be required as a condition of approval to fund the bulk services.

In those circumstances appropriate provisions need to be incorporated in a Service agreement relating to control over the costs of such external services and relating to the fund of reasonable costs to which the Applicant may be entitled.

5. Application of policy

5.1 This policy applies from date of its adoption by the Municipality to all applications for approval made in terms of the Ordinance relating to development within the Municipal Area.

5.2 It is trite law that where discretion has been conferred upon a public body by a statutory provision (such as section 42 of the Ordinance), such a body may lay down a general principle for its general guidance, but it may lay down a general principle as a hard and fast rule to be applied invariably in every case. Every case that is presented to the public body for its decision must be considered on its merits. It follows that there may be circumstances in which it will not be appropriate to require the payment of development Contributions whilst in other instances it may be necessary to increase or decrease the amounts payable as Development Contributions.

6. Policy approaches the development contributions

6.1 In terms of the so-called “Brownfields approach”, the point of departure is that the bulk services that will serve the proposed development have been funded by existing ratepayers and the Applicant should make a contribution towards those costs on a pro rata basis, based on the unit rate of usage. The value of Development Contributions must reflect the burden to date on the existing ratepayers for providing those services and not the future burden, as ratepayers in the proposed new development will share this burden and will benefit from contributions from future developments. For this reason outstanding loans in respect of the particular services are to be subtracted from the replacement value of those services when determining the amount of Development Contributions payable.

6.2 In terms of the so-called “Greenfields approach” the Applicant is responsible to finance the provision of all bulk engineering services, as these are specifically required for the



proposed development , and the intention is that the new development should not place any financial burden on existing ratepayers. However this scenario is only fully applicable if the development is self-contained; if the development does not make use of other existing or future developments will not make use of these services.

6.3 In most cases it is necessary to partially apply a Brownfields approach and to partially apply a Greenfield Approach to a particular development application, depending on the availability and adequacy of available bulk engineering services. This can be described as a “Combined approach”. In an ideal situation, if it was practically possible, the actual engineering services required should be determined for each development, and charged to the Applicant concerned. However because this is not practically possible, use is required to be made of calculation method derived and outlined in the report referred to in this policy.

6.4 In appropriate circumstances the Municipality may further require that an Applicant provides engineering services to a higher capacity than warranted by the development proposed, to accommodate future developments. In those circumstances and when Applicants are required to fund the provision of bulk engineering services suitable arrangements need to be incorporated in a service Agreement relating to control over the costs of such external services and the refund (where appropriate) of costs in excess of the costs which the Applicant would have incurred if normal capacity standards were applied. Such arrangements may include the application of set-off of development Contributions against such costs.

6.5 In all circumstances, where lawful development exists on the site to be redeveloped, development Contributions should be required only to the extent that the redevelopment , for which approvals are required under the Ordinance, place an additional burden on the existing bulk services infrastructure.

7. Imposition of appropriate conditions of approval

7.1 When the Municipality receives an application under the Ordinance, it must determine whether adequate bulk engineering services are available to serve the proposed development, whether the upgrading of such services will be required and/or what new bulk services will have to be installed to serve the proposed development.

7.2 The Municipality must, when it approves an application under the Ordinance, impose appropriate conditions relating to the provision and/or upgrading of bulk engineering



services to serve the proposed development and/or the payment of Development Contributions.

7.3 Such conditions may *inter alia* require the Applicant:

- In lieu of payment of Development Contributions (partially or in full), to install bulk engineering services to serve the proposed development standard as required by the Municipality; and
- To enter into a service Agreement with the Municipality.

7.4 Before submitting an application under the Ordinance to the competent municipal decision-maker, the Municipality must inform the Applicant which conditions relating to the provision of bulk engineering services and the payment of money (stating the amounts that will become due and payable) it regards as appropriate, afford the Applicant the opportunity to make representations in respect thereof and, where required, enter into negotiations with the Applicant in an attempt to avoid unnecessary appeals.

7.5 In the event that the Municipality and the Applicant fails to reach agreement on the amounts payable as development Contributions, the bulk services to be provided by the Applicant or in respect of matters relating thereto, and the Municipality imposes its interpretation as a condition of approval, the Applicant shall, in addition to his right of appeal under Section 62 of the Local Government: Municipal System Act, have a right of appeal under section 44(1) of the Ordinance to the competent provincial authority.

7.6 The Municipality should, when imposing conditions of approval under the Ordinance, clearly stipulate when development contributions shall become payable (e.g. before a rates clearance certificate as contemplated in section 31(1) of the Ordinance may be issued, before approval of a site development plan or building plan, or before a certificate for occupancy is issued in terms of the building regulations).

8. Calculation of Development Contributions

8.1 Brownfield Developments

- i) In this scenario, sufficient existing bulk services are available and the construction of new bulk services is not required. The Applicant must, however, make a Development Contribution for his portion of the capacity of the existing services. Because it would be complicated, impractical and time-consuming to calculate this exactly for each development on a case-by-case basis, the Thembelihle Development Contribution report calculation method can be used, as it covers this scenario on an average basis across all areas covered by that



report, unless it would be more appropriate to adopt a different method of calculation in any particular instance.

- ii) The calculation method employed in the Thembelihle Development Contributions Report has *inter alia* taken into consideration the principles of the Venter Commission Report, the empowering provisions of the Ordinance, past and future infrastructure costs in terms of existing master planning, replacement value costs, existing loans and existing and future potential grants and subsidies.

8.2 Greenfields Developments

- i) In this scenario no bulk services are available and all bulk services still need to be constructed. The Applicant must make a Development Contribution for his portion of the capacity of the bulk services to be installed. If the development is self-contained and all bulk services are only for that development, then the actual costs thereof can be calculated, and charged to the Developer.
- ii) Development in the Thembelihle Development contributions report should be used, unless it would be more appropriate to adopt a different method of calculations in any particular instance.

8.3 Combined approach

- i) In this scenario use can be made of spare capacity in some bulk services also need to be constructed. The Applicant must make Development Contributions for his use of existing services and his portion of the new services.
- ii) Because it would be complicated, impractical and time-consuming to calculate this exactly for each development on a case-by-case basis, the Thembelihle Development Contribution Report calculation method can be used in the areas covered by that report, as covers this scenario on an average basis across all those areas.

9. Service Agreements

Service Agreements conclude in compliance with Municipal conditions of approval imposed under the Ordinance must stipulate and record at least the following :

- The amount of Development Contributions payable;
- How escalation will be calculated on Development Contributions payable



- Exactly when Development Contributions will become due and payable;
- What bulk engineering services the Applicant is required to construct and/or upgrade, the standard with which such services comply and the agreement reached relating to set-off and/or refund the costs to be incurred by the Applicant in respect thereof.

10. Ensuring compliance

10.1 The Municipality may use various checkpoints/milestones to ensure that an Applicant complies with the conditions of approval with regard to the payment of Development Contributions or the provision of engineering services. The conditions of approval imposed should stipulate clearly which further approvals or clearances as may be required by the

