



# Ward 2 Forum

SERVING THE COMMUNITY TOGETHER

## **Municipal Public Participation**

June 2016

## 1. SUMMARY

Whatever the different words in the legislation are, the meaning and intent is absolutely clear. With very few exceptions, all policy, planning documents and applications to carry out an intended activity etc must involve comprehensive, open, fair and accountable consultation with the part(s) of the community that may be affected.

Additionally, public participation includes the two-way communication of information between the communities and local government, the heart of which is the Ward Committee system.

## 2. DEFINITIONS

**Council** means the municipal council of Theewaterskloof Municipality;

**Councillor** means an elected or nominated member of the Theewaterskloof Municipal council;

**Community or local community** means a group of people living in an area, but may also mean a sector or part of a larger community with common interests or characteristics;

**Community participation** means the public participation at the Ward level where local residents are referred to as ***the community***;

**Consultation** means the action or process of formally consulting or requesting comment or alternative proposals in relation to a particular matter;

**Inform** means to give or impart knowledge of a fact or a specific topic;

**Integrated Development Plan (IDP)** means the principle strategic plan, which prioritises municipal services and guides all planning and development within a financial and capacity framework;

**Interested and affected Party (I&AP)** includes any individual person or group potentially interested in a specific application, activity etc;

**Involve** means to have or include (something/someone) as a necessary or integral part of a specific process;

**Local Government** means one of 24 municipalities that make up the 5 District municipalities that constitute the Western Cape Province, and provides most of the basic services to the people;

**Public Participation** is an open, fair and accountable process by which an organization consults with interested or affected individuals, organizations, and government entities before making a decision;

The **principle** of public participation holds that individuals and communities who are affected by a decision have a right to be involved in the decision-making process;

**Registered stakeholder** means an individual or group (such as Ward 2 Forum), registered on the municipal database, with a known interest and officially representing part or all of the community on particular issues;



able to make contributions to local governance. It is for this reason that legislation requires elected councillors and officials to *inform and consult* communities. However, democratic decision-making is also about the community informing the municipality of its issues and concerns to make decision-making better informed and more responsive.

#### **4. THE CONSULTATION PROCESS FOR PLANNING APPLICATIONS**

Legislation requires that the municipality must consider if an intended planning activity or decision may have an effect on even a minority of the community if it is approved and must determine the nature, extent and significance of the effect. In a relatively small rural community, the potential impact or effect of a planning decision on the whole community must be considered rather than just the affect on the immediate neighbours.

It must be determined if the decision-maker is competent to decide the issue, which legislative procedure to follow, the sensitivity of the activity and which other Authorities should be involved. In addition to informing relevant stakeholders, the municipality must locate any persons who may be affected by the activity, or who represent them. They must be contacted and informed of all the details. Notices must be displayed in suitable prominent places to inform the general public. All comments by these Interested & Affected Parties must be recorded together with the municipality's considered responses and any actions to be taken.

Submissions, in support of, or objecting to, the activity, and alternative proposals must be considered adequately in the decision-making process. The decision-maker must not act unreasonably or arbitrarily, and must take into account all relevant factors that may influence the decision.

Decision making must reflect how appropriate the application is to the community in general and in particular the immediate neighbourhood, whether alternatives have been properly considered, the balance between commercial and personal benefits for the applicant and desirability for the community, and the degree or significance of the departure or deviation from the prescribed land uses and development rules. In addition, these items must be taken into account:

- Consideration of all significant and relevant facts;
- Consideration of different criteria that could have been used to arrive at an alternative planning decision;
- Adequate conditions to mitigate the impacts of a decision;
- Conformity with approved SDF and other municipal plans;
- Consideration of affects of the decision on other property owners or members of the community.

The Applicant and any I&APs must be informed in writing of the decision with reasons specific to any objections against the application, and their right of appeal. Contrary to the Municipal Systems Act (section 62), this right should extend to any

I&AP, if their reasonable expectations may be affected. The following grounds of appeal apply as well as the items above:

- The administrative action was not procedurally fair (PAJA);
- The merits of the land use or development application are insufficient (SPLUMA Regulations).

## **5. THE CONSULTATION PROCESS FOR DOCUMENTS ETC**

This section includes the compiling, amending, and revision of all such documents that should require public participation and consultation including Bye-laws, Guidelines, land use schemes, zoning maps, integrated development plans (IDP), sector and special development plans and frameworks (SDF), municipal reports and plans, land alienations, exemptions.

Each issue, draft, revision or amendment of a report or document etc, where a PP process is involved, must be made available for public comment if it is materially different to the previous version. Instances where content is materially different should be identifiable.

The PP process is otherwise similar to the process involving development applications described above.

## **6. TWO-WAY COMMUNICATION: MUNICIPALITIES AND COMMUNITIES**

The municipality has an obligation to the community to inform them by public Notice, local newspaper, pamphlets and 'fliers', the media, SMS, Email, website, PO box or house delivery, cell phone, direct talking to a sub-committee etc. The information ranges from dates and times of local road works, electrical power or water restrictions on use etc to reports on service delivery plans, financial material relating to property rates, municipal rents, budgets etc.

There is a requirement also for information feedback from the public concerning any municipal aspect that may be important to the way in which the municipality carries out its duties. Complaints, issues, concerns and supportive comment must be communicated to the municipality. The Ward System was established to, amongst other functions, gather such information and ensure it gets suitably distributed in the right Departments of the municipality.

In both cases, there is a need for the recipient of the information to understand the importance of the two-way process.

The Ward Committee system is the major communication source between communities and municipality, and must be utilised much more effectively and consistently for the benefit of all.

## 7. LEGISLATIVE FRAMEWORK

Local Government is subject to specific laws, which are central to public participation. These are:

### 7.1 Constitution of the Republic of South Africa

The notion of public participation in all spheres of government is embedded in the Constitution. One of the objects of local government in terms of Chapter 7, Section 152(1)(a) is to encourage the involvement of communities and community organisations in the matters of local government.

Chapter 10 expounds the basic values and principles that must govern public administration. Section 195(1)(e) stipulates that *'people's needs must be responded to, and the public must be encouraged to participate in policy-making'*, whilst Section 195(1)(g) stipulates that *'transparency must be fostered by providing the public with timely, accessible and accurate information'*.

### 7.2 Municipal Systems Act (No 32 of 2000)

A municipality has the duty (Section 4(2)):

- To encourage the involvement of the local community;
- To consult the community about the level, quality, range and impact of municipal services provided by the municipality;

The public have the right (Section 5(1)):

- To contribute to the decision-making processes of the municipality and submit written or oral recommendations, representations and complaints to the council;
- To be informed of decisions of the council;
- To regular disclosure of the affairs of the municipality, including its finances;

Perhaps the clearest and most specific requirements for the administration of a municipality (Section 6 (2)) are that it must:

- be responsive to the needs of the local community;
- facilitate a culture of public service and accountability amongst staff;
- take measures to prevent corruption;
- establish clear relationships, and facilitate co-operation and communication between it and the local community;
- give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and

- inform the local community how the municipality is managed, of the costs involved and the persons in charge.

The Municipality must develop a culture of municipal governance that compliments formal representative government with a system of participatory governance and must (Section 16):

- encourage and create conditions for the community to participate in the affairs of the municipality, including the IDP, performance management system, monitoring and review of performance, preparation of the budget, strategic decisions re municipal services;
- contribute to building the capacity of the local community to participate in the affairs of the municipality and councillors and staff to foster community participation.

### **7.3 Municipal Structures Act (No 117 of 1998)**

An important and key feature of local government is the Ward Committee System, set up to enhance participatory democracy in local government (Section 72). Ward committees are seen as the vehicle for deepening local democracy and the instrument through which a vibrant and involved citizenry can be established. It is at the local level within Wards that all development issues converge. Ward committees therefore have a crucial role to play as an interface between all levels of government and communities.

The Ward 2 Forum was developed out of a need to further the participatory process to be more inclusive of all communities of Ward 2.

### **7.4 Municipal Finance Management Act (No 56 of 2003)**

This Act was put in place to bring about transparent and effective financial management in municipalities and municipal public entities. The MFMA outlines ways in which the community can be informed of the financial situation of a municipality.

Annual budgets must be presented to the local community for their views, which council must consider before they are approved. It should be noted that a major item in the budget is the list of Tariff charges for all the services provided by the municipality.

### **7.5 Property Rates Act**

The **Property Rates Act** stipulates that the public must participate in decisions relating to municipal property rates.

## **7.6 National Environmental Management Act (NEMA) (No 107 of 1998)**

This is undoubtedly the most sophisticated legislation in terms of the extent of public participation. Applications are managed by professional environmental practitioners, who are paid for by the Applicant, and assessed by the Department of Environment (National or Provincial) in the following areas:

- land-use planning and development;
- resource conservation and utilisation; and
- waste management and pollution control.

Consulting organisations and Government authorities have a major role in commenting officially on all applications.

Assessment of the impacts of the activities for which approval is sought must take into account all aspects of the area specified for the application including its living creatures, biodiversity, etc, the extent to which these may be affected by the activities and the longer term implications after the activities have ceased. Comparative studies of similar activities in similar areas and monitoring of environmental aspects are done to assist in the determination of the significance of the activities. Nowadays, there is increasingly stringent legislation to ensure that environmental damage is corrected where possible and the development area rehabilitated.

Public participation can be problematic because of the precarious balance between opportunities for local communities who can participate in the benefits of the investment as mitigation for possibly otherwise unacceptable environmental damage.

Similarly, municipalities must balance the local socio-economic benefits of a development against environmental damage.

## **7.7 Promotion of Access to Information Act (2 of 2000)**

The main intent of this Act is to actively promote a society in which the people of South Africa have effective access to information held by the State or by another person, to enable them to more fully exercise and protect all of their rights.

## **7.8 Promotion of Administrative Justice Act (No 3 of 2000)**

Administrative action, which materially and adversely affects the rights or legitimate expectations of any person, must be procedurally fair.

In order to give effect to the right to procedurally fair administrative action, an administrator must give any person, unless it is considered unreasonable and unjustifiable in the circumstances (Section 3(2)):

- Adequate notice of the nature and purpose of the proposed administrative action;
- Reasonable opportunity to make representations;

- A clear statement of the administrative action;
- Adequate notice of any right of review or internal appeal, where applicable;
- Adequate notice of the right to request reasons for the action.

In cases where an administrative action materially and adversely affects the rights of the public, the administrator must decide whether to hold a public enquiry, follow a Notice and Comment procedure or follow a different procedure (Section 4). He must consider the comments given prior to any decision.

Registered Conservation organisations must be consulted in relation to any heritage applications in their area.

## 7.9 The White Paper on Local Government (1998)

Municipalities require active participation by citizens at four levels:

- As **voters**: to ensure maximum democratic accountability of the elected political leadership for the policies they are empowered to promote;
- As **citizens**: who express, via different stakeholder associations, their views before, during and after the policy development process in order to ensure that policies reflect community preferences as far as possible;
- As **consumers** and **end-users**: who expect value for money, affordable services and courteous and responsive service;
- As **organised partners** with Companies, non-Government organisations and community-based institutions involved in the mobilisation of resources for sustainable local development.

## 8. GUIDING PRINCIPLES AND AIMS OF PUBLIC PARTICIPATION:

The following principles of municipal service are underscored by the 8 Batho Pele principles:

**Consultation** – municipalities should not assume to know what customers want. The only way to find out for certain is by asking. This can be done through surveys, questionnaires, meetings, suggestion boxes, izimbizo and by talking to stakeholders and the public in general. Feedback via the Ward system is important so service users know what to expect, and municipal staff know what to supply;

**Service Standard** – the public should be told about the level and quality of the services they receive, and if possible they should be given an opportunity to choose the service they want, depending on available resources. The standards agreed are used to measure performance, and therefore need to be realistic and measureable. Everyone should be able to see if they are met;

**Access to services** is especially important in rural communities, and for users who are disabled or sick. De-centralised offices, extended office hours etc allow services to be taken to the user; all main languages should be available;

**Courtesy** – the public should be treated with courtesy and consideration;

**Information on Services** – full and accurate information and explanation is required;

**Openness and transparency** – annual reports, budgets, strategic plans, service commitment charters, etc must be made available to the public. The costs associated with services should be available. Department Managers should be available to assist scrutiny of the records. Accounts should be understandable, and expenditure/income entries should be directly related to service functions, even down to small monetary values.

**Redress** - An apology, full explanation and effective, speedy remedy should be offered when the promised standards of service have not been delivered.

**Value for money** – municipalities need to make the best use of available resources, avoid unnecessary wastage of time and money, eliminate theft, fraud and corruption and find innovative ways of improving services at little or no cost. In essence, all the unit costs, direct and indirect, of a service must be determined in order to identify areas of potential saving and to monitor these changes.

## **9. THE WARD COMMITTEE SYSTEM**

Ward committees are seen as the vehicle for deepening local democracy and the instrument through which a vibrant and involved citizenry can be established. It is at the local level within wards that all development issues converge. Ward committees therefore have a crucial role to play as an interface between government and communities (not just local government).

## **10. IMPORTANCE OF PUBLIC PARTICIPATION**

- Increases involvement in the democratic process;
- Encourages openness and transparency in community engagement;
- Alarms municipality of concerns and issues from the residents' viewpoint;
- Contributes to the development of self-confidence, pride, initiative, responsibility and co-operation;
- Motivates residence and communities of to take charge of their own lives and be actively involved in finding solutions to their problems;
- Builds capacity in the communities to engage effectively with their councils;
- When communities establish good working relationships with the municipality, it raises communities level of confidence;
- Participation also encourages and strengthens internal accountability

structures in the communities and their organisations;

- In terms of the IDP process, participation enables partnerships like public/public; public/private; public/community.

## 11. TOOLS FOR IMPROVED PARTICIPATION

- **Inform** the communities of community rights and municipal policies and duties;
- **Consult** the communities for feedback on matters that may affect them;
- **Consult** experts and stakeholders in the community on specialised subjects;
- **Consult** Government Departments with expertise and authority on certain matters;
- **Motivate** the municipality to consider community needs in their decision making;
- **Support** the implementation of reasonable municipal legislation;
- **Involve** Ward Committees in the IDP, Budget, Performance management system, performance assessment and service delivery agreement processes;
- **Build** capacity of municipal staff, Councillors, Ward committee members, stakeholders and the community in general.

## 12. CONCLUSION

We all must strive to ensure the delivery of quality services and encourage development in our Wards. This can only be achieved by creating a climate of co-operative governance with meaningful partnerships with all stakeholders. This can only happen with the dedication and insistence of the municipality, fully supported by the community.