



**DRAFT**

# **DEVELOPMENT CHARGES POLICY FOR KWADUKUZA MUNICIPALITY**

**APRIL 2017**

***POLICY REGULATING THE PAYMENT AND USE OF DEVELOPMENT CHARGES PAYABLE BY DEVELOPERS TO COVER THE MUNICIPALITY'S COST OF PROVIDING EXTERNAL ENGINEERING SERVICES TO LAND DEVELOPMENTS WITHIN THE KWADUKUZA MUNICIPALITY.***



# DOCUMENT CONTROL

**TITLE:** Developers' Development charges policy regulating the payment and use of development charges payable by the developers to cover the municipality's cost of providing external engineering services to land developments within the KwaDukuza Municipality.

**ELECTRONIC FILE:** KDM\_POL\_DEVPOL\_VERSION\_1\_2017

**REPORT STATUS:** DRAFT

**REVISION NUMBER:** 1

**COMMENT / SYNOPSIS** The KwaDukuza Municipality Economic and Development Planning, Technical Services, and Municipal Services Directorates including the Finance Department puts forward for the consideration of council a policy that will guide developers in respect of developers contributions for existing and new developments that are submitted to the Municipality via the Land Development Application process using planning legislation such as the Spatial Planning Land Use Management Act, the now effective SPLUMA and any other piece of relevant legislation that deals with the development/ enhancement of land.

Officials directly affected with such have as a collective formulated this policy to address the issues regarding the provision of engineering services and have in some cases as a precautionary measure to protect council subject to available funds from the capital budget to suggest that proportional contributions from council and the developer is the most feasible route to take when it comes to the provision of engineering services.

**DIRECTORATE:** Economic Development and Planning  
P.O. Box 72  
KwaDukuza  
4450

**DATE:** April 2017

**REFERENCE NUMBER:** KDM\_POL\_DEVPOL\_VERSION\_1\_2017

**PROJECT TEAM:**

**Author:**

Various

**Reviewers:**

KDM MANCO

## TABLE OF CONTENTS

DEFINITIONS .....	6
PREAMBLE .....	10
<b>1. INTRODUCTION .....</b>	<b>11</b>
<b>2. OBJECTIVE OF THE POLICY .....</b>	<b>13</b>
<b>3. INTERPRETATION .....</b>	<b>13</b>
<b>4. PRINCIPLES GUIDING THE DEVELOPMENT CHARGES POLICY .....</b>	<b>14</b>
I. EQUITY AND FAIRNESS .....	14
II. PREDICTABILITY .....	14
III. SPATIAL AND ECONOMIC NEUTRALITY.....	15
IV. ADMINISTRATIVE EASE AND UNIFORMITY .....	15
<b>5. ROLEPLAYERS AND STAKEHOLDERS.....</b>	<b>15</b>
<b>6. DEFINITION OF DEVELOPMENT CHARGE COST COMPONENTS.....</b>	<b>16</b>
<b>7. LAND DEVELOPMENT APPLICATIONS THAT TRIGGER DEVELOPMENT CHARGES.....</b>	<b>18</b>
<b>8. APPLICABILITY OF DEVELOPMENT CHARGES.....</b>	<b>20</b>
<b>9. WHERE DEVELOPMENT CHARGES DO NOT APPLY .....</b>	<b>20</b>
<b>10. CONDITIONS OF ESTABLISHMENT .....</b>	<b>21</b>
<b>11. DECISIONS OF THE TRIBUNAL.....</b>	<b>22</b>
<b>12. CONDITIONS DETERMINED BY TRIBUNAL IN TERMS OF SECTION 87 OF THE SPLUMA REGULATIONS.....</b>	<b>23</b>
<b>13. PREVIOUSLY APPROVED DEVELOPMENTS .....</b>	<b>24</b>
<b>14. LEGISLATIVE FRAMEWORK.....</b>	<b>24</b>
<b>14.1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 .....</b>	<b>24</b>
14.2. THE MUNICIPAL SYSTEMS ACT (ACT 32 OF 2000).....	27
14.3. MUNICIPAL POWERS AND FUNCTIONS ACT (ACT 12 OF 2007).....	29
14.4. THE MUNICIPAL FINANCE MANAGEMENT ACT, (ACT 56 OF 2003).....	31
14.5. SPATIAL LAND USE AND MANAGEMENT ACT (ACT 16 OF 2003) .....	31
<b>15. METHODOLOGY FOR DETERMINING UNIT COSTS FOR USE IN DEVELOPMENT CHARGES CALCULATIONS .....</b>	<b>32</b>
<b>16. CALCULATION OF DEVELOPMENT CHARGES .....</b>	<b>34</b>
<b>16. DEVELOPMENT CHARGES IN RESPECT OF ROADS AND STORMWATER.....</b>	<b>36</b>
<b>17. DEVELOPMENT CHARGES IN RESPECT OF ELECTRICITY .....</b>	<b>39</b>
<b>18. COST OF EXTERNAL ELECTRICAL ENGINEERING INFRASTRUCTURE.....</b>	<b>40</b>

<b>19.</b>	<b>NON-EXISTENT AND/OR INADEQUATE EXTERNAL ENGINEERING SERVICES</b>	
	<b>INFRASTRUCTURE .....</b>	<b>41</b>
<b>20.</b>	<b>ADDITIONAL SERVICE CONNECTIONS .....</b>	<b>42</b>
<b>21.</b>	<b>ENHANCEMENT OR IMPROVEMENT OF EXISTING SERVICES .....</b>	<b>42</b>
<b>22.</b>	<b>EXEMPTIONS.....</b>	<b>42</b>
<b>23.</b>	<b>ADMINISTRATIVE PROCESS.....</b>	<b>44</b>
<b>24.</b>	<b>APPLICATION PROCEDURE.....</b>	<b>44</b>
<b>25.</b>	<b>PAYMENT OF DEVELOPMENT CHARGES .....</b>	<b>45</b>
<b>26.</b>	<b>INFRASTRUCTURE IN LIEU OF DEVELOPMENT CHARGE .....</b>	<b>46</b>
<b>27.</b>	<b>USE OF DEVELOPMENT CHARGES FUNDS .....</b>	<b>47</b>
<b>28.</b>	<b>TRANSITIONAL ARRANGEMENTS .....</b>	<b>48</b>
<b>29.</b>	<b>MONITORING, EVALUATION AND REVIEW .....</b>	<b>48</b>
29.1.	MONITORING.....	48
<b>30.</b>	<b>REVIEW.....</b>	<b>48</b>

## **LIST OF ANNEXURES**

**ANNEXURE 1: MODEL FOR CALCULATION FOR ROADS CONTRIBUTION**

**ANNEXURE 2: CALCULATION PARAMETERS**

**ANNEXURE 3: SOUTH AFRICAN ENGINEERING SERVICE CONTRIBUTION MANUAL FOR MUNICIPAL ROAD INFRASTRUCTURE (TMH 15)**

**ANNEXURE 4: SOUTH AFRICAN ENGINEERING SERVICE CONTRIBUTION MANUAL FOR MUNICIPAL ROAD INFRASTRUCTURE (TMH 17)**

**ANNEXURE 5: SOUTH AFRICAN ENGINEERING SERVICE CONTRIBUTION MANUAL FOR MUNICIPAL ROAD INFRASTRUCTURE (TMR 26)**

## DEFINITIONS

In this Policy, unless the context clearly indicates otherwise –

**“ADMINISTRATION / OFFICIALS”** means a municipal official who is employed in terms of the Systems Act, or any structure or employee of the Municipality acting in terms of delegated authority by the Council or the Municipal Manager.

**“BUILDING PLAN”** means a set of plans assessed by the Municipality for consideration by the Council and in respect of which various aspects may be considered by the Council in determining the amount payable by a developer in respect of development charges, such as GLA (Gross Leasable Area), Coverage and FAR (Floor Area Ratio). This will be assessed by the Council based on the proposed use of the building, and may also be subject to a Traffic Impact Assessment (TIA) so as to determine traffic loads. On request, the Municipality may request from the developer or its agent any Computer Aided Design drawings to verify what has been submitted, and these should be compatible to AutoDesk AutoCAD in either DWG or DXF drawings.

**"BY-LAW"** means any by-law adopted by the Municipality in terms of section 156(2) of the Constitution, read with section 13 of the Systems Act;

**"CONSTITUTION"** means the Constitution of the Republic of South Africa, 1996, as amended;

**"COUNCIL"** means the KwaDukuza Municipal Council as referred to in section 157(1) of the Constitution; and includes any committee or official of the Council carrying out any duty or function, or exercising any power delegated to it by the Council;

**“CONDITION OF APPROVAL / ESTABLISHMENT”** means a condition imposed by the Municipality on the approval of a land development application in terms of land use planning legislation;

**“CONNECTION FEES”** means the fees determined by the Council for payment by a developer in order to connect any of its internal engineering services to an external engineering service provided by the Municipality;

**“CRT”** means a certificate of registered title;

**“DEVELOPER”** means any natural or corporate person, including an organ of State, which may or may not be the registered owner of the land in respect of which an application for permission to develop or change the use of land is submitted to the Municipality;

**“LAND DEVELOPMENT”** means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;

**“DEEDS OFFICE”** means the provincial or national office for the registration of title deeds in respect of immovable property;

**“DEVELOPMENT CHARGE”** means a once-off charge determined by the Municipality in terms of the tariff of charges for payment by a developer as a condition of approval of a land development application.

The purpose of the development charge is to cover the total cost to be incurred by the Municipality for the construction or erection of any infrastructure required for the provision of an external engineering service to the development to which the application relates;

**“DEVELOPMENT REVIEW COMMITTEE”** means a committee set up by the Council where all sections sit and review land development applications;

**“ECSA”** means the Engineering Council of South Africa;

**“ENGINEERING SERVICE”** means a system for the provision of water, electricity, municipal roads, storm water drainage, gas and solid waste collection and removal required for the purpose of land development referred to in Chapter 6 of the SPLUMA;

**“ESKOM”** means the national entity for the provision of electricity;

**“EXTERNAL ENGINEERING SERVICE”** means a municipal engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area and includes:

- a) **Bulk engineering services-** means municipal service infrastructure external to the development, including land required to provide engineering services to multiple users at a municipality-wide scale as indicated in the relevant Master Plans.
- b) **Link engineering services-** means municipal service infrastructure external to the development site boundary, including land required to connect internal engineering services within the proposed development to existing or proposed bulk engineering services.

**“ENGINEER”** means the Engineer, Electrical Services, referred to in the By-laws and is deemed competent by way of being registered with the relevant council;

**“ENGINEERING SERVICES CONTRIBUTIONS (ESC)”** means a contribution made by the developer at the time for engineering services.

**“FAR”** means the ratio of the total floor area of the building as defined in the applicable scheme;

**“GLA”** means the sum total of all leasable areas in a commercial development which are available to tenants for retail or other commercial purposes, irrespective of whether they are indoors or outdoors;

**“HOME CHILDCARE”** means the use of portion of a dwelling house or outbuildings by the occupant to provide day care, after school care or instruction for a limited number of infants or children;

**“INTERNAL ENGINEERING SERVICE”** means an engineering service within the boundaries of a land area which is necessary for the use and development of the land area and which is to be

owned and operated by the Municipality or a service provider appointed by it, including any link service required to link the internal engineering service to an external engineering service.

**“LAND DEVELOPMENT APPLICATION”** means any application to the Municipality for permission to develop or change the use of land in terms of applicable land use or planning law;

**“LOW-INCOME HOUSING PROJECTS”** means housing development projects where residential land is as per the LUMS together with the supporting non-residential land uses, these developments are funded by means of the national housing subsidy and are not liable to developers contributions;

**“LUMS”** means the by-laws that are applicable to a cadastral boundary and are linked to the land development application or application site;

**"MFMA"** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**“MODELLING IMPACT ZONE”** means a zone determined by the municipality in which all the components of the external engineering services system, network or networks that a particular development impacts on. This zone will be defined differently for different external engineering services, and will be based on modelling work undertaken for each of the services as part of the determination of the average unit costs to be applied in the development charge calculation.

**“MUNICIPALITY”** means the KwaDukuza Municipality, a category B municipality as envisaged in section 155(1) of the Constitution;

**"MUNICIPAL SERVICE"** means a service that the Municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether or not -

- a) such service is provided, or to be provided, by the Municipality through an internal mechanism contemplated in section 76 of the Systems Act or by engaging an external mechanism contemplated in section 76 of that Act; and
- b) fees charged or tariffs levied in respect of such a service;

**“NERSA”** means the regulation authority with regards to power and energy charges;

**"PDA"** means the KwaZulu Natal Planning and Development Act, 2008 (Act No. 06 of 2008);

**"PERSON"** means a natural or juristic person;

**“RATES CLEARANCE CERTIFICATE”** means a certificate issued by the Finance Department of the Municipality confirming the payment of rates in respect of an immovable property as a prerequisite for the registration of transfer thereof;

**“RESTRUCTURING ZONES”** means areas that the Municipality has identified for infilling and densification in line with IRD Definition of IRD);

**“SECOND DWELLING”** means another dwelling unit which may, in terms of the LUMS, be erected on a parcel of land where a dwelling house is also permitted; and such second dwelling may be



a separate structure or attached to an outbuilding or may be contained in the same structure as the dwelling house; provided that:

- 1) the second dwelling shall remain on the same land unit as the dwelling house; and
- 2) the second dwelling shall comply with the requirements specified in the LUMS;

**“SERVICE LEVEL AGREEMENT”** means an agreement entered into in writing between the Municipality and a developer in cases where the developer constructs or installs an external engineering service in lieu of payment in full or in part of an applicable development charge determined by the Municipality for payment by the developer concerned;

**“SERVICE MASTER PLANS”** means high level infrastructure plans prepared by the Municipality to cater for current and future development. These include, but are not limited to: Electricity Master Plan, Roads and Storm Water Master Plans and Integrated Waste Management Plan.

**“SOCIAL HOUSING”** means housing development projects where residential land can be zoned either Single Residential Zone SR1 or Single Residential Zone SR2 or a combination thereof and where the household income levels of recipients are between R3 500 and R15 000 per month;

**“SOCIAL INFRASTRUCTURE”** means infrastructure that serves for purposes that are non-residential in nature (supporting land uses to residential and non-residential developments). This may include both low to high income residential and non-residential developments where administration will comment on submission of a Land Development Application;

**“SPATIAL DEVELOPMENT FRAMEWORK”** means a spatial development framework referred to in Chapter 4 of the SPLUMA;

**“SPLUMA”** means the Spatial Planning and Land Use Planning Act, 2013 (Act 16 of 2013);

**“SYSTEMS ACT”** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

**“TOWNSHIP”** means an area of land divided into Erven, and may include public places and roads indicated as such on a general plan;

**“TARIFF OF CHARGES”** means the list of charges at the rates determined by the Council from time to time for payment by an applicant for the provision of an engineering service by the Municipality;

**“TRIBUNAL”** means the Municipal Planning Tribunal referred to in Chapter 6 (Part C) of the SPLUMA.

## **PREAMBLE**

**WHEREAS** the Municipality is one of the fastest growing areas in the Province of KwaZulu Natal, and is promoted as an attractive destination for economic investment;

**AND WHEREAS** new economic development has a positive impact on the Municipality's finances as it increases revenue from property rates and service charges by expanding the base of ratepayers in respect of both residential and non-residential properties;

**AND WHEREAS** development associated with this economic growth has an impact on the demand for essential engineering services and other social services, such as clinics, schools and other public amenities;

**AND WHEREAS** the costs attached to the provision of engineering services infrastructure for the Municipality are exorbitant.

**AND WHEREAS** the Municipality is required in terms of section 73(2) of the Systems Act to provide municipal services to the local community in a financially sustainable manner, in respect of which services the Municipality is empowered in terms of section 75A of the same Act to levy and recover fees, charges or tariffs;

**NOW THEREFORE** the Council adopts this Policy with a view to achieving an equitable provision of services by the Municipality to all its ratepayers in a financially sustainable manner and without using exerting undue pressure upon the existing ratepayers to fund or subsidize new developments.

## 1. INTRODUCTION

South African municipalities are currently facing significant challenges in relation to mobilising finance to meet their infrastructure investment requirements. Analysis undertaken indicates that infrastructure investment needs emanating from the need to expand access to services, to expand infrastructure that supports economic activity and to maintain, rehabilitate or replace existing infrastructure that is nearing the end of its design life.

Two factors have begun to compound the effects of this situation namely:

- a) Construction costs that have risen dramatically in the last few years, resulting in municipalities being able to construct fewer assets for the same amount of revenues.
- b) Municipalities now facing a significant accumulation of investment needs from both previous years and the present.

With consideration of this, government has responded to the situation in the following ways:

- i. Grants targeted at infrastructure investment have increased substantially and now make up the largest single source of capital revenues for all categories of municipality.
- ii. The policy framework for municipal borrowing has been substantially reformed, to improve the long term capacity of creditworthy municipalities to borrow on a substantial basis. Both of these efforts, while important face their own constraints.

KwaDukuza can be considered one of the fastest growing municipalities in KwaZulu Natal and can be considered a lucrative and competitive region for economic investment. New development positively impacts the municipality's finances and results in increased revenue through the expansion of the revenue base.

Furthermore, such growth within the local municipality's economy has significant implications for the provision of engineering services (water, sewer, waste, electricity, stormwater and roads). Increased development also results in an increased demand for social services and other public facilities. Infrastructure provision is a significant component or "backbone" of economic development within any rapidly development locale. Municipalities countrywide rely on the following sources to fund infrastructure:

1. **Grants**- these are provided by national or provincial government and are generally targeted towards social infrastructure, particularly in support of low-income housing development.
2. **Loans**- these are converted into tariffs and are recovered by user fees paid by all consumers to the City.
3. **Capital contributions**- these are a more targeted and more equitable way of ensuring that the main beneficiaries of infrastructure make an appropriate and fair contribution to that cost, without unduly burdening the municipality's ratepayers. Development Charges are taxes, levies, surcharges that a municipality may impose on certain developments that would deplete or add loads on the municipal infrastructure.

With consideration of the above mentioned sources, there is a dire need for municipality's more especially KwaDukuza with rapid and growing development needs to look beyond the traditional sources of revenue drawn from national government and mainstream local taxed as well as user charges. Development charges represent an additional and alternative financing mechanism for municipal infrastructure investment.

The failure of the municipality in developing an efficient system of Development Charges will result in the following:

- Less capital available for the development of new infrastructure, or the expansion of existing capacity. The effects of such would be less investment into the local economy by private investors and a gradual decline in economic growth.
- Property rates and other sources of municipal revenue would have to increase thus burdening ratepayers and businesses. It would entail that infrastructure for new developments are subsidized by existing ratepayers which does not promote equity and fairness.

Section 4 (2) of the Systems Act places a duty upon the Council, within the Municipality's financial and administrative capacity and having regard to practical considerations, to, amongst others –

- i. use the resources of the municipality in the best interests of the local community;
- ii. strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner; and
- iii. give members of the local community equitable access to the municipal services to which they are entitled;

In due fulfilment of its duty in terms of section 4(2) of the Systems Act, the Council has duly adopted and published the By-Laws in terms of section 156(2) of the Constitution, read with section 13 of the Systems Act for the provision of municipal services to the local community;

Insofar as the Electricity Supply By-laws of the Municipality ("the Electricity Supply By-laws") are concerned, it is hereby recorded that –

Section 4 of the said By-laws states that only the Municipality shall supply or contract for the supply of electricity within its licensed area of supply; and

Section 5 of the said By-laws prohibits any person from using an electricity supply from the Municipality unless or until such person shall have entered into an agreement in writing with the Municipality for such supply. Such agreement, together with the relevant provisions of the By-laws and this Policy, shall in all respects govern the supply of electricity by the Municipality to any person.

## **2. OBJECTIVE OF THE POLICY**

The objective of this policy is to regulate –

- a) The provision of external engineering services in respect of existing and
- b) new developments within the Municipality's area of jurisdiction; and
- c) How the municipality determines the payment of development charges payable by the developers of land within the Municipality's area of jurisdiction in terms of section 49 of the SPLUMA, as determined by the Municipality from time to time in terms of the tariff of charges, taking into account the actual cost to be incurred by the Municipality in relation thereto.

The policy further seeks to:

- i. Provide an enabling environment for the provisions of infrastructure in an efficient manner to support rapid development within KwaDukuza Municipality.
- ii. Ensure financial sustainability of KwaDukuza municipality through the introduction of development charges on any new development or land uses that increase the load on municipal infrastructure or agreements between the municipality and the developer for the developer to finance costs related to provision of infrastructure for new or existing developments.

This policy will provide detail relating to the introduction of a Development Charge for KwaDukuza Municipality. There are three main factors that define the development charge and these are highlighted below:

1. The Development Charge is a once off payment determined by the municipality paid to cover the cost to be incurred by the municipality for the construction of any infrastructure required for the provision of an external engineering service to the development to which the application relates.
2. The determination of whether or not a Development Charge is required is the nature of the proposed development which is contained in land development application.
3. The basis on which the amount of a Development Charge is calculated is the increased impact that a new or changed land use will have on the existing infrastructure

## **3. INTERPRETATION**

If there is any conflict of meaning or interpretation between the terms or provisions of this Policy and the applicable By-law, the meaning or interpretation of the terms or provisions of the By-law shall prevail.

## **4. PRINCIPLES GUIDING THE DEVELOPMENT CHARGES POLICY**

The principles guiding the Municipality in the implementation of this policy closely reflect those set out in the draft National Policy Framework for Municipal Development Charges, National Treasury, 2011.

They shall be reviewed by the Municipality once the National Policy Framework for development charges has been finalised in order to ensure that the principles espoused by the Municipality herein are aligned with the principles contained in the final national policy framework. The guiding principles are as follows:

### **I. EQUITY AND FAIRNESS**

The Municipality shall do everything in its power to ensure that the amount payable by a developer in respect of development charges is reasonable, balanced and practical so as to be equitable to all stakeholders and, in recognition of such principle, shall, as far as possible, recover from the developer the actual or estimated cost to be incurred by the Municipality in providing the necessary external engineering service to the development;

The development charge payable by a developer for the land development shall be assessed by the Municipality in terms of the tariff of charges, taking into account such criteria as it may deem appropriate, including –

- a) the pre-installed municipal services infrastructure resulting from historical municipal investments in excess (spare) capacity; or
- b) The need to provide new infrastructure to meet additional capacity requirements.

The funds received by the municipality from a developer in respect of development charges must be utilised exclusively for the purpose for which they were collected.

### **II. PREDICTABILITY**

The Municipality shall always strive to ensure that its method of assessing development charges is reasonable, fair and transparent, based on objective criteria aimed at the proper utilisation of available resources by the Municipality in order to maintain its capacity to provide essential services to its local community in a cost effective and sustainable manner.

The payment of development charges by developers constitutes a predictable, legally certain and reliable source of revenue for the municipality in order to enable it to provide the necessary external engineering services required for the proposed land development. Revenue raised through development charges shall be utilised for necessary upgrading existing external engineering services, as well as the installation of new external engineering services required for the proposed land development, and will be accounted for by means of a dedicated vote number.

In order to promote predictability and coordination, the costs associated with municipal infrastructure must be established before any capital grants from national or provincial government or other funding sources that are applied so that there is full transparency.

The municipality reserves the right to appoint an independent professional to assess the submissions of costs related to any land development application for reviewing purposes and, ultimately, to get a second opinion if it deems it necessary to do so. The municipality, at its own discretion, reserves the right to interrogate and make decisions decision on the results tallied by either of the specialist studies.

### **III. SPATIAL AND ECONOMIC NEUTRALITY**

The primary role of the development charge is to ensure the timely and sustainable financing of the external engineering services required to support land development in line with municipal planning. The development charges shall:

- a) be determined on identifiable and measurable costs in a way that avoids distortions in the economy and in patterns of spatial development. The adopted Spatial Development Framework or any other framework plan adopted will thus be used as a determinant in this regard; and
- b) where appropriate, be raised on a sectoral or geographic scale to more accurately recover costs within a specific impact zone where this is in line with the adopted municipal framework planning where clause 8(3) applies.

### **IV. ADMINISTRATIVE EASE AND UNIFORMITY**

The Municipality shall do everything in its power to ensure that the calculation and operation of development charges are carried out in an administratively simple and transparent manner. This will necessarily detract from the accuracy of individual charges, but is nonetheless deemed by the Municipality to be a necessary trade-off. Development charges thus only estimate the actual costs associated with the provision of proportionate new external engineering services and /or upgrading the existing external engineering services capacity to support the proposed land development. Proportionality will apply on the part of the Municipality should it have the sufficient budget to do so as the ratio of proportionality will be determined by the available capital budget.

## **5. ROLEPLAYERS AND STAKEHOLDERS**

1. In essence, this Policy identifies two sets of stakeholders, the first is made up of the various departments and affected units of the Municipality. These directorates are deemed to have a direct impact on development charges resulting from Land Development Applications. The directorates listed below are in the forefront of determining and accepting the proposals relating to development charges.
  - a) Economic Development and Planning Business Unit;
  - b) Civil Engineering Services and Human Settlements Business Unit;
  - c) Electrical Services Business Unit;

- d) Finance Business Unit; and
  - e) Municipal Services Business Unit.
2. The second set of stakeholders is made up of the land development industry, which includes both the private sector and the public sector entities engaged in land development, such as the National, Provincial and Local authorities responsible for social infrastructure, which includes low income housing and any other non-residential land use that is deemed necessary in a particular area. In the case of the Municipality, the demarcated restructuring zones will form part and parcel of the areas that may be affected by this policy.

## 6. DEFINITION OF DEVELOPMENT CHARGE COST COMPONENTS

- 6.1. External engineering services are essentially made up of two components, namely, the bulk engineering services as well as the link engineering services. Both components are subject to the payment of a development charge, though different criteria may be applied by the Municipality in its assessment of the amount payable by a developer in respect of each component.
- 6.2. Developers are liable for payment of a development charge in respect of both components of external engineering services referred to in the paragraph above as follows:
- a) A pro rata share of the cost of the external engineering service, based on the demand or requirement of the development concerned.
  - b) The actual cost of any link engineering services required for the specific development.
- 6.3. The developer shall be responsible for payment of the development charge in respect of both the bulk engineering services and the link engineering services, unless the bulk engineering services are provided by the developer in lieu of payment of the applicable development charges, as contemplated in Section 49 of the SPLUMA.
- 6.4. A description of the components of external engineering services for each of the engineering services is provided in Annexure 1. The amount payable excludes the electricity development charges as the provisions relating to this charge are described in the **Electricity Development Charge Policy** as well as for the roads component for the proposed development which is provided for in the TMH 15 Manual (Please refer to Annexure 5). The development charge only covers the provision of infrastructure for which the Municipality is responsible and, therefore, does not cover the costs associated with provincial and national infrastructure.
- 6.5. Notwithstanding the provisions of paragraph 6.4 above, the costs associated with provincial and national infrastructure may well have to be met by the developer, but that has to be part of a process regulated and managed by the authority responsible for providing such service, such as the Provincial Government of KwaZulu Natal for provincial roads, SANRAL for national roads, ILembe District Municipality and its contracted



company for the provision of water, and Eskom for electricity in those parts of the municipality where it is the service provider.

- 6.6. The provision and installation of internal engineering services is the responsibility of the developer.
- 6.7. Where an application is made for a development outside the Priority Development Area of the Municipality (so-called leapfrog developments), the municipality may require the applicant to bear the total cost of providing the connecting services or alternatively provide and install the external services on behalf of the Municipality. In such cases, the Applicant will be entitled to recover a share of the cost for the services when other Applicants at some future date will make use of such services, provided that there was prior agreement with the Municipality. The scope of the services as well as the conditions of repayment by the municipality must be defined in the Engineering Services Agreement.
- 6.8. While the developer is required to provide the external engineering services in terms of section 49 of the SPLUMA, the technical norms and standards prescribed by the Municipality to direct how each of the two components of external engineering services is to be installed may differ.
- 6.9. Notwithstanding the provisions of section 49 of the SPLUMA, the municipality shall not be obliged to provide external engineering services infrastructure where it is not consistent with the applicable service master planning, capital budgets and any other framework plan adopted by the council that would influence the decision in approving a land development application based on merit.
- 6.10. Where a land development requires infrastructure not consistent with the applicable master planning, capital budgets and/or adopted framework planning, but where the municipality nevertheless approves the development application but does not have the expertise to install the required external engineering service, the municipality may enter into an agreement with the developer, where the developer is required to install at its own cost the necessary external engineering services required for the proposed development provided that the installed engineering services will be transferred to the municipal ownership at a specified timeframe set and agreed to in writing by both parties.
- 6.11. Where the municipality and the developer agree that the developer will install the bulk engineering services, the cost of that installation must equal the developer's overall development charge liability. Should the set-off value described herein be greater than the total development charge payable by the developer in respect of the external engineering services for all phases of a development, the municipality shall commit in writing to reimburse the developer the additional cost thereof.
- 6.12. Where the agreement specifies that the link engineering services to be installed by the developer must be of a value greater than the capacity required to service the proposed land development, the municipality must agree with the developer in terms of how the developer will be reimbursed for the additional cost incurred in installing link engineering services.
- 6.13. New engineering services or the additional engineering services required to eradicate historic infrastructure backlogs shall be excluded from the development charge cost

calculation. Where there is a dispute as to whether or not a particular situation amounts to an historic infrastructure backlog for the purposes of this policy, the municipality will make a determination, taking into account all relevant factors, and its decision shall be final.

6.14. Although measures to reduce consumption of electricity and lessen impacts on all infrastructure capacity are encouraged and supported by the municipality, the implementation of these measures cannot be sufficiently guaranteed by the municipality at the time of a development application to be considered in the calculation of the development charge.

## **7. LAND DEVELOPMENT APPLICATIONS THAT TRIGGER DEVELOPMENT CHARGES**

7.1. Changes in land use or zoning shall result in liability for payment of a development charge where there is intensified utilisation of the land and resulting increase in loading on engineering services infrastructure. Development charges will be imposed on all these applications where the Municipality is requested to approve a development application in terms of the applicable land use or planning legislation.

7.2. For the purposes of the interpretation of the provisions of this section, the following definitions shall apply:

7.3. Coverage means the total area of a land unit that may be covered by buildings, expressed as a percentage of the area of such land unit, and shall include all roofed areas; provided that the following portions of buildings shall be disregarded in the calculation of coverage:

- a) stoeps, entrance stairs and landings;
- b) open balconies and retractable awnings;
- c) cornices, chimney breasts, pergolas, flower boxes, water pipes, drain pipes and minor decorative features not projecting more than 500 mm from the wall of the building;
- d) eaves not projecting more than 1 m from the wall of the building; and
- e) a basement, provided that the finished level of the top of the basement roof slab does not project above the existing ground level.

7.4. Gross Leasable Area (GLA) means the area of a building, whether indoors or outdoors, that is designed for, or capable of, occupancy and/or control by tenants, measured from the c

7.5. entre line of joint partitions to the inside finished surface of the outside walls, and shall exclude the following:

- a) All exclusions from the definition of floor space;

- b) Toilets;
- c) Lift shafts, service ducts, vertical penetrations of floors;
- d) Lift motor rooms and rooms for other mechanical equipment required for the proper functioning of the building;
- e) Areas reasonably used in connection with the cleaning, maintenance and care of the building, excluding dwelling units for caretakers, supervisors, cleaners or maintenance staff; and
- f) Interior parking and loading bays.

7.6. Floor space means the area of a floor which is covered by a slab, roof or projection, provided that:

- i. Any area, including a basement, which is reserved solely for parking or loading of vehicles shall be excluded;
- ii. External entrance steps and landings, any canopy, any stoep and any area required for external fire escapes shall be excluded;
- iii. a projection including a projection of eaves, and a projection which acts as a sunscreen or an architectural feature, which projection does not exceed 1 m beyond the exterior wall or similar support, shall be excluded;
- iv. Any uncovered internal courtyard, light well or other uncovered shaft which has an area in excess of 10 m<sup>2</sup> shall be excluded;
- v. Any covered paved area outside and immediately adjoining a building at or below the ground floor level, where such paved area is part of a forecourt, yard, external courtyard, pedestrian walkway, parking area or vehicular access, and which is permanently open to the elements on at least the front or long side, shall be excluded;
- vi. Any covered balcony, veranda or terrace which, apart from protective railings, is permanently open to the elements on at least the front or long side, and which does not exceed 2,5 m in width, shall be excluded;
- vii. Subject to subsection (h) below, any stairs, stairwells and atriums that are covered by a roof shall be included;
- viii. In the case of multi-level buildings, any stairwells, lift wells, light wells or other wells, and any atrium, shall only be counted once; and provided further that:
- ix. Floor space shall be measured from the outer face of the exterior walls or similar supports of such building, and where the building consists of more than one level, the total floor space shall be the sum of the floor space of all the levels, including that of basements.

## 8. APPLICABILITY OF DEVELOPMENT CHARGES

8.1. Development charges shall be payable in respect of the land development applications of the following types:

1. Scheme amendment for the removal of restrictive conditions in title which could trigger external engineering services requirements in terms of load or installation thereof;
2. Subdivision applications;
3. Consolidation applications, provided that where a property is consolidated it does not mean that the coverage, FAR or height and any clauses of the relevant clauses of LUMS will be subject to review as these will decrease by means of the increase in the lot area of the consolidated, etc.;
4. Applications to depart from parking requirements;
5. Consent use applications (in terms of the Zoning Scheme) where the change in land use is deemed by the Municipality to result in additional utilization of infrastructure;
6. Any application for the amendment of conditions of a previous approval where the condition limited the land use, Floor Space, GLA or Coverage nor any other condition that may affect the latter; and
7. Building plans that are submitted which increase the current Floor Area Ratio (FAR), Coverage, Height etc. where such an increase necessitates the provision of additional external engineering services by the municipality.

## 9. WHERE DEVELOPMENT CHARGES DO NOT APPLY

9.1. Development Charges **DO NOT** apply to services that are district and provincial functions i.e. District and Provincial Roads, Bulk Water, Bulk Sewerage etc.

9.2. Development charges shall not be payable in respect of the following land development applications, which are deemed to have no significant impact on provision or existence of external infrastructure:

1. Scheme amendments to a less intensive zone, i.e. where one land use (primary or consent use) is replaced by a different land use with similar or lesser infrastructure utilisation impacts for all services;
2. Subdivision applications where no additional development rights are created or which do not result in additional loading onto external infrastructure. (The submission of building plans will be assessed of their content in line with the additional bulk as a result of a sub-divisional application, where the officials deem the increase in bulk as per the plans has changed, the developer / applicant will be charged for Development Charges);

3. Relaxation applications for building lines or height or other similar parameters, which do not lead to an intensification of land use;
4. Temporary departure applications where rights are granted on a temporary basis;
5. If the municipality does not have sufficient spare capacity available to accommodate the application for the temporary departure then onus will be on the developer to supply excess capacity;
6. Consolidation applications that are not accompanied by rezoning or additional rights application;
7. Consent use applications which have a similar or lesser impact on infrastructure utilisation than previous rights applicable to the property; and
8. Applications to change land use to one of the following land uses, up to the extent indicated:
  - i. early childhood development centre up to 20 children per Erf;
  - ii. home occupation up to 50m<sup>2</sup> per Erf;
  - iii. home child care up to 20 children per Erf;
  - iv. house shop up to 20m<sup>2</sup> per Erf;
  - v. second dwelling up to 30m<sup>2</sup> per Erf; and
  - vi. bed and breakfast establishment up to the first three bedrooms of an existing dwelling (Subject to the hospitality policy of council).

## **10. CONDITIONS OF ESTABLISHMENT**

10.1. Should the municipality approve an application in whole or partially, the imposed conditions to the applicant will be applicable, and the following will then apply in terms of Section 49 of the SPLUMA:

1. *the developer shall be responsible for the provision and installation of internal engineering services;*
2. *the municipality shall be responsible for the provision of external engineering services;*
3. *where the Municipality is not the provider of an engineering service, the developer must demonstrate to the Municipality that adequate arrangements have been made with the relevant service provider for the provision of that engineering service;*
4. *the developer may, in agreement with the Municipality or service provider, install any external engineering service instead of development charges liability, and the fair and reasonable cost of such external services may be set off against the development charges payable;*

5. *if external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), MFMA pertaining to procurement and the appointment of contractors on behalf of the Municipality shall not apply.*

**NOTE:** However it remains the responsibility of the municipality to put in place technical standards that the applicant must comply with when installing external engineering services.

10.2. Where a developer intends to provide external engineering services in lieu of development charges payment, a Service Level Agreement must be entered into between the Municipality and the developer before the installation of external engineering services commence. The service level agreement must specify:

- a) the actual cost of the required external engineering services, unless:
- b) if the municipality agreed in writing with the developer to install external engineering services of a value greater than the actual calculated development charges liability; and
- c) provided that the municipality agrees to reimburse the developer for the extra cost incurred above the actual calculated cost;
- d) timeframe on which the external engineering services are to be installed; and;
- e) timeframe for transferring the installed external engineering services to municipal ownership

## **11. DECISIONS OF THE TRIBUNAL**

1. A tribunal must consider and make decision on land development applications in accordance with section 42 of the SPLUMA and the Promotion of Administrative Justice Act, 2000.
2. In addition on the factors listed in section 42(1) of the SPLUMA, the Tribunal may have regard to additional factors such as-
  - a) environmental concerns;
  - b) heritage and cultural factors;
  - c) mining impacts;
  - d) traffic impacts;
  - e) issues of urgency; and
  - f) any other matter the Tribunal may deem necessary to consider.
3. The Tribunal may, within 30 days of the last day of the Tribunal having heard a land development application –

- a) approve the application in whole or in part, subject to such conditions as it may deem appropriate;
  - b) refuse the application; or
  - c) postpone its decision on the application -
  - d) giving reasons in writing for the postponement; and
  - e) Notify the developer of a new date on which the final decision on land development application will be made and must not exceed 7 days after the last day of the issued postponement.
4. The tribunal's final decision with regard to the land development application must be accompanied by reasons thereof for such decision.

## **12.CONDITIONS DETERMINED BY TRIBUNAL IN TERMS OF SECTION 87 OF THE SPLUMA REGULATIONS**

1. The Tribunal may approve a land development application in accordance with regulation 86(3)(a) subject to, amongst others, the following conditions relating to-
  - a) The extent of the applicant's obligation to provide engineering services;
  - b) The provision of municipal roads, parks or other open spaces;
  - c) The creation of a servitude in favour of the subdivided Erven or consolidated Erf or against the subdivided Erven or consolidated Erf in favour of another Erf;
  - d) The reservation of land for government purposes, including educational or health facilities, sports and recreational purposes or community facilities;
  - e) The maximum or minimum sizes of Erven;
  - f) The regulation of buildings, with particular reference to –
  - g) The maximum or minimum number of buildings which may be built;
  - h) The maximum or minimum size of buildings;
  - i) The location of buildings; and
  - j) Restrictions on building materials
  - k) The alteration, suspension or deletion of restrictions relating to the land that prohibits the subdivision or consolidation of the land;
  - l) The amendment of the municipality's scheme;
  - m) Any amount or contribution payable in respect of any development resulting from or required for the effectuation of the land development rights; and
  - n) A duty to furnish the municipality with a guarantee issued by a financial institution or other guarantor acceptable to it, within a period specified in the condition for an amount sufficient to cover the costs of -
  - o) Fulfilling the obligations of the applicant to provide engineering services; and
  - p) Complying with any other condition of approval.

- q) If the tribunal conditionally approves a land development application it may stipulate the period within which the applicant is expected to comply with the condition stipulated by the tribunal.

### **13. PREVIOUSLY APPROVED DEVELOPMENTS**

- 13.1. The Council, together with delegated or delegated officials, reserve the right to request additional information attached to Land Development Applications and where there are agreements that are more than 1 year old, at the discretion of administration, an updated letter of correspondence from any sector department may be requested and in the case of a signed SLA that is more than 1 year old, administration has the right to request for a newly signed agreement and the agreement that is more than 1 year old will be deemed obsolete.
- 13.2. It is the onus of the developer/applicant and agent to furnish administration/ officials with Development Facilitation Act (DFA) judgments including conditions of establishment or any other information deemed important by the official for previously approved land development applications that acquired rights via the DFA or any other planning legislation applicable.

### **14. LEGISLATIVE FRAMEWORK**

Development charges are an integral part of the broader legal framework for land development and municipal finance. This legal framework is undergoing change at national, provincial and municipal levels. Set out below is a summary of the applicable legislation, a summary of the likely changes to that legislation as well as an outline of new legislation.

#### **14.1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996**

The Constitution is the supreme law of the republic of South Africa and any conduct that is deemed inconsistent with it is considered invalid. All obligations contained within the Constitution must be fulfilled and adhered to. With consideration of Development Charges, the following Sections of the Constitution apply in the formulation and legal framework of this Policy:

#### **Section 151**

The Constitution establishes the various spheres of government, including the local sphere of government which also includes municipalities. Section 151 of the Constitution outlines the status of municipalities as follows:

- 1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.*
- 2) The executive and legislative authority of a municipality is vested in its Municipal Council.*
- 3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.*



- 4) *The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.*

### **Section 152**

Section 152 of the Constitution outlines the provision of services to communities and municipalities have the obligation to strive to meet these objectives of local government mentioned below:

- 1) *The objects of local government are-*
- a) *to provide democratic and accountable government for local communities;*
  - b) *to ensure the provision of services to communities in a sustainable manner;*
  - c) *to promote social and economic development;*
  - d) *to promote a safe and healthy environment; and*
  - e) *to encourage the involvement of communities and community organisations in the matters of local government.*

### **Section 156**

This section outlines the Powers and Functions of municipalities which are outlined below:

- 1) *A municipality has executive authority in respect of, and has the right to administer-*
- a) *the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5;*  
*and*
  - b) *any other matter assigned to it by national or provincial legislation.*
- 2) *A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.*
- 3) *Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a By-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.*
- 4) *The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if-*
- a) *that matter would most effectively be administered locally; and*
  - b) *the municipality has the capacity to administer it.*
- 5) *A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.*

## **Section 229**

This section of the Constitution outlines Municipal fiscal powers and functions which have a significant impact for the formulation and enforcement of Development Charges by municipalities. The contents of this section are outlined below:

- 1) *Subject to subsections (2), (3) and (4), a municipality may impose-*
  - a) *rates on property and surcharges on fees for services provided by or on behalf of the municipality; and*
  - b) *if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.*
- 2) *The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties-*
  - a) *may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and*
  - b) *may be regulated by national legislation.*
- 3) *When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria:*
  - a) *The need to comply with sound principles of taxation.*
  - b) *The powers and functions performed by each municipality.*
  - c) *The fiscal capacity of each municipality.*
  - d) *The effectiveness and efficiency of raising taxes, levies and duties.*
  - e) *Equity.*
- 4) *Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.*
- 5) *National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.*

## **14.2. THE MUNICIPAL SYSTEMS ACT (ACT 32 OF 2000)**

The Municipal Systems Act (MSA) provides for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards social and economic upliftment of communities as well as ensure the universal access to essential services that are affordable to all. This act also makes provision for the manner in which municipal powers and functions are exercised and performed. The following sections of the MSA are relevant for the formulation and introduction of Development Charges:

### **Section 4: Rights and duties of municipal councils**

- 1) *The council of a municipality has the right to--*
  - a) *govern on its own initiative the local government affairs of the local community;*
  - b) *exercise the municipality's executive and legislative authority, and to do so without improper interference; and*
  - c) *finance the affairs of the municipality by-*
    - i. *charging fees for services; and*
    - ii. *Imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.*
- 2) *The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to-*
  - a) *exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;*
  - b) *provide, without favour or prejudice, democratic and accountable government;*
  - c) *encourage the involvement of the local community;*
  - d) *strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;*
  - e) *consult the local community about-*
    - i) *the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider: and*
    - ii) *the available options for service delivery;*
  - f) *give members of the local community equitable access to the municipal services to which they are entitled;*
  - g) *promote and undertake development in the municipality;*
  - h) *promote gender equity in the exercise of the municipality's executive and legislative authority;*

- i) *promote a safe and healthy environment in the municipality: and contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.*

#### **Section 74: Tariff Policy**

This Section of the municipality makes provisions for council to adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements. This section reads as follows:

- 1) *A municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of this Act and with any other applicable legislation.*
- 2) *A tariff policy must reflect at least the following principles, namely that-*
  - a) *users of municipal services should be treated equitably in the application of tariffs;*
  - b) *the amount individual users pay for services should generally be in proportion to their use of that service;*
  - c) *poor households must have access to at least basic services through-*
    - i. *tariffs that cover only operating and maintenance costs;*
    - ii. *special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or*
    - iii. *any other direct or indirect method of subsidisation of tariffs for poor households;*
  - d) *tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;*
  - e) *tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;*
  - f) *provision may be made in appropriate circumstances for a surcharge on the tariff for a service;*
  - g) *provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;*
  - h) *the economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged;*
  - i) *the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.*

- 3) *A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.*

**Section 75: Bylaws to give effect to the Policy**

This section of the MSA requires a municipal council to adopt By-Laws that will give effect to the implementation and enforcement of its tariff policy. This section is outlined below:

- 1) *A municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.*
- 2) *By-laws in terms of subsection (1) may differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.*

**14.3. MUNICIPAL POWERS AND FUNCTIONS ACT (ACT 12 OF 2007)**

The main purpose of the MPFA is to regulate the exercise by municipalities of their power to impose surcharges on fees for services provided under Section 229(l) (a) of the Constitution and to provide for the authorisation of taxes, levies and duties that municipalities may impose under Section 229(l) (b) of the Constitution; and to provide for matters connected therewith.

With reference to the formulation of a Development Charges Policy, the following Sections as provided for in the MFPA relate:

**Section 5: Application for Authorisation**

- 1) *A municipality, group of municipalities or organised local government must submit an application to the Minister, which application must-*
- a) set out the reasons for the imposition of the proposed municipal tax;*
  - b) the purposes for which revenue derived from the collection of the municipal tax will be utilised;*
  - c) give particulars on the proposed municipal tax's compliance with section 229(2)(a) of the Constitution;*
  - d) give particulars on the proposed municipal tax's compliance with the prohibition contained in section 229(1)(b) of the Constitution;*
  - e) identify and, where appropriate, describe—*
    - i. the tax base;*
    - ii. the desired tax rate;*
    - iii. the persons liable for the tax; and*
    - iv. any tax relief measures or exemptions;*

- f) *specify-*
  - i. *the tax-collecting authority;*
  - ii. *the persons responsible for remitting the tax;*
  - iii. *the methods and likely costs of enforcing compliance with that tax;*
  - iv. *the compliance burden on taxpayers; and*
  - v. *procedures for taxpayer assistance;*
- g) *give particulars of, and describe the estimation methods and assumptions used to determine-*
  - i. *the amount of revenue to be collected on an annual basis over the three municipal financial years following the introduction of the municipal tax;*
  - ii. *the economic impact on individuals and businesses; and*
  - iii. *the impact on economic development;*
- h) *give particulars of any consultations conducted, including consultations with, where applicable, a provincial government, organised local government and municipalities, and the outcomes of such consultations;*
- i) *give particulars of any consultations with the South African Revenue Service and any other collecting agent contemplated in Section 7, regarding the administration of the proposed municipal tax; and*
- j) *include such other information as may be prescribed.*

## **Section 6: Regulations regarding imposition and administration of municipal tax**

*The regulations-*

- a) *must regulate the powers of a municipality, group of municipalities or a kind of municipality, which may be defined either in relation to the capacity of a municipality, a category, type or budgetary size of municipality or the powers and functions exercised by a municipality to impose the municipal tax;*
- b) *must determine-*
  - i. *the date from which the municipal tax may be imposed, which date must coincide with the start of a municipal financial year; and*
  - ii. *the collecting agent for such municipal tax, if it is not the municipality or municipalities authorised to impose the tax;*
- c) *must determine the tax base on which such municipal tax may be levied and any exclusion from the tax base, if any, and-*

- i. where the tax is a specific purpose tax or a tax levied on the same tax base as that of national taxes, the rate expressed as a percentage or Rand value at which a municipality may impose that tax; or*
  - ii. where the tax is not a specific purpose tax or a tax levied on the same tax base as that of national taxes-*
    - aa) the rate expressed as a ratio, a percentage of the municipal tax base or a Rand value at which a municipality may impose that tax; or*
    - bb) the bands or ranges within which that municipal tax may be imposed; and*
  - iii. the basis upon and the intervals at which the rates referred to in paragraph (i) or (ii) may be increased;*
- d) may-*
- i. limit the period during which the municipal tax may be imposed;*
  - ii. in respect of a specific purpose tax, limit the purpose for which revenue derived from the collection of the municipal tax may be utilised;*
  - iii. specify that a percentage of the revenue derived from the collection of the specific purpose tax must be utilised for a specific purpose; and*
- e) may include any other matter necessary for the proper imposition and administration of the municipal tax.*

#### **14.4. THE MUNICIPAL FINANCE MANAGEMENT ACT, (ACT 56 OF 2003)**

This Act secures sound and sustainable management of the financial affairs of the municipalities and describes the obligations of the municipality in connection with capital expenditure. The requirements of this Act are relatively important in the procedures for collecting engineering service contributions.

##### **Section 41: Monitoring of prices and payments for Bulk Resources**

- 1.** *The National Treasury must monitor-*
- a) the pricing structure of organs of state for the supply of electricity, water or any other bulk resources that may be prescribed, to municipalities and municipal entities for the provision of municipal services; and*
  - b) payments made by municipalities and municipal entities for such bulk resources.*

#### **14.5. SPATIAL LAND USE AND MANAGEMENT ACT (ACT 16 OF 2003)**

SPLUMA makes provisions for sound spatial planning and land use management and specifies the relationship between spatial planning and land use management systems and other kinds of planning. Most important this Act provides a framework for Policies and the formulation of the

Development Charges Policy is also underpinned by provisions made within this Act. Section 49 of SPLUMA clearly outlines provisions for engineering services which are outlined below:

**Section 49: Provision of Engineering Services**

- 1) *The applicant is responsible for the provision and installation of internal engineering services.*
- 2) *A municipality is responsible for the provision of external engineering services.*
- 3) *Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service.*
- 4) *An applicant may, in agreement with the municipality or service provider install any external engineering service instead of payment of the applicable development charges and the fair reasonable cost of such external services may be set off against development charges payable.*
- 5) *If external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) pertaining to procurement and the appointment of contactors on behalf of the municipality does not apply.*

**15.METHODOLOGY FOR DETERMINING UNIT COSTS FOR USE IN DEVELOPMENT CHARGES CALCULATIONS**

- 15.1. A development charge shall be calculated by the Municipality to determine the actual capital costs of providing external engineering services needed to service a particular land development.
- 15.2. The determination of a development charge is based on estimated unit costs for each external engineering service, which are calculated in the following manner:
  - a) The land use development scenario of the municipality is influenced by the adopted Spatial Development Framework at the time;
  - b) The land use model is used to develop optimum service models for transport, stormwater and solid waste to correspond to the future land use scenario. This is not to say that the land use model is cast in stone, as there will be scenarios where the municipality would be responding to developments that are not within the current adopted SDF and merits thereof can be looked into by the Development Review Committee.
  - c) The demand for each of external engineering services required to service the proposed land development is calculated using average unit demands for each land use category, based on demand factors from the Guidelines for Human Settlement Planning and Design (CSIR and Construction Technology, 2000), and the South African Road Trip Data Manual (Committee of Transport Officials, TMH 17, Version 1.01 September 2013) (Please refer to Annexure 6).



- 15.3. The external engineering services required to service this new land development is determined, taking into account existing master planning and any existing capacity (or lack thereof) within the systems.
- 15.4. The future capital cost of these external engineering services is quantified using the current replacement cost of construction of the systems. Current replacement cost includes all land costs, professional fees, materials, labour, preliminary and general items. The capital cost to address historic infrastructure backlogs are excluded from the total cost.
- 15.5. Where possible, unit costs should be re-calculated every five years using current replacement costs to accurately reflect the infrastructure cost.
- 15.6. In the case of a full re-calculation the annual inflation will not apply for that year.
- 15.7. The developer shall be required to pay the unit cost rate applicable on the date at which the Development Charge becomes payable. Where the payments are scheduled in accordance with phased approvals of a development then the applicable unit cost payable for each phase is that applicable on the date at which the Development Charges become payable for that phase. In the case of a phased development where the application is made prior to a full re-calculation of the unit costs but the approval is granted thereafter, the last unit cost (including annual inflation) prior to the full re-calculation shall apply. This includes any pricing increases that are imposed by the relevant services authority.

## 16. CALCULATION OF DEVELOPMENT CHARGES

16.1. The standard units for the measurement of impact for each municipal engineering service are provided, below:

Service	Factor (s)	Yardstick	Unit of impact
Electricity	Refer to Electricity Development Charge tariff policy		
Roads (Roads under the jurisdiction/ownership of KwaDukuza Municipality)	Increased municipal road capacity required	Vehicle trip generation	Vehicle trips/day
Storm water	Increase in the overall quantity and the peak flow rate of the runoff	Runoff coefficient (based on land use)	C factor
Transport	Increased number of passengers using public transport and requiring additional facilities	Area of the development (As per LUMS)	Trips
Solid waste	Increase in landfill airspace required and transfer station capacity	Solid waste generation rate	kg/day

16.2. The unit cost for each of the units of impact above will be derived from the modelling exercise, which will allocate the increased demand to the appropriate modelling impact zone for calculation of the actual cost. The actual costs will be aggregated to derive an average unit cost for each unit of impact for the township as a whole.

16.3. The **Modelling Impact Zone** used for the purposes of the calculation of development charges is a zone determined by the municipality in which all the components of the external engineering services system, network or networks that a particular development impacts on. This zone will be defined differently for different external engineering services, and will be based on modelling work undertaken for each of the services as part of the determination of the average unit costs to be applied in the development charge calculation.

- 16.4. Unit costs for all required external engineering services are multiplied by the impact of the development on each service, as determined by the difference between the future impact and the current impact, to determine a total amount payable as a contribution to the bulk and link engineering services cost.
- 16.5. Future impact is determined according to standard impacts (per service) that have been calculated for each development charge category of land use (Please refer to Annexure 1 for the Development Charge Categories), which in turn are related to the KwaDukuza LUMS.
- 16.6. Should an application for rezoning not specify the particular land use or extent, the highest possible development impact for that application site / area / zone shall be charged for.
- 16.7. If a particular application is based on a combination of uses that correspond to a number of the DC development charges categories listed in Appendix A, the fee for the extent of the development in each category is calculated individually and added together.
- 16.8. The Municipality may accede to a request by a developer to calculate the actual cost of the external service to be provided by such a developer. Once calculated, such cost may be set off against the development charge payable by the developer concerned where –
- i. all expenses associated with the application are borne by the developer;
  - ii. the developer appoints a qualified third party, acceptable to the Municipality, to calculate the actual costs under the guidance of the Municipality; and
  - iii. actual costs evaluated to form part of the development charges are calculated for all infrastructure components listed in Annexure 1, including:
    - a) the cost of the land;
    - b) professional fees;
    - c) materials;
    - d) labour;
    - e) preliminary and
    - f) Tax liabilities, provided that such costs would otherwise have been borne by the Municipality.
- 15.1. Should the municipality accept the request to calculate the liability on the basis of actual cost in the manner described above, then the total development charge (including both bulk and the link engineering services) will be based on this calculation.
- 15.2. Exceptional circumstances for the purposes of this section occur when it can be shown that the proposed development is of an unprecedented scale or will give rise to an exceptional dependence on or independence from one or more municipal engineering services.

15.3. In the case whereby a developer is in disagreement with the calculated fee for development charges by the municipality, an independent third party that being the **Municipal Council** shall decide of the final fee applicable in adherence with this policy.

15.4. The municipality reserves the right to appoint a professional to assess or review the work that has been submitted by the applicant.

## **16. DEVELOPMENT CHARGES IN RESPECT OF ROADS AND STORMWATER**

The methodology of calculating external services for the roads and associated stormwater component is in line with the South African Engineering Service Contribution Manual for Municipal Road Infrastructure, COTO TMH15, and July 2015 (Please refer to Annexure 5).

The stormwater described henceforth refers solely to drainage for roads which would include the road reserve. Bulk stormwater infrastructure required due to development is excluded from this section.

### **16.1. Determination of the Road Contribution**

In determining the contribution for roads, the following formula is used:

ESC roads = (new – existing) Trips \* Distance / Lane Capacity \* Cost of a lane.

Added to this is a contribution towards the strength component if the road must be strengthened due to heavy vehicles generated by the development, plus a proportion of the cost if a boundary road (i.e. an access street (Class 4 and 5) which is not an internal street) is to be provided on the boundary of the development.

In applying the formula, the following is relevant:

- a) Trips:** The number of trips is determined by multiplying the proposed development size and type by the trip generation rate, less any existing land use rights on the site, multiplied by that trip generation rate. The trip generation rates are based on Average Annual Daily Traffic converted back to an equivalent hourly rate to account for the total impact on the road network and not merely the impact during peak hours. The trip generation rates are provided in TMH17 South African Trip Data Manual, September 2013. These are the latest and most accurate trip generation rates available. This policy is based on these national rates.
- b) Distance:** The distance travelled on KDM-owned mobility roads (Class 1, 2 and 3). The distance excludes travel on access streets (Class 4 and 5) as these streets are provided as internal streets at no cost to the KDM. The distance also excludes national and provincial roads, as these are provided by other authorities. The distance on mobility roads is divided by two to account for the fact that the origin of the trip will pay for half the trip and the destination for the other half. The definition of distance is provided in TMH17 South African Trip Data Manual, September 2013.
- c) Lane capacity:** the service flow rate (veh/h/lane). This figure is provided in TMH17 South African Trip Data Manual, September 2013.

**d) Cost per lane:** The cost of providing the land and constructing one lane kilometre of a mobility arterial road in KDM. The cost is comprehensive providing for all the road services as listed below:

- Construction related costs, e.g. site establishment and traffic accommodation
- Earthworks
- Grade separation
- Guardrails and safety devices
- Kerbs
- Land (road reserve or servitude)
- Landscaping
- New pavement (roadway)
- Non-Motorized Transport facilities such as paved sidewalks and bicycle lanes
- On-street public transport facilities
- Professional fees, including environmental assessments
- Preparation of a transportation master plan for the affected area.
- Stormwater drainage within the road reserve
- Street lighting
- Strengthening of pavement (roadway)
- Traffic signals, signs and markings

#### **16.2. Applying the Engineering Service Contribution for Roads and Stormwater**

The municipality is responsible for providing a master plan to applicants indicating the development framework and the arterial road network required to serve the region or area. If the municipality is not able to provide a master plan for the area, the applicant can offer to pay for the master plan and any modeling required. This master plan is to be prepared under the direction and to the satisfaction of the municipality;

The following process must be followed by applicants:

1. As part of the application, the applicant must indicate all new roads and road upgrading required, whether they comply with the master plan for the area, indicating which roads are internal, boundary or external and the road authority (municipal, provincial, national or private), to the satisfaction of the municipality.

2. The applicant will be given the opportunity to provide the external and boundary road upgrades that fall within KDM's responsibility at his/her cost. Improvements on bordering municipal, provincial or national roads should be agreed by those authorities. This cost can include land, professional fees, and doing the construction itself.
3. KwaDukuza Municipality (KDM) can, in its sole discretion, accept the offer(s) above and agree to offset the costs incurred by the developer on external services against the ESC. The costs offset must be proven actual costs incurred by the applicant.
4. In the event that the applicant offers to construct services on roads not owned by KDM but owned by bordering municipal, provincial or national road authorities and KDM is in favour of such construction because it is in the interests of the community, then there must be an agreement with the relevant authority in terms of inter-governmental co-operation legislation and may grant the applicant a rebate on the contribution required up to the value of the construction undertaken, but not exceeding the ESC for Roads and Stormwater
5. KDM will allow applications by the developer to provide the required "external" infrastructure and will not unreasonably withhold permission. In the event that KDM agrees to the developer providing the infrastructure (and master plan if applicable), one of two events can occur:
  - i. If the cost to the applicant is less than the ESC, the balance of the ESC must be paid to the Municipality.
  - ii. If the cost to the applicant equals or exceeds the ESC, the applicant can decide:
    - To absorb the cost in the interests of the development;
    - Only provide infrastructure to the value of the ESC, in which case the Municipality may have to refuse the application if it is to the detriment of existing developments.
  - iii. The agreement will be recorded in the Engineering Services Agreement.

### 16.3. **Utilizing the Engineering Services Contribution (ESC)**

The ESC for roads and associated stormwater will be used for providing roads and stormwater infrastructure as defined in this policy and not for any other purpose. Contributions paid to the Municipality will be transferred into a *Municipal Road and Stormwater Contribution Account* which shall be established for this purpose.

The ESC will be used where the need is greatest as per the follows:

- 1) The cost to the applicant for undertaking the master plan on behalf of the Municipality, if applicable.
- 2) The cost of land provided by the applicant for external roads and stormwater.

- 3) The cost to the applicant of increasing the size of internal roads and stormwater to serve other developments at the behest of the Municipality.
- 4) The cost to the applicant of providing external services.
- 5) Funds in the Contribution Account will be utilized in the impacted area of the development, as follows:
  - a) Contributions received for specific roads, such as boundary roads.
  - b) The costs of increasing the size of internal services where the Municipality has instructed the applicant to do so.
  - c) The cost over and above the ESC spent by the applicant on external roads where an Engineering Services Agreement has made provision for this amount to roll over into another associated development.

#### 16.4. **Annual Updating**

The tariff increase will be updated annually, using the consumer price and civil engineering indices published by Stats SA. In addition, the formula and unit cost rates shall be reviewed periodically and amended if conditions have changed at time intervals not exceeding five years.

### **17. DEVELOPMENT CHARGES IN RESPECT OF ELECTRICITY**

- 17.1. In order to enable the Municipality to meet the additional demand imposed by new developments for the provision of electrical services, a developer shall be liable for payment of a development charge in respect of electricity in an amount determined by the Municipality in terms of the tariff of charges, based on the criteria set out in this Policy. Such amount shall be utilized by the Municipality towards the cost of construction and/or improvement of the infrastructure associated with the external engineering services required for the supply of electricity to the development concerned;
- 17.2. In the event of the external electrical engineering services infrastructure within a reasonable proximity to a new development being non-existent or inadequate, the Municipality may in its sole discretion provide temporary electrical services ("start-up allocation") to the development concerned through an existing line, provided that no temporary electrical services shall be provided by the Municipality to any developer unless such developer has paid, or given a written undertaking to pay, the total amount due for development charges in respect of electricity.
- 17.3. The amount payable by a developer as a development charge in respect of electricity shall be determined by the Municipality from time to time in terms of the tariff of charges, read with this Policy, taking into account the actual cost to be incurred by the Municipality in constructing or improving the external electrical engineering services supply infrastructure which, in the opinion of the Municipality, is within a reasonable proximity to the new development concerned.

## **18. COST OF EXTERNAL ELECTRICAL ENGINEERING INFRASTRUCTURE**

18.1. Unless agreed to the contrary in writing between the Municipality and the developer concerned, the costs to be incurred by the Municipality in the construction or installation of the external electrical engineering infrastructure shall include the following in respect of every new development:

1. Transformer capacity cost: R3500/per kVA; and
2. If, in the opinion of the Engineer or his / her nominee the existing capacity available in the KwaDukuza medium voltage main supply is adequate to supply at least 5% of the objectively calculated consumption of the proposed township; and
3. The closest boundary of the proposed township is within 5 Km radius of the Municipality's existing main supply;
4. Then the development charge payable by the developer to the Municipality shall be adjusted proportionately and be specified in the relevant Services Level Agreement:
5. In the case of an internal electrical engineering service not requiring dedicated transformer capacity, such capacity shall be provided by the Municipality at a cost of R3500 per kVA, which cost per kVA shall be revised annually by the Municipality for implementation on 1 July of each year;

18.2. The municipality is responsible for the installation of the external bulk electrical services, the cost of which shall be recovered by the Municipality from the development charge payable by the developer in respect of the electrical engineering services.

18.3. Should the lay-out or use of the township Erven be amended prior to publication of the notice in terms of any applicable legislation, the Municipality shall have the right to recalculate the cost to be incurred by it for the provision of the external electrical engineering services to the township. The Municipality shall also have the right to recalculate the cost of external engineering services in the event of a division of the proposed township. In the case of a small development requiring less than 10kVA, the development charge as set out in this paragraph shall apply.

18.4. The amounts shall be specified in the relevant Service Level Agreement, which shall also provide that if the agreement is entered into by the Municipality after 1 July in any financial year, the rates applicable as from 1 July of the financial year (1 July to 30 June of the next calendar year) in which the agreement is entered into, shall be applicable.

18.5. The Service Level Agreement shall provide that the internal electrical engineering service shall vest in the municipality (free from the obligation to pay any reimbursement) from the date of handover of the service or the date of publication of the relevant Section 103 notice, whichever occurs last:



- a) Provided that the developer shall in respect of such service remain responsible for the maintenance and/or replacement and/or rectification of faulty workmanship or materials until the development in the relevant township has taken up 60% of the electrical consumption as envisaged at the time when the amount of development charge payable by the developer concerned in respect of the electrical engineering services was assessed and calculated by the Municipality.

18.6. For the purpose of classifying the engineering service, external engineering means services situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area, provided that a link service is required to connect an external engineering service to the internal engineering service within the boundaries of a land area shall not be regarded as an external engineering service for the purpose of this policy.

18.7. The Municipality shall provide and install the external electrical engineering services through its own staff or by engaging an external mechanism contemplated in section 76 of the Systems Act. If the provision and installation of the external electrical engineering services is through an external mechanism, the service provider concerned must be appointed strictly in accordance with the provisions of the Municipality's Supply Chain Management Policy, read with the relevant provisions of the MFMA relating to, inter alia, the budget, capacity projects and financing of such projects.

## **19. NON-EXISTENT AND/OR INADEQUATE EXTERNAL ENGINEERING SERVICES INFRASTRUCTURE**

19.1. If, in the opinion of the Engineer, an application for the provision of electrical services does not meet the criteria set out in paragraph 23.2 above, then such application shall be dealt with on its own merit and in strict compliance with all relevant legislation, including the MFMA, the Systems Act and the Local Government: Municipal Planning and Performance Management Regulations, 2001, as well as the Municipality's budget, Supply Chain Management Policy and Integrated Development Plan (IDP).

19.2. In addition to the Service Level Agreement which must be entered into in writing between the Municipality and every developer, the following standard terms and conditions will be applicable to every such agreement to ensure due compliance with the applicable provisions of the MFMA:

- a) Capital projects must be budgeted for and after approval of such projects, the Municipality will call for tenders in accordance with the provisions of its Supply Chain Management Policy and other relevant legislation, such as the Preferential Procurement Policy Framework Act, 2000);
- b) The Municipality might require of the developer to finance the engineering services (planning and consultant's costs included) by long-term loans for which specific provision must be made on the budget whilst extensive procedures apply, such loans to be beneficial to the Municipality;
- c) No assurance can be given that the capital projects will be included in the budget for a specific financial year; and

- d) The Municipality will prefer the payment of development charges to cover its cost of providing the external engineering services to be made upfront, that is, unless a guarantee or written undertaking is given by the developer to make payment thereof at such later stage as may be agreeable to the municipality.

## **20. ADDITIONAL SERVICE CONNECTIONS**

- 20.1. Should a proposed sub-division require additional service connections, the cost of such service connections shall be for the account of the developer.
- 20.2. The cost of the additional service connections shall be paid by the developer in accordance with the method set out in paragraph 25 above, *mutatis mutandis*.

## **21. ENHANCEMENT OR IMPROVEMENT OF EXISTING SERVICES**

- 21.1. If, in the opinion of the engineer, it is necessary to enhance or improve the existing external electrical engineering services infrastructure, the municipality may impose a condition to the effect that the developer shall pay to the municipality an additional development charge in an amount assessed by the Municipality in terms of the tariff of charges, read with this Policy, which amount shall then be utilized by the Municipality towards the cost of enhancing or improving the existing external engineering electrical services infrastructure concerned.
- 21.2. In respect of all applications submitted to the Municipality in terms of the PDA or the SPLUMA, including applications for the rezoning of properties and/or the removal of title conditions in respect of land, the Engineer or his/her nominee shall in his/her discretion decide whether this will render it necessary for the bulk electrical infrastructure required to supply electricity thereto to be enhanced or improved and, if so, advise the developer concerned in writing of the non-refundable contribution and costs payable.
- 21.3. All other applications received for the establishment of townships by virtue of legislation not specified in this Policy shall be dealt with in terms of such other legislation, read with the regulations applicable thereto, if any: Provided that the non-refundable costs and contributions specified in the preceding paragraphs herein (annually revised) shall form the basis for the calculation of contributions, if any, and if such costs and contributions may be imposed in terms of such legislation and/or regulations and/or negotiations, the latter being subject to prior approval by the Council or its relevant delegate.

## **22. EXEMPTIONS**

- 22.1. The development charges policy is based on an equitable and sustainable model for providing infrastructure to promote economic growth. The total cost of infrastructure for new development is apportioned to the new users in accordance with the land use model and relies on each user paying for their share of the infrastructure.

- 22.2. Exemptions from payment of development charges may be granted by the Council in its sole discretion and on case by case in an equitable, transparent and administratively feasible manner and in respect of developments which are considered by the Council to be exceptional for any reason, provided such reason is in terms of an existing policy of the Municipality or is recorded in a resolution adopted by the Council to that effect.
- 22.3. Current land use rights permitted as a primary right in terms of the KwaDukuza LUMS are not liable for development charges, and do not require exemptions as there is no need for a land development application in order for the developer to exercise his or her right, not unless the applicant submits a land development application.
- 22.4. An exemption from payment of development charges may be granted by the municipality only if it does so in accordance with a council approved policy or council resolution that complies with the requirements of national legislation and or provincial legislation.
- 22.5. A council approved policy or Council resolution allowing for exemption from development charges liability:
- a) may exempt specified categories of land use or specified geographical areas or a combination of both; and
  - b) may not specify individual developers or properties.
- 22.6. A Council approved policy or Council resolution allowing for exemption from development charges liability must —
- a) calculate the full liability for development charges that would otherwise have been received by the municipality were it not for the exemption;
  - b) make projections regarding revenue to be foregone for a period of at least three years; and
  - c) make budgetary provision for the realisation of the associated revenue forgone from another realistically available source either through a specific capital transfer or an alternative capital budget vote.
- a) Applications that qualify in terms of the Council approved policy or Council resolution allowing for exemption from development charges liability are not liable for development charges to the extent permitted in the policy or resolution, provided that:
- b) the amount of the development charges liability for that application must be sourced from alternative funding identified in terms of the policy or resolution and transferred to the relevant asset-financing fund; and
  - c) the application for exemption must be approved by the Council.
- 22.7. The municipality must disclose the value of exemptions provided for each budget year in its annual report.

22.8. No relief may be granted in respect of the payment of development charges to a category of properties or a geographical area other than by way of an exemption provided for in this policy.

22.9. No relief may be granted in respect of the payment of development charges to an owner of property or properties on an individual basis unless it is in compliance with a Council approved policy or resolution.

## **23. ADMINISTRATIVE PROCESS**

23.1. In order to implement this policy the following implementation procedures will apply and must be prescribed in the appropriate by-law.

- a) In terms of the applicable legislation, the Municipality may require from the developer any information necessary for it to evaluate an application. This includes information that will enable it to calculate the required development charge. The type of information that a developer must provide, as well as the format in which it is provided will be prescribed by the Municipality from time to time. These details, however, will vary according to the type of land use change envisaged as well as the scale of the proposed project.

## **24. APPLICATION PROCEDURE**

24.1. Land development applications must be submitted to the Economic Development and Planning Directorate.

24.2. The full application must be circulated for comment to the following Directorates:--

- a) Economic Development and Planning;
- b) Finance Directorate;
- c) Municipal Services;
- d) Technical Services;
- e) iLembe District Municipality / Siza Water (Depending on concessions); and
- f) Government Sector Departments.

24.3. A Department may impose conditions relating to the development and, in particular, conditions relating to development charges which must include conditions relating to the time periods within which payment or payments must be made.

24.4. The limitations to the scale of permitted development, which were used to calculate the development charge, must be clearly set out where these will be stipulated in the town planning scheme for superstructure / top structures.

24.5. Should a developer in future wish to acquire additional development rights over and above those already approved, a new application will be required in terms of the applicable planning legislation and the development charges liability will be recalculated based on the additional capacity required.

- 24.6. The final development charges must be reflected in the calculation and form part of the conditions to be approved. It is therefore imperative that the developer indicates his intention to develop or apply for development rights at the pre-submission stage of the development and where necessary present his proposal to the Development Review Committee.
- 24.7. The conditions of the relevant department must be included in the final conditions of approval that are approved in terms of the applicable land use or planning legislation.
- 24.8. The final approval of the conditions will be binding in terms of the relevant land use or planning legislation. Section 51 of the SPLUMA effectively replaces this with an appeal relating to land development applications to the Municipal Manager.

## **25. PAYMENT OF DEVELOPMENT CHARGES**

- 25.1. The conditions of approval attached to a land development application must set out the payment requirements and specifically must prescribe:-
- a) the amount to be paid, including provisions for escalation over time; and
  - b) the date when the development charge payment is due, which may include more than one payment date in the case of phased developments.
- 25.2. The development charge will be payable by the developer in full by cheque or electronic funds transfer.
- 25.3. Payment will be made in response to a detailed invoice, provided by the Municipality to the developer and no payments by instalments will be permitted.
- 25.4. Each payment must be made into the correct Asset-Financing Fund of the relevant external engineering service as follows:
- a) In the case of subdivision of land, prior to the issuing of a subdivision clearance certificate which would allow transfer of first unit, or registration of a CRT, unless the conditions of approval indicate otherwise;
  - b) In the case of an application where no subdivision is required and where the intended development requires approval of a building plan, prior to approval of building plans unless the conditions of approval indicate otherwise;
  - c) In the case of any application where no subdivision clearance or subsequent building plan approval is required, prior to commencement of any activity on site pursuant to the application.
- 25.5. The Municipality may withhold any approval or clearance in terms of planning or building control legislation where a developer has not complied with his or her development charge liability, including the following:
- i. Where the development entails subdivision of land, no transfer or registration of a CRT shall be approved may be approved concluded of any portion of land until the development charge has been paid;

ii. Where there is no transfer, the Municipality may withhold both building plan approval and the certificate of occupation until the development charge has been paid; and

iii. In the event that a developer proceeds with exercising his or her rights without paying the development charge in accordance with the applicable conditions of approval, no subsequent transfer of that erf, or registration of a CRT, may be processed or approved until the applicable Development Charge has been paid.

25.6. In all cases where a development charge arises, the Municipality must impose a condition that confirms that the land use becomes unlawful on account of non-payment of the development charge, thereby enabling the Municipality to invoke its enforcement measures appropriate to an unlawful land use.

25.7. In large and/or complex projects the Municipality may approve a development in phases thereby allowing development charges to be paid on commencement of each approved phase.

25.8. The amount due for development charges in respect of an immovable property is considered by the Municipality as falling under the category of the municipal taxes, levies and duties envisaged in section 118 of the Systems Act and the certificate contemplated in that section shall not be issued by the Municipality for the transfer of any immovable property in respect of which such amount or any portion thereof, is still outstanding.

## **26. INFRASTRUCTURE IN LIEU OF DEVELOPMENT CHARGE**

26.1. A developer may by agreement with the Municipality install the external engineering services in lieu of payment of the applicable development charges.

26.2. Where a developer installs the external engineering services in lieu of payment of the applicable development charges such developer may deduct the cost of the infrastructure installed from the amount determined by the Municipality as payable in respect of the applicable development charges for that particular development, provided that -

- a) the external engineering services to be installed complies with the technical standard required and set by the Municipality;
- b) the external engineering services to be installed are located within the same municipal district in which the development is situated;
- c) a written Services Level Agreement is entered into, which specifies the roles and responsibilities of the two parties (i.e. developer and municipality), the value of the external engineering service to be installed, the type of external engineering services to be provided in lieu of payment of the applicable development charges, the technical standards to which the external engineering services to be installed

must comply with , the timeframe for installation and to transfer the assets to the Municipal ownership;

- d) the Services Level Agreement is signed by the developer and the Municipality prior to the commencement of any works to be provided in lieu of payment of the applicable development charges;
- e) the Municipality may not issue a clearance certificate referred to in Section 53 of the SPLUMA authorizing the registration of any property resulting from a land development application unless the developer concerned has fully complied with all the requirements and conditions for the approval of the development, including full payment or provision of a guarantee for the payment of the applicable development charge.
- f) The Municipality may not approve a building plan in relation to the development concerned prior to the fulfilment of the commitment or provision of a guarantee for the payment of the applicable development charges.

26.3. The final value of the external engineering services transferred, as reflected in payment certificates, must be reconciled with the original development charges liability as assessed by the Municipality for the land development concerned, and any balance due by the developer must be paid in full.

26.4. Where the developer installs external infrastructure of a higher value than the development charge liability as assessed by the Municipality, the developer may off-set the additional amount against his or her liability for development charges incurred under subsequent phases of the same development. The Municipality must verify that the additional infrastructure is necessary for the integrated and efficient development of the infrastructure network.

- a) Provided that the additional amount to be set off by the developer in terms of this clause must be reduced proportionately by any amount which the developer is by agreement with the municipality entitled to recover from any subsequent adjacent developments as their pro-rata contributions towards the cost of the higher value infrastructure installed by the first developer based on their proportionate or estimated use thereof.

## **27. USE OF DEVELOPMENT CHARGES FUNDS**

27.1. Development charges may be used by the Municipality only for capital works, i.e. the construction of new external engineering services or the upgrading of existing external engineering services. They may not be used to reduce or eliminate existing infrastructure backlogs, for operations or maintenance costs, or as a general revenue source for the Municipality.

27.2. All funds received by the Municipality in respect of development charges are to be retained in dedicated Asset-financing Funds, per service and per district, to be applied in the municipal districts concerned, and toward the services against which payment was made, provided that:

- a) In the case of integrated services it will be permissible to pool development charges for use across areas and to implement inter-district transfers; and
- b) Contributions towards public transport infrastructure will be retained in a vote dedicated for Public Transport.
- c) Funds must be spent according to the project priorities of the Municipality for that district and service, as illustrated in the infrastructure master plans and detailed in the capital budget or integrated development plan.
- d) Once a development charge has been paid in full for a specified external engineering service, the Municipality must include that infrastructure development project on the capital budget in the subsequent budget cycle.

## **28. TRANSITIONAL ARRANGEMENTS**

This policy will come into effect on the date of approval by the Council.

## **29. MONITORING, EVALUATION AND REVIEW**

### **29.1. MONITORING**

1. All funds received by the Municipality in respect of development charges must be subject to the standard regular audit processes of the Municipality's finances. Interest gained from the capital raised via the developers charges payments held by the Municipality must be channelled back to the maintenance and installation of the required external engineering services.
2. The following information, broken down by service and by applicable region, must be published annually by the Municipality and used for the evaluation of this Policy:
  - a) Value of Development Charges levied;
  - b) Value of Development Charges received;
  - c) Value of the external engineering services provided by developers as payment in kind;
  - d) Expenditure from all Development Charges funds; and
  - e) Value of rebates/exemptions awarded and sources of alternative funding.

## **30. REVIEW**

1. This Policy must be reviewed by the Municipality on an annual basis as and when the need arises, but not less than once per annum.
2. Triggers for the review of this Policy may include the following situations:



3. The growth trajectory of the Municipality deviates significantly from the projected land use model; or
4. The engineering service provision responsibilities of the Municipality are amended;
5. Where NERSA or ESKOM influence the rates at which the Municipality charges its end users. To that extent, this policy will be in alignment to the Municipalities Electricity Tariff Charge Policy and this policy will be subject to review as and when the electricity tariff charge policy is reviewed as well;
6. The introduction or enactment of any new law that is passed by National or Provincial government, but where the above is an influencing factor in the provision of external engineering services and
7. The need to align this policy with any other municipal by-law, which may include the Electricity Tariffs of Charges, Materials as per the rates applicable at the time.
8. The determination of liability for payment of development charges is an administrative action regulated by law (including the requirements of procedural fairness, lawfulness and reasonableness as provided for in the Promotion of Administrative Justice Act, 3 of 2000). In addition, it is procedurally subject to the municipal budget process. This provides the scope for annual public consultations. Thus the review of this Policy can be incorporated into the annual budget process so as to make it possible for the Municipality to engage all stakeholders in the review process.

SECTOR	EXTENT OF COSTS
Electricity (to the extent provided by the Municipality)	Refer to Electricity Tariff Policy
Roads (to the extent provided by the Municipality)	<p>Contributions to basic road infrastructure are based on providing for the required road space which is needed on external municipal roads (of all classes) for trips on external roads by customers in the new development (or visitors) in order to maintain the existing minimum standard of service, including:</p> <p>Link infrastructure to connect the new development to the existing municipal infrastructure, unless this is required in terms of a traffic impact assessment.</p> <p>The proportionate share of existing external road capacity or increase in length or capacity of external roads due to the generalised (non-local) impact of the development.</p> <p>Road structures, minor stormwater facilities, sidewalks, furniture, controls including street lights to the specification of the Director Special Projects</p> <p>and signage associated with the above roads.</p> <p>The proportionate share of exciting capacity at, or new junctions and interchanges.</p>
Transport (to the extent provided by the Municipality)	<p>The proportionate share of capacity or increase in size of the municipal public transport infrastructure not associated with road infrastructure, to accommodate the needs of the new development and maintain acceptable minimum levels of service, including:</p> <p>Public transport interchanges</p> <p>Public transport facility</p> <p>Bus terminus</p> <p>Street-to-street pedestrian access</p> <p>Cycle lanes</p>

SECTOR	EXTENT OF COSTS
	<p>But excluding any portion of this infrastructure funded from national government grants, including the costs of Intermodal Facility and facilities for scheduled services.</p>
Stormwater	<p>The proportionate share of existing capacity or increase in size of the external stormwater infrastructure associated with communal conveyance, to accommodate the needs of the new development, including:</p> <p>Link infrastructure outside the development site required to connect the new development to the existing municipal stormwater network.</p> <p>Piped networks (excluding provision for minor drainage system associated with road provision)</p> <p>Culverts</p> <p>Open channels, lined and unlined</p> <p>Detention and retention facilities</p> <p>Energy dissipation structures</p> <p>Water quality management facilities</p> <p>Outfalls to watercourses or the sea</p>
Solid waste (to the extent provided by the Municipality)	<p>The proportionate share of existing capacity or new facilities, to accommodate the needs of the new development, including:</p> <p>Disposal facilities (landfill, transfer stations, alternative treatment technologies)</p> <p>Specialised vehicles used for landfill operations</p> <p>Drop-off facilities</p> <p>Specialised collection vehicles</p> <p>Material recovery facilities</p>

---

<b>SECTOR</b>	<b>EXTENT OF COSTS</b>
All services (to the extent provided by the Municipality)	The proportionate cost of land or servitudes of existing infrastructure or the cost thereof to establish new infrastructure as a result of the development.

## **ANNEXURE 1: MODEL FOR CALCULATION FOR ROADS CONTRIBUTION**

## **ANNEXURE 2: CALCULATION PARAMETERS**

**ANNEXURE 3: SOUTH AFRICAN ENGINEERING SERVICE CONTRIBUTION MANUAL  
FOR MUNICIPAL ROAD INFRASTRUCTURE (TMH 15)**

**ANNEXURE 4: SOUTH AFRICAN ENGINEERING SERVICE CONTRIBUTION MANUAL  
FOR MUNICIPAL ROAD INFRASTRUCTURE (TMH 17)**



**ANNEXURE 5: SOUTH AFRICAN ENGINEERING SERVICE CONTRIBUTION MANUAL  
FOR MUNICIPAL ROAD INFRASTRUCTURE (TMR 26)**