
GOVERNMENT NOTICE

DEPARTMENT OF HUMAN SETTLEMENTS

No. R. 610

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HOUSING DEVELOPMENT AGENCY ACT, 2008

HOUSING DEVELOPMENT AGENCY REGULATIONS

The Minister of Human Settlements has under section 32 of the Housing Development Agency Act, 2008 (Act No. 23 of 2008), and after consultation with the Agency and Parliament, made the Regulations in the Schedule.

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Chapter 1

1 Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act has a meaning so assigned, and, unless the context indicates otherwise—

"chairperson" means the Chairperson of the Board referred to in section 9(2)(c) of the Act;

"chief executive officer" means the chief executive officer of the Housing Development Agency, referred to in section 17 of the Act;"

"circumstances of priority" means circumstances which relate to the housing conditions of people, particularly those in the low income groups of society, which give rise to priority to provide shelter or to upgrade areas or to re-develop precincts in a manner which requires accelerated methods for the delivery of housing at a large scale in an integrated and sustainable manner;

"declare" means final declaration of a priority housing development area by the Agency;

"department" means the national department of human settlements;

"Division of Revenue Act" means the Act of Parliament, as amended, which is enacted annually in terms of section 214 (1) of the Constitution;

"Housing Act" means the Housing Act, 1997 (Act No. 107 of 1997);

"housing development" means housing development as defined in section 1 of the Housing Act within a declared priority housing development area and relating to circumstances of priority, which is of national importance and executed in accordance with an approved development plan;

"housing institution" means a national housing institution established by the Minister in terms of section 3(4)(h) of the Housing Act.

"implementing agent" means the entity, organ of state, or business enterprise responsible for the implementation of the priority housing development area plan as identified in terms of these regulations;

"implementation protocol" means an implementation protocol as defined in the Intergovernmental Relations Framework Act;

"Intergovernmental Relations Framework Act" means the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005);

"integrated development plan" means the strategic plan for the development of the municipality adopted by the council of that municipality, as contemplated in the Municipal Systems Act;

"Minmec" means Minmec as defined in the Intergovernmental Relations Framework Act, 2005;

"Medium Term Expenditure Framework" means government strategic policy and expenditure framework which balances what is affordable against policy priorities of government;

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"participants" means collectively, national and provincial departments, municipal authorities, housing institutions, applicable organs of state and private partners;

"preliminary declaration" means a declaration by the Agency in consultation with the Minister, preceding the final declaration of a priority housing development area;

"priority housing development plan" means a development plan referred to in regulation 14;

“protocol subscriber” means a signatory to an implementation protocol as referred to in regulation 22;

“spatial development framework” means a spatial development framework as defined in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

“the Act” means the Housing Development Agency Act, 2008 (Act No. 23 of 2008).

Chapter 2

Proceedings and meetings of the Board

Meetings of the Board

- 2** (1) The Board must hold at least four meetings a year.
- (2) Meetings of the Board must be held at the time and the place determined by the Board.
- (3) The Chairperson—
- (a) may at any time convene a special meeting of the Board, and
 - (b) must convene such a meeting as may be requested by one third of the members of the Board, in writing.
- (4) The Chairperson may, from time to time, determine that a meeting be held by telephone, closed-circuit television or other means of communication.

Notices of meetings

- 3.** (1) Except as provided in sub-regulation (3), the Chairperson must give at least seven days' written notice to all members of the Board of any meeting convened at the request of one third of the members of Board.
- (2) The notice contemplated in sub-regulation (1) must—
- (a) specify the date and time of the meeting; and
 - (b) state the general nature of the business of the meeting; and either
 - (i) state the place of the meeting; or
 - (ii) specify the means of communication by which the meeting will be held.
- (3) The Chairperson must give notice of a meeting—

- (a) in writing; and
 - (b) not less than seven days in advance except in cases of emergency or where all members of the Board agree to accept a short notice.
- (4) The Board must, if requested by a member of the Board, allow that member to participate in the meeting in the manner contemplated in regulation 9.
- (5) The proceedings of or resolutions passed at a meeting of the Board are not invalid merely because—
 - (a) the chief executive officer omitted to send a notice to a member of the Board; or
 - (b) a member did not receive a notice of the meeting.

Quorum

- 4. (1) No business may be conducted at a meeting of the Board unless a quorum of members of the Board is present.
- (2) A quorum for a meeting of the Board is the majority of its members.
- (3) If a quorum is not present within 30 minutes of the time determined for a meeting of the Board, the person presiding at the meeting may adjourn the meeting to the same time and place, seven days after the adjournment.
- (4) If a quorum is not present at an adjourned meeting within 30 minutes of the time determined for such meeting, the meeting is automatically cancelled.

Adjournment

- 5. (1) The person presiding at a meeting at which a quorum is present—
 - (a) may adjourn the meeting with the member's consent; and
 - (b) must adjourn the meeting if the members so direct.

(2) An adjourned meeting must be held at the time and place agreed to by the members before the meeting is adjourned.

(3) Only unfinished business of an initial meeting can be conducted at an adjourned meeting.

Person presiding at meetings

6. (1) Subject to sub- regulation (2)—

(a) the Chairperson must preside at all meetings of the Board at which the Chairperson is present; and

(b) in the absence of the Chairperson, the Deputy Chairperson must preside at a meeting of the Board.

(2) If neither the Chairperson nor the Deputy Chairperson is present, the members present must appoint a member of the Board from amongst themselves to preside at the meeting, unless the Minister has appointed a Chairperson in terms of section 9(2)(c) of the Act.

Taking of decisions at meetings

7. (1) A question arising at a meeting of the Board must be determined by the majority of votes of members of the Board present and voting.

(2) If voting on a question is equal, the person presiding at a meeting has a casting vote in addition to his or her deliberative vote.

Minutes

8. (1) The chief executive officer must ensure that complete and accurate minutes of each meeting are kept.
- (2) Draft minutes of each meeting must—
- (a) be presented to the next meeting of the Board for amendment, if necessary, and adoption; and
 - (b) be recorded and entered in a book kept for that purpose.
- (3) The person presiding at the next meeting must sign and date an affirmation to the effect that the minutes of the previous meeting have been adopted by the members of the Board.
- (4) The Chairperson must provide the Minister with a summary of the minutes after every meeting of the Board.

Meetings by telephone or video conference or other means of communication

9. (1) The Board may, by resolution, permit members of the Board to Participate in a particular meeting by telephone, video conference or other means of communication.
- (2) A member of the Board who participates in a meeting as contemplated in sub-regulation (1) must be regarded as being present at the meeting.

Resolutions signed by members of Board

10. (1) Where the majority of the members of the Board sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms must be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the

members do not sign the document on the same day, on the day on which the last member signs the document.

(2) For the purpose of sub-regulation (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the Board, must be taken to be one document.

(3) A document referred to in this regulation may be in an acceptable electronic format.

Execution of documents

11. (1) A document is duly executed by the Board if it is executed on behalf of the Board by any two members of the Board.

(2) The Board may, either generally or in a particular case or class of cases, by resolution authorise the chief executive officer to execute documents on behalf of the Board.

Proceedings of Board

12. (1) Subject to these regulations, the Board may regulate its own proceedings.

Chapter 3

Declaration of priority housing development area

Preliminary declaration of priority housing development area

13. (1) Based on the development priorities identified in the integrated development plan, the Agency will apply the identification criteria in sub-regulation (2), in order to prepare a Development Plan proposal for a preliminary declaration of a priority housing development area in consultation with the municipality.

(2) The identification criteria contemplated in sub-regulation (1) in order to identify a priority housing development area must be whether the proposed area -

- (a) has a high demand for housing and related services within the area;
- (b) is large enough to accommodate economic and social infrastructure and housing needs;
- (c) supports sustainable environmental management and the integration of land uses and amenities;
- (d) would grant reasonable access, or progressive realisation of such access, to bulk infrastructure, amenities, economic activities and transport; and
- (e) is not situated within an area which -
 - (i) is zoned or used for purposes of forestry, mining, or similar activities;
 - (ii) poses an unreasonable environmental or health risk; or
 - (iii) is protected in terms of any law in order to preserve biodiversity, the natural habitat, or any other purpose.

(3) The municipality and the Agency must develop and finalise an implementation protocol that commits the municipality and the Agency to working together to develop a proposal for a preliminary declaration of a priority housing development area.

(4) If the relevant municipality is a non-assigned municipality seeking priority housing development area declaration, the relevant provincial departments must be co-signatory to the implementation protocol.

(5) A public consultation process, including the Agency, in respect of the proposal for preliminary declaration of a priority housing development area must be incorporated in the annual integrated development plan review process undertaken by the municipality in terms of the Local Government: Municipal Systems Act.

(6) The Agency, in consultation with the municipality, must submit the proposal contemplated in sub-regulation (1) to the Minister for consideration.

(7) After the approval by the Minister of a Development Plan proposal for preliminary declaration of priority housing development area, the Agency must make a preliminary declaration.

(8) The proposal contemplated in sub-regulation (1) must contain at least the following:—

- (a) a motivation and reasons in support of the preliminary declaration of a priority housing development area;
- (b) details on the nature of the circumstances of priority in the municipality;

- (c) details of and evidence of alignment with the relevant integrated development plan and applicable spatial development frameworks;
- (d) details on the nature of the land use and the land ownership;
- (e) details and proof of inclusion of the consultative processes with the participants in the integrated development plan review process in terms of sub-regulation (5);
- (f) the commitment by the relevant participants to assist the Agency in preparing the development plan, once a preliminary declaration of a priority housing development area has been made by the Agency;
- (g) source of the funds required to prepare the priority housing development area plan;
- (h) indicative budget allocations from all spheres of government and other relevant participants over the Medium Term Expenditure Framework;
- (i) proposed time periods within which the development plan must be finalised; and
- (j) a signed implementation protocol between the municipality and the Agency as per sub-regulation (3).

Actions to finalise Development Plan for priority housing development area

14. (1) The Agency, in consultation with the municipality, must finalise the development plan and obtain a council resolution supporting the development plan within 12 months of the date on which the Agency makes the preliminary declaration.

(2) The development plan must at least contain the following information: —

- (a) the objectives and the prioritisation criteria of the priority housing development area;
- (b) a motivation with regard to the priority for declaring the land or landed property as a priority housing development area;
- (c) the name, delineated priority housing development area location, municipal and provincial domicile of the area to be declared a priority housing development area, which shall not differ significantly from the area described in the preliminary declaration;
- (d) the nature of the land use and the land ownership;
- (e) details and evidence of alignment with the relevant spatial planning frameworks, national development priorities, applicable provincial and municipal spatial development frameworks, and integrated development plans and land use schemes;
- (f) the type of development to be implemented within the priority housing development area;
- (g) roles and responsibilities of the required participants;
- (h) details of the community to be affected, either directly or indirectly, by the declaration of a priority housing development area;
- (i) all technical and feasibility studies that have been carried out on the land, or results to be obtained relevant to the implementation process and procedures of the priority housing development area;
- (j) a description of how existing projects in the area will be integrated into the development plan for the area;
- (k) budget allocations from all spheres of government and other relevant participants over the Medium Term indicative Expenditure Framework;

- (l) an indication of the intended implementing agent;
- (m) the implementation, governance and oversight structures;
- (n) risk mitigation management provisions and structures;
- (o) the reporting mechanisms;
- (p) the anticipated planning and development approvals and related arrangements regarding the implementation and finalisation of the priority housing development area;
- (q) compliance with applicable governmental policy and legislation, including spatial planning and land use management legislation, and other relevant provincial and municipal policies and legislation;
- (r) a closure strategy in accordance with regulation 27;
- (s) an indication of the person -
 - (i) responsible for acting as the duly authorised representative of the participants;
 - (ii) who will be vested with the necessary authority to bind the participants in terms of decisions which has to be taken, save where the principal of the authorised representative has directed differently;
 - (iii) who will be the party with whom the implementing agent will liaise and correspond; and
 - (iii) who must inform the implementing agent of any changes with regard to the authorised representation and the position of the representative;
- (t) any other details which the Agency may require to be included in the priority housing development plan.

Consultation Process

15. (1) In finalising the priority housing development plan, the Agency must, in consultation with the municipality:—

- (a) consult with the community, participants, the owner of the land, any authorities having jurisdiction over the affected area, and other parties who have a legally recognised interest in the land, and will be impacted by the declaration of a priority housing development area;
- (b) retain the records of the consultative process contemplated in regulation 15(1)(a) which must include any written comments received from the consulted parties; and
- (c) record and retain any objection expressed in the consultation process as contemplated in regulation 15(1)(a).

(2) The consultation process referred to in regulation 15(1)(a) must ensure that:—

- (a) notice to consult-
 - (i) is displayed at the municipality's offices;
 - (ii) provides the community with at least seven-days' prior notice of the place, date and time at which the consultative meeting is to take place;
 - (iii) informs the community that a copy of the preliminary development plan is open for inspection at a specified office within the municipal offices or available for download on the municipality's official website;

- (iv) includes any other details of the meeting which the municipality deems necessary;
- (b) the information contained in the notice is, as far as reasonably possible, in at least three of the official languages, including English and the predominantly spoken language in the municipal jurisdiction;
- (c) advertisements are placed in the media in accordance with section 21 of the Local Government: Municipal Systems Act informing the community that a consultation meeting will be held on a specific date (which must be not less than seven but not more than fourteen days after the date of the advertisement), time and place and other details which in the reasonable opinion of the municipality may be necessary;
- (d) any notice regarding the proposed development plan is of such a nature that it can be understood by affected parties;
- (e) during the consultation meeting -
 - (i) a register is kept of all attendees;
 - (ii) the consultative process is conducted in a language understood by the broader community;
 - (iii) the community is aware of the right to object and provide written comments, within 30 days of the consultation meeting on the proposed development plan; and
 - (iv) to the extent that submissions require interpretation either because of the language in which the consultative process is being conducted adequate interpretation

methods must be provided;

- (f) the municipality retains and stores for record purposes -
 - (i) the minutes of the consultative processes;
 - (ii) comments received; and
 - (iii) a record of how comments were dealt with;
- (g) the municipality provides the Agency with any information that may be requested by the Agency for purposes of submitting the proposed development plan to the Minister.

(3) The Agency must consult with the Minister regarding the finalisation of the development plan in respect of the following:—

- (a) progress achieved in financing the development plan;
- (b) obstacles experienced by the Agency and attempts made by the Agency to resolve such obstacles;
- (c) matters which require urgent assistance or intervention by the Minister;
- (d) delays experienced and extension of time required by the Agency to finalise the development plan;
- (e) changes in circumstances which require the contents of the development plan to be changed;
- (f) any participant who refuses or fails to cooperate with the Agency in preparing the development plan; and
- (g) any other aspects which the Agency deems necessary to refer to the Minister.

- (4) Before consulting with the Minister in terms of regulation 3(f) the Agency must in writing, request written reasons for the participant's refusal to cooperate.
- (5) The Agency, in consultation with municipality, must submit the development plan to the Minister for consideration and approval.
- (6) The Minister must, in consultation with MinMec and the relevant authorities in the provinces and municipalities approve the development plan within 90 days.
- (7) The development plan must be kept and filed by the Agency for record purposes.

Declaration of priority housing development area

16. (1) Prior to a priority housing development area being declared by the Agency, the Agency must ensure that—

- (a) all legal requirements applicable to the Agency in respect of the declaration of a priority housing development area have been complied with; and
 - (b) the priority housing development area conforms to the integrated development plans, spatial development frameworks and land use schemes applicable at the time in the proposed priority housing development area.
- (2) After the approval of the development plan by the Minister, the Agency must declare a priority housing development area.

(3) The declaration contemplated in sub-regulation (2) must be published by the Agency by notice in the Government Gazette which notice must contain at least the following information -

- (a) the objectives sought to be achieved in the declaration of a priority housing development area;
- (b) a cadastral description to identify the location of the priority housing development area; and
- (c) the name by which the priority housing development area will be known or identified.

(4) The declaration of a priority housing development area will initiate the process for the commencement of a housing development, which must be regarded as a national housing programme as defined in section 1 of the Housing Act.

Amendment or withdrawal of development plan

17. (1) Any amendment effected to a development plan must be done by way of an addendum to the original approved development plan for record purposes.

(2) The Agency must fully motivate any amendment or withdrawal of a development plan and must give reasons to the Minister when applying for the Minister's approval.

Chapter 4

Implementation of priority housing development area

Implementation in accordance to the development plan

18. (1) A housing development will be implemented in accordance with the approved development plan.

(2) The implementation of a priority housing development requires from the Agency and all relevant participants to meet their obligations, responsibilities and duties during and after implementation.

(3) The Agency may from time to time identify circumstances which may cause delays on the progress of the development and take remedial steps to combat those delays.

Implementing agent

19. (1) The municipality in cooperation with the Agency may appoint an implementing agent on terms and conditions agreed to between the parties. The intended implementing agent being either-

- (i) the Agency or an external service provider appointed by the Agency with the approval of the municipality;
- (ii) the municipality or an external service provider appointed by the municipality with the approval of the Agency; or
- (iii) a public or municipal entity as agreed to by the Agency and the municipality;

(2) Depending on the nature of the development, more than one implementing agent may be appointed.

(3) The implementing agent may not cede or assign any of its rights, functions or obligations to a third party without the written consent and approval of the Agency.

Committees and support structures

20. (1) The Agency may, in consultation with the Municipality, for purposes of functionality and management of the priority housing development area, establish one or more forums and committees on which representatives of the Agency and identified participants must serve.

(2) The forums and committees contemplated in sub regulation 1 must include community representatives.

(3) The municipality in cooperation with the Agency may, in order to accommodate the priority housing development area as a national housing programme, require the participants of the priority housing development area plan to prioritise assistance to the Agency in the implementation of the housing development, which may include—

- (a) attending meetings;
- (b) adopting special resolutions;
- (c) taking the necessary actions in accordance with the priority housing development area plan ; and
- (d) prioritising budgets in accordance with the indicative allocations set out in the priority housing development area plan by the participants.

Monitoring of priority housing development area

21. (1) The Agency must monitor the implementation of the priority housing development area plan.

- (2) The Agency must monitor the performance of-
- (a) the implementing agent, if the Agency is not the implementing agent; and
 - (b) the signatories of the priority housing development area plan.
- (3) The Agency in consultation with the implementing agent must periodically report on progress and risks and indicate remedial steps.
- (4) The Minister must monitor the performance of the Agency in instances where the Agency is the implementing agent.
- (5) If the implementing Agent fails to fulfil its roles or obligations, the Municipality may terminate the appointment and replace it with another implementing agent.

Chapter 5

Intergovernmental and institutional collaboration

Implementation Protocol for housing development

22. (1) The Agency must develop an implementation protocol to be concluded by respective organs of state, at national, provincial and local government levels, and other housing institutions in accordance with section 35 of the Intergovernmental Relations Framework Act and where applicable enter into a separate agreement with the private sector, to provide mechanisms and procedures

of facilitating, assisting, supporting and funding the planning and implementation of the priority housing development area.

- (2) The implementation protocol will determine the terms and conditions of each protocol subscriber.
- (3) It will be the duty of the Agency to effect changes or amendments to the implementation protocol, as approved by the Minister, which must at all times align to the priority housing development plan.
- (4) The implementation protocol must indicate a contact person –
 - (a) who will act as the duly authorised representative of the protocol subscriber;
 - (b) who will be vested with the necessary authority to bind the protocol subscriber in terms of decisions which have to be taken, save where the principal of the authorised representative has directed differently;
 - (c) who will be the party with whom the Agency will liaise and correspond with; and
 - (d) must inform the Agency of any changes in regards to the authorised representation and the position of the representative.

Priority housing development area participant agreements

23. (1) The Agency in cooperation with the municipality may, where applicable, enter into a separate agreement with any person or entity in order to provide mechanisms and procedures of facilitating, assisting, supporting and funding the planning and implementation of the priority housing development area plan.

(2) Amendments to the implementation protocol must be agreed to in writing by all signatories.

Chapter 6

Funding of priority housing development area

Recognition of priority housing development area programme

- 24.** (1) The Agency must:—
- (a) compile and submit a programme plan to the Minister in order to recognise the priority housing development area as a dedicated national housing programme in accordance with the Housing Act; and
 - (b) submit budget plans reflecting the financial requirements for the declared priority housing development areas over the Medium Term Expenditure Framework.

Funding of implementation of priority housing development area plan

25. (1) The department will allocate a portion of the Human Settlements Development Grant allocated in terms of the Division of Revenue Act, for the implementation of the development plan and facilitate the allocation of other relevant grants.

(2) A defined amount must be made available by the relevant member of the executive council in a particular province from the provincial allocation in terms of the annual housing vote allocation by the Minister of Finance in terms of the Division of Revenue Act.

(3) In the case of an assigned municipality, a defined amount must be made available by the municipality from the municipal allocation in terms of the annual housing vote allocation by the Minister of Finance in terms of the Division of Revenue Act.

(4) The funding contemplated in sub-regulations (1) and (2) must cover funds for

capital and operational budget requirements.

(5) Funding commitments and the sequence of release must be stipulated by each party in the development plan in accordance with regulation 14(2) (k).

Essential elements of cooperation

26. (1) The Agency will at all times be entitled to rely upon the full cooperation and support of other organs of state to achieve the planning, implementation and funding of the priority housing development area in a manner contemplated in terms of the Intergovernmental Relations Framework Act, and in this regard every signatory and protocol subscribers will be deemed to have –

- (a) committed to expedite and fast-track the subscriber's functions and duties; and
- (b) guaranteed performance in terms of any financial undertaking or commitment given by that subscriber to the Agency.

(2) The Agency may at any time request from a protocol subscriber and be entitled to receive from that subscriber an undertaking reaffirming the subscriber's financial commitment, upon which document the Agency will be entitled to rely, for purposes of planning and implementing the housing development as a whole or in any phase thereof.

(3) Unless the Agency had in writing agreed to release or conditionally release a protocol subscriber from any financial commitment or any other commitment, in terms of the implementation protocol, such subscriber may not cancel, withdraw or in any way fail to perform in terms of the commitment given, which will, if the protocol subscriber had acted contrary to their agreed functions and duties, such contrary action will constitute a breach of contract.

Closure of a housing development

27. (1) The development plan contemplated in regulation 25 must provide for a closing down strategy.

(2) The closing down strategy, contemplated in sub-regulation (1), must address at least the following-

- (a) the continuation or non-continuation of the Agency's participation in the development;
- (b) the handing over procedures of identified responsibilities, authorities, functions and, where applicable, assets including buildings and services from one party to another, which relate to the housing development and the future management, ownership and control of the housing development after the closing down strategy event;
- (c) the financial implications regarding the closing down or handing over of the development, as contemplated in sub-regulation (2)(b) and the impact which such handing over process will have on the Agency, or the party taking over the respective roles, functions, duties and assets; and
- (d) any other aspect or circumstances required to be addressed

Chapter 7

General

Short title

28. These Regulations are called the Housing Development Agency Regulations.
