

BUILDING APPLICATIONS – REQUIREMENTS & RESPONSIBILITIES

Responsibility For Compliance.

Every owner wishing to build a new building, extend or alter an existing building, or regularise un-authorized building work is responsible for ensuring that the requirements of the National Building Regulations and Building Standards Act (Act 103 of 1977) (NBR & BS Act) are complied with.

How Is This Achieved.

To achieve the required compliance the NBR require the appointment of registered competent persons. In most cases this is an architectural professional who is registered with the SA Council for the Architectural Profession (SACAP) and has the appropriate competency level to undertake the design work.

The competency of each level of registration with SACAP being as contained in the Interim Identification of Work Matrix gazetted 04 October 2011.

Responsibility Of Appointed Competent Person.

The level of advise, guidance and professional service provided is governed by the Code of Practice laid down by the relevant registration body.

The appointed registered competent persons should be able to advise on:

- the legal processes involved to obtain approval to build from the local authority;
- the legal implication for the owner should building without the required approval be undertaken
(Planning or Building Inspectorate authorisation does not constitute an approval by the local authority in terms of sec. 7 of Act 103 of 1977);
- additional requirements that may impact or affect the design of a proposal or may require additional authorisation prior to submission of an application to the local authority for consideration, such as:

Environmental Management Act;
National & Provincial Heritage Resource Acts;
Housing Act;
Occupation Health & Safety Act & related Regulations;
Water Act;
Department of Transport re: National & Provincial roads;
Metro Electricity re: electrical power-lines & associated restrictions;
including –
Local Authority Town Planning Scheme;
Local Authority Bylaws;
Title Deed restrictions;
and most importantly the National Building Regulations and Building Standards Act (Act 103 of 1977).

The appointed competent person is further responsible for designing any building such that it achieves the level of

compliance that will satisfy the local authority as required by sect. 7 of Act 103 of 1977.

How such compliance has been achieved is made through a signed declaration on the prescribed Form 1 contained in SANS 10400-A ie: by rational design or compliance with the referenced national standards.

Function Of The Local Authority.

The local authority is responsible for ensuring the required level of compliance has been achieved before it can approve a building application.

Process.

The local authority processes are governed by the timeframes contained within the provincial Planning Development Act and the National Building Regulations and Building Standards Act No. 103 of 1977. eThekweni Municipality has a two phased process to be followed in order to obtain an approval:

Step 1) Make an application for consideration in respect of the relevant Town Planning Scheme to Land Use Management Branch;

After planning authorisation is obtained -

Step 2) Make an application in respect of section 4 of Act 103 of 1977 to Development Applications Branch.

Such applications cannot be submitted simultaneously or made to run concurrently due to conflicting legislative timeframes.

Land Use Management (LUM) Consideration.

Land Use Management Branch considers a proposal for adherence with the relevant Town Planning Scheme provisions and associated requirements, ie:

- zoning controls;
- space about buildings;
- appearance;
- impact on amenities, etc..

Where the town planning scheme controls are adhered to an authorisation from LUM will be granted. Such authorisation does not constitute an authority to undertake building work (by the owner/contractor or any other person) or that an application made in terms of sec. 4 of Act 103 of 1977 will be successful.

The purpose of town planning scheme controls are generally to:

Building lines:

- develop and maintain an attractive streetscape;
- provide privacy to rooms facing the street;
- insulate against traffic generated noise;
- enhance traffic safety by maintaining sight lines;
- provide for natural light and air movement (ventilation) around buildings;

Side Spaces:

- maximise privacy;
- limit overshadowing of neighbouring sites;
- allow for natural lighting and air movement (ventilation) around buildings;
- allow vehicular access to rear of building;
- provide separation for aesthetic purposes;
- protect the foundations of neighbouring buildings;
- provide for existing and future services;

Rear Space:

- create space for relaxation purposes;
- preserve privacy;
- provide for existing and future services;

Density:

- maintain an equilibrium in the provision of services and amenities

Height:

- through varying height controls within the urban context ensure access to natural light and air movement (ventilation) around buildings;
- preserve an acceptable character and aesthetic within the different zonings;
- control the intensity of development;

Coverage:

- to limit the bulk of buildings;
- create an area around building for recreational purposes;
- maintain aesthetics of the area

Floor Space and Bulk Controls:

- control the intensity of development and building bulk;
- ensure and maintain a balance between the population of an area and the provision of facilities;
- control the intensity of commercial use;
- ensure aesthetic quality;
- maintain the correct intensity of use from a traffic generation aspect;

Environmental controls:

- provide a mechanism to protect environmentally sensitive areas, fauna & flora, water courses, etc.

Building Inspectorate Involvement.

The local Building Inspector is primarily responsible for regulating building activities undertaken upon a property by the owner and ensuring that such activity is in accordance with an approval granted by the local authority, not planning authorisation.

Where such activity is not in terms an approval granted by the local authority the Building Inspector responsible for instituting the necessary legal action against owner/s.

Any deviation or departure from the local authority approval and approved building plan that is necessary on site requires the submission and approval of a building

application before such changes can be effected on the site. The procedure for the submission and consideration of an application for a deviation or departure from work approved is as contained above. No building work in respect of a proposed deviation or departure may be undertaken until approval therefor has been obtained

The Building Inspector is not empowered to authorise or grant authorisation to commence any building work based upon the submission of an application to the local authority, whether in terms of a Town Planning Scheme or sec. 4 of Act 103 of 1977.

Upon completion of the building work for which approval was obtained, the Building Inspector is responsible for issuing a certificate of occupancy for the occupation of the building. This is subject to the necessary supporting documentation and certificates being submitted.

Development Applications Considerations. (Applications i.t.o sec.4 of Act 103 of 1977.)

The Development Applications Branch, on behalf of the local authority, considers whether an application submitted in terms of sec.4 of Act 103 of 1977 achieves the level of compliance for approval required by sec.7 of Act 103 of 1977.

Again a two stage process is involved:

Step 1) The Building Control Officer (BCO) makes a recommendation to approve or refuse the application to the local authority; and

Step 2) The local authority, together with the recommendation of the Building Control Officer, decides whether to refuse or approve the application submitted.

Recommendation By Building Control Officer (BCO).

The BCO (through delegation) considers a proposal made to the local authority and assesses whether the necessary level of compliance required by Part A to X of the NBR has been achieved, as required by section 6 of Act 103 of 1977.

Where a satisfactory level of compliance has been achieved and the proposal complies with all other applicable laws, the BCO will recommend the approval of the application to the local authority. This recommendation does not presuppose that the local authority is in fact satisfied that approval of the application is possible.

A recommendation to refuse the application will be made where the design of the proposal fails to achieve the necessary level of compliance or is found lacking in terms of any other applicable laws.

Consideration By Local Authority.

The second stage of the process involves the local authority (through delegation) making a decision in terms of sec.7 of Act 103 of 1977.

To arrive at a decision the local authority considers the recommendation made by the BCO, LUM authorisation,

any other authorisations obtained, ie: Environmental, Heritage (AMAF), etc, together with any undesirable impact that may result from the construction of the building if it were to be approved.

Where the local authority is not satisfied that the necessary level of compliance has been achieved it will refuse to approve the application. A decision notice of refusal will set out the reasons for refusal.

The decision notice will identify the requirements that fail to achieve compliance. This is not a detailed list of required corrections or endorsements as is often assumed, but rather serves only to identify and direct the owner / architectural professional to those aspects that require further attention or reconsideration.

Where the decision is to refuse an application, the owner is afforded an opportunity to address the identified requirements, and subject to the timeframe of 1 year contained in section 7 of Act 103 of 1977 calculated from the original refusal date, submit the application anew for re-consideration.

This however requires that the identified requirements must have been attended to and adequately resolved by the owner / architectural professional. Where not adequately addressed or resolved and the period of 1 year has past new fees in accordance with the tariff of charges will apply and the application will need to be submitted anew. No building work can be commenced with where an application has been refused.

Where the local authority is satisfied that the necessary level of compliance has been achieved it will approve the application in terms of sec.7 of Act 103 of 1977. Such approval authorises the owner to commence building work after serving a notice to this effect on the Building Inspectorate.

The approval of the building application will be indicated on one copy of the plans which will be made available to the owner for collection. The approval granted by the local authority is to be retained and be available for inspection on the building site until completion of the project.

The wording below, confirming approval has been granted, is generally endorsed in the top right hand corner of all copies of the building plan:

“Building Application Approved in terms of sec.7 of the National Building Regulations & Building Standards Act No 103/1977.	
_____	_____
Date	Signature
This plan is approved on the basis of the information shown herein. Attention is drawn to the attached documentation & that this approval shall lapse ONE year after the above approval date, unless the erection of the building in terms of NBR Act 103/1977 is commenced.”	

Any other endorsement containing wording “Authorised “/

“Granted”, does not constitute an approval to build.

Responsibility of the OWNER.

Any property owner wishing to undertake building work that requires the submission of building plans and approval in terms of the NBR & BS Act, must appoint a competent registered person. (Reg A1(1) of NBR)

The owner is also responsible for ensuring that the registered competent person has the necessary competence to undertake the proposed work and that their registration with the regulatory body is current prior to appointing the registered person. Failure to ensure that the appointed competent person has the required level of competence or valid registration will result in the refusal of the building application by the local authority.

The gazetted Identification of Work and validity of a competent person (architecture) is available via the website (www.sacapsa.com) of the South African Council for the Architectural Profession (SACAP).

The Identification of Work relates the scope of work that the registered professional may undertake dependant on the category within which the professional is registered.

The competent person, appointed by the owner, is responsible for designing compliance into any building proposal, not the local authority.

An additional responsibility placed on the owner where building work is undertaken in accordance with an approval granted is ensure that the obligations in terms of the Construction Regulations of 2003 contained in the Occupational Health & Safety Act, No. 85 of 1993 are adhered with to avoid any legal liability should any injury associated with the construction work occur upon the site.

Recourse Available to Owner.

Where an appointed registered competent person does not conduct themselves in terms of the applicable professional code of conduct, ie: failing to carry out their profession with due skill, competency and integrity, fails to advise the owner against building without the necessary approval, fails to achieve the level of compliance necessary, makes a declaration that is false, etc., the owner generally has the following recourse available:

- (a) Report the matter to the relevant registration body (SACAP – Architectural professional, ECSA – Engineering professional), or
- (b) Exercise the rights contained in the Consumer Protection Act, No. 68 of 2008; or
- (c) Institute legal action where solutions are not available by (a) and (b) above.

The local authority is not the forum to resolve disputes between owners and appointed professionals.

Recent National Legislative Amendments.

A recent amendment to the National Building Regulations and Building Standards Act, No 103 of 1977 is the requirement that Part X Environment Sustainability is considered in the design and construction of buildings.

Note, the applicable legislation and amendments are part of the requirements of Department of Trade & Industry to regulate the building industry and is applicable across South Africa. These are not revisions to a bylaw or policy of the local authority. The local authority is however responsible for regulating compliance with such national legislation and amendments.

The first requirement relates to Part XA Energy Efficient Usage in Buildings which is aligned with the National Energy Efficiency Strategy of the Republic of South Africa. The aim being to contribute to the reduction of greenhouse gases by buildings and their functioning.

Applicability.

These requirements are applicable to all new buildings and extensions to buildings, including but not limited to office buildings, residential buildings and dwelling units and houses, etc.. Various exemptions apply in respect of warehouse and factory buildings.

The nature and extent of the extension will determined the extent to which retrofitting of the existing building will be necessary.

The reduction in greenhouse gases is to be achieved through designing of buildings to use energy efficiently, ie: lighting, hot water, thermal comfort (air conditioning included) and for a building to have an external envelope appropriate for its function and use, internal environment and geographic location.

It further requires that 50 percent of the volume of the annual hot water heating requirement will be by an alternative means than an electric resistance heating system (conventional geyser generally).

How Achieved.

To achieve the requirements above the appointed registered competent person will need to advise the owner accordingly and ensure that the design of the new building or extension to an existing building achieves the correct orientation, shading and has services and a building envelope in accordance with SANS 10400-XA.

Buildings built without the necessary approvals first having been obtained will require expensive retro-fitting in order to achieve the levels of compliance required.

Misconceptions.

The requirement to first obtain approval from the local authority applies equally to wooden cabins / huts (irrespective of use or size), awnings / carports and similar shelters, thatch gazebos / lapas, swimming pools, timber decks, enclosure of verandahs / balconies with sliding /

folding door / window elements, etc..

The popular misconception being that these types of buildings are exempt from the requirement to submit a building plan. No such exemption exists within the eThekweni Municipality

Awnings / carports, thatch gazebos / lapas, the enclosure of verandahs / balconies, although being relatively simple in terms of their construction have however, the ability to severely affect a buildings compliance with energy efficiency where not designed or integrated correctly in the design of a building.

Further Assistance.

The information contained in this communiqué attempts to assist property owners in understanding the process involved to obtain the proper approval from the local authority when wishing to undertake building work and to create an awareness of the responsibilities of the various role players.

For further assistance or guidance please contact the relevant Regional office of the Development Applications Branch.

BUILDING PLAN – ASSESSMENT PROCESS

The below process applies to the submission of an application for Permission to Build in terms of sec. 4(2) of Act no. 103 of 1977.

The process requires that any obligations on the owner to comply with KZN Heritage and PLANNING legislation have been satisfied and any attached conditions have been finalised.

