



**'n Unieke en sorgsame Vallei van uitmuntende dienslewering, geleentehede en groei.  
Intlambo ekhethekileyo enenkathalo, egqwesayo kuniko-zinkonzo, ivulela amathuba kwaye iphuhlise.  
A unique and caring Valley of service excellence, opportunities and growth.**

## **POLICY FRAMEWORK : RULES AND PROCEDURES REGARDING THE SECTION 62 APPEALS**

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## 1. INTRODUCTION AND PRINCIPLES

**Section 62 of the Local Government : Municipal Systems Act, 2000 (Act 32 of 2000)**, establishes the regulatory framework on appeals lodged against decisions taken in terms of delegated authority. Subsection 62(1) reads as follows:

“A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal to the municipal manager within 21 days of the date of the notification of the decision.”

Subsection (3) prescribes that “the appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.”

Subsection (4) prescribes who the appeals authority is in terms of legislation. The categories are as follows:

- a staff member other than the Municipal Manager, then the latter is the appeals authority;
- a Municipal Manager then the Executive Mayor is the appeals authority;
- a political structure or political office bearer, or a councillor, then the appeals committee is the appeals authority.

Note that any person whose rights are affected may provide written notice of the appeal, as well as reasons for these appeal, to the relevant appeals authority. All correspondence communicating the decision in terms of delegated authority, should include advise on the persons right to appeal in terms of section 62. Although section 62 does not provide a solution in cases where the appeal is lodged later than the prescribed 21 days, it is implicit that said appeal will not be heard.

This policy will thus serve as a uniform guideline on how Breede Valley Municipal Council will deal with section 62 appeals. All appeals received is subject to both the statutory prescriptions, as well as the principles of natural justice in terms of section 33 of the “Constitution” and the “Promotion of Administrative Justice Act.”

## 2. DEFINITIONS

“**Appeal authority**” refers to the relevant appeals authority in terms of section 62(4) of the “Systems Act.”

“**Appellant**” means a person whose rights are affected in terms of a decision which had been taken in terms of delegation and sub-delegation.

“**Constitution**” means the Constitution for the Republic of South Africa Act, 1996 (Act 108 of 1996).

“**councillor**” means a member of Breede Valley Municipal Council.

“**decision**” refers to a decision made by a political structure, political office bearer, councillor and staff made in terms of a delegation and sub-delegation of Council.

“**delegation**” in relation to a duty, includes an instruction to perform the duty, and “delegate” has the corresponding meaning.

“**delegation authority**” means :

“(a) in relation to a delegation of a power or duty by a municipal council, means the municipal council; or

(b) in relation to a sub-delegation of a power or duty by another political structure, or by a political office bearer, councillor or staff member of a municipality, means that political structure, political office bearer, councillor or staff member.”

“**Municipal Manager**” means a person appointed by Council in terms of section 54 of the “Systems Act.”

**“municipality”** means Breede Valley Municipal Council in terms of the “Structures Act”.

**“notice”** means a notice either being in the form of ordinary post, registered post, fax or email.

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

**“political office bearer”** means the Speaker, Executive Mayor Deputy Executive Mayor as referred in the “Municipal Structures Act.”

**“political structure”** means the council of the municipality or any committee or other collective structure of the municipality, elected, designated or appointed in terms of specific provisions of the “Municipal Structures Act.”

**“Promotion of Administrative Justice Act”** means the Promotion of Administrative Justice Act (Act 3 of 2000).

### **3. ADMINISTRATION OF THE APPEALS PROCESS**

(1) The Municipal Manager or his/her delegee is responsible for all administrative processes related to section 62 appeals.

(2) When an appeal is received then the Municipal Manager or his/her nominee must:

- acknowledge receipt of the appeal;
- notify all relevant and affected parties about the application for appeal in terms of section 62;
- invite all relevant and affected parties to provide comment on the appeal, received within 14 days of receipt of said notice;
- to identify the relevant appeals authority prescribed in section 62(4);

- arrange for the composition of the appeals committee, if relevant;
- prepare and compile all relevant documentation (including comments and reports) to enable the appeals authority the opportunity to make a decision, based on documentation prepared;
- ensure that members of the appeals committee had not been part of the original decision making;
- establish and arrange a date for the hearing of the appeal;
- ensure that the venue for the constituting of the Appeals Committee is arranged;
- ensure that secretariate services are available for the minuting of the meeting;
- ensure that sufficient notice is sent to all members of the Appeals Committee.

(3) All appeals received regardless of the appeals authority must be noted in the Appeals Register.

#### **4. APPEALS COMMITTEE APPOINTED BY COUNCIL**

Breede Valley Municipal Council had appointed an Appeals Committee to hear relevant appeals relating to decisions of political office bearers and structures. In cases however where members of the Appeals committee had been part of the initial functionary who made the decision, which is the subject of the appeal and there is no quorum, then the Council can elect other members to serve on a specially constituted Appeals committee.

The discretion of said committee is however limited to the appeal for which they had been appointed. The Municipal manager shall establish an appropriate appeal authority in terms of section 62 of the Systems Act, to consider appeals received in terms of the Supply Chain Management Policy.

No councilor may be a member of the appeal authority to hear supply chain appeals, nor attend such an appeals committee meeting as an observer, nor will this Appeals Committee have the power to hear Supply Chain Management Appeals.

## **5. PROCEDURE OF THE APPEALS COMMITTEE**

- (1) The Appeals Committee decides on the procedure used for hearing the appeal. This is however done in terms of the statutory framework.
- (2) The Appeals Authority considers the section 62 appeal on the basis of documentation received by the Municipal Manager in terms of clause 3(2).
- (3) Neither the appellant nor the objectors have the right to give viva voce evidence during the hearing of the appeal. However if extenuating circumstances are provided on reasons to hear viva voce evidence then the Appeals committee can consider it, and make a decision in this regard.
- (4) The Appeals Committee can request members from the administration to appear before the committee to provide guidance regarding relevant issues encapsulated in the appeal.
- (5) The Appeals Committee however does not have the discretion to summons any private persons to appear before them.
- (6) No person referred to above have the right to be legally represented during the appeals hearing. If there is a request for legal representation on behalf of any affected party then the Appeals committee can consider that application to be represented and make a decision in that regard.
- (7) The Municipal Manager should ensure that all Appeals Committee meetings should be minuted by committee secretariat.

## **6. CONSIDERATION OF THE APPEAL**

- (1) The Appeals Committee is compelled in terms of legislation to start considering the appeal and should finalise the appeal within a reasonable time.
- (2) The Appeals authority must consider the decision maker had the delegated authority to make the original decision against which the appeal had been lodged and ensure that, amongst others:

- the delegee had all relevant information in their possession when considering the initial application, which is subject to appeal;
- whether the delegee had subscribed to all relevant principles of administrative justice when making that decision;
- whether the delegee had acted within their competence or alternatively acted ultra vires;
- whether all statutory prescriptions had been complied with.

(3) The Appeals authority may allow new information to be submitted, but said submission should be limited to the scope of the initial decision.

(4) If the appellant however submits a revised proposal which amounts to a new application (especially with regard to planning matters) then the Appeals authority should advise said appellant that they should submit their new/revised application to the delegee for consideration as a new application.

(5) The Appeals authority must after the provisions (2) and (4) above had been complied with, hear the appeal with or without the hearing of viva voce evidence.

(6) The Appeals authority must ensure that decisions are made within the statutory framework.

(7) The Appeals authority should hear the appeals subject the provisions of section 62(4), of the "Systems Act" i.e. that the appeal should be considered without derogating from any rights which had previously vested.

(8) However if the original decision is revoked and replaced with a new decision which is similar to the competency of the original functionary.

## **7. REASONS FOR DECISIONS**

The Appeals authority should provide reasons for their decision to either confirm, vary or revoke a decision.

## **8. NOTICE OF THE APPEAL DECISION**

(1) The appellant and/or any interested party should be notified of the decision of the Appeals authority, by the Office of the Municipal Manager, within seven(7) days of the decision being made.

(2) If the appeal had not been successful then the appellant should be notified of any further rights to appeal(for example the right to appeal in terms of the Land Use Planning Ordinance) and should advised on any time periods applicable to such an appeal.

## **9. APPEALS RECEIVED CONTRARY TO STATUTORY PRESCRIPTIONS**

(1) Any appeal received after the prescribed twenty-one(21) days prescribed in terms of legislation, will not be considered by the Appeals authority.

(2) No provision for condonation for the hearing of late applications are allowed in terms of section 62.

## **10. DECISION WHICH ARE SUBJECT TO APPEALS**

No decision made in terms of statutory competencies may be appealed against in terms of section 62. This applies to all statutory decisions made by Council, a political office bearer or the Municipal Manager.