

CELLULAR MASTS POLICY

ITEM A-CPED (04-2013) CM 01/08/2013	CITY PLANNING AND ECONOMIC DEVELOPMENT: OVERSIGHT COMMITTEE REPORT ON THE NEW POLICY ON CELLULAR MASTS
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RESOLVED

1. **That** the contents of the report regarding the new Cellular Mast Policy, **BE NOTED**.
2. **That** the Policy for Cellular Masts attached to the report as **Annexure A BE APPROVED**.
3. **That** the Mobile Infrastructure Policy **BE RESCINDED**.
4. **That** the Department of City Planning and Economic Development **PLACE A MORATORIUM** on new applications until the Policy for Cellular Masts can be implemented.
5. **That** the Department of City Planning and Economic Development **SUBMIT** a report to the Oversight Committee on City Planning and Economic Development on the number of applications received which were not finalised on the approval of the Policy.
6. **That** the Head of Department: City Planning **ENSURE** that a departmental manual including administrative processes to handle cellular mast applications and guidelines to evaluate applications **BE PRODUCED** within three (3) months of approval of the Policy.
7. **That** the Department of City Planning and Economic Development **REPORT** to the Oversight Committee on City Planning and Economic Development when it is ready to implement the Policy.

ANNEXURE A**EKURHULENI METROPOLITAN MUNICIPALITY
CELLULAR MAST POLICY****PURPOSE**

The purpose is to develop a uniform policy for the erection and evaluation of cellular masts within the Ekurhuleni Metropolitan Municipality area of jurisdiction.

PROBLEM STATEMENT AND BACKGROUND

The current policy on Mobile Telecommunication Infrastructure was approved by Council under Item B-OP (6-2005) MC on 8 September 2005. At this time the Environmental Legislation prescribed that an EIA should be done for the erection of any of the mentioned infrastructure. With the change in the regulations of the National Environmental Management Act the EIA for all Telecommunication Infrastructure was done away with and EIA's are only necessary when the land on which a mast of more than 15m is to be erected, falls within an environmental sensitive area.

What this mainly took away from the process is the public participation part. Due to this, petitions and objections were received from the public on cellular masts that was installed without public participation. The new policy is thus needed to build in a process of public participation.

The main principle of the current policy is that cellular mast infrastructure is not seen as a land use and thus the policy was written in a manner that this infrastructure could be approved only with the EIA and a building plan. The new policy aim to keep these principles intact and therefore the reference to the environmental legislation have been updated and a procedure set in place to ensure public participation prior to approval of a building plan for the purpose of cellular masts. More detail on the evaluation and guidelines will be included in the departmental processes.

The applicant will therefore only have to submit a building plan in terms of the National Building Regulations and Building Standards Act 103 of 1977 which is the responsibility of the City Planning Department (Building Control Division) as well as proof that public participation has been undertaken.

Growth in the industry creates a need for more infrastructures on an on-going basis and therefore a policy is still needed.

3. OBJECTIVES AND DEFINITIONS

The objective of this policy is to ensure a fast and professional service to the industry and the community at large while at the same time ensuring that the community is informed of the applications for cellular masts in their area.

A list of commonly used terminology in the telecommunications industry is attached as **Annexure "A1"** in order to assist in the interpretation of concepts within this policy and also to assist the officials when dealing with submissions from the service providers.

4. SCOPE

- 4.1 This policy shall apply within the area of jurisdiction of Ekurhuleni Metropolitan Municipality.
- 4.2 It will apply to the erection of equipment and infrastructure relating to mobile telephones only (cellular masts).
- 4.3 This policy covers all types of cellular masts and relevant infrastructure.

5. ANALYSIS

5.1 Relevant Legislation

The erection of cellular masts is regulated by the following pieces of legislation:

5.1.1 National Environmental Management Act 107 of 1998

The Minister of Environmental Affairs on 5 September 1997, in terms of Section 21 of the abovementioned act, published a list, of activities, which in his opinion may have a substantial detrimental effect on the environment. Included in the list at that time were "structures associated with communication networks, other than telecommunication lines and cables, as well as access roads leading to these structures".

Cellular masts were therefore subject to an Environmental Impact Assessment, which had to be approved by the Department of Agriculture, Conservation and Environment, Gauteng Province. As part of the scoping report, public notification had to be given in respect of every application except cellular masts not exceeding 3m in height erected on top of existing buildings. Only after public response to the adverts has been received, the department decided whether a full EIA needed to be undertaken.

National Environmental Management Act, 1998 as well as the regulations as promulgated under Listing notice 3 in the Government Gazette on 18 June 2010. The purpose of Listing Notice 3 is ".....to list activities and identify competent authorities under sections 24(2), 24(5) and 240 of the National Environmental Management Act, 1998, where environmental authorization is required prior to commencement of that activity in specific identified geographical areas only."

Activity number 3 reads as follows:

"The construction of masts or towers of any material or type used for telecommunication broadcasting or radio transmission purposes where the mast:

- (a) is to be placed on a site not previously used for this purpose, and
 - (b) will exceed 15 meters in height
- But excluding attachments to existing buildings and masts on rooftops.

- (c) In Gauteng:
 - i. A protected area identified in terms of NEMPAA, excluding, conservancies;
 - ii. National Protected Area Expansion Strategy Focus areas
 - iii. Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;
 - iv. Sites or areas identified in terms of an International Convention;
 - v. Sites identified as irreplaceable or important sites in the Gauteng Conservation Plan;
Areas larger than 2 hectares zoned for use as public open space;
 - vii. Areas zoned for a conservation purpose"

Based on the above amendments an Environmental Impact Assessment for cellular masts will only be necessary when these sites falls within an environmental sensitive area and is higher than 15m.

5.1.2 National Building Regulations and Building Standards Act 103 of 1977

The abovementioned act regulates the erection of any building or structure on a national level.

In terms of the act, a building" is defined to include:

- (a) "any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in conjunction with.....
- (iii) the rendering of any service

The act regulates the submission and approval of building plans for any structure to be erected within a local authority area of jurisdiction. It requires the appointment of a Building Control Officer, who has to make recommendations to the local authority on whether a building plan should be approved or not.

Section 7 of the Act sets out the conditions in terms of which a local authority can either approve or refuse a building plan.

"7(1) If a local authority, having considered a recommendation referred to in section 6(1)(a) -

- (a) is satisfied that the application in question complies with the requirements of this Act and any other applicable law, it shall grant its approval in respect thereof;
- (b)(i) is not so satisfied; or is satisfied that the building to which the application in question relates —
 - (aa) is to be erected in such manner or will be of such nature or appearance that —

(aaa) the area in which it is to be erected will probably or in fact be disfigured thereby;

(bbb) it will probably or in fact be unsightly or objectionable;

(ccc) it will probably or in fact derogate from the value of adjoining or neighbouring properties;

(bb) will probably or in fact be dangerous to life or property;

Such local authority shall refuse to grant its approval in respect thereof and give written reasons for such refusal: Provided that the local authority shall grant or refuse, as the case may be, its approval in respect of any application, where the architectural area of the building to which the application relates is less than 500m², within a period of 30 days after receipt of the application and, where the architectural area of such building is 500m² or larger, within a period of 60 days after receipt of the application."

The question could be asked as to why the provisions of the Building Control Act should not apply to Eskom power line masts, Telkom microwave -towers, municipal water reservoirs, SpoorNet installations etc; The answer to this is the fact that all these utilities are creatures of stature and are in terms of Section 2 of the Building Control Act exempted from the provisions of the Act.

Based on the above legislation, the cellular mast infrastructure is subject to the process of building plan approval by the local authority.

5.1.3 Town Planning Schemes

A Town Planning Scheme has as its primary objective the control over the use of buildings and use of land. In other words it provides for a legislative framework which sets the parameters for development of land and the use of the buildings on land.

Town Planning Schemes do not however provide for inter alia outdoor advertising signage as this is governed in Ekurhuleni by the Outdoor Advertising Policy Revision 3. Schemes also are not used to regulate infrastructure installations for example electricity networks, water reticulation networks, sewerage systems, telecommunications networks managed by Telkom, gas distribution networks, etc. The provision of infrastructure, which provides the city with the necessary basic services in order for it to function, is not considered to be "land use" within the ambit of the town planning schemes. There are certain exceptions with large structures such as water reservoirs. It therefore makes sense in terms of the above argument to regard a cellular mast as infrastructure.

5.2 Conclusion

It can therefore be concluded that the introduction of a cellular mast network covering the whole city, to serve the users of cellular phones, must be considered as infrastructure. It is not a land use and therefore is not subject to the provisions of the various Town Planning Schemes.

Network providers and infrastructure providers will however have to abide by the provisions of both the Environmental Conservation Act 73 of 1989 (where applicable) and the National Building Regulations and Building Standards Act 103 of 1977.

6 PRINCIPLES

- 6.1 Adequate legislation exists in the form of the Environmental Conservation and the Building Regulations and Building Standards Acts to deal with cellular masts. It is not necessary to create another legislative level, i.e. by-laws, consent use or rezonings, to deal with a situation, which can easily be managed through the use of existing legislation.
- 6.2 Guidelines for the evaluation of cellular mast applications must be drafted as part of the departmental administrative procedures for this kind of applications in order to assist the Building Control Officer in his recommendation.
- 6.3 Departmental administrative procedures must also be developed in order to apply the provisions of Section 7(1) of the National Building Regulations and Building Standards Act 103 of 1977. This involves the canvassing of opinion from interested and affected parties which process should also form part of the departmental administrative procedures.
- 6.4 Process of canvassing the opinion of interested and affected parties must not be duplicated. If such a process was undertaken during the EIA procedure in cases where the mast is in a sensitive area, it need not be repeated during the building plan evaluation process.
- 6.5 In instances where the mast would be in a sensitive area, a record of decision from the Department of Agriculture, Conservation and Environment must precede the approval of building plans.
- 6.6 The policy must give due recognition to the importance of public participation as part of the application.
- 6.7 The policy must strike a balance between the responsibility of the applicant to submit a complete application as prescribed in the administrative manual and the obligations of the municipality to make a decision in the shortest time possible.

7. **ROLE CLARIFICATION**

Based on the purpose of this policy as well as the principles contained herein, it is important to clearly define the roles and responsibilities in order to enhance understanding and implementation of this policy by all affected parties. The proper execution of the respective roles and responsibilities will lead to the achievement of the objectives of this policy.

7.1 Telecommunications Industry or appointed Representative

- Submission of application

The applicant / developer shall submit a complete prescribed application together with the required documentation, fees and proof of public participation to the EMM. The EMM will not take in any incomplete

applications and will only consider applications that have all the required documentation. All documents required will be listed as part of the departmental administrative procedures.

Public participation

The following public participation must be embarked on by the applicant in cases where an Environmental Assessment is not necessary.

A Site notice informing the community that an application for the erection of cellular masts will be submitted to Council must be displayed on the premises for a period of 14 consecutive days. The notice should include an invitation to render objections to the Council and the applicant, if any.

Registered post to inform adjacent property owners that an application will be submitted simultaneously with the site notice. The letter should include an invitation to render objections to the Council and the applicant, if any.

Request for comments to the ward Councilor. If the Ward Councilor do not submit his/her comments, within the stipulated time period, it can be accepted, in terms of the Corporate Affairs Committee Resolution No. CL 63-2003, dated 10 February 2003 that he/she supports the application

Proof of all the above must form part of the application submitted to Council and is thus the responsibility of the applicant.

No additional public participation or advertising will be required in cases where an EIA must be submitted. Results of the public participation (EIA) must also be submitted as part of the application.

7.2 City Planning Department (Building Control Division)

Evaluation of the application

The Building Control Division forms part of the Department City Planning. In terms of this policy the need for any town planning process has been removed thus making the processing and implementation of cellular masts to lie only in the Building Control Division. This Division will be responsible for the approval of applications in terms of the Building Regulations and Buildings Standards Act 103 of 1977 as well as the Cellular Mast policy on the submission of the required documents.

Building Control Division will coordinate the processing of the building plans with all relevant departments and divisions signing off their part of the building plan. Furthermore, the said division shall ensure compliance with the requirements of this policy.

Should there be any objections to an application for cell mast due to public notification, the applicant will be given the opportunity to mitigate the objection through negotiations with the objector. If this cannot be achieved within a period of 14 days, the objection will be sent to the Development Tribunal to hear the objection and make a

recommendation to the Building Control Officer. The Building Control Officer will then handle the final approval of the Building Plan.

The Land Use Management Division will ensure that building line restrictions are adhered to when building plans get circulated. The building line restriction will be applicable to both the mast and the base station.

7.3 Environment Resource Management Department

Evaluation of the application

The department is the custodian of all environmentally related matters including the erection of cellular masts in environmentally sensitive areas and they will form part of the process including the evaluation of the building plans. They will also ensure environmental compliance with the applicable regulations.

8. IMPLEMENTATION

8.1 This policy will replace the existing policy.

8.2 All applications for cellular masts, base stations and related infrastructure submitted prior to the approval of this policy, will be finalised in terms of the relevant "old policy" in place when the application was submitted, taking into account the provisions and intentions of this policy. The EMM however reserves the right to insist on compliance with this new policy, in cases where it is of the opinion that non-compliance thereof, will adversely affect the environment.

8.3 Any upgrading of, or alterations or modifications to cellular antennae / masts shall be effected in compliance with the provisions of this policy.

8.4 All applications for cellular masts shall be lodged, evaluated and authorised by the City Planning Department: Building Control Division.

8.5 The City Planning Department: Building Control Division shall grant, consider and or request additional information on an application within a stipulated period, failing which the application shall be considered incomplete and therefore will not be evaluated.

9. CONCLUSION

Adequate legislation exists and is available as a legal basis in terms of which cellular mast applications can be considered. The main aim of the policy is to ensure public participation which is not covered by the relevant legislation. Provided the departmental guidelines are applied it will ensure an orderly process for the development of a cellular network within the boundaries of the Ekurhuleni Metropolitan Municipality.

ANNEXURE "AI"**DEFINITIONS**

(Definitions are provided to assist in the interpretation of aspects and understandings and are not an attempt to redefine existing definitions in existing legislation and policies. This is also not a complete list of all terminology relating to the telecommunications industry.

MOBILE TELECOMMUNICATIONS INFRASTRUCTURE" means, but is not limited to any one or more of the following:

- **"Cellular Base station site"** means any structure designed and used for the accommodation of equipment used in the transmitting or receiving of electronic communication signals and which is or is not physically connected to Cellular Masts on the site. This means all relevant related equipment associated with cellular telecommunication, and includes the cellular mast, as well as the equipment container, which houses all the radio equipment for transmission purposes, inclusive of Land.
- **"Cellular Masts"** means any form of mast or any other structure intended for the use to transmit or receive electronic communication signals intended for cellular handsets and may or may not include a base station. It also means any solid or lattice structure longer than 5.7 metres (mast pole, monopole guyed tower, lattice tower, free- standing tower or other structure) designed and primarily used to support antenna.
- **"Erection"** shall mean the initial erection and subsequent upgrading, alteration or modification of cellular masts.
- **"Antenna"** Means any system of wires, poles, rods or devices used to receive or transmit electromagnetic waves (antenna) and the associated feeder cables between the mobile telecommunications equipment (equipment) and the antenna. The antenna can be mounted directly on the equipment or attached to a building or any other antenna support structure.
- **"Equipment Room"** means a structure to house mobile telecommunications equipment associated with an antenna support structure and/or antenna. This can be a separate building used exclusively for the equipment or it can be a container or a room or rooms within a building with another predominant use
- **"Microwave Dish"** means any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shaped as a shallow dish, cone, horn or other, and is used to transmit and/or receive electromagnetic signals.
- **"Upgrade"** means requiring increasing the fenced area to cater for another user's equipment shelter.
- **"Extension"** means extending the height of an approved cellular mast.

Other terms used in mobile telecommunication infrastructure applications:

- **"Monopole"** means a pole type structure, with a landing platform or crow's nest. This could be made of steel or concrete with an internal or an external ladder access.
- **"Lattice Structure"** means a structure made up of multiple steel members that make up the legs and horizontal and diagonal sections. These steel members could be tubular or angular steel. This also comprises of either an internal or external crow's nest.
- **"Tree Structure"** means monopole disguised as a tree.

General terms and acronyms used in this policy:

- **"Council"** means the Ekurhuleni Metropolitan Municipality.
- **"EMM"** means Ekurhuleni Metropolitan Municipality.

- “**GDARD**” means the Gauteng Department of Agriculture and Rural Development or its successor.
- “**Environmental Conservation Act**” means the Environmental Conservation Act, No73 of 1989.
- “**CAA**” means Civil aviation Authority
- “**Service Provider**” means Vodacom, MTN, Cell C and other operators.