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DEPARTMENT OF TRANSPORT**KWAZULU-NATAL PROVINCIAL ROADS REGULATIONS, 2006**

I hereby make the Regulations contained in the Schedule hereto in terms of section 44 of the KwaZulu-Natal Provincial Roads Act, 2001 (Act No. 4 of 2001), in order to regulate the provincial roads network.

Given under my hand at Pietermaritzburg on this 31st day of October, Two Thousand and Six.

B. H. CELE

Member of the Executive Council of the Province of KwaZulu-Natal
responsible for transport

SCHEDULE**Definitions**

1. In these Regulations, “the Act” means the KwaZulu-Natal Provincial Roads Act, 2001 (Act No. 4 of 2001), and any word or expression to which a meaning is assigned in the Act bears the meaning so assigned to it, and, unless the context otherwise indicates —

“**gate**” means any gate, grid gate, boom or similar structure constructed on, across or adjacent to a provincial road or boundary fence, which is intended to control the entry or exit of people, animals or vehicles;

“**municipality**” means a municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000), and “**municipalities**” has a corresponding meaning;

“**person**” means a natural or juristic person;

“**stormwater**” means surface water run-off specifically generated by rainfall or snow;

“**subdivision**” means the division of a registered immovable property into two or more portions which are or could be registered in a Deeds Registry as separate entities, and also includes any consolidation of land; and

“**watercourse**” means any natural land formation which conveys surface water or an artificial structure constructed for the purpose of conveying surface water.

Declaration and de-declaration of provincial roads

2.(1) The Minister must consider the following criteria in the declaration or de-declaration of a provincial road —

- (a) the function or usage of the provincial road;
- (b) the location and positioning of the provincial road;
- (c) road and traffic safety considerations;

- (d) environmental impact;
 - (e) proof of consultation with affected parties;
 - (f) where relevant, promotion of economic growth and sustainable development; and
 - (g) any other relevant factor.
- (2) The Minister must make available to a member of the public, on written request and payment of the prescribed fee, the standards and requirements applied to make a determination in terms of the criteria in sub-regulation (1).
- (3) The requirements for a main road must include the following —
- (a) a road reserve width of a minimum of 30 metres or less than 30 metres where physical constraints prevent the full road reserve width of 30 metres; and
 - (b) substantial compliance with assessment criteria in terms of sub-regulation (1).
- (4) The Minister must give each main road a “P” prefix and a unique identification number.
- (5) The requirements for a district road must include the following —
- (a) a road reserve width of a minimum of 20 metres, or less than 20 metres where physical constraints prevent the full road reserve width of 20 metres; and
 - (b) substantial compliance with assessment criteria in terms of sub-regulation (1).
- (6) The Minister must give each district road a “D” prefix and a unique identification number.
- (7) The requirements for a local road must include the following —
- (a) a road reserve width of a minimum of 10 metres, with the width not exceeding 20 metres, where the absence of physical constraints facilitates a wider width; and
 - (b) substantial compliance with assessment criteria in terms of sub-regulation (1).
- (8) The Minister must give each local road an “L” prefix and a unique identification number.
- (9) The Minister may identify a road or proposed road within the Province to be declared or de-declared.
- (10) Notwithstanding sub-regulation (9), a person or municipality may identify a road or proposed road to be declared or de-declared by the Minister and submit a signed application in terms of regulation 17(1) requesting the declaration or de-declaration.
- (11) Where the Minister in terms of sub-regulation (9) has identified the need, or a person or municipality has submitted an application in terms of sub-regulation (10), for the declaration or de-declaration of a provincial road and the identified road or proposed road meets assessment criteria specified in sub-regulation (1) —
- (a) the Minister must submit a notice of intent to declare or de-declare a provincial road, including a physical description of the identified road or proposed road, to the municipality in which the identified road or proposed road is located;
 - (b) if the municipality in which the identified road or proposed road is located has an objection to the declaration or de-declaration of the identified road or proposed road, the relevant municipality may submit its objection in writing to the Minister within 30 calendar days of the date of the notice of intent;
 - (c) if a written objection is submitted to the Minister in terms of paragraph (b), the Minister must consult with the relevant municipality on the declaration or de-declaration of the identified road or proposed road;
 - (d) if the municipality in which the identified road or proposed road is located fails to respond within 30 calendar days of the date of the notice of intent, the Minister may assume that there is no objection by the municipality to the declaration or de-declaration of the provincial road;
 - (e) after consultation in terms of paragraph (c) with the municipality in which the identified road or proposed road is located, or the failure of a municipality to respond in terms of paragraph (d), the Minister must publish a notice in the *Gazette* of intent to declare or de-declare the provincial road, with a physical description of the identified road or proposed road;
 - (f) if a person objects in writing, within 21 calendar days of publication in terms of paragraph (e), to the declaration or de-declaration of a provincial road, the Minister must respond in writing to the objection within 30 calendar days of receipt of the objection;
 - (g) after consideration of any written objection submitted in terms of paragraph (f), the Minister must determine whether to declare or de-declare the provincial road; and
 - (h) if there is a written objection in terms of paragraph (f) and the Minister makes a determination in terms of paragraph (g) to declare or de-declare an identified road or proposed road, the Minister must, no earlier than 30 calendar days after publication of the notice of intent in terms of paragraph (e), publish a notice in the *Gazette* to declare or de-declare the provincial road, with a physical description of the identified road or proposed road, including the approximate route of the road.
- (12) Where a road or proposed road is not declared or de-declared a provincial road by the Minister within three years from the date of the assessment in terms of sub-regulation (1), the road or proposed road must be reassessed prior to being declared or de-declared by the Minister.
- (13) The Minister must, where an application submitted in terms of sub-regulation (10) has been authorised, advise the applicant —
- (a) of any conditions relevant to the declaration or de-declaration of a provincial road;
 - (b) of the number of the new provincial road; and
 - (c) that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law.
- (14) The Minister must, where an application submitted in terms of sub-regulation (10) has not been authorised, advise the applicant in writing —
- (a) that the identified road or proposed road failed to meet assessment criteria in terms of sub-regulation (1) for provincial road status;
 - (b) of the reasons why assessment criteria were not met; and
 - (c) that the identified road or proposed road was assessed in terms of sub-regulation (1) and a copy of the assessment is available to the applicant on written request.
- (15) If a provincial road fails to meet assessment requirements in terms of sub-regulation (1), the Minister —
- (a) may initiate de-declaration of the provincial road and take any other appropriate steps with regard to the road;
 - (b) must, where the Minister authorises de-declaration of the provincial road in terms of paragraph (a), follow the procedure for de-declaration in sub-regulation (11); and
 - (c) may take any other appropriate action.

Access to main roads and district roads

- 3.(1) The Minister must consider the following criteria in the determination of a new access, change in use, an upgrade, or a closure of an existing access to a main road or district road —

- (a) the standard, type of access and level of service required for access to a main road or district road;
 - (b) any change of land or building use, including but not limited to the function or potential usage of the access and type and size of vehicles used on the access;
 - (c) any subdivision or development of land;
 - (d) any change of use of an existing access;
 - (e) the location and positioning of the access, taking into account public and traffic safety, road safety risks and traffic flow;
 - (f) the number of existing accesses in the immediate vicinity of the affected property;
 - (g) stormwater control;
 - (h) environmental impact;
 - (i) where relevant, promotion of economic growth and sustainable development; and
 - (j) any other relevant factor.
- (2) The Minister must make available to the public, on written request and payment of the prescribed fee, the standards and requirements applied to make a determination in terms of the criteria in sub-regulation (1).
- (3) The Minister may identify the need to construct a new access, change the use, upgrade or close an existing access to a main road or a district road.
- (4) Notwithstanding sub-regulation (3), a person or municipality must, from the date of this regulation coming into effect, submit an application in terms of regulation 17(1) signed by the owner of the land on which any proposed new access or identified access is located, requesting written authorisation from the Minister when any of the following activities is contemplated —
- (a) construction of a new access to a main or district road;
 - (b) any change of land or building use, including but not limited to the function or potential usage of the access and type and size of vehicles used on the access;
 - (c) change of an existing use of the access;
 - (d) rezoning, development or extension of existing development;
 - (e) subdivision of land;
 - (f) where the owner of land on which an access has been constructed contemplates altering, upgrading or closing the access; or
 - (g) where the owner of the land on which an access was constructed before this regulation came into effect has been advised that the access is not in compliance with this regulation.
- (5) Where the Minister in terms of sub-regulation (3) has identified the need for a new access, change in use, upgrade or closure of an existing access, or a person or municipality has submitted an application in terms of sub-regulation (4), the Minister must assess the need in terms of criteria specified in terms of sub-regulation (1).
- (6) Where —
- (a) an application submitted in terms of sub-regulation (4) meets assessment criteria in terms of sub-regulation (1), the Minister must grant written authorisation for the new access, change in use, upgrade or closure of an existing access; and
 - (b) the new access or change in use or upgrade of an existing access is not constructed or the existing access is not closed within 18 months from the date of written authorisation in terms of paragraph (a) or at the end of the period authorised in sub-regulation (7)(b), whichever is less, or the access presents a safety hazard, the Minister's written authorisation lapses and a new application must be submitted.
- (7) The Minister must, where an application submitted in terms of sub-regulation (4) has been authorised, advise the applicant in writing —
- (a) of any conditions relevant to the construction of the new access, change in use, upgrade or closure of the existing access;
 - (b) of the period of validity of the authorisation of the application, which period may not exceed 18 months; and
 - (c) (i) that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law; or
 - (ii) of the de-registration of the access which is to be closed in terms of the Minister's authorisation.
- (8) The Minister must, where an application submitted in terms of sub-regulation (4) has not been authorised, advise the applicant in writing —
- (a) that the application failed to meet assessment criteria in terms of sub-regulation (1); and
 - (b) of the reasons why assessment criteria were not met.
- (9) The person or municipality authorised in terms of sub-regulation (7) must, prior to taking any action, notify the Minister in writing of the anticipated construction of the new access or change in use, upgrade or closure of the access.
- (10) The Minister must register a newly authorised access and issue a unique registration number to the owner of the land on which the access is located.
- (11) If an application for change in use of or upgrade to an existing access fails to meet assessment criteria specified in terms of sub-regulation (1) or the owner fails to maintain the access, the Minister may de-register and close the existing access, with the owner liable for the costs, as specified by the Minister, to close the access and restore the main or district road to its original condition.
- (12) Where the Minister has, in terms of sub-regulation (3), identified the need for the construction of a new access or the change of use or upgrading of an existing access —
- (a) the Minister is responsible for the initial construction costs; and
 - (b) the owner whose property is served by the access, is responsible for maintenance of the access and any other costs after the initial construction is completed.
- (13) The owner whose property is served by the access is liable for all construction, maintenance and any other costs of a new access or change of use or upgrade of an existing access authorised in terms of sub-regulation (7).
- (14) A person may use a new access or change in use or upgrade of any existing access where —
- (a) the Minister has granted temporary written authorisation to use an access under construction, including any terms and conditions related to the access; or
 - (b) the owner has obtained written authorisation from the Minister, which authorisation must state that the access has been constructed in the manner prescribed by the Minister, the unique registration number of the access and any terms and conditions related to the access.
- (15) If an owner of land on which an access is located contravenes or fails to comply with any provision of this regulation, or any condition imposed by the Minister, or fails to meet prescribed standards, the Minister may issue a warning, giving the owner a specified period of time within which to rectify the owner's contravention or failure to comply with this regulation.
- (16) Where the owner of land fails to comply with the rectification provisions of the warning issued in terms of sub-regulation (15), the —
- (a) owner is liable for all costs incurred by the Minister in restoring the provincial road to its original condition; and

- (b) Minister may order that the access be closed, with the owner liable for all costs associated with the closure of the access.
- (17) The Minister may repair any damage caused by the failure of an owner to maintain an access and the owner is liable for repairs and all costs related thereto.
- (18) The Minister may close an access where the owner fails to maintain the access, with the owner liable for all costs to close the access.
- (19) A person may not —
- (a) construct a new access, or upgrade an existing access, without complying with this regulation;
 - (b) fail to maintain an access authorised in terms of this regulation;
 - (c) fail to comply with the rectification provisions of any warning issued in terms of sub-regulation (15);
 - (d) fail to close an access in terms of this regulation; or
 - (e) close an access without complying with this regulation.

Public right of way

- 4.(1)(a) A register of public rights of way must be maintained by the Department or by a municipality on behalf of the Department.
- (b) The Minister must enter into an agreement with a municipality, for it to be authorised to maintain a register of public rights of way in terms of paragraph (a).
- (2) A municipality which has maintained a register of public rights of way at the time of the coming into effect of this regulation must continue to maintain the register and within 18 months of the coming into effect of this regulation, enter into an agreement as contemplated in sub-regulation (1)(b).
- (3) The Minister or a municipality, as the case may be, must enter each public right of way, together with a diagram, into the relevant public rights of way register and provide a registration number, including property, lot and erf description, for the public right of way.
- (4) The Minister or a municipality, as the case may be, must consider the following criteria in the registration or de-registration of a public right of way —
- (a) whether an existing public right of way is a municipal road;
 - (b) whether an existing public right of way constitutes a reasonable means of entering and exiting from land;
 - (c) the length of time a public right of way has been used and its existing or previous use;
 - (d) any change of land or building use which could create the need for a public right-of-way;
 - (e) any change of use of an existing public right of way;
 - (f) the standard, type and level of service required;
 - (g) the location, positioning and proximity of a proposed public right of way to be registered in relation to any other public right of way;
 - (h) the location, positioning and proximity of a public right of way to be de-registered in relation to any other public right of way;
 - (i) road and traffic safety considerations;
 - (j) environmental impact;
 - (k) proof of consultation with affected parties, including but not limited to consultation with community structures addressing road and public transportation issues;
 - (l) where relevant, promotion of economic growth and sustainable development; and
 - (m) any other relevant factor.
- (5) The Minister or a municipality may of his or her or its own accord identify the need to register or de-register a public right of way.
- (6) A person or municipality may submit an application in terms of regulation 17(1) signed by the owner of the land on which an existing or proposed public right of way is located, requesting the Minister or a municipality, as the case may be, to register or de-register a public right of way.
- (7) Where the Minister or a municipality, in terms of sub-regulation (5), has identified the need to register or de-register a public right of way or a person or municipality has submitted an application in terms of sub-regulation (6), the Minister or the municipality —
- (a) must assess the application in terms of the public right of way criteria specified in sub-regulation (4);
 - (b) must submit a notice of intent to register or de-register the public right of way, including a physical description of the public right of way, to the owner of the land on which the public right of way is located, the relevant municipality and any interested party known to the Minister or the municipality;
 - (c) must, if the owner of the land on which the public right of way is located objects to the registration or de-registration of the public right of way within 30 calendar days of the date of the notice of intent, consider the objection and consult with the owner, municipality and any interested party known to the Minister or the municipality on the registration or de-registration of the public right of way;
 - (d) must advertise the public right of way in local newspapers;
 - (e) may, if the owner of the land, relevant municipality or other interested party in which the public right of way is located fails to respond within 30 calendar days after submitting the notice of intent required in terms of paragraph (b) and fails to respond within 21 calendar days after advertising in local newspapers in terms of paragraph (d), assume that there is no objection by the owner of the land, municipality or other interested party to the registration or de-registration of the public right of way; and
 - (f) must where there is a written objection after compliance with paragraph (e) —
 - (i) consider the written objection;
 - (ii) consult with the owner of the land, relevant municipality and any interested party known to the Minister or the municipality; and
 - (iii) after consultation in terms of subparagraph (ii), determine whether the proposed public right of way should be registered or the identified public right of way should be de-registered.
- (8) If the Minister or a municipality makes a determination to register or de-register a public right of way, the Minister or the municipality must —
- (a) to register a public right of way —
 - (i) enter the public right of way, together with a diagram specifying the route of the public right of way, into the applicable public rights of way register and provide a registration number, including property, lot and erf description, for the public right of way;
 - (ii) state who will be responsible for construction, maintenance and fencing, if any, of the public right of way;
 - (iii) state the type, standard, width and usage of the public right of way; and
 - (iv) where an applicant has submitted an application in terms of sub-regulation (6), notify the applicant that the public right of way will be registered and that the registration fee must be paid; or
 - (b) to de-register a right of way —

- (i) de-register the identified public right of way; and
 - (ii) notify the applicant that the identified public right of way has been de-registered and give written reasons for the decision.
- (9) The authorisation for registration of a public right of way in terms of sub-regulation (8)(a) lapses if —
- (a) the applicant fails to pay the required registration fee; or
 - (b) the public right of way is not constructed within 18 months from the date of notification.
- (10) Where a public right of way lapses in terms of sub-regulation (9)(b) —
- (a) the Minister or a municipality must de-register the public right of way; and
 - (b) a new application must be submitted and approved in terms of this regulation prior to the construction of any public right of way.
- (11) The Minister or a municipality must, where a public right of way is authorised in terms of this regulation, advise the applicant in writing —
- (a) of any conditions relevant to the registration of the public right of way, including but not limited to requirements to —
 - (i) pay the required fee to register the public right of way;
 - (ii) pay the required registration fee to register the public right of way with the relevant deeds registry; and
 - (iii) construct, maintain and, where required, fence the public right of way;
 - (b) of the registration number of the public right of way;
 - (c) that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law; and
 - (d) as to who will be liable for all costs for and maintenance of a public right of way authorised in terms of this regulation.
- (12) The Minister or municipality must, where an application submitted in terms of sub-regulation (6) has not been authorised, advise the applicant —
- (a) that the application failed to meet assessment criteria in terms of sub-regulation (4); and
 - (b) of the reasons why assessment criteria were not met.
- (13) A diagram of any registered public right of way must be available with the registration of the public right of way in the Department's Head Office and the regional office responsible for the public right of way or in the offices of the relevant municipality.
- (14) A person may use a new public right of way where the Minister has —
- (a) granted temporary written authorisation for the public right of way; or
 - (b) registered the public right of way.
- (15) The Minister or the relevant municipality may issue a warning, giving the person specified in sub-regulation (11)(a) a specified period of time in which to rectify a contravention or failure to comply with this regulation where the person —
- (a) contravenes or fails to comply with any provision of this regulation; or
 - (b) fails to meet any condition imposed by the Minister or the relevant municipality for the construction, maintenance and fencing, if any, of a public right of way.
- (16) Where the person specified in sub-regulation (11)(a) fails to comply with the rectification provisions of the warning issued in terms of sub-regulation (15), the —
- (a) person is liable for all costs incurred by the Minister or the relevant municipality to construct, maintain or fence the public right of way; and
 - (b) Minister or the relevant municipality may order that the public right of way be closed, with the person liable for all costs incurred to close the public right of way.
- (17) If a person wishes to alter an authorised public right of way, he or she must reapply in terms of sub-regulation (6) for any change to the public right of way.
- (18) Where the Minister or a municipality learns that an unauthorised public right of way is in use, the Minister or relevant municipality may assess the public right of way in terms of this regulation and either register the public right of way or cause it to be closed.
- (19) Where a person specified in sub-regulation (11)(d) fails to maintain a public right of way, the Minister or relevant municipality may —
- (a) close the public right of way, with the person failing to maintain the public right of way responsible for all costs to close the public right of way; or
 - (b) repair any damage caused by the failure to maintain the public right of way, with the person failing to maintain the public right of way liable to the Minister or relevant municipality for all costs for repairs.
- (20) The Minister or relevant municipality may investigate any damage to a public right of way, including fencing, if any.
- (21) A person who is found to be responsible for damage to a public right of way, including fencing, if any, is liable for all costs for repairs.
- (22) A person may not —
- (a) construct or upgrade a public right of way without complying with this regulation;
 - (b) fail to maintain a public right of way authorised in terms of this regulation;
 - (c) fail to comply with the rectification provisions of the warning issued in terms of sub-regulation (15);
 - (d) fail to close a public right of way in terms of this regulation; or
 - (e) close a public right of way without complying with this regulation.

Control of stormwater and watercourses on provincial roads

5.(1) The Minister must consider the following criteria in any action in terms of sections 12(1) or 12(2)(a) and (b) of the Act —

- (a) any change in land use or land contouring on property adjacent to a provincial road;
- (b) any subdivision or development of land;
- (c) any building or structures on the land;
- (d) the probability of flooding or damage to a provincial road;
- (e) the construction of any structure such as a dam or weir, where the water level in a river, stream or watercourse will cause interference with a provincial road or any bridge, drift, culvert, pipe, or embankment of a provincial road;
- (f) environmental impact; and
- (g) any other relevant factor which would have an adverse impact on a provincial road.

- (2) The Minister must make available to a member of the public on written request and payment of the prescribed fee, the standard and requirements applied to make a determined in terms of the criteria in sub-regulation (1).
- (3) Prior to taking action in terms of section 12(1) of the Act, a person or municipality must —
- (a) submit a written application as prescribed in regulation 17(1); and
 - (b) have the application countersigned by the landowner.
- (4) Where a person or municipality has submitted an application in terms of sub-regulation (3), the Minister must assess the need in terms of criteria specified in terms of sub-regulation (1).
- (5) Where —
- (a) an application submitted in terms of sub-regulation (3) meets assessment criteria in terms of sub-regulation (1), the Minister may grant written authorisation: and
 - (b) action is not taken within 18 months from the date of written authorisation in terms of paragraph (a) or at the end of the period authorised in sub-regulation (6)(b), whichever is less, the Minister's written authorisation lapses and a new application must be submitted.
- (6) The Minister must, where an application submitted in terms of sub-regulation (3) has been authorised in terms of sub-regulation (5)(a), advise the applicant in writing —
- (a) of any conditions relevant to the protection of the provincial road from water damage;
 - (b) of the period of validity of the authorisation of the application to take action to protect the provincial road from water damage, which period may not exceed 18 months; and
 - (c) that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law.
- (7) The Minister must, where an application submitted in terms of sub-regulation (3) has not been authorised, advise the applicant in writing —
- (a) that the application failed to meet assessment criteria in terms of sub-regulation (1); and
 - (b) of the reasons why assessment criteria were not met.
- (8) A person or municipality authorised in terms of sub-regulation (5)(a) must, prior to taking any action, notify the Minister in writing of the anticipated construction to —
- (a) lead water over, under or across a provincial road; or
 - (b) raise or lower the level of water in any river, dam or watercourse that may interfere with or endanger any provincial road or any bridge, culvert, drift, or other thing forming part of, connected with or belonging to a provincial road.
- (9) The owner of land adjacent to a provincial road is liable for all costs where action is taken —
- (a) leads water over, under or across a provincial road; or
 - (b) raises or lower the level of water in any river, dam or watercourse to prevent interference with or endangerment of any provincial road or any bridge, culvert, drift, or other thing forming part of, connected with or belonging to a provincial road.
- (10) If an owner of land adjacent to a provincial road contravenes or fails to comply with any provision of this regulation, or any condition imposed by the Minister, or fails to meet prescribed standards for the protection of a provincial road from water damage, the Minister may issue a warning giving the owner a specified period of time in which to rectify the owner's contravention or failure to comply with this regulation.
- (11) Where the owner of land fails to comply with the rectification provisions of the warning issued in terms of sub-regulation (10), the —
- (a) owner of the land adjacent to a provincial road is liable for all costs where the owner knew or had reason to know that the owner's failure to take action would damage the provincial road or any bridge, culvert, drift or other thing forming part of, connected with or belonging to a provincial road; and
 - (b) Minister may order that the provincial road be closed temporarily, with the owner liable for all costs incurred by the Minister to rectify any damage caused by the owner's failure to protect the provincial road from water damage and restore the provincial road to an acceptable condition.
- (12) A person may not —
- (a) lead water over, under or across a provincial road without complying with this regulation;
 - (b) raise or lower the level of water in any river, dam or watercourse to prevent interference with or endangerment of any provincial road or any bridge, culvert, drift, or other thing forming part of, connected with or belonging to a provincial road without complying with this regulation;
 - (c) deviate any watercourse, stream or river without complying with this regulation;
 - (d) divert stormwater from or under any provincial road onto private property without complying with this regulation;
 - (e) fail to maintain or control any watercourse, stream or river or to divert stormwater to prevent water damage to a provincial road; or
 - (f) fail to comply with the rectification provisions of the warning issued in terms of sub-regulation (10).

Structures adjacent to or on provincial roads

6.(1) The Minister must consider the following criteria before granting permission to erect, lay, establish or alter any structure, or permit the erection, laying, establishment or alteration of any structure, excluding fencing erected by the Department in terms of regulation 7, on, over or below the surface of a provincial road so as to encroach on a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road —

- (a) any change of land or building use;
 - (b) any subdivision or development of land;
 - (c) the function or potential usage of the structure, erection or improvement, aboveground or underground, including but not limited to utility services and all structures related thereto;
 - (d) the location and positioning of the structure;
 - (e) road construction, maintenance and traffic safety considerations;
 - (f) stormwater control onto the main road or district road;
 - (g) environmental impact;
 - (h) where relevant, promotion of economic growth and sustainable development; and
 - (i) any other relevant factor which would have an adverse impact on the integrity of a provincial road.
- (2) The Minister must make available to the public on written request and payment of the prescribed fee, the standard and requirements applied to make a determination in terms of the criteria in sub-regulation (1).

- (3) The Minister may identify a need to erect, lay, establish or alter any structure on, over or below the surface of a provincial road which encroaches on a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road.
- (4) A person or municipality contemplating any of the actions hereunder must obtain written authority from the Minister, submitting an application form in terms of regulation 17(1) when any of the following activities is contemplated —
- (a) erecting, laying, establishing or altering any structure on, over or below the surface of a provincial road which encroaches on a provincial road;
 - (b) erecting, laying, establishing or altering any structure in a building restriction area within 15 metres of the boundary of a main road or district road; or
 - (c) undertaking any activity with respect to a structure which may impact adversely on a provincial road, or have a direct effect on the integrity of a provincial road.
- (5) Where the Minister has identified a need in terms of sub-regulation (3) or a person or a municipality has submitted an application in terms of sub-regulation (4), the Minister must assess the need to protect the provincial road from damage in terms of criteria specified in sub-regulation (1) and take appropriate action.
- (6) Where —
- (a) an application submitted in terms of sub-regulation (4) meets assessment criteria in terms of sub-regulation (1), the Minister may grant written authorisation to erect, lay, establish or alter any structure which encroaches on a provincial road, or is within 15 metres of the boundary of a main road or district road; and
 - (b) action is not taken within 18 months from the date of written authorisation in terms of paragraph (a) or at the end of the period authorised in sub-regulation (7)(b), whichever is less, the Minister's written authorisation lapses and a new application must be submitted.
- (7) The Minister must, where an application submitted in terms of sub-regulation (4) has been authorised in terms of sub-regulation (6)(a), advise the applicant —
- (a) of any conditions relevant to protect the provincial road from damage;
 - (b) of the period of validity of the authorisation of the application to take action to erect, lay, establish or alter any structure on, over or below a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road, which period may not exceed 18 months; and
 - (c) that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law.
- (8) The Minister must, where an application submitted in terms of sub-regulation (4) has not been authorised, advise the applicant in writing —
- (a) that the application failed to meet assessment criteria in terms of sub-regulation (1);
 - (b) of the reasons why assessment criteria were not met; and
 - (c) that the application was assessed in terms of sub-regulation (1) and a copy of the assessment is available to the applicant on written request.
- (9) A person or municipality authorised in terms of sub-regulation (6)(a) must, prior to taking any action, notify the Minister in writing of the anticipated construction of a structure adjacent to or on a provincial road, or within 15 metres of the boundary of a main road or district road.
- (10) If an application fails to meet assessment requirements in terms of sub-regulation (1) and a person or municipality has erected a structure in contravention of this regulation, the Minister may remove the structure or undertake any required repairs or maintenance to ensure the integrity of the provincial road.
- (11) A person or municipality who erects, lays, establishes or alters a structure on land adjacent to or on a provincial road or within 15 metres of the boundary of a main or district road, without prior written authorisation in terms of sub-regulation (6)(a), is liable for the cost of restoring the provincial road to its original condition.
- (12) Where the Minister has, in terms of sub-regulation (3), identified a need, the Minister is responsible for the initial construction costs, maintenance and any other costs, except where there is an encroachment agreement.
- (13) A successful applicant in terms of sub-regulation (6)(a) is liable for all costs to erect, lay, establish or alter any structure and maintain or permit the erection, laying, establishment or alteration of any structure on, over or below the surface of a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road.
- (14) A person may use a structure on, over or below the surface of a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road where the Minister has granted —
- (a) temporary written authorisation in terms of sub-regulation (6)(a) for the use of the structure; or
 - (b) written authorisation certifying compliance with engineering standards specified from time to time by the Minister to ensure the integrity of the provincial road.
- (15) If a person or municipality erects, lays, establishes or alters a structure or permits the erection, laying, establishment or alteration of a structure on, over or below the surface of a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road, in contravention of this regulation, or otherwise fails to comply with any provision of this regulation or any condition imposed by the Minister, the Minister may issue a warning giving the person or municipality a specified period of time in which to rectify the person's or municipality's contravention or failure to comply with this regulation.
- (16) Where a person or municipality fails to comply with the rectification provisions of a warning issued in terms of sub-regulation (15), the person or municipality is liable for all costs of restoring the provincial road to its original condition, including but not limited to the removal, demolishing and disposal of all materials related to the structure.
- (17) A person or municipality responsible for an unauthorised structure on, over or below the surface of a provincial road which encroaches on a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road, must apply in terms of sub-regulation (4) within 30 calendar days of being formally notified that the structure is not in compliance with criteria established in terms of this regulation.
- (18) If a person or municipality fails to obtain authorisation for a structure in terms of sub-regulation (6)(a) or (14), the person or municipality must remove or relocate the structure.
- (19) If a person or municipality fails to remove or relocate a structure in terms of sub-regulation (18), the —
- (a) Minister may remove or relocate the structure; and
 - (b) person or municipality is liable for all costs incurred by the Minister to —
 - (i) remove or relocate the structure; and
 - (ii) restore the provincial road to its original condition.
- (20) The Minister may identify a need to remove or relocate a structure adjacent to or on a provincial road and may remove or relocate the structure.
- (21) A person or municipality contemplating the removal or relocation of a structure must apply in terms of sub-regulation (4).

- (22) A person or municipality which receives authorisation to remove or relocate a structure is liable for all costs to remove or relocate the structure and restore the provincial road to its original condition.
- (23) The Minister may repair any damage caused by the failure of a person or responsible authority to maintain a structure and the person or municipality is liable for repairs and all costs to restore the provincial road to its original condition.
- (24) The Minister may remove or relocate a structure which is not maintained in terms of sub-regulation (13) and the Minister may recover all costs for the removal or relocation of the structure.
- (25) A person may not —
- erect, lay, establish or alter a structure on, over or below the surface of a provincial road which encroaches on a provincial road, or in a building restriction area within 15 metres of the boundary of a main road or district road, without complying with this regulation;
 - fail to comply with the rectification provisions of a warning issued in terms of sub-regulation (15); or
 - fail to remove a structure in terms of sub-regulation (16) or (18).

Fencing on provincial roads

- 7.(1) The Minister may erect fencing adjacent to any provincial road or, in the Minister's sole discretion, financially assist a person or municipality with erecting or repairing fencing.
- (2) The Minister must consider the following criteria in authorising the erection, replacement or the removal of fencing adjacent to a provincial road —
- demarkation of the boundary of a provincial road reserve;
 - access control to a provincial road;
 - preventing animals from entering a provincial road reserve;
 - preventing encroachment on a provincial road;
 - road and traffic safety considerations;
 - any other relevant factor which would have an adverse impact on a provincial road; and
 - subject to the availability of funds appropriated by the KwaZulu-Natal Provincial Legislature for fencing.
- (3) The Minister must make available to a member of the public on written request to the Minister and payment of the prescribed fee, the standard and requirements the applied to make a determination in terms of the criteria in sub-regulation (2).
- (4) The Minister may, in terms of criteria specified in sub-regulation (2), identify the need to —
- erect a fence along the boundary of a road reserve of unfenced sections of a provincial road at the time of construction or completion of construction of the provincial road;
 - erect, maintain or replace fences on the boundary of the road reserve of a provincial road; or
 - remove a fence along the boundary of a provincial road.
- (5) When seeking a contribution in terms of section 14(3) of the Act, a person or municipality, including but not limited to the owner of property adjacent to a provincial road, must submit an application to erect, replace or remove fencing adjacent to a provincial road prior to taking any action.
- (6) An application submitted in terms of sub-regulation (5) must be signed by the owner of property adjacent to a provincial road.
- (7) Where the Minister in terms of sub-regulation (4) has identified the need to erect, replace or remove fencing along the boundary of a provincial road, or a person or municipality, including but not limited to the owner, has submitted an application in terms of sub-regulation (5), the Minister must assess the need to erect, replace or remove a fence in terms of sub-regulation (2).
- (8) Where —
- an application submitted in terms of sub-regulation (5) meets assessment criteria in terms of sub-regulation (2), the Minister may grant written authorisation to erect, replace or remove the fence along the boundary of a provincial road; and
 - if action is not taken within 18 months from the date of written authorisation in terms of paragraph (a) or at the end of the period authorised in sub-regulation (9)(c), whichever is less, the Minister's written authorisation lapses and a new application must be submitted.
- (9) The Minister must, where an application submitted in terms of sub-regulation (5) has been authorised in terms of sub-regulation (8)(a), advise the applicant in writing —
- of any relevant conditions, including but not limited to conditions specifying —
 - what section of the provincial road may or may not be fenced;
 - that the owner of property adjacent to the provincial road is responsible for all costs related to erecting or removing a fence;
 - that instead of fencing, road reserve markers may be erected on the boundary of the road reserve by the Minister and must not be removed; and
 - that the adjacent land owner indemnifies the Minister against any harm of whatsoever nature arising out of the fencing, failure to fence, failure to maintain a fence or removal of fencing on property adjacent to the provincial road;
 - that the adjacent landowner must comply with this regulation;
 - of the period of validity of the authorisation of the application to erect, replace or remove a fence along the boundary of a provincial road, which period may not exceed 18 months; and
 - that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law.
- (10) The Minister must, where an application submitted in terms of sub-regulation (5) has not been authorised, advise the applicant in writing —
- that the application failed to meet assessment criteria in terms of sub-regulation (2); and
 - of the reasons why assessment criteria were not met.
- (11) A person or municipality authorised in terms of sub-regulation (8)(a) must, prior to taking any action, notify the Minister in writing of the anticipated erection, replacement or removal of fencing.
- (12) If an application fails to meet assessment requirements in terms of sub-regulation (2) and a person or municipality has erected, replaced or removed fencing in contravention of this regulation, the Minister may erect, replace or remove the fencing and undertake any required repairs or maintenance to ensure the integrity of the provincial road, with the person or municipality liable for the cost of restoring the provincial road to its original condition.
- (13) Where the Minister in terms of sub-regulation (4) has identified the need to erect, replace or remove fencing along the boundary of a provincial road or within a provincial road reserve, the Minister is responsible for all costs to erect, replace or remove the fencing.
- (14) Where an application has been authorised in terms of sub-regulation (8)(a), the owner of property adjacent to the provincial road is responsible for all costs to erect, replace or remove the fencing.

- (15) The owner of property adjacent to a provincial road is responsible for all costs to maintain fencing adjacent to the provincial road.
- (16) The Minister may, in his or her sole discretion and after receiving written notice from an owner of property adjacent to a provincial road, repair damage caused to the fence within five calendar days of the damage and claim the cost from the responsible party.
- (17) If the owner of property adjacent to a provincial road fails to give written notice of damage to fencing adjacent to the owner's property in terms of sub-regulation (16), or the Minister otherwise refuses to repair a fence, the adjacent owner of the property is responsible for the repair of the fence.
- (18) An owner of property adjacent to a main road may submit a written application for a contribution to erect, maintain or replace fencing on the boundary of the road reserve on a main road in the manner prescribed from time to time by the Minister, which contribution may be authorised at the sole discretion of the Minister.
- (19) An owner of property adjacent to a provincial road who obtains a contribution in terms of sub-regulation (18) must erect, maintain or replace the fencing pursuant to specifications and standards, including cost requirements, specified by the Minister.
- (20) Where an owner of property adjacent to a provincial road is required by law to replace a fence along a provincial road, the Minister may, in his or her sole discretion and subject to available financial resources, contribute towards the cost of materials for the replacement of the fence at a rate authorised by the Minister.
- (21) The owner of property adjacent to a provincial road must be advised in writing where a fence encroaches on the road reserve along a provincial road and the fence must be moved and re-erected within the time period specified by the Minister, with the owner liable for all costs incurred to relocate the fence to the boundary specified by the Minister.
- (22) Where an owner of land adjacent to a provincial road fails to move and re-erect a fence in terms of sub-regulation (21), the Minister may remove and re-erect the fence and claim the cost from the land owner.
- (23) The Minister is responsible for relocating or replacing fencing along the road reserve boundaries where existing fencing is affected by the alignment or construction of a provincial road.
- (24) A person may not —
- (a) erect, replace or remove a fence adjacent to or on a provincial road without prior written authorisation from the Minister;
 - (b) erect, replace or remove a fence adjacent to or on a provincial road without complying with specifications provided by the Minister;
 - (c) erect a fence which encroaches on a provincial road; or
 - (d) refuse to remove or re-erect a fence in terms of sub-regulation (21).

Gates on or across provincial road

- 8.(1) The Minister must consider the following criteria in authorising the construction of a gate on or across a provincial road —
- (a) public health or animal disease control;
 - (b) international border control;
 - (c) nature conservation, including but not limited to controlling the movement of game in an area adjacent to a public or private game reserve;
 - (d) stock control, including but not limited to controlling the movement of stock adjacent to a provincial road;
 - (e) the flow of traffic on the provincial road or an adjacent provincial road;
 - (f) road and traffic safety considerations; and
 - (g) any other relevant factor which would have an impact on a provincial road.
- (2) The Minister must make available to a member of the public on written request to the Minister and payment of the prescribed fee, the standard and requirements applied to make a determination in terms of the criteria in sub-regulation (1).
- (3) The Minister may, in terms of criteria specified in sub-regulation (1), identify the need to erect, replace or remove a gate across a provincial road.
- (4) Notwithstanding sub-regulation (3), a person or municipality must submit an application prescribed in terms of regulation 17(1) to erect, replace or remove a gate across a provincial road.
- (5) Where the Minister in terms of sub-regulation (3) has identified the need to erect, replace or remove a gate or a person or municipality, has submitted an application in terms of sub-regulation (4), the Minister must assess the need to erect, replace or remove the gate in terms of sub-regulation (1).
- (6) Where —
- (a) an application submitted in terms of sub-regulation (4) meets assessment criteria in terms of sub-regulation (1), the Minister may grant written authorisation to erect, replace or remove the gate; and
 - (b) action is not taken within 18 months from the date of written authorisation in terms of paragraph (a) or at the end of the period authorised in sub-regulation (7)(b), whichever is less, the Minister's written authorisation lapses and a new application must be submitted.
- (7) The Minister must, where an application submitted in terms of sub-regulation (4) has been authorised in terms of sub-regulation (6)(a), advise the applicant —
- (a) of any conditions relevant to the authorisation to erect, replace or remove the gate, including but not limited to —
 - (i) standard specifications of the gate;
 - (ii) the positioning of the gate;
 - (iii) the requirement that the person or municipality responsible for the construction of the gate must pay the full cost of installation and maintenance of the gate;
 - (iv) the requirement that the person or municipality responsible for the construction of the gate must pay the full cost of any prescribed lighting for the gate; and
 - (v) that the person or municipality constructing the gate is obligated to remove the gate at his or her own cost if the gate falls into disrepair or constitutes an unnecessary obstruction to the flow of traffic;
 - (b) of the period of validity of the authorisation of the application to erect, replace or remove a gate, which period may not exceed 18 months; and
 - (c) that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law.
- (8) The Minister must, where an application submitted in terms of sub-regulation (4) has not been authorised, advise the applicant in writing —
- (a) that the application failed to meet assessment criteria in terms of sub-regulation (1); and
 - (b) of the reasons why assessment criteria were not met.
- (9) A person or municipality authorised in terms of sub-regulation (6)(a) must, prior to taking any action, notify the Minister in writing of the anticipated erection, replacement or removal of a gate.

(10) If an application fails to meet assessment requirements in terms of sub-regulation (1) and a person or municipality has erected, replaced or removed a gate in contravention of this regulation, the Minister may remove the gate and undertake any required repairs or maintenance to ensure the integrity of the provincial road, with the person or municipality who erected the gate liable for the cost of restoring the provincial road to its original condition.

(11) Where the Minister in terms of sub-regulation (3) has identified the need to erect or replace a gate across a provincial road, the Minister is responsible for all costs.

(12) Where the Minister determines that a gate obstructs the flow of traffic or is a safety hazard, the Minister may instruct the person who constructed the gate to remove or alter the gate, failing which it may be removed or altered by the Minister, with the person who constructed the gate responsible for all costs for removal, alteration or restoration of the provincial road to its original condition.

(13) A person may not lock or otherwise restrict access to a gate which is erected across a public road.

(14) A person may not —

- (a) erect a gate across a provincial road without prior written authorisation from the Minister;
- (b) erect a gate across a provincial road without complying with specifications provided by the Minister;
- (c) fail to maintain a gate;
- (d) refuse to remove a gate in violation of sub-regulation (12); or
- (e) lock a gate in violation of sub-regulation (13).

Abandoning vehicles, machines or parts, or leaving refuse within boundary of provincial road and road reserve

9.(1) A person may not without submitting an application and obtaining prior written authorisation from the Minister in terms of sub-regulation (2) —

- (a) leave a vehicle in the same place within the boundary of a provincial road for a continuous period of more than seven calendar days;
- (b) negligently or wilfully deposit or cause or permit to be deposited any petrol or other liquid fuel, oil, grease or any other flammable or offensive matter, ashes or other refuse, of whatsoever nature, alongside or on a provincial road;
- (c) abandon a vehicle, machine or part, or leave refuse, within the boundary of a provincial road; or
- (d) refuse to remove a vehicle, machine, part or refuse within the boundary of a provincial road where instructed to do so by the Minister.

(2) The Minister —

- (a) must consider the application submitted in terms of sub-regulation (1) and advise the applicant within two working days of receiving the application whether the application is successful; or
- (b) may remove an abandoned vehicle, machine or part or refuse from a provincial road or adjacent to a provincial road; and
- (c) may notwithstanding sub-regulation (2)(a) remove without delay any vehicle, machine or part, or refuse which constitutes a danger.

(3) The Minister is not liable for any cost whatsoever where a person abandons a vehicle, machine or part, or leaves refuse, within the boundary of a provincial road.

(4) A person who abandons a vehicle, machine or part, or leaves refuse within the boundary of a provincial road is liable for all costs to remove the vehicle, machine, part or other refuse.

Trading on or adjacent to provincial road

10.(1) The Minister must consider the following criteria in the determination of an application for a person to trade on or adjacent to a main road or district road —

(a) whether the area designated for trade in the application —

- (i) is to place any property, stationary vehicle or other item utilised for trading purposes within the road reserve of the provincial road, or within 15 metres from the road reserve boundary of the main or district road;
- (ii) is zoned or demarcated for that purpose by a municipality;
- (iii) is on or alongside a main or district road in an urban area;
- (iv) is within 180 metres of a railway level crossing or any road traffic sign, or within 500 metres of an intersection;
- (v) would obstruct an access, intersection into or from a main or district road, or visibility of road traffic users;
- (vi) would limit access to, or utilise parking or loading bays or other facilities for, vehicular traffic;
- (vii) would obscure any road traffic safety feature; or
- (viii) would present a safety hazard or put any person, including but not limited to road users and pedestrians, in any danger;

(b) environmental impact and health hazards, including but not limited to disposal of refuse;

(c) where relevant, promotion of economic growth and sustainable development; and

(d) any other relevant factor, including but not limited to road traffic safety considerations, which could have an impact on a main road or district road.

(2) The Minister must make available to a member of the public on written request to the Minister and payment of the prescribed fee, the standard and requirements applied to make a determination in terms of the criteria in sub-regulation (1).

(3) The Minister may identify a need to permit trading on or adjacent to a provincial road.

(4) A person or municipality already trading or wishing to trade on or adjacent to a provincial road, must submit an application, in the format prescribed in terms of regulation 17(1), requesting written authorisation from the Minister and must submit the application within 10 calendar days of receiving official notification to do so.

(5) Where the Minister in terms of sub-regulation (3) has identified the need for trading on or adjacent to a provincial road, or a person or municipality has submitted an application to trade on or adjacent to a main or district road in terms of sub-regulation (4), the Minister must assess the need and take appropriate action in terms of criteria specified in terms of sub-regulation (1).

(6) Where —

(a) an application submitted in terms of sub-regulation (4) meets assessment criteria in terms of sub-regulation (1), the Minister may grant written authorisation for a person or municipality to trade on or adjacent to a main or district road; and

(b) action is not taken within 18 months from the date of written authorisation in terms of paragraph (a) or at the end of the period authorised in sub-regulation (7)(b), whichever is less, to initiate trade on or adjacent to a main or district road, the Minister's written authorisation lapses and a new application must be submitted.

(7) The Minister must, where an application submitted in terms of sub-regulation (4) has been authorised in terms of sub-regulation (6)(a), advise the applicant in writing —

- (a) of any conditions relevant to assessment criteria in terms of sub-regulation (1), including but not limited to road safety issues and environmental impact, including health hazards;
 - (b) of the period of validity of the authorisation of the application to trade on or adjacent to a main or district road, which period may not exceed 18 months; and
 - (c) that any authorisation in terms of this regulation is in addition to and not in substitution of any consent or authorisation required by any other law.
- (8) The Minister must, where an application submitted in terms of sub-regulation (4) has not been authorised, advise the applicant in writing —
- (a) that the application failed to meet assessment criteria in terms of sub-regulation (1);
 - (b) of the reasons why assessment criteria were not met; and
- (9) If an application fails to meet assessment requirements in terms of sub-regulation (1) and a person or municipality is trading on or adjacent to a provincial road, or a person or municipality is trading outside the terms and conditions of the authorisation granted in terms of sub-regulation (6)(a) or (7), the Minister may —
- (a) remove or dispose of any goods or property held by the person or municipality trading on or adjacent to a main or district road; or
 - (b) remove or relocate the structure where the person or municipality was selling goods, property or services.
- (10) The person or municipality is liable for the costs to remove or dispose of goods and property, remove or relocate the structure where the person or municipality was selling goods, property or services in terms of sub-regulation (9), and restore the main or district road to its original condition.
- (11) The successful applicant in terms of sub-regulation (6)(a) is liable for all costs to trade on or adjacent to a main or district road.
- (12) Irrespective of any approval the Minister grants in terms of sub-regulation (6)(a) for a person to trade on or adjacent to a main or district road, the Minister is not liable for any cost whatsoever, including but not limited to negligence or an intentional action, to or for a person trading on or adjacent to a main or district road.
- (13) If a person or municipality trades on or adjacent to a main or district road in contravention of this regulation, or otherwise fails to comply with any provision of this regulation or any condition imposed by the Minister, the Minister may issue a warning, giving the person or municipality a specified period of time in which to rectify the contravention or failure to comply with this regulation.
- (14) Where a person or municipality fails to comply with the rectification provisions of the warning issued in terms of sub-regulation (13), the person or municipality is liable for all costs of restoring the main or district road to its original condition, including but not limited to the removal, demolishing and disposal of all materials related to the structure used for trading on or adjacent to the main or district road.
- (15) If a person or municipality fails to obtain authorisation to trade on or adjacent to a main or district road in terms of this regulation, the person or municipality must cease trading.
- (16) A person may not —
- (a) without obtaining written authorisation in terms of this regulation, trade within the road reserve of the provincial road, or within 15 metres from the road reserve boundary of a main or district road;
 - (b) trade, offer, deliver or manufacture goods on a local road where these activities constitute a safety hazard;
 - (c) fail to comply with this regulation or a condition imposed by the Minister in terms of this regulation;
 - (d) without obtaining written authorisation in terms of this regulation, place any property, stationary vehicle or other item utilised for trading purposes within the road reserve of a main or district road, or within 15 metres from the road reserve boundary of the main or district road;
 - (e) obstruct an access, intersection or visibility of road users on a main or district road;
 - (f) limit access to, or utilise parking or loading bays or other facilities for, vehicular traffic;
 - (g) obscure any road traffic safety feature; or
 - (h) place any person, including but not limited to road users and pedestrians, in danger.

Development plans

11.(1) A municipality is required to include a transport plan in its integrated development plan which is to be submitted in terms of section 19 of the Act, where the development plan, which must include a diagram —

- (a) affects access to, or traffic volumes on a provincial road; or
 - (b) contemplates any construction or structures to be constructed within 500 metres of a provincial road.
- (2) The Minister may refuse to approve an integrated development plan where the plan —
- (a) has not been submitted timeously by a municipality;
 - (b) fails to include all information required to enable the Minister to assess the impact of the development plan on the provincial road network;
 - (c) is in contravention of provincial road network infrastructure standards;
 - (d) negatively affects road traffic and road safety standards;
 - (e) negatively affects access to a provincial road;
 - (f) contemplates any construction or structures to be constructed within 500 metres of a provincial road;
 - (g) contemplates any provincial road development and maintenance which is not within the budget allocated for road development and maintenance in the Province;
 - (h) negatively impacts the environment; or
 - (i) adversely affects the provincial road network in any other way.
- (3) A municipality which implements a development plan —
- (a) without having obtained Ministerial authority; or
 - (b) in conflict with Ministerial instructions,

is liable for all costs incurred by the Minister for all consequential remedial or other work to the provincial road network.

Restriction on subdivision of land

12.(1) A person or municipality required to submit a sub-divisional application in terms of section 20(1) of the Act must do so on the prescribed form in terms of regulation 17(1).

- (2) The Minister may refuse to approve a sub-divisional application where the sub-divisional application —

- (a) has not been submitted timeously by the municipality;
 - (b) fails to include all information required to enable the Minister to assess the impact of the sub-divisional application on the provincial road network;
 - (c) is in contravention of provincial road network infrastructure standards;
 - (d) contemplates any provincial road development and maintenance which is not within the budget allocated for road development and maintenance in the Province;
 - (e) negatively impacts the environment; or
 - (f) where the sub-divisional application adversely affects the provincial road network in any other way.
- (3) A municipality which proceeds to implement a sub-divisional application —
- (a) without submitting a sub-divisional application;
 - (b) without having obtained Ministerial authority; or
 - (c) in conflict with ministerial instructions,
- is liable for all costs incurred by the Minister for all consequential remedial or other work to the provincial road network.

Land use changes and development proposals

13.(1) A person or municipality required to submit a land use change or development proposal application in terms of section 21(f) of the Act must do so on the prescribed form in terms of regulation 17(1).

- (2) The Minister may refuse to approve a land use and development proposal where the land use and development proposal —
- (a) has not been submitted timeously by the municipality;
 - (b) fails to include all information required to enable the Minister to assess the impact of the land use and development proposal on the provincial road network;
 - (c) is in contravention of provincial road network infrastructure standards;
 - (d) negatively affects road traffic and road safety standards;
 - (e) negatively affects access conditions to a provincial road or the existing capacity of the provincial road network;
 - (f) negatively impacts the environment;
 - (g) contemplates any provincial road development and maintenance which is not within the budget allocated for road development and maintenance in the Province; or
 - (h) adversely affects the provincial road network in any other way.
- (3) A municipality which proceeds to implement a land use change and development proposal —
- (a) without submitting a land use change and development proposal;
 - (b) without having obtained Ministerial authority; or
 - (c) in conflict with ministerial instructions, is liable for all costs incurred by the Minister for all consequential remedial or other work to the provincial road network.

Establishment, control and management of resting places for livestock

- 14.**(1) The Minister must consider the following criteria in the declaration or de-declaration of a resting place for livestock —
- (a) the movement of livestock on a provincial road or public road and the need for a resting place for livestock;
 - (b) any servitude in or over property for the purpose of establishing an access, works, dam, weir or laying pipes and related costs to supply water to a resting place;
 - (c) where animals usually grazing within the vicinity of a road present a road safety hazard;
 - (d) whether the resting place for livestock is still in use;
 - (e) whether the resting place for livestock constitutes a road safety hazard; and
 - (f) the availability of funds appropriated by the KwaZulu-Natal Provincial Legislature for that purpose.
- (2) A person or municipality may submit an application to the Minister for the declaration or de-declaration of a resting place for livestock.
- (3) Where a person or municipality has submitted an application for the declaration of a resting place in terms of sub-regulation (2), the Minister may, after consultation with the municipality in which the proposed or existing resting place is located, acquire —
- (a) property for the purpose of establishing a resting place for livestock; or
 - (b) any servitude in or over property other than a resting place for the purpose of ensuring a reasonable supply of water to the resting place.
- (4) The Minister must declare a resting place by notice in the *Gazette*, on the property described in that notice.
- (5) Any notice issued in terms of sub-regulation (4) may, at any time, be amended or revoked by the Minister by further notice in the *Gazette*.
- (6) The Minister must determine the extent and location of a rest area adjacent to a provincial road or public road.
- (7) The Minister may fence any resting place, which must be clearly indicated by a notice board.
- (8) The Minister may, at his or her sole discretion, fence servitude, or part thereof which may be acquired on property other than a resting place, for the purpose of ensuring a reasonable supply of water to the resting place.
- (9) A person, after the declaration of a resting place in terms of sub-regulation (4), may use the property as a resting place for livestock which are being moved on a public road or which usually graze in that vicinity.
- (10) Where a person or municipality has submitted an application for the de-declaration of a resting place in terms of sub-regulation (4), the Minister may, after consultation with the municipality and the owner of the property on which the resting place is located, de-declare a resting place and —
- (a) re-vest ownership of the resting place in the owner upon such terms and conditions as may be agreed by the Minister and owner of the land; or
 - (b) if no agreement is reached between the Minister and owner of the property, the Minister may —
 - (i) appropriately alienate the property on which the resting place is located if the owner of the property does not wish to resume ownership; or
 - (ii) use the property on which the resting place is located for any other purpose in the public interest.

Advertising regulations

15.(1) The following criteria must be taken into account in considering an application to display or erect an advertisement —

- (a) road and traffic safety considerations;
 - (b) zoning or demarcation by a municipality, as is applicable;
 - (c) function, size, nature and type of advertisement contemplated;
 - (d) location, positioning and orientation of the advertisement;
 - (e) visual content of the advertisement, including but not limited to letter sizes, length of messages, colours and impact;
 - (f) environmental considerations, which may include visual and social aspects and an environmental impact assessment by an accredited environmental consultant;
 - (g) visual or aesthetic sensitivity of the landscape;
 - (h) promotion of economic growth and sustainable development; and
 - (i) any other effect on the provincial road network.
- (2) The Minister must make available to a member of the public on written request and payment of the prescribed fee, the standards and requirements applied to make a determination in terms of sub-regulation (1).
- (3) The Minister may identify the need to enter into a lease for an advertisement on or adjacent to a provincial road.
- (4) A person or municipality displaying an advertisement falling within the scope of this regulation who, on the date of these regulations coming into effect, had previously obtained written authority from the Minister for an advertisement is deemed to be in compliance with this regulation.
- (5) A person or municipality who displays an advertisement falling within the scope of this regulation and has not obtained written authority from the Minister or intends to erect and display an advertisement on or adjacent to —
- (a) main road or within 500 metres of and visible from a main road; or
 - (b) district road or local road where the advertisement constitutes or would constitute a safety hazard,
- must submit a written application to the Minister in the form prescribed under regulation 17(1), which must include written approval from the owner of the property where the advertisement has been or is to be displayed.
- (6) Where the Minister in terms of sub-regulation (3) has identified the need to enter into a lease for an advertisement, or a person or municipality has submitted an application in terms of sub-regulation (5), the Minister must assess the need and take appropriate action in terms of the criteria specified in terms of sub-regulation (1).
- (7) Where an application submitted in terms of sub-regulation (5) meets assessment criteria in terms of sub-regulation (1), the Minister may —
- (a) grant written authorisation for a person or municipality to erect the advertisement on or adjacent to a provincial road;
 - (b) specify the location of the advertisement, including authorisation to erect the advertisement in the building restriction area on the provincial road;
 - (c) specify the size and content of the advertisement;
 - (d) specify the lease agreement to be entered into and the amount to be paid to the Minister for the advertisement;
 - (e) confirm that the owner of the advertisement is responsible for obtaining any required municipal approval;
 - (f) confirm that the owner of the advertisement indemnifies the Minister against any claims or damages, including legal costs incurred, as a result of the erection of the advertisement or failure to maintain the advertisement; and
 - (g) enter into a lease agreement with the applicant.
- (8) Where an applicant fails to enter into a lease agreement in terms of sub-regulation (7)(d) and (g), or an advertisement is not erected within 18 months from the date of written authorisation in terms of sub-regulation (7)(a) or at the end of the period authorised in sub-regulation 9(b), whichever is less, the Minister's written authorisation lapses and a new application must be submitted.
- (9) Where an application submitted in terms of sub-regulation (5) has been authorised in terms of sub-regulation (7)(a), the Minister must advise the applicant —
- (a) of any conditions relevant to assessment criteria in terms of sub-regulation (1), including but not limited to road safety and traffic issues and environmental impact;
 - (b) of the period of validity of the authorisation to erect an advertisement on or adjacent to a provincial road, which period may not exceed 18 months; and
 - (c) that any authorisation in terms of this regulation is in addition to, and not in substitution of, any consent or authorisation required by any other law.
- (10) An advertisement authorised in terms of this regulation must be registered by the Minister, with a unique registration number allocated, and the owner of the advertisement must display the registration number on the advertisement in a clearly visible position and in the manner prescribed by the Minister.
- (11) The Minister must, where an application submitted in terms of sub-regulation (5) has not been authorised, advise the applicant in writing —
- (a) that the application failed to meet assessment criteria in terms of sub-regulation (1);
 - (b) of the reasons why assessment criteria were not met.
- (12) If a person or municipality has erected an advertisement —
- (a) which has not been authorised or has failed to submit an application when obligated by this regulation or requested to do so;
 - (b) for which authority was not granted on application;
 - (c) which does not comply with the terms and conditions of any authorisation granted in terms of sub-regulation (7)(a); or
 - (d) fails to continue to meet the assessment criteria in terms of sub-regulation (1),
- the Minister may order the removal or demolition of the advertisement or remove or demolish the advertisement and the person or municipality which erected the advertisement is liable for all costs to remove or demolish the advertisement and restore the provincial road to its original condition.
- (13) A person does not have to apply for authorisation to display or erect an advertisement on a main road, or within 500 metres of and visible from a main road where an advertisement —
- (a) is an estate agent's board: Provided that —
 - (i) the advertisement contains no information other than the words "for sale", "to let", or "sold" and the name, logo, address and telephone number of the selling or letting agent;
 - (ii) only one advertisement per letting or selling agent may be erected on any erf;
 - (iii) a maximum of two letting or selling agents may display their advertisements simultaneously on the same erf;

- (iv) the size of the advertisement must not exceed two square metres for a commercial site or 0.65 square metres for a residential site;
 - (v) the advertisement must be fixed to the building concerned, attached to the boundary fence of the property concerned, or displayed within the boundary of the premises; and
 - (vi) the advertisement must be removed no later than 14 calendar days after the conclusion of a contract of sale or lease for the property concerned;
- (b) announces the sale of goods or livestock on land or premises not normally used for commercial premises: Provided that —
- (i) only one advertisement is permitted per sale;
 - (ii) the size of the advertisement must not exceed two square metres;
 - (iii) the advertisement must only be displayed on premises or property where the advertised sale is to take place, or be attached to the boundary fence of the property or premises;
 - (iv) the advertisement may not be illuminated or animated; and
 - (v) the advertisement must be removed no later than seven calendar days after the sale is completed;
- (c) is temporarily or permanently painted on or attached to the window glass of a building used for commercial, entertainment, office or industrial purposes, or any sign displayed inside a building, within two metres of a window or external opening, so as to be visible from the outside: Provided that —
- (i) the advertisement may only be displayed, on or in relation to, ground floor windows or openings;
 - (ii) the total area of any advertisement painted on or attached to the windows or external openings or a building must not exceed 10% of the total ground floor window area; and
 - (iii) no internally illuminated advertisement inside a building may be visible from outside the building, unless specifically authorised;
- (d) advertises neighbourhood watch, farm watch or similar schemes, and may contain the name, address and telephone number of a security company contracted to protect the premises on which the sign is displayed: Provided that —
- (i) the size of the advertisement for a neighbourhood watch, farm watch or similar schemes does not exceed 1,5 square metres and the height must not exceed three metres above the ground, with the name, address and telephone number of the security company not to exceed 0.35 square metres;
 - (ii) in urban areas, only one advertisement may be displayed per street frontage and the advertisement must be firmly affixed to the building, boundary wall, fence or gate on the street frontage or within the boundaries of the erf; and
 - (iii) only one advertisement is allowed on farms or agricultural holdings and the advertisement must be displayed at the intersection of a public road and private access road, or at the entrance to a property, outside the road reserve;
- (e) is intended to identify or provide direction to or warning of places of residence: Provided that —
- (i) the advertisement is only permitted on the premises to which they refer, or on a boundary wall, fence or gate of premises;
 - (ii) no advertisement is permitted inside a road reserve;
 - (iii) farm or smallholding advertisements must be displayed next to the entrance of the access to the residence, or must be affixed to the gate at the entrance to the access;
 - (iv) in the case of several farms or smallholding which share an access or entrance, a combination advertisement must be erected at the entrance or access, in which event the size of —
 - (aa) the combination advertisement must not exceed four metres above ground level; and
 - (bb) each advertisement must not exceed one square metre per farm or smallholding;
 - (v) no advertisement may be erected where a road traffic sign is displayed at the entrance or access to premises;
 - (vi) the advertisement is not animated or illuminated;
 - (vii) the highest point of any single free-standing advertisement must not exceed three metres above ground level;
 - (viii) where the advertisement is intended to give directions, warnings or notices, the content must be limited to messages such as “beware of the dog”, “no parking please”, “close the gate”, and “no entrance”, and the total area of the advertisement for each premises must not exceed 0,5 square metres per road frontage;
 - (ix) where the advertisement is intended to display street numbers —
 - (aa) only one advertisement displaying street numbers is permitted per road frontage for each premises;
 - (bb) the total area of the advertisement for each premises must not exceed 0,5 square metres per road frontage; and
 - (cc) the minimum letter size must be 150 millimetres and the maximum letter size must be 350 millimetres;
 - (x) where the advertisement is intended to identify places of residence —
 - (aa) the content of the advertisement is limited to the name of, and the nature of the main activity on, the residence, dwelling place, farm or smallholding;
 - (bb) in the case of advertisements identifying farms and smallholdings, the name or logo of the sponsor of the advertisement is permitted but may not occupy more than one-third of the total area of the advertisement;
 - (cc) one advertisement is allowed per premises with a maximum area of 1,5 square metres per road frontage;
 - (dd) where a supporting structure is provided, the maximum area of the advertisement may be increased to three square metres, provided that the advertising panel or lettering must not occupy more than 50% of the total area of the advertisement; and
 - (ee) where more than one farm or smallholding shares the same entrance or access, a combination advertisement must be provided with a maximum of one square metre of advertisement per farm or smallholding; or
- (f) is on or attached to a self-driven vehicle which normally moves on land or water, including taxis, buses, trains and delivery vehicles, but excluding aircraft: Provided that —
- (i) a vehicle may not be used for the sole purpose of advertising;
 - (ii) the advertisement is not animated; and
 - (iii) the advertisement is not illuminated, except where the advertisement is internally illuminated and indicates that a taxi is for hire.
- (14) The owner of an advertisement is responsible for maintenance of an advertisement authorised in terms of this regulation.
- (15) The Minister, where an owner of an advertisement fails to maintain an advertisement, may maintain the advertisement and the owner of the advertisement is liable for all maintenance costs.
- (16) A person must not alter, move or re-erect an advertisement without first obtaining written authorisation from the Minister.

- (17) A person who erects or displays or intends to erect or display an advertisement on land controlled by the Minister must —
- enter into a lease agreement on terms and conditions specified by the Minister; and
 - pay rent on terms and conditions specified by the Minister in the lease agreement entered into in terms of this regulation.
- (18) The Minister may remove any advertisement displayed or erected on land controlled by the Minister if the person who erects or displays the advertisement —
- fails to enter into a lease agreement with the Minister;
 - breaches any term or condition in terms of the authorisation granted in sub-regulation (7)(a); or
 - breaches any condition of a lease entered into in terms of sub-regulation (17)(a).
- (19) If a person or municipality maintains or erects an advertisement on or adjacent to a provincial road in contravention of this regulation, or otherwise fails to comply with any provision of this regulation or any condition imposed by the Minister, the Minister may issue a warning, giving the person or municipality a specified period of time in which to rectify the contravention or failure to comply with this regulation.
- (20) Where a person or municipality fails to comply with the rectification provisions of a warning issued in terms of sub-regulation (19), the person or municipality is liable for all costs of restoring the provincial road to its original condition, including but not limited to the removal, demolishing and disposal of all materials related to the advertisement on or adjacent to a provincial road.

Contributions to or by municipality, organisation or individual to construct, reconstruct, improve, repair or maintain provincial road

- 16.(1) The Minister must enter into an agreement for a contribution to or by a municipality, organisation or individual to construct, reconstruct, improve, repair or maintain any provincial road, provided that the Minister makes a determination regarding the —
- need for any required construction, improvement, repair or maintenance of the provincial road;
 - nature and extent of the required construction, reconstruction, improvement, repair or maintenance of the provincial road;
 - cost of the contribution for the required construction, reconstruction, improvement, repair or maintenance of the provincial road;
 - municipality, organisation or individual best suited to undertake and complete the work specified in terms of paragraphs (a) and (b); and
 - contribution in terms of paragraph (c).
- (2) The Minister may not, in the absence of an agreement contemplated in terms of sub-regulation (1), authorise any construction, reconstruction, improvement, repair or maintenance of any provincial road, or any contribution to a municipality, organisation or individual.
- (3) The Minister may enter into an agreement with a municipality, organisation or individual to accept a contribution from the municipality, organisation or individual for a specific project to construct, reconstruct, improve, repair or maintain a provincial road.

Submission of applications

- 17.(1) Where a person or municipality is required to submit an application in terms of these regulations, the person or municipality must —
- obtain the relevant application form from the location or locations designated by the Minister;
 - submit the completed and signed application in the manner prescribed from time to time by the Minister; and
 - submit the required fee with the application at the location or locations designated by the Minister.
- (2) The Minister must provide a written acknowledgement of an application submitted by a person or municipality in terms of sub-regulation (1).
- (3) Where an application is not signed or completed in the prescribed format in terms of sub-regulation (1)(b), or a fee is not paid in terms of sub-regulation (1)(c), the Minister may —
- refuse to consider the application; and
 - return it to the applicant with a written explanation of the reason for his or her refusal to consider the application.
- (4) An applicant may withdraw an application at any time prior to a determination by the Minister of the application.
- (5) The Minister may refuse to consider an application submitted in terms of these regulations where a person knowingly makes a false statement in the application.

Regulations in addition to and not in substitution of any other law

18. These regulations are in addition to and not in substitution of any other law.

Dispute resolution

19. A person or municipality who is aggrieved by a Ministerial decision may ask the Minister to review and consider any decision in terms of these regulations by making a written submission to the Minister in terms of section 43 of the Act.

Delegation and assignment

- 20.(1) The Minister may, in writing, delegate or assign any power, function or duty in terms of these regulations to the Head of Department.
- (2) The Head of Department may, with the approval of the Minister, delegate or assign any power, function or duty delegated or assigned by the Minister in terms of these regulations in writing, to a Departmental official.
- (3) A delegation or assignment in terms of sub-regulation (1) or (2) —
- is subject to any limitations the Minister, Head of Department or an Act may impose;
 - may be to a specific individual or to the holder of a specific post in the Department; and
 - does not divest the Minister or Head of Department of the responsibility concerning the exercise of a power, function or duty in terms of these regulations.
- (4) The Minister may, in terms of a written agreement with a municipality, delegate or assign any power, function or duty in terms of these regulations to the municipality.
- (5) The Minister or Head of Department may confirm, vary or revoke any decision taken by an official as a result of a delegation or assignment in terms of these regulations, subject to any rights which may have become vested as a consequence of the delegation or assignment.
- (6) A delegation in terms of these regulations does not deprive the Minister or the Head of Department of the right to exercise the delegated power function or duty.

Short title

21. These regulations are called the KwaZulu-Natal Provincial Roads Regulations, 2006.