

Cape Town, South Africa

## Municipal Planning

Legislation as at 18 November 2016

FRBR URI: /akn/za-cpt/act/by-law/2015/municipal-planning/eng@2016-11-18

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PDF created on 19 April 2024 at 08:12.

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# Cape Town South Africa

## Municipal Planning By-law, 2015

Published in Western Cape Provincial Gazette 7414 on 29 June 2015

**Assented to on 25 March 2015**

**Commenced on 1 July 2015 by Municipal Planning: Commencement**

*[This is the version of this document as it was from 18 November 2016 to 11 May 2017.]*

*[Amended by Municipal Planning: Amendment on 1 July 2016]*

*[Amended by Municipal Planning: Second Amendment on 18 November 2016]*

WHEREAS section 156(1) of the Constitution of the Republic of South Africa, 1996 confers on municipalities the executive authority and right to administer local government matters set out in ([Act 16 of 2013](#)) and the Western Cape Provincial Legislature has enacted the Land Use Planning Part B of Schedule 4 and Part B of Schedule 5 to the Constitution;

WHEREAS Part B of Schedule 4 to the Constitution lists municipal planning as a local government matter;

WHEREAS section 156(2) of the Constitution empowers municipalities to make and administer laws for the effective administration of matters that it has the right to administer;

WHEREAS Parliament has enacted the Spatial Planning and Land Use Management Act, 2013 ([Act 16 of 2013](#)) and the Western Cape Provincial Legislature has enacted the Land Use Planning Act ([Act 3 of 2014](#)), which among other things set out development principles which apply to all organs of state responsible for the implementation of legislation regulating the use and development of land;

WHEREAS section 2(2) of the Spatial Planning and Land Use Management Act ([Act 16 of 2013](#)) permits other legislation to prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner consistent with the provisions of that Act, and the City intends through this By-Law to prescribe such a mechanism, measure, institution and system;

WHEREAS the City intends to regulate and control municipal planning matters within the geographical area of the City.

AND NOW THEREFORE, BE IT ENACTED by the Council of the City of Cape Town as follows:

## Chapter 1 Definitions

### 1. Definitions

In this By-Law, unless the context indicates otherwise –

"**adopt**", in relation to a spatial development framework, development management scheme, policy or strategy, means the approval thereof by the City;

"**advisory panel**" means the advisory panel contemplated in section 121;

"**appeal authority**" means the appeal authority contemplated in section 114(3);

"**applicant**" means a person contemplated in section 40;

"**approval**" means permission granted in terms of this By-Law and includes the conditions of approval;

**"authorised official"** means an employee of the City responsible for carrying out any duty or function or exercising any power in terms of this By-Law and includes an employee delegated or designated to carry out or exercise such duty, function or power;

**"base zoning"** means the zoning before the application of any overlay zoning and may include a subzoning as contemplated in the development management scheme;

**"City"** means the municipality of the City of Cape Town established by Government Notice No 479 of 2000 issued in terms of section 12 the Local Government: Municipal Structures Act, 1998 ([Act 117 of 1998](#)), and where the context so requires, includes –

- (a) the Municipal Council;
- (b) another political structure or a political office bearer of the City, authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (c) the Municipal Planning Tribunal authorised or delegated to perform a function or exercise a power in terms of this By-Law;
- (d) the City Manager; and
- (e) an authorised official;

**"City Manager"** means the person appointed as the accounting officer of the City in terms of section 54A of the Municipal Systems Act;

**"commencement of construction"** means to have begun a continuous programme of physical, on-site construction in accordance with building plans approved in terms of the National Building Regulations and Building Standards Act, 1977, and which has gone beyond site clearing, excavation or digging trenches in preparation for foundations;

**"community facilities"** includes play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities and community halls;

**"consent use"** means a land use permitted in terms of a particular zoning with the approval of the City;

**"councillor"** means a member of the Municipal Council;

**"date of notification"** means the date contemplated in section 111(6);

**"Deeds Registries Act"** means the Deeds Registries Act, 1937 ([Act 47 of 1937](#));

**"Department"** means the directorate of the City responsible for spatial planning, land use management and building development management;

**"departure"** means a permanent departure or a temporary departure;

**"determination"** includes any conditions associated with the determination;

**"development charge"** means a once-off charge imposed by the City on a developer as a condition of approval of a land development application in order to cover the cost of municipal engineering services required as a result of an intensification of land use;

**"development edge line"** means a demarcated edge line as depicted in the municipal spatial development framework;

**"development management scheme"** means the development management scheme contemplated in section 26(2);

**"development rule"** means a provision, restriction or condition in the development management scheme that sets out the permissible extent of the land use in terms of a zoning;

**"deviation"** in relation to a spatial development framework, means

- (a) an approval which departs from the provisions of the municipal spatial development framework contemplated in section 22(2) of SPLUMA;
- (b) a deviation from the provisions of the municipal spatial development framework authorised by section 9(1) of this By-Law; or
- (c) a deviation from the provisions of a district spatial development framework or local spatial development framework authorised by section 16(2)(b) of this By-Law;

and "deviate" has a corresponding meaning;

**"diagram"** means a diagram as defined in section 1 of the Land Survey Act;

**"district spatial development framework"** means a district spatial development framework contemplated in section 11;

**"effective date of decision"** means the date contemplated in section 105(2);

**"engineering service"** means a system for the provision of water, electricity, gas, roads or storm water drainage, or collection and removal of solid waste or sewerage, required for the purpose of land development;

**"engineering services agreement"** means an agreement between an applicant and the City in cases where an applicant constructs or installs external engineering services in lieu of the payment in full or in part of a development charge and in which the parties agree on their respective roles in the construction, installation and financing of infrastructure, including their respective responsibilities for maintenance and upkeep of infrastructure from the date of installation to the date of transfer of the land;

**"general plan"** means a general plan as defined in section 1 of the Land Survey Act;

**"Integrated Development Plan"** means the plan envisaged in section 25 of the Municipal Systems Act;

**"land development"** means the erection of a building or structure on land or the change in use of land, including township establishment, the rezoning, the subdivision or consolidation of land or any deviation from the land use or use permitted in terms of the development management scheme, and "development of "land" and "develop land" have corresponding meanings;

**"land"** means any land unit or any portion of a land unit, and includes any improvement or building on the land and any real right in land;

**"land unit"** means a portion of land registered or capable of being registered in a deeds registry and includes a portion of land to which a registered servitude right or registered lease relates;

**"land use"** means the purpose for which land is or may be used lawfully in terms of the development management scheme;

**"Land Use Planning Act"** means the Western Cape Land Use Planning Act ([Act 3 of 2014](#));

**"Land Survey Act"** means the Land Survey Act, 1997 ([Act 8 of 1997](#));

**"local spatial development framework"** means a local spatial development framework contemplated in section 12;

**"Mayor"** means the Executive Mayor of the City;

**"Municipal Council"** means the Municipal Council of the City;

**"Municipal Planning Tribunal"** means the Municipal Planning Tribunal referred to in section 114;

**"municipal spatial development framework"** means the municipal spatial development framework adopted by the City in terms of Chapter 5 of the Municipal Systems Act;

**"Municipal Systems Act"** means the Local Government: Municipal Systems Act, 2000 (32 of 2000);

**"National Building Act"** means the National Building Regulations and Building Standards Act, 1977 ([Act 103 of 1977](#));

**"notification"** has the meaning contemplated in section 111 and includes the method by which the City may "call for" or "require" a person to do something, and "notice" and "notify" have corresponding meanings;

**"Ordinance"** means the Land Use Planning Ordinance, 1985 (Cape) (Ordinance 15 of 1985);

**"organ of state"** means an organ of state as defined in section 239 of the Constitution;

**"overlay zoning"** means a zoning, in addition to the base zoning, stipulating the purposes for which land may be used and the development rule which may be more or less restrictive than the base zoning;

**"owner"** includes their successor-in-title and means –

- (a) the person whose name is registered in a deeds registry as the owner of land;
- (b) the beneficial owner of land in law;
- (c) the owner of land by virtue of vesting in terms of this By-Law or another law; and
- (d) the legal representative of the owner or their estate where the registered owner lacks legal capacity for any reason including age, mental health, mental disability, death or insolvency;

**"owners" association** means an owners' association established or deemed to have been established in terms of section 61;

**"permanent departure"** means right to use land otherwise than in accordance with the development rules of the zoning applicable to the property;

**"person"** means a natural or juristic person and includes the state;

**"planning law"** means the Townships Ordinance no 33 of 1934 or the Ordinance, whichever is applicable. "prescribe" includes prescribe by procedure, standard, requirement or rule;

**"previous zoning scheme"** means –

- (a) a town planning scheme;
- (b) a town planning scheme in the course of preparation; or
- (c) zoning scheme regulations in operation in the geographic area of the City at any time before the commencement of this By-Law;

**"private street"** means privately owned land which provides vehicle access to a separate land unit or land units and which is designated as private road or private street on an approved general plan, diagram or approved plan of subdivision; it may include ancillary access control infrastructure such as a gatehouse, guardhouse, refuse room and utility room, but does not include a driveway on a property or a servitude;

**"Province"** means the Province of the Western Cape;

**"Provincial Government"** means the provincial government of the Province;

**"Provincial Minister"** means the member of the Executive Council in the Provincial Government responsible for land use planning;

**"public place"** means any open or enclosed place, park, public street or thoroughfare or other similar area of land shown on a general plan or diagram that is for use by the general public and is owned by, or vests in the ownership of, the City, and includes a public open space and a servitude for any similar purpose in favour of the general public;

**"public road"** means any highway, thoroughfare, lane, footpath, sidewalk, alley, passage, bridge or any other place of a similar nature or any portion thereof serving as a public right of way, whether for vehicles or pedestrians, established or proclaimed in terms of the former Municipal Ordinance, 1974 (Ordinance

20 of 1974) or any equivalent current municipal by-law and/or national legislation and includes a public street;

**"public street"** means any land indicated on an approved general plan, diagram or map as having been set aside as a public right of way, whether for vehicles or pedestrians or public or urban squares, of which the ownership is registered in favour of or vests in the City in terms of this ByLaw or any other law;

**"registered planner"** means a professional or technical planner registered in terms of the Planning Profession Act, 2002 ([Act 36 of 2002](#)), unless the South African Council for Planners has reserved the work to be performed by a registered planner in terms of this Act for a particular category of registered persons in terms of section 16(2) of the Planning Profession Act, 2002, in which case a registered planner means the category of registered persons for whom the work has been reserved;

**"Registrar of Deeds"** means the Registrar of Deeds as defined in the Deeds Registries Act;

**"restrictive condition"** means any condition registered against the title deed of land restricting the use, development or subdivision of land concerned, excluding servitudes creating real or personal rights;

**"rezoning"** means the change of zoning in relation to a particular land unit or units in terms of this By-Law;

**"road"** includes a public street, a public road and a private street;

**"road reserve"** means a designated area of land that contains or is able to contain a public street or public road, including the road and associated verge, which land may or may not be defined by cadastral boundaries;

**"Sectional Titles Act"** means the Sectional Titles Act, 1986 ([Act 95 of 1986](#));

**"sectoral plan"** means any written strategy or plan which deals mainly with one of the sectors or elements or particular subjects that form part of an integrated development plan and which may be an economic, land reform, environmental, housing, water, service or transport plan;

**"service master plan"** means a high level infrastructure plan prepared by the City to cater for future development and includes an Integrated Transport Plan, Electricity Business Plan, Bulk Water and Sanitation Master Plan, Storm Water Master Plan and Integrated Waste Management Plan;

**"spatial development framework"** means a national spatial development framework, regional spatial development framework (approved by either national or provincial government), provincial spatial development framework, municipal spatial development framework, district spatial development framework or local spatial development framework;

**"SPLUMA"** means the Spatial Planning and Land Use Management Act, 2013 ([Act 16 of 2013](#)) and regulations promulgated in terms of thereof;

**"state"** includes an organ of state as defined in section 239 of the Constitution and a state-owned enterprise listed as a public entity in Schedule 2 or 3 to the Public Finance Management Act, 1999 ([Act 1 of 1999](#));

**"street"** means "public street" or "private street";

**"structure plan"** means a structure plan approved in terms of section 4(6) or 4(10) of the Ordinance;

**"subdivision plan"** means a plan which depicts the relative location of newly proposed land units on a land unit that is to be subdivided;

**"subdivision"**, in relation to land, means the division of a land unit into more land units and includes any physical activity on the land to prepare the land for subdivision but does not include the surveying of land for the preparation of a subdivision plan and "subdivide" has the same meaning;

**"subdivisional area"** when referring to a zoning, means the subdivisional overlay zoning permitting subdivision provided for in the development management scheme; and when referring to land, means land zoned with a subdivisional overlay zoning;

**"substitution scheme"** means a zoning map or development rules which replaces, in terms of planning law, any other zoning map or portion thereof;

**"Surveyor-General"** means the Surveyor-General as defined in the Land Survey Act;

**"temporary departure"** means the right to use land on a temporary basis for a purpose for which no provision is made in the zoning applicable to the property;

**"this By-Law"** includes the development management scheme and the other schedules to this ByLaw;

**"title deed"** means any deed registered in a deeds registry recording the ownership of land or a real right in land;

**"urban edge line"** means a development edge line to demarcate the appropriate geographic limit to urban growth or to protect natural resources;

**"use"** means the use of land for a purpose or the improvement of land;

**"use right"**, in relation to land, means the right to use that land in accordance with its zoning, a departure, consent use, condition of approval or any other approval granted in respect of the rights to use the land;

**"zone"** when used as a verb in relation to land, means to designate land for a particular zoning;

**"zoning"** includes base zoning and overlay zoning and means a land use category prescribed by the development management scheme regulating the use of and development of land and setting out –

- (a) the purposes for which land may be used; and
- (b) the development rules applicable to that land use category;

**"zoning map"** means the map of the zoning scheme contemplated in section 29(1);

**"zoning register"** means the zoning register of the zoning scheme contemplated in section 32; and

**"zoning scheme"** means the zoning scheme contemplated in section 25(1).

## **Chapter 2**

### **Application of this by-law and conflict of laws**

#### **2. Application of this By-Law and conflict of laws**

- (1) This By-Law applies to all land within the geographical area of the City, including land owned by the state.
- (2) This By-Law binds every owner and every user of land, including the state.
- (3) When considering an apparent conflict between this By-Law and another law, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.
- (4) If there is a conflict between this By-Law and another by-law, this By-Law prevails over the affected provision of the other by-law in respect of any municipal planning matter.

## **Chapter 3**

### **Spatial planning**

#### **Part 1 – Introductory provisions concerning spatial development frameworks**

#### **3. Spatial development frameworks**

- (1) The City's spatial development frameworks are –
  - (a) the municipal spatial development framework;
  - (b) district spatial development frameworks; and
  - (c) local spatial development frameworks.
- (2) The Cape Town Spatial Development Framework adopted as part of the Integrated Development Plan as amended, until it is replaced, is deemed to be the municipal spatial development framework.
- (3) The purposes of the City's spatial development frameworks include –
  - (a) providing a longer-term spatial depiction of the desired form and structure of the geographic area to which it applies;
  - (b) providing land use management guidelines regarding the appropriate nature, form, scale and location of development;
  - (c) contributing to spatial co-ordination;
  - (d) guiding investment and planning of municipal departments and where appropriate other spheres of government;
  - (e) guiding investment for the private sector;
  - (f) reflecting relevant provisions of strategies adopted by the Municipal Council; and
  - (g) guiding decision making on applications.

#### **Part 2 – The municipal spatial development framework**

#### **4. Process for drafting the municipal spatial development framework**

- (1) The City must adopt a process, which includes a public participation process, for drafting the municipal spatial development framework which complies with the Municipal Systems Act and any other applicable law.
- (2) Upon completion of the process contemplated in subsection (1), the Municipal Council must consider a written report from the Department that must at least –
  - (a) assess the draft municipal spatial development framework;
  - (b) summarise the process of drafting the municipal spatial development framework;
  - (c) summarise the consultation process;
  - (d) set out the City's responses to the comments received;
  - (e) describe how the City has complied with, is complying with and intends to comply with the requirements of relevant national and provincial legislation, and relevant provisions of strategies adopted by the Municipal Council; and



- (f) recommend the adoption of the draft municipal spatial development framework.
- (3) A registered planner must sign the report required by subsection (2).

## **5. Process for amending the municipal spatial development framework**

- (1) Section 34 of the Municipal Systems Act and the contemplated regulations govern the process for an amendment of the municipal spatial development framework.
- (2) Sections 4(2) and 6 apply to amendments to the municipal spatial development framework as a result of comments received from the Provincial Minister responsible for local government as contemplated in section 32 or 33 of the Municipal Systems Act.
- (3) The City Manager may prescribe the form and process governing a request to amend the municipal spatial development framework other than as a result of the annual review process contemplated in section 34(a) of the Municipal Systems Act.

## **6. Decision on the adoption or amendment of the municipal spatial development framework**

The Municipal Council may –

- (a) accept the report envisaged in section 4(2) and adopt the draft municipal spatial development framework in terms of Chapter 5 of the Municipal Systems Act;
- (b) adopt or refuse a draft amendment; or
- (c) refer the report on the adoption of the draft municipal spatial development framework or draft amendment back for further – (i) specified information; and/or (ii) specified consultation.

## **7. Submission of municipal spatial development framework to Provincial Minister**

Within 10 days of the Municipal Council adopting the municipal spatial development framework or an amendment thereof, the City Manager must submit the following to the Provincial Minister responsible for local government –

- (a) a written notice of the decision to adopt or amend the municipal spatial development framework;
- (b) the adopted or amended municipal spatial development framework;
- (c) a copy of the report referred to in section 4(2); and
- (d) a further report or statement to the extent required to comply with section 32(1)(b) of the Municipal Systems Act or section 14 of the Land Use Planning Act or any other legislation.

## **8. Publication of the adopted or amended municipal spatial development framework**

Within 14 days of the Municipal Council adopting the municipal spatial development framework or an amendment thereof, the City Manager must –

- (a) publish a notice of its decision to adopt or amend the municipal spatial development framework in the Provincial Gazette and in accordance with section 19;
- (b) give notice to the public and publicise a summary in accordance with section 25(4) of the Municipal Systems Act; and
- (c) publish a notice of the amendment of the municipal spatial development framework in the Provincial Gazette if the municipal spatial development framework is amended as contemplated in section 32 or section 33 of the Municipal Systems Act.



## 9. Status of the municipal spatial development framework

- (1) Subject to section 22, the City may deviate from the provisions of the municipal spatial development framework only if site specific circumstances justify the deviation.
- (2) In determining whether the site specific circumstances exist, the City must have regard to the development application that has been submitted and any other relevant considerations.
- (3) If an application is inconsistent with the municipal spatial development framework, the applicant must describe the inconsistency in –
  - (a) the application; and
  - (b) the advertisement of the application.
- (4) The municipal spatial development framework does not confer or take away rights.
- (5) If there is a conflict between the municipal spatial development framework and a district spatial development framework or local spatial development framework, the municipal spatial development framework prevails over other development frameworks to the extent of the conflict.

## 10. Review of the municipal spatial development framework

- (1) When reviewing the integrated development plan in terms of section 34(a) of the Municipal Systems Act, in relation to the review of the municipal spatial development framework, the City must consider at least –
  - (a) the record of deviations from the municipal spatial development framework and the reasons for the deviations;
  - (b) the requirements of provincial and national legislation relating to the municipal spatial development framework;
  - (c) relevant provisions of strategies adopted by the Municipal Council; and
  - (d) comments received in the review process.
- (2) Sections 5(1), 6 and 7 apply to a proposal to amend the municipal spatial development framework resulting from the review process.

## Part 3 – District spatial development frameworks and local spatial development frameworks

## 11. District spatial development frameworks

- (1) The Municipal Council may adopt a district spatial development framework for a specified geographic area within the geographical area of the City.
- (2) A district spatial development framework must –
  - (a) align with and give further effect to the municipal spatial development frameworks;
  - (b) identify and depict on a map current and future significant elements which give structure or spatial order to a settlement including road circulation networks, public transport systems, public open spaces, public facilities, and external engineering services;
  - (c) provide land use management guidelines that relate to –
    - (i) desirable land use patterns;
    - (ii) appropriate development densities and urban form;

- (iii) provision of public open space and public facilities;
- (iv) environmentally sensitive areas; and
- (v) high potential agricultural land;
- (d) provide a spatial representation to support spatial restructuring and integration within the district by indicating –
  - (i) areas where public and private development should be prioritised and facilitated;
  - (ii) areas where strategic intervention is required to enable desired changes to land use or urban form;
  - (iii) locations of future publicly-funded housing developments;
  - (iv) key infrastructure requirements to enable development of areas that have been prioritised;
- (e) support the municipal spatial development framework by depicting spatially the co-ordination, alignment and integration of relevant sectoral plans or policies of City departments;
- (f) include an implementation plan setting out how the proposals of the district spatial development framework are to be achieved; and
- (g) identify areas where more detailed local spatial development frameworks must be developed.

## **12. Local spatial development frameworks**

- (1) The Municipal Council may adopt a local spatial development framework for a specified geographic area within the geographical area of the City.
- (2) A local spatial development framework must align with and give further effect to the municipal spatial development framework and any relevant district spatial development framework by providing more detailed, local planning.
- (3) Where relevant, a local spatial development framework may contain the elements envisaged in sections 11(2)(a) to 11(2)(e).
- (4) A local spatial development framework may include an implementation plan which must among other things inform and guide actions aimed at realising proposals of the local spatial development framework.

## **13. Process for drafting or amending a district spatial development framework or a local spatial development framework**

- (1) If the City intends to adopt a district spatial development framework or a local spatial development framework, the City must –
  - (a) specify the geographic area concerned; and
  - (b) approve the drafting of a district spatial development framework or a local spatial development framework as the case may be.
- (2) *[Subsection (2) deleted by amendment on 2016-07-01.]*

- (3) The Department must provide a written report that must at least –
  - (a) describe the manner in which –
    - (i) the draft district spatial development framework or draft amendment thereof aligns to the municipal spatial development framework and relevant provisions of strategies adopted by the Municipal Council; or
    - (ii) the draft local spatial development framework or draft amendment thereof aligns to the municipal spatial development framework, the relevant district spatial development framework and relevant provisions of strategies adopted by the Municipal Council; as the case may be;
  - (b) summarise the process of drafting the district spatial development framework, local spatial development framework or amendment;
  - (c) summarise the consultation process;
  - (d) set out the City's responses to the comments received; and
  - (e) recommend the adoption of the draft district spatial development framework, draft local spatial development framework or draft amendment.

#### **14. Decision on the adoption or amendment of a district spatial development framework or a local spatial development framework**

The Municipal Council may –

- (a) accept the report envisaged in section 13(3) and adopt the draft district spatial development framework, draft local spatial development framework or draft amendment, with or without a condition;
- (b) refer the report envisaged in section 13(3) back for further specified information and/or further specified consultation; or
- (c) refuse to adopt the draft district spatial development framework, draft local spatial development framework or draft amendment.

#### **15. Publication of the adopted or amended district spatial development framework or local spatial development framework**

Within 30 days of adopting or amending a district spatial development framework or a local spatial development framework, the City must publish the adopted or amended district spatial development framework or local spatial development framework on the City's website.

#### **16. Status of a district spatial development framework and a local spatial development framework**

- (1) If an application is inconsistent with an applicable district spatial development framework or a local spatial development framework, the applicant must describe the inconsistency in –
  - (a) the application; and
  - (b) the advertisement of the application.
- (2) A person who takes a decision in terms of this By-Law –
  - (a) must be guided by an applicable district spatial development framework and/or local spatial development framework;

- (b) subject to section 22, may deviate from the provisions of an applicable district spatial development framework and/or local spatial development framework only if the circumstances justify the deviation.
- (3) A district spatial development framework and a local spatial development framework do not confer or take away rights.

#### **17. Review of a district spatial development framework or a local spatial development framework**

- (1) The City must review a district spatial development framework or a local spatial development framework or structure plan at least every 10 years.
- (2) The City Manager must give notice in the media in accordance with section 21 of the Municipal Systems Act of the City's intention to review a district spatial development framework or a local spatial development framework and give details of the person to whom and the date by which any comments or suggestions to be taken into account in the review process, must be submitted.
- (3) When conducting a review for the purposes of subsection (1), the City must consider at least –
  - (a) the record of deviations from the district spatial development framework or local spatial development framework and the reasons for the deviations;
  - (b) any relevant amendments to the municipal spatial development framework;
  - (c) the requirements of provincial and national legislation relating to the municipal spatial development framework;
  - (d) relevant provisions of strategies adopted by the Municipal Council; and
  - (e) comments received in the review process.

#### **18. Withdrawal of a district spatial development framework or a local spatial development framework**

- (1) If the City intends to withdraw a district spatial development framework or a local spatial development framework, the City must comply with subsection (2).
- (2) Upon completion of the consultation process and the adopted process, the Department must provide a written report which must at least –
  - (a) describe the reasons for withdrawing the district spatial development framework or the local spatial development framework or structure plan;
  - (b) summarise the consultation process;
  - (c) set out the City's responses to the comments received; and
  - (d) recommend the withdrawal of the district spatial development framework or local spatial development framework or structure plan.
- (3) The Municipal Council may –
  - (a) accept the report envisaged in subsection (2) and withdraw the district spatial development framework or local spatial development framework or structure plan;
  - (b) refer the report envisaged in subsection (2) back for further specified information, and/or require further specified consultation; or
  - (c) refuse to withdraw the district spatial development framework or local spatial development framework or structure plan.

- (4) Within 30 days of withdrawing a district spatial development framework or a local spatial development framework, the City must publish the withdrawal in accordance with section 15.

## **Part 4 – General provisions concerning spatial planning**

### **19. Record of and access to spatial development frameworks**

- (1) The City must keep, maintain and make accessible to the public, including on the City's website, the approved municipal spatial development framework, a district spatial development framework and a local spatial development framework and any amendment or withdrawal thereof.
- (2) The City must provide a requester, on payment of the prescribed fee, with a copy of the approved municipal spatial development framework, a district spatial development framework and a local spatial development framework and any amendments thereto.

### **20. Structure plans**

- (1) A structure plan listed in Schedule 1 and which remains in force in terms of section 16(1)(b) of the Land Use Planning Act is deemed to be a district spatial development framework approved in terms of this By-Law and remains in force indefinitely until withdrawn in terms of this By-Law.
- (2) A structure plan approved in terms of section 4(6) or section 4(10) of the Ordinance and listed in Schedule 2 and which remains in force in terms of section 16(1)(b) of the Land Use Planning Act is deemed to be a local spatial development framework approved in terms of this By-Law and remains in force indefinitely until withdrawn in terms of this By-Law.
- (3) Sections 13 to 18, with changes required by the context, apply to the amendment, status or withdrawal of a structure plan.

### **21. Policies to guide decision making**

- (1) The City may adopt a policy or guidelines to guide decision making in respect of applications made in terms of this By-Law.
- (2) The provisions of section 138 apply to policies contemplated in subsection (1).

### **22. Record of deviations from spatial development frameworks**

- (1) A person who takes a decision in terms of this By-Law which deviates from the provisions of the municipal spatial development framework and/or an applicable district spatial development framework and/or local spatial development framework or policy must at the time of making the decision –
  - (a) record in writing the reasons for the deviation; and
  - (b) keep a record of the decision and the written reasons for the deviation.
- (2) A record of decisions of applications that deviate from the municipal spatial development framework must be kept with the municipal spatial development framework.

### **23. Spatial development frameworks applicable to land incorporated into the geographic area of the City**

When land situated in the geographic area of another municipality is incorporated into the geographic area of the City, any spatial development framework applicable to that area or to part of that area remains in force until the City reviews or amends it in terms of the provisions of this By-Law.

## **Chapter 4**

### **Development management**

#### **Part 1 – Zoning scheme**

#### **24. Zoning**

- (1) All land within the geographic area of the City must have a zoning.
- (2) A zoning may apply to a land unit or part thereof, and a zoning need not follow cadastral boundaries.
- (3) The City may, by amendment of the development management scheme, on its own initiative adopt a new overlay zoning or amend or remove an existing overlay zoning.
- (4) In respect of each overlay zoning, except a subdivisional area overlay zoning, the City must publish in the Provincial Gazette –
  - (a) which specified area or land units have the overlay zoning;
  - (b) a reference to a map available on the City's website that depicts which specified area or land units have the overlay zoning; or
  - (c) a statement that no specified area or land unit has the overlay zoning.
- (5) The City may at any time designate a specified area or land unit to have an overlay zoning, or to no longer have an overlay zoning, by following the process in the development management scheme and must publish the designation in the Provincial Gazette.
- (6) The City is not required to follow the process in the development management scheme contemplated in subsection (5) when publishing a notice contemplated in subsection (4) if the area or land unit specified in the notice has the same or a substantially similar overlay zoning as it does when this By-Law comes into operation.

#### **25. Zoning scheme**

- (1) The zoning scheme comprises –
  - (a) the development management scheme;
  - (b) the zoning map; and
  - (c) the zoning register.
- (2) The zoning scheme applies to all land in the geographic area of the City.

#### **26. Development management scheme**

- (1) The purposes of the development management scheme include –
  - (a) regulation of use rights and control of the use of land;
  - (b) facilitation of the implementation of policies and principles set out in relevant spatial development frameworks and binding policies and principles set out in and in terms of national and provincial legislation;
  - (c) facilitation of efficient, economic and sustainable use of land;
  - (d) protection of areas with an environment which could be substantially adversely affected by development;

- (e) other purposes lawfully prescribed by national or provincial legislation.
- (2) The development management scheme is the scheme in Schedule 3. (3) The development management scheme is an integral part of this By-Law and its provisions have force of law.
- (4) When considering an apparent conflict between the body of this By-Law and the development management scheme, a court must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict.
- (5) If there is a conflict between the body of this By-Law and the development management scheme, the body of this By-Law prevails over the affected provision of the development management scheme.

## 27. Review of development management scheme

- (1) The City Manager must, at least every five years after the commencement of this By-Law, review the development management scheme.
- (2) The City Manager must give notice in the media in accordance with section 21 of the Municipal Systems Act of the City's intention to review the development management scheme and give details of the person to whom and the date by which any comments or suggestions to be taken into account in the review process, must be submitted.
- (3) The City Manager must submit a review report to the Municipal Council setting out for the period under review at least –
  - (a) the proposed amendments to the development management scheme, including proposed overlay zones, aimed at aligning the development management scheme with the municipal spatial development framework;
  - (b) the number of deviations from the municipal spatial development framework and the nature and reasons for each deviation;
  - (c) the response to comments received as a result of the notice published in the media in accordance with subsection (2).
- (4) If the Municipal Council approves the recommendations in the review report, the City must commence a process to amend the development management scheme accordingly.
- (5) The City must comply with the provisions of section 27 of the Land Use Planning Act prior to adopting any amendment of the development management scheme.
- (6) A review contemplated in terms of this section is not required for ad hoc amendments to the development management scheme.

## 28. Zoning map

- (1) The zoning map must –
  - (a) depict the zoning of every land unit in the City's geographical area;
  - (b) depict overlay zones applicable to a land unit; and
  - (c) be updated within a reasonable time after a use right has been granted or has lapsed.
- (2) The zoning map may –
  - (a) depict the proposed establishment, widening or closure of public streets and public roads;
  - (b) indicate by means of a symbol that a decision has been taken about a landuse right; and
  - (c) be kept in electronic format.

**29. Adoption, amendment and substitution of zoning map**

- (1) The zoning map is the zoning map in operation for the City at the commencement of this By-Law as may subsequently be amended or substituted.
- (2) A lawful zoning recorded on the zoning map at the commencement of this By-Law remains in force until it lapses or the zoning map is amended or substituted.
- (3) The City may amend or, after consultation, substitute the zoning map in terms of this ByLaw.
- (4) The substitution contemplated in subsection (3) takes effect when notification of approval of the substituted zoning map is published in the Provincial Gazette or on a future date fixed in the Provincial Gazette.

**30. Error in zoning map**

- (1) An owner who believes that the zoning map contains an error in respect of their property may apply to the City for the zoning map to be corrected.
- (2) An owner making an application contemplated in subsection (1) –
  - (a) must describe the nature of the error;
  - (b) bears the onus of proving the error and must provide written proof of the lawful land use rights; and
  - (c) must indicate the correct zoning.
- (3) The City must advertise the application –
  - (a) to another owner if the application materially affects the other owner; and
  - (b) for public comment if the application materially affects the public.
- (4) The City may approve or refuse the application.
- (5) If the application is approved, the City Manager must amend the zoning map.
- (6) If the City finds an error on the zoning map, the City may on its own initiative amend the zoning map after –
  - (a) providing notice of the error and of the City's intention to correct the error to, and inviting representations within a specified time period from –
    - (i) the owner of the property concerned;
    - (ii) another owner if the proposed correction materially affects the other owner; and
    - (iii) the public if the proposed correction materially affects the public;
  - (b) considering any representations received; and
  - (c) taking a decision to amend the zoning map.

**31. Status of zoning map and exemption of City from liability for any error**

- (1) The zoning map is the City's record of the zoning of each land unit.
- (2) A zoning recorded in the zoning map is presumed to be the correct zoning unless proved otherwise.
- (3) A use right ceases to exist on the day it lapses in terms of this By-Law or a previous zoning scheme even if the zoning map still records the use right as existing.



- (4) The City is exempt from liability for any damage which may be caused by –
  - (a) an error in the zoning map; or
  - (b) an erroneous representation by the City about a use right or the zoning of a land unit.

### **32. Zoning register**

- (1) The City must record in the zoning register –
  - (a) a decision taken in terms of this By-Law after the commencement of this By-Law to grant –
    - (i) a rezoning;
    - (ii) a permanent or temporary departure;
    - (iii) a consent;
    - (iv) a consolidation; or
    - (v) any other permission or approval granted in terms of the development management scheme;
  - (b) a non-conforming use which has been confirmed in terms of section 37(8); and
  - (c) any other matter which this By-Law requires to be recorded in the zoning register.
- (2) The City may keep the zoning register in electronic format.

### **33. Access to the zoning map and zoning register**

- (1) The zoning map is accessible to the public on the City's website.
- (2) The zoning map and zoning register are also available for inspection at the district offices of the Department.
- (3) The City must provide a requester, on payment of a fee, with a relevant extract in writing from the zoning map and zoning register.
- (4) An extract contemplated in subsection (3) must be in writing and signed by an authorised official.

### **34. Continuation of zoning schemes**

If the geographic area of the City is expanded to incorporate land from another municipality then the zoning scheme applicable to that land remains in force until the City amends, repeals or replaces it.

## **Part 2 – Use right and non-conforming use**

### **35. Use right**

- (1) A use right vests in land and not in a person.
- (2) No person may use or develop land unless the use or development is permitted in terms of the zoning scheme or an approval is granted or deemed to have been granted in terms of this ByLaw.
- (3) No person may contravene or fail to comply with a condition of approval imposed or deemed to have been imposed in terms of this By-Law.
- (4) A condition of approval imposed or deemed to have been imposed in terms of this By-Law binds a successor-in-title of the land unit.

### 36. Determination of zoning

- (1) Save where land is deemed to be zoned as contemplated in the development management scheme, the City may determine a zoning for land which does not have a zoning on its own initiative or on application by an owner.
- (2) When the City determines a zoning contemplated in subsection (1), it must have regard to at least –
  - (a) the lawful use of the land, or the purposes for which it could be lawfully used immediately before the commencement of this By-Law if possible to determine;
  - (b) the zoning, if any, that is most compatible with that use and any applicable title deed condition;
  - (c) any permanent departure or consent use that may be required in conjunction with that zoning;
  - (d) where land was vacant immediately before the commencement of this By-Law, the use permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the City; and
  - (e) where the lawful use of the land and the purpose for which it could be lawfully used immediately before the commencement of this By-Law cannot be determined, the zoning that is most desirable and compatible with any applicable title deed condition together with any departure or consent use that may be required.
- (3) When the City determines a zoning contemplated in subsection (1) and where the land is part of a protected area contemplated in the National Environmental Management: Protected Areas Act, 2003 ([Act 57 of 2003](#)) or similar legislation, the zoning is the zoning which would be most compatible with the objects of that legislation.
- (4) The City must amend the zoning map as soon as practicable to reflect the zoning determined for the land.
- (5) The City must give notice of its intention to determine a zoning to the owner if it acts in terms of subsection (1).
- (6) The City must comply with sections 79 and 80 if it acts in terms of subsection (1). (7) If the lawful use of the land cannot be determined, the City must follow a rezoning process.

### 37. Non-conforming use

- (1) For purposes of this section, 'non-conforming use' means the use of land or a building or part thereof for a purpose and in a manner which does not comply with the zoning scheme,
  - (a) but –
    - (i) has been so used lawfully for the same purpose and in the same manner continuously since at least 1 June 1950 without a material interruption; or
    - (ii) which once complied with an applicable previous zoning scheme and since then has been used lawfully for the same purpose and in the same manner continuously without a material interruption; and
  - (b) is continuously so used from the commencement of this By-Law without an interruption of longer than six months.
- (2) For the purposes of subsection (1)(a), a material interruption is regarded as a period of longer than –
  - (a) six months from 1 June 1950 to 30 June 1986; or

- (b) two years from 1 July 1986 to the day before the commencement of this By-Law.
- (3) A person claiming a non-conforming use has the onus of proving its existence.
- (4) A non-confirming use –
  - (a) may continue as long as it remains otherwise lawful;
  - (b) does not constitute an offence in terms of this By-Law; and
  - (c) is confined to the part of a land unit or building for which proof of its existence exists.
- (5) Notwithstanding the existence of a non-conforming use, no person may extend or alter the building concerned without approval in terms of this By-Law and any other applicable law.
- (6) If a building or a substantial part of it in respect of which a non-conforming use exists is destroyed or must be demolished because of damage, the City may on application and in its discretion grant permission for its reconstruction within the envelope of the non-conforming use and subject to conditions.
- (7) The permission in terms of subsection (6) does not relieve the owner from also obtaining authorisations required by any other applicable law.
- (8) The City may on its own initiative or on application make a binding determination as to the existence, nature and extent of a non-conforming use.
- (9) The City must advertise the application or intention to make a determination contemplated in subsection (8) –
  - (a) to the owner concerned if the owner is not the applicant;
  - (b) to another owner if the application materially affects the other owner; and
  - (c) for public comment if the application materially affects the public.
- (10) An applicant applying for a determination contemplated in subsection (8) must use the prescribed form and must provide any information which the City calls for.

### **Part 3 – General lapsing provision**

#### **38. General lapsing provision**

- (1) Unless otherwise specified in this By-Law, an approval granted or deemed to have been granted in terms of this By-Law to use or develop land lapses two years after the effective date of decision –
  - (a) where the land is not used in accordance with the approval; or
  - (b) where an improvement of land is required in order to use the land in accordance with the approval, lawful commencement of construction has not occurred.
- (2) An applicant may apply in terms of and subject to the requirements of section 107 for an extension of the validity periods contemplated in subsection (1), save that an extension may not exceed two years from the date that the original approval lapses.

### **Chapter 5 General requirements for an application**

#### **39. Applications**

- (1) An applicant who requires approval in terms of this By-Law for the use or development of land must apply to the City in terms of section 42.

- (2) An approval granted or deemed to have been granted in terms of this By-Law does not –
  - (a) release anyone from their duty to also obtain any other authorisation required by this By-Law or another law, and to comply with all law, a title deed restriction or a requirement in the constitution of an owners' association; or
  - (b) oblige anyone to use the approval.

#### **40. Persons who may make application in terms of this By-Law**

- (1) An application may be submitted only by –
  - (a) the owner of the land concerned;
  - (b) the City in respect of land which it does not own, for the purposes of sections 44(1) and 48(1);
  - (c) a person to whom the land concerned has been made available for development in writing by an organ of state or such person's duly authorised agent for housing purposes; or
  - (d) a service provider responsible for the provision of infrastructure, utilities or other related services.
- (2) A person duly authorised to make an application does so on behalf of the owner.

#### **41. Continuation of application by new owner**

If land that is the subject of an application in terms of this By-Law is transferred to a new owner, the new owner may continue with the application as the successor-in-title to the previous owner and the new owner will be regarded the applicant for the purposes of this By-Law.

#### **42. Types of applications**

A person may make application for the following in terms of this By-Law –

- (a) rezoning of land, including rezoning to subdivisional areaoverlay zoning;
- (b) permanent departure;
- (c) temporary departure;
- (d) subdivision of land;
- (e) implementation of a subdivision approval in phases;
- (f) consolidation of land;
- (g) amendment, suspension or deletion of a restrictive condition;
- (h) consent or approval in terms of, or the relaxation of, a restrictive condition in a title deed where the restriction relates to use, subdivision, development rules or design criteria;
- (i) consent, approval or any other permission or requirement in terms of the development management scheme;
- (j) amendment, deletion or addition of conditions in respect of an existing approval granted or deemed to be granted in terms of this By-Law;
- (k) extension of the period of validity of an approval;
- (l) amendment or cancellation of an approved plan of subdivision or general plan;
- (m) permission required in terms of the conditions of approval of an application;

- (n) determination of a zoning, a non-conforming use right or any other matter which the City may determine in terms of this By-Law;
- (o) correction of a zoning map;
- (p) *[Paragraph (p) deleted by amendment on 2016-07-01.]*
- (q) alteration or amendment of a street name or number;
- (r) determination of an administrative penalty as contemplated in section 129(1);
- (s) to exempt a subdivision from the need for approval in terms of this By-Law as contemplated in section 67(3);
- (t) permission for the reconstruction of a building or a substantial part of it within the envelope of a non-conforming use as contemplated in section 37(6);
- (u) any other application which the City Manager may prescribe in terms of this By-Law.

#### **43. Provisions which govern an application**

- (1) Unless otherwise provided in this By-Law, an application is governed by –
  - (a) the general procedures in Chapter 7;
  - (b) to the extent applicable, the special provisions in Chapter 6; and
  - (c) any other applicable provision in this By-Law.
- (2) In the event of an inconsistency between a special provision in Chapter 6 and another provision of this By-Law, the special provision prevails over the other provision.

### **Chapter 6** **Special provisions for certain applications**

#### **Part 1 – Rezoning, departure and consent use**

#### **44. Rezoning**

- (1) Subject to section 35(2) of the Land Use Planning Act and Chapter 7 of this By-Law, the City may on its own initiative rezone land which it does not own to give effect to approved spatial development frameworks and other City policies or for the purpose contemplated in section 36(7).
- (2) No application for approval of subdivision involving a change of zoning to more than one zone may be considered unless the land is zoned or will be zoned to subdivisional area.
- (3) Applications for rezoning to subdivisional area and for approval of subdivision may be considered simultaneously.
- (4) The City must as soon as practicable after rezoning land amend the zoning map and the zoning register to reflect the rezoning.

#### **45. Departure**

- (1) In respect of each land unit, a temporary departure to use land on a basis for which no provision is made in the zoning applicable to the land may not be granted –
  - (a) for a period exceeding five years;
  - (b) if another temporary departure is in operation at the time; or

- (c) if the temporary departure includes an improvement to land that is not permitted by the zoning applicable to the property.
- (2) If a condition for the approval of a temporary departure is not complied with or is contravened, the City may withdraw the approval in terms of section 127.

#### **46. Consent use**

A consent use may be granted for a specified period of time or permanently.

#### **47. Lapsing of rezoning, consent use or departure**

- (1) A rezoning, other than a rezoning to a subdivisional areazoning, consent use or permanent departure approved or deemed to have been approved in terms of this By-Law lapses five years after the effective date of the decision –
  - (a) where the land is not used in accordance with the approval; or
  - (b) where an improvement of land is required in order to use the land in accordance with the approval, lawful commencement of construction has not occurred.
- (2) A rezoning to a subdivisional area approved or deemed to have been approved in terms of this By-Law lapses five years after the effective date of decision if the applicant does not make an application for approval of subdivision in accordance with the approved subdivisional areazoning.
- (3) An applicant may apply in terms of and subject to the requirements of section 107 for an extension of the validity period contemplated in subsections (1) and (2). (4) In the case of a rezoning other than a rezoning to subdivisional area, consent use or departure –
  - (a) the City must request the owner in writing prior to the lapsing period or extended lapsing period to submit proof that the land is being used in accordance with the approval;
  - (b) the owner must notify the City in writing within the lapsing period or extended lapsing period that the land is being used in accordance with the approval, failing which the rezoning, consent use or departure is presumed to have lapsed.
- (5) If a rezoning lapses, the zoning applicable to the land as reflected on the zoning map prior to the granting of the approval applies.
- (6) If a rezoning, including rezoning to a subdivisional area, consent use or departure lapses, the City must as soon as practicable after lapsing amend the zoning map and the zoning register to reflect the lapsing.

### **Part 2 – Restrictive conditions**

#### **48. Removal, suspension or amendment of restrictive conditions**

- (1) Subject to section 39 of the Land Use Planning Act, the City may on its own initiative or on application remove, suspend or amend a restrictive condition in respect of any land unit.
- (2) An applicant must submit –
  - (a) a certified copy of the title deed to the City; and
  - (b) the mortgage bond holder's consent to the application, if relevant.
- (3) In addition to the procedures in Chapter 7, notice of the application must be served on –
  - (a) any provincial or national department if referred to in the title deed restriction;

- (b) a person whose rights or legitimate expectations are materially and adversely affected by the application;
  - (c) any person mentioned in the title deed for whose benefit the restrictive condition was imposed; and
  - (d) if the City so requires, the public or any other person.
- (4) The City must have regard to section 39(5) of the Land Use Planning Act and section 47 of SPLUMA when considering whether to remove, suspend or amend a restrictive condition.
- (5) A decision to amend, suspend or remove any restrictive condition –
  - (a) must be published by notice in the Provincial Gazette within 30 days of the effective date of the decision;
  - (b) may be unconditional or subject to any condition specified in the notice;
  - (c) may be permanent or for a period specified in the notice; and
  - (d) does not lapse.
- (6) The City must notify the Registrar of Deeds of the approval of the application as contemplated in subsection (5) and must forward a copy of the notification in the Provincial Gazette.

#### **49. Endorsements in connection with alterations, suspensions or removals of restrictions or obligations**

- (1) Upon notification of the approval of the application in the Provincial Gazette as contemplated in section 48(5)(a), the owner must, for purposes of the appropriate entries and endorsement, submit to the Registrar of Deeds –
  - (a) the original title deed;
  - (b) the original letter of approval; and
  - (c) a copy of the notification of the Provincial Gazette.
- (2) The Registrar of Deeds concerned must, as soon as possible after the publication of the approval of the application in the Provincial Gazette as contemplated in section 48(5)(a), make, free of charge, such appropriate entries in and endorsements on any relevant register, title deeds, diagram or plan in its office or submitted to it as may be necessary to reflect the effect of the notice.

### **Part 3 – Consolidation**

#### **50. Consolidation and construction of buildings**

- (1) A person may not construct a building or structure that straddles the boundaries of two or more contiguous land units unless the owners of the contiguous land units have either taken legal steps to the City Manager's satisfaction, to ensure that such land units cannot be separately sold, leased, alienated or otherwise disposed of or the City has approved.
- (2) An applicant who requires consolidation of land units must –
  - (a) obtain the City's approval (unless the consolidation is exempt in terms of section 67);
  - (b) submit a diagram for consolidation to the Surveyor-General for approval (who may approve the diagram in terms of the Land Survey Act only if the City has granted approval in terms of this By-Law);
  - (c) after the effective date of decision but before the City's approval lapses, obtain registration of the consolidation from the Registrar of Deeds in terms of the Deeds Registries Act.

- (3) If the City approves a consolidation or exempts a consolidation in terms of section 67 –
  - (a) the applicant must, when submitting a diagram to the Surveyor-General for approval, include proof to the satisfaction of the Surveyor-General of –
    - (i) the City's decision to approve the consolidation or proof of exemption;
    - (ii) the City's conditions of approval, if any; and
    - (iii) the consolidation plan approved by the City;
  - (b) the City must –
    - (i) amend the zoning map, and where applicable, the zoning register accordingly; and
    - (ii) notify the Surveyor-General.
- (4) No building plan may be approved in terms of section 7 of the National Building Regulations and Building Standards Act in respect of a building or structure contemplated in subsection (1), until –
  - (a) the consolidation or documentation arising out of the legal steps contemplated in subsection (1) has been registered; or
  - (b) a conveyancer provides written proof that the consolidation or the documentation arising out of the legal steps has been lodged with the Registrar of Deeds for registration.

## **51. Lapsing of consolidation**

- (1) Subject to subsection (2), an approved consolidation of land units lapses if the Registrar of Deeds does not register it within five years, after the effective date of decision.
- (2) If a consolidation of land units is approved as part of another application, the City may specify as a condition of approval that the applicant must obtain registration of the consolidation by the Registrar of Deeds within that validity period of the other application failing which the consolidation will lapse.
- (3) If an approval of a consolidation lapses –
  - (a) the City must –
    - (i) amend the zoning map, and where applicable, the zoning register accordingly; and
    - (ii) notify the Surveyor-General; and
  - (b) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect that the consolidation has lapsed.

## **Part 4 – Subdivision**

## **52. Approval of subdivision**

- (1) No land may be subdivided without approval of the City in terms of this By-Law, unless the subdivision is exempt in terms of section 67. (2) An application for approval of subdivision must be accompanied by a plan of subdivision showing at least –
  - (a) the location of proposed land units, public places and land needed for public purposes; and
  - (b) the proposed zonings in respect of the proposed land units.
- (3) An applicant may apply for approval to implement a subdivision in phases.



- (4) If the City approves the subdivision, the City must –
  - (a) impose any conditions of approval which the City considers reasonable, as contemplated in section 100, which must include conditions relating to the provision of engineering services;
  - (b) in the case of a phased subdivision –
    - (i) include in the conditions of approval, details of the phasing of the subdivision; and
    - (ii) require the owner to submit a separate general plan to the Surveyor-General for each phase; and
  - (c) endorse a plan of subdivision which must be in accordance with the approved subdivision.
- (5) Land that on the date of commencement of the Townships Ordinance, 1934 (Ordinance 33 of 1934) had been laid out as a township or had been subdivided by means of an actual survey into land units and public places and the plan is registered in the office of the Surveyor-General concerned, is deemed to be a confirmed subdivision for the purposes of this By-Law except in so far as any portion thereof or any land unit therein is further subdivided or laid out.

### **53. Approval of general plan or diagram by Surveyor General**

- (1) If the City approves a subdivision and has endorsed a plan of subdivision, the applicant must submit the general plan or diagram to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of –
  - (a) the decision to approve the subdivision or an indication on the plan of subdivision (contemplated in section 67(4)) that the subdivision is exempt from the approval requirement;
  - (b) the endorsed plan of subdivision; and
  - (c) the conditions of approval contemplated in sections 52(4)(a) and 52(4)(b).
- (2) If the City approves a phased subdivision, the applicant must submit a general plan or diagram for each phase to the Surveyor-General for approval.

### **54. Transfer of land unit arising out of approved subdivision**

- (1) No person may obtain transfer of a land unit arising out of an approved subdivision or the approved phase of a subdivision unless –
  - (a) the Surveyor-General has granted the approval contemplated in section 53;
  - (b) the engineering services required by the conditions of approval contemplated in section 52(4) and any other applicable legislation in respect of the area or the approved phase of a subdivision on the approved general plan or diagram have been completely installed;
  - (c) all other conditions of subdivision or the conditions relating to the approved phase of a subdivision on the approved general plan or diagram and all conditions precedent to the transfer of the land unit have been met; and
  - (d) where an owners' association is required,
    - (i) the City has certified the constitution of the association (as contemplated in section 62(2));
    - (ii) the association has been or will be established upon transfer of the first land unit (as contemplated in section 61(5)); and
    - (iii) all land designated in terms of the conditions of approval to be transferred to the owners' association including private roads and private open space, arising from the subdivision or approved phase of a subdivision have been, or together with

the transfer of the first land unit, will be transferred to the association, without compensation.

- (2) No person may obtain transfer of a land unit arising out of an approved subdivision, unless the City Manager has issued a transfer certificate contemplated in section 137.
- (3) Where an owners' association is required, an applicant is guilty of an offence if the first land unit arising from a subdivision or approved phase of a subdivision is transferred without all common property, including private roads and private open spaces originating from that subdivision, being transferred to the owners' association, and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

## **55. Confirmation of subdivision**

- (1) Within a period of five years after the effective date of decision, the applicant must, in respect of the approved general plan or diagram –
  - (a) meet all of the requirements in section 54(1); and
  - (b) obtain the registration of transfer in terms of the Deeds Registries Act of at least one land unit.
- (2) Upon compliance with subsection (1), the subdivision or phase of a subdivision is confirmed.
- (3) Upon confirmation of a subdivision or part thereof –
  - (a) the subdivision or part thereof cannot lapse;
  - (b) the zonings indicated on the approved subdivision plan are the zonings that apply to the land units arising from the subdivision or part thereof;
  - (c) the zonings contemplated in paragraph (b) cannot lapse; and
  - (d) the City must, as soon as practicable, amend the zoning map and the zoning register.
- (4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless –
  - (a) the subdivision or relevant phased part thereof is confirmed; or
  - (b) the City approves the construction before the subdivision or phased part thereof is confirmed.

## **56. Lapsing of subdivision and extension of validity periods**

- (1) An approval of a subdivision or an approved phase of subdivision lapses if the requirements of section 55(1) are not met.
- (2) If only a portion of the general plan complies with sections 54(1)(b) and 54(1)(c), the approval for the subdivision or an approved phase of subdivision lapses.
- (3) An applicant may apply in terms of and subject to the requirements of section 107 for an extension of the period to comply with section 55(1).
- (4) If an approval of a subdivision or an approved phase of subdivision lapses –
  - (a) the zoning applicable to the land prior to the granting of the approval of the rezoning to subdivisional area applies;
  - (b) the City must –
    - (i) amend the zoning map and, where applicable, the zoning register accordingly; and
    - (ii) notify the Surveyor-General accordingly;

- (c) the Surveyor-General must endorse the records of the Surveyor-General's office to reflect the lapsing.

#### **57. Land for public places and other uses**

- (1) When the City approves an application for subdivision, the applicant may be required to provide land for public places, community facilities and engineering services.
- (2) The extent of land required for public places is determined in accordance with the normal need arising from the subdivision or in accordance with a policy adopted by the City.
- (3) The land required for parks or public open spaces must be provided within the land area concerned with the application or may, with the consent of the City, be provided elsewhere within the municipal area.
- (4) Where the application is approved without the required provision of land for parks or public open space, the applicant may be required to make payment of a monetary amount in lieu of the provision of land for that purpose to the City.

#### **58. Ownership of public places and land required for municipal engineering services and community facilities**

- (1) The ownership of all land designated as a public place on an approved plan of subdivision vests in the City upon confirmation of the subdivision or a phased part thereof.
- (2) All land which vests in the City as contemplated by subsection (1) must be registered in the name of the City at the cost of the applicant within a period of six months after confirmation of the subdivision or the phased portion thereof.
- (3) In terms of the conditions imposed in terms of section 100, the City may determine that land designated for the provision of municipal engineering services and, where relevant, community facilities on an approved subdivision plan be transferred to the City upon confirmation of the subdivision or a part thereof.
- (4) Section 31 of the Deeds Registries Act applies to the transfer of the land to the City.
- (5) The City is not liable for compensation for the land referred to in subsection (1) if the City considers the provision of the public place to be a normal need arising from the subdivision or for internal engineering services.
- (6) A person who fails to comply with subsection (2) is guilty of an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

#### **59. Servitude in respect of services arising from subdivision**

The owner of any land unit arising from a subdivision must, after the confirmation of a subdivision –

- (a) without compensation, allow any service relating to the approval of the subdivision to be conveyed across or installed on the land unit in the manner and position that the City or organs of state from time to time reasonably requires. The services include –
  - (i) gas mains;
  - (ii) electricity infrastructure;
  - (iii) telephone cables;
  - (iv) television cables;
  - (v) internet cables;
  - (vi) other electronic infrastructure;

- (vii) main and other water pipes;
  - (viii) sewers;
  - (ix) storm water pipes;
  - (x) ditches and channels; and
  - (xi) surface installations such as mini-substations, meter kiosks and service pillars;
- (b) allow access to the works contemplated in paragraph (a) on the land unit at any reasonable time including for the purpose of constructing, altering, repairing, maintaining, removing or inspecting the works; and
- (c) receive such material or permit such excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless the owner elects to build retaining walls to the satisfaction of and within a period determined by the City.

## **60. Amendment or cancellation of plan or subdivision**

- (1) The City may approve an application for the amendment, cancellation or partial cancellation of an approved plan of subdivision, diagram or general plan of –
- (a) a subdivision which has not been confirmed; or
  - (b) a confirmed subdivision, in relation to land units shown on the general plan in respect of which no transfer has been registered in terms of the Deeds Registries Act.
- (2) Prior to approving an application in respect of a confirmed subdivision, any affected public place indicated on a plan or diagram or general plan, must be closed in terms of the applicable legislation.
- (3) If an application contemplated in this section is approved –
- (a) the applicant must submit the amended or cancelled plan or diagram to the Surveyor General to give effect to the amendment or cancellation;
  - (b) the applicant is liable for any expenditure resulting from the amendment or cancellation incurred by the City in respect of land that must be retransferred to or that reverts to the owner of the remainder of the land;
  - (c) after the subdivision or part thereof has been confirmed, any public place which has been closed must be given a deemed zoning or rezoned to an appropriate zoning; and
  - (d) the City must amend the zoning map and zoning register accordingly.

## **Part 5 – Owners’ association**

### **61. Establishment and operation of an owners’ association**

- (1) The City may, when approving an application for subdivision, require the applicant to establish an owners’ association for an area determined in the conditions of approval.
- (2) The requirement may be imposed only if the applicant satisfies the City that the owners’ association is likely to have the financial resources to maintain the private open space, private roads and other internal engineering services and amenities arising from the subdivision.
- (3) The owners of land units arising from the subdivision become members of the owners’ association upon taking transfer of the land unit and may not resign from the owners’ association.

- (4) No person may apply to the Registrar of Deeds for registration of, and the Registrar of Deeds may not register, a land unit arising from the subdivision without the consent of the owners' association, which consent may not be unreasonably withheld.
- (5) An owners' association –
  - (a) comes into existence upon the transfer of the first unit arising from the subdivision or part thereof;
  - (b) is a juristic person, has perpetual succession and is capable of suing and of being sued;
  - (c) has as its members all the owners of land units in the association's area who are jointly liable for the expenditure incurred in connection with the association; and
  - (d) must recover expenditure incurred in connection with the association from its members.
- (6) The applicant for approval of subdivision must call the first meeting of the owners' association within 60 days of the transfer of 60% of the land units arising from the subdivision or within two years of the transfer of the first land unit, whichever is the earlier.
- (7) An applicant who contravenes subsection (6) is guilty of an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3). (8) Members of an owners' association must at the first meeting of the association elect the trustees of the association.
- (9) The applicant for approval of subdivision must within 60 days of the first meeting notify the City that the meeting has taken place and provide the City with a copy of the minutes of the meeting.
- (10) A home owners' association established in terms of a previous planning law and which exists at the commencement of this By-Law is deemed to be an owners' association established in terms of this By-Law.

## 62. Constitution of an owners' association

- (1) An owners' association must have a constitution which –
  - (a) must at least provide for –
    - (i) the association to act in accordance with the collective mutual interests of its members;
    - (ii) the control, administration and management of private open space, private streets and other services and amenities arising from the subdivision and buildings on land under the association's control for the benefit of all members;
    - (iii) the association's ownership of private open space, private streets and internal engineering services arising out of the subdivision concerned;
    - (iv) the obligation to enforce certain conditions of subdivision approval or management plans listed in the conditions;
    - (v) the matters in section 61(5);
    - (vi) where relevant, any further development which must form part of the association and the procedures for incorporating the development;
    - (vii) the regulation of at least one yearly meeting of its members;
    - (viii) the prohibition of the transfer of a land unit arising from the subdivision unless the consent of the association has been obtained and the grounds upon which such consent may be refused;
    - (ix) arrangements for the transfer of a land unit in the event that the association ceases to function; and

- (x) the association's implementation and enforcement of the provisions of subparagraphs (i) to (viii);
- (b) may also provide for –
  - (i) the control, administration and management of design guidelines for buildings and landscaping on land units arising from the subdivision, provided that design guidelines may not introduce more restrictive development rules or land uses than provided in the development management scheme;
  - (ii) financial penalties for a member who fails to comply with a provision of the constitution; and
  - (iii) any other matter determined by the association which does not conflict with this By-Law or any other law.
- (2) The City must certify that the constitution of an owners' association complies with subsection (1)(a).
- (3) The constitution of an owners' association, as certified by the City, is deemed to be the constitution of the owners' association and comes into force upon the transfer of the first land unit arising from the subdivision.
- (4) The constitution of an owners' association may be amended in accordance with the provisions of the constitution provided that an amendment concerning a matter in subsection (1)(a) becomes effective only when certified by the City.
- (5) The constitution of an owners' association and any amendment thereof must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of subsection (2) or (4), is presumed to contain the operative provisions of the constitution.
- (6) The City is exempt from liability for any damage which may be caused by its certification of a constitution of an owners' association or an amendment thereof or by the loss of a constitution lodged with the City.
- (7) The owners' association must enforce the provisions of its constitution.

### **63. Owners' association which fails to meet an obligation or ceases to function**

- (1) If an owners' association fails to meet an obligation in section 61(5)(d) or section 62(1)(a)(ii) and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.
- (2) The City may recover any expenditure in respect of the action contemplated in subsection (1) from the owners' association or its members, who are jointly liable.
- (3) The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the owners' association for the purposes of section 61(5)(d). (4) If an owners' association ceases to function effectively or to carry out its obligations, the City may give the association a binding instruction to –
  - (a) hold a meeting and to reconstitute itself; or
  - (b) dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owner's association and the removal of relevant provisions in the title deed.
- (5) In determining whether to act in terms of subsection (4)(a) or (4)(b), the City must have regard to –
  - (a) the purpose of the association;
  - (b) who will take over the maintenance of internal engineering services and other which the association is responsible for, if at all;

- (c) the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
  - (d) the impact of the dissolution of the association on its members and the community;
  - (e) any written representations from the association and its members.
- (6) If the association is dissolved, the members must jointly pay the costs of –
- (a) the transfer to the City of the association's property which contains the internal engineering services and private open space;
  - (b) the upgrading of the internal engineering services to the standards of the City.
- (7) In the event that the owners' association has ceased to function and its constitution does not provide for an owner who wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% of the members of the association, which consent is deemed to be the consent of the owners' association unless the constitution provides for another procedure.

## Part 6 – Engineering services

### 64. Definitions in this Part

In this Part, unless the context indicates otherwise –

**"bulk engineering service"** means an engineering service required to provide an engineering service to multiple users in the municipal area and includes the land required for the bulk engineering service;

**"external engineering service"** means a municipal engineering service situated outside the boundaries of a land area required to serve the use and development of the land area and is either a bulk engineering service or a link engineering service;

**"internal engineering service"** means an engineering service situated within the boundaries of a land area required for the use and development of the land area and which is to be owned and operated by the City or a service provider or an owners' association and may include a bulk engineering service or a link engineering service; and

**"link engineering service"** means an engineering service required to connect an engineering service situated within the boundaries of a land area to a bulk engineering service and includes the land required for the link engineering service.

### 65. Responsibility for engineering services

- (1) The City is responsible for the –
- (a) provision of an external engineering service; and
  - (b) installation of a bulk engineering service if it is installed when planned according to the City's service master plans and capital budget.
- (2) An applicant is responsible for the –
- (a) provision and installation of an internal engineering service;
  - (b) installation of a link engineering service, unless otherwise agreed with the City in writing; and
  - (c) installation of a bulk engineering service if the land development requires the installation of the bulk engineering service other than in accordance with the applicable service master plan or capital budget of the City, and if the City in the conditions of approval requires the applicant to perform the installation.

- (3) If necessary to maintain the functionality of the City's long-term plans, the City may require an applicant, when installing a bulk engineering service or a link engineering service, to install a service in excess of the capacity of service required for the land development.
- (4) Subject to subsection (5), the City must set off from the applicant's development charge liability the fair and reasonable costs to the applicant of installing the following when required by the City to do so –
  - (a) the portion of a link engineering service in excess of the capacity of service required for the land development; and
  - (b) a bulk engineering service.
- (5) An applicant is liable for the full costs of installing all bulk engineering services and link engineering services to meet the capacity of service required for the land development even if the costs exceed the total development charges for all phases of the development.
- (6) If the City is not the provider of a bulk engineering service or a link engineering service, the applicant must satisfy the City that adequate arrangements have been made with the relevant service provider or sphere of government for the provision of that service.
- (7) An applicant must ensure that the design of a bulk engineering service or a link engineering service to be installed by the applicant –
  - (a) accords with the City's guidelines, design manuals, engineering practices and approved policies;
  - (b) meets the standard and capacity required by the City; and
  - (c) is approved in writing by the City before the engineering service is installed.
- (8) If the City requires the applicant to install a bulk engineering service or a link engineering service, the applicant may not commence installation until the applicant has concluded an engineering services agreement with the City.
- (9) The construction and installation of engineering services must be in accordance with plans and specifications which the applicant submitted to the City for the development or for each phase of the development and, if applicable, in accordance with the engineering services agreement.
- (10) An applicant may install internal engineering services and external engineering services in phases provided that –
  - (a) such phasing is made a condition of approval; and
  - (b) the installation must be done in accordance with an approved phasing plan.
- (11) The City may grant an exemption from the installation of engineering services in accordance with a policy approved by the Municipal Council or in accordance with applicable legislation.

## **66. Development charge**

- (1) The applicant must pay a development charge to the City in respect of the provision and installation of bulk engineering services and link engineering services in accordance with a policy adopted by the City.
- (2) The City may grant an exemption or rebate from the payment of development charges in accordance with a policy approved by the Municipal Council or in accordance with applicable legislation.
- (3) The development charge is subject to annual escalation as provided for in the approved policy.



## **Part 7 – Exemption of certain subdivisions and consolidations from the need for approval**

### **67. Exemption of certain subdivisions and consolidations from the need for approval**

- (1) Subject to subsection (5), the subdivision or consolidation of land units does not require approval in terms of this By-Law if it arises from –
  - (a) the implementation of a court order;
  - (b) an expropriation;
  - (c) an amendment of the common boundary between two or more land units if the resulting change in area of any of the land units is not more than 10%;
  - (d) the survey of closed streets or public open spaces in order to consolidate with an abutting land unit;
  - (e) construction or alteration of a public road or a public street;
  - (f) the need to transfer land units to the City or an organ of state in terms of the Deeds Registries Act for municipal or government purposes;
  - (g) the registration of a servitude or lease for the provision or construction of –
    - (i) an engineering service or other service provided by or on behalf of the state or a service provider including communication infrastructure and pipelines; or
    - (ii) an encroachment into a road reserve; or
    - (iii) a municipal engineering service; or
    - (iv) the imposition of height restrictions;
    - (v) the granting of a right of habitation, private right of way or usufruct; or
    - (vi) bore-hole or waterpipe;
  - (h) an existing state- or City-owned housing scheme in order to make ownership of individual land units possible.
  - (i) a consolidation of land required in terms of a condition of approval imposed in terms of the Ordinance prior to this By-Law coming into force; or
  - (j) the consolidation of land units where an existing building constructed in terms of approved building plans and in accordance with such plans straddled the boundaries of two or more contiguous land units prior to the commencement of this By-law;
  - (k) the cession of land to the City for inclusion into a road reserve.
- (2) Subject to subsection (5), the City may, by notice in the Provincial Gazette, exempt any other type of subdivision application from the need for approval in terms of this By-Law if the exemption does not adversely affect the rights or legitimate expectations of any person.
- (3) Subject to subsection (4), the City may, on application, exempt a subdivision from the need for approval in terms of this By-Law if exceptional circumstances exist and if the exemption does not adversely affect the rights or legitimate expectations of any person.
- (4) The City must endorse on the plan of subdivision that a subdivision is exempt from the need for approval in terms of this By-Law.

- (5) The exemptions in subsection (1) and the power to exempt in subsection (2) do not apply –
  - (a) if a rezoning or any other land use approval in terms of this By-Law is required;
  - (b) when engineering services must be moved or provided; or
  - (c) if the subdivision is required to create individual land units for new housing.

## **Part 8 – Emergency housing and urgent housing**

### **68. Emergency housing**

- (1) In this section, unless the context indicates otherwise, ‘emergency housing’ means temporary housing required for households whose homes are uninhabitable as a result of a disaster situation caused by rain, flood, wind, fire, earthquake, accident or other circumstance sufficient in nature and scale to result in widespread homelessness and where the damage or threat to the homes cannot be rectified without temporary relocation and the households cannot be rehoused on site during the rectification.
- (2) If the City identifies a need for the establishment of emergency housing on land which is not zoned for the purpose, the City may approve the commencement of a process to declare the land to be an emergency housing site.
- (3) The City may approve the commencement of a process to declare the land to be an emergency housing site only if it is satisfied that basic water and sanitation services can be provided to the site and with the consent of owner of the land if the City is not the owner of the land.
- (4) The City must advertise its intention to establish an emergency housing site in accordance with the requirements of the Municipal Systems Act and any applicable City policy.
- (5) The notice must contain at least the following information-
  - (a) a description of the land and the physical address of the land;
  - (b) the reason for declaring the land to be an emergency housing site;
  - (c) that the City intends to suspend the zoning applicable to the land for a period of 90 days to allow the land to be used for emergency housing which would otherwise be in contravention of the development management scheme;
  - (d) details of where and when particulars of the matter are available for inspection;
  - (e) an invitation to members of the public to lodge with the City written comment or objection with reasons;
  - (f) details of the procedure for that person to submit written comment and the date by when it must be lodged (which may be no less than 10 days after the publication of the notice); (g) a statement that no late comment or objection will be considered; and
  - (h) a statement that any person who cannot write may come during office hours to a stated place where an authorised official will assist that person by transcribing that person’s comment or objection and reasons.
- (6) To the extent necessary, the City must request the Provincial Minister for authorisation in terms of section 60(2) of the Land Use Planning Act to deviate from the provisions of that Act.
- (7) After considering any timeous comments, the City may declare the land to be an emergency housing site and suspend the zoning applicable to the land for a period of up to 90 days to allow the land to be used for emergency housing.

- (8) A declaration contemplated in subsection (7) –
  - (a) must be published by the City in the Provincial Gazette within 48 hours;
  - (b) means that the use of the land for emergency housing will be regarded as consistent with this By-Law; and
  - (c) does not exempt a person using land for emergency housing from their duty to comply with all other applicable law.
- (9) After following a process which complies with the provisions of this section, the City may extend the declaration contemplated in subsection (7) for a further period of up to 90 days.

## **69. Urgent housing**

- (1) Subject to subsection (2), the City may declare an application for the establishment of housing to be an urgent housing application.
- (2) The City may declare an application to be an urgent housing application only if –
  - (a) the application relates to government-subsidised housing; and
  - (b) the land concerned is either –
    - (i) designated for government subsidised housing in terms of the integrated development plan, the municipal spatial development framework, a district spatial development framework or a local spatial development framework; or
    - (ii) subject to an established high demand for government subsidised housing and a low supply of housing opportunities.
- (3) The City may to the extent necessary exempt the applicant from a procedural requirement or shorten a time period provided for in this By-Law, provided that the procedure must still comply with the provisions of applicable legislation dealing with advertising.
- (4) To the extent necessary, the City must obtain authorisation from the Provincial Minister in terms of section 60(1) of the Land Use Planning Act to deviate from the provisions of that Act in the processing of an urgent housing application.

## **Chapter 7 General procedures for all applications**

### **Part 1 – Making an application**

## **70. Pre-application consultation**

- (1) The City may require an applicant to consult with an authorised official prior to submitting an application in terms of this By-Law in order to determine among other things the –
  - (a) information which must be submitted with the application;
  - (b) nature of the public notification to be carried out in accordance with Chapter 7;
  - (c) investigations which must be carried out;
  - (d) further applications required in terms of this By-Law or any other relevant law;
  - (e) sequence in which the applications should be processed;
  - (f) combined advertising of different applications required in terms of different laws;

- (g) engineering services required and the need to liaise with other organs of state for services regarding engineering services;
  - (h) liaison required with other organs of state in order to align procedures for processing applications in terms of different legislation; and
  - (i) consideration of whether a package of plans approach, as contemplated in item 136 of schedule 3 of this By-Law, is to be followed.
- (2) The City Manager may prescribe requirements to determine whether an application requires pre-application consultation, the nature of the information that is required, the procedures to be followed and the time periods within which such meetings must take place.
- (3) An applicant may in writing request a pre-application consultation.
- (4) The City must keep a record of a pre-application consultation.

## 71. Information required

- (1) An application must be accompanied by at least –
- (a) the prescribed application form completed and signed by the applicant and owner, where the applicant is not the owner;
  - (b) the following authority –
    - (i) if the applicant is not the owner of the land, a power of attorney signed by the owner and the owner's contact details;
    - (ii) if the owner is a company, close corporation, trust, body corporate or an owners' association, proof that the applicant is authorised to act on behalf of the owner;
    - (iii) if the owner is a close corporation or company proof that a close corporation or company has not been deregistered and is not in the process of being deregistered;
    - (iv) if the owner is a trust, a copy of the Trust Deed; and
    - (v) the consent of any mortgage bond holder, if any, in respect of an application prescribed by the City Manager;
    - (vi) the name of the representative with whom, and the method by which, the City will liaise and notify;
  - (c) proof of payment of all fees in respect of the application;
  - (d) if pre-application consultation has taken place, the record of the pre-application consultation proceedings;
  - (e) a full copy of the title deed and if required by the City Manager, a conveyancer's certificate indicating that there are no restrictive conditions relating to the application;
  - (f) a locality plan, layout plan or plan depicting the proposed development in its cadastral context;
  - (g) a copy of the Surveyor-General's diagram of the subject property or extract from the approved general plan;
  - (h) written motivation for the application based on the criteria for decision and information to support such motivation;
  - (i) the information required in the pre-application consultation;
  - (j) sufficient information as required in terms of the City's approved Development Charge policy;

- (k) any additional information that the City Manager prescribes in relation to that type of application;
- (l) any additional information that the City Manager calls for in relation to that particular application;
- (m) in the case of an application for the subdivision of land, the subdivision plan showing the following –
  - (i) location of the proposed land units;
  - (ii) proposed zonings in respect of the proposed land units;
  - (iii) public places;
  - (iv) existing structures;
  - (v) existing and proposed access points;
  - (vi) servitudes;
  - (vii) contours with at least a 1m interval or such interval as the City Manager may prescribe;
  - (viii) existing external engineering services;
  - (ix) any significant natural features;
  - (x) street furniture;
  - (xi) scale of the plan; and
  - (xii) the proposed names and numbers of streets.
- (2) If a subdivision is to be implemented in phases, the subdivision application must be accompanied by a phasing plan showing –
  - (a) the proposed timeline for the completion of the entire subdivision;
  - (b) how the subdivision will be implemented and what engineering services must be in place before a certificate contemplated in section 137 may be granted;
  - (c) that the engineering services for each phase will be able to function independently and in sequence;
  - (d) the links in engineering services to the next phase;
  - (e) proposed measures to avoid or mitigate any adverse impact on adjoining land units or proposed land units not located within the phase to be developed; and
  - (f) a map indicating –
    - (i) the proposed subdivision which clearly marks, in bold lines, the boundaries of each proposed phase;
    - (ii) each phase labelled alphabetically; and
    - (iii) the roads, land units, open spaces, internal engineering services and external engineering services that the applicant will provide for each phase.
- (3) If an application for subdivision requires a servitude over land which does not belong to the applicant, the applicant must provide a copy of a written agreement with the owner of the land over which the servitude will be registered.

- (4) If an owners' association is to be established, the applicant must provide an indication of the financial costs of the maintenance of the private open spaces, private streets and internal engineering services and amenities for the owners' association.
- (5) An application must comply with any information specification of the City Manager in respect of that particular application or that type of application relating to matters such as size, scale, colour, number of hard copies, electronic format and file format.
- (6) The City Manager may in writing waive any information requirement for a particular application or a type of application.

## **72. Application fee**

- (1) Before submitting an application, an applicant must pay the application fee.
- (2) The City may refund an application fee only if permitted by the City's Tariff, fees and charges book.

## **73. Refusal to accept an application**

- (1) The City must refuse to accept an application if –
  - (a) a pre-application consultation is required but has not taken place;
  - (b) the City has not received the application fee;
  - (c) the application does not comply with an information specification, lacks necessary information required in terms of section 71 or contains manifestly incorrect information; or
  - (d) in the City's opinion, a materially similar application was refused within the previous six months (other than by way of a deemed refusal contemplated in section 75(4)) and there has been no relevant change in law or policy or the factual considerations upon which the decision to refuse was based have not changed.
- (2) The City may refuse to accept an application if the application is not accompanied by an application for any other approval required in terms of this By-Law.

## **74. Acceptance of application and call for additional information**

If the City accepts the application, the City Manager must –

- (a) acknowledge receipt of an application either by means of a stamp on the submitted application on the day of receipt or in writing;
- (b) within 14 days after receipt of the application or such further period as may be agreed in writing either –
  - (i) call for additional information or fees; or
  - (ii) notify the applicant that the application is complete.

## **75. Additional information**

- (1) The applicant must, within 30 days or such further period agreed with the City Manager, provide the City with any additional information which the City Manager calls for.
- (2) If the applicant provides additional information or fees which the City Manager considers inadequate or non-compliant with an information specification, the City Manager may within 14 days or such further period as may be agreed, in writing either –
  - (a) again call for additional information or fees; or
  - (b) notify the applicant that the application is closed, in which event subsection (4) applies.

- (3) If the applicant does not timeously provide the additional information and does not timeously request the City Manager to make a determination as contemplated in subsection (5), the City may close the application and notify the applicant in writing.
- (4) If the City closes the application –
  - (a) the application is deemed to be refused; and
  - (b) the applicant may submit a new application and must pay a new application fee.
- (5) If the applicant disputes that the additional information is necessary, the applicant may, within 21 days of the call for information, request the City Manager to make a determination.

## **76. Complete application**

- (1) An application is complete if the City has received the application fee, all information necessary for the City to assess the application and the information submitted is compliant with all information specifications.
- (2) Within 14 days after receipt of any additional information which the City Manager called for and considers adequate and compliant with all information specifications, the City Manager must notify the applicant in writing that the application is complete.
- (3) The date that an application is complete is regarded as the date of submission.

## **77. Withdrawal of application**

- (1) An applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the City.
- (2) If an applicant withdraws their application –
  - (a) the application fee is not refundable; and
  - (b) the applicant must submit a new application to proceed with the application.

## **78. Duties of an applicant**

- (1) An applicant must ensure that –
  - (a) no misrepresentation is made to the City;
  - (b) the City is not misled;
  - (c) all information furnished to the City is accurate; and
  - (d) the application does not omit any relevant information.
- (2) A person who contravenes subsections (1)(a) or (1)(b) is guilty of an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

# **Part 2 – Notice and comment**

## **79. Notice of application**

- (1) The City must, in accordance with the requirements of this Part, cause notice to be given of its intention to consider an application.
- (2) Subject to sections 80, 81 and 82, the City may require the use of or use any one or a combination of these methods of notice –
  - (a) publish a notice in the media as contemplated in section 81;

- (b) serve a notice to a person as contemplated in section 82;
  - (c) serve a notice of no objection as contemplated in section 84.
- (3) The City may, in addition to the methods contemplated in subsection (2), require the applicant to display a site notice which must –
  - (a) be laminated and of a size of at least 60 cm by 42 cm;
  - (b) be displayed on every boundary of the land unit or units concerned which abut a street or at any other conspicuous place on the unit or units which the public is likely to see;
  - (c) be displayed for a period and from a date set by the City Manager, which may not be less than 30 days; and
  - (d) be replaced if it is damaged or removed during the notification period.
- (4) Where an applicant gives notice, the applicant must provide proof to the City within seven days of giving notice.
- (5) Subject to the requirements of national and provincial legislation, the City Manager may exempt an application from a public notification process if the application does not materially and adversely affect the rights of the public.

## **80. Content of notice**

- (1) Any notice which is given regarding an application must contain the following information –
  - (a) details of the applicant and the owner of the land unit (if different from the applicant);
  - (b) description and physical address of the land unit;
  - (c) the purpose of the application to which the notice relates;
  - (d) details of where and when particulars of the application of which notice is given are available for inspection;
  - (e) an invitation to members of the public to lodge with the City written comment or objection with reasons;
  - (f) details of the procedure for a person to submit written comment or objection and the date by when it must be lodged (which may not be a date less than 30 days from the date of the notice);
  - (g) a statement that no late comment or objection will be considered unless the City Manager has agreed in writing; and
  - (h) a statement that any person who cannot write may come during office hours to a stated place where an authorised official will assist that person by transcribing that person's comment or objection and reasons.
- (2) The notice must require a person providing written comment or objection to provide the details contemplated in section 90(5).

## **81. Notice in the media**

- (1) The City Manager must cause notice to be given in the media of the City's intention to consider an application listed in section 43 of the Land Use Planning Act.
- (2) The City Manager may prescribe any other type or category of application that requires the publication of a notice in the media.



- (3) A notice in the media contemplated in subsection (1) or (2) must be published#
  - (a) in accordance with section 21 of the Municipal Systems Act in at least two of the official languages of the Province most spoken in the area concerned; and
  - (b) if publication as contemplated in paragraph (a) is considered to be ineffective, through other effective means, which may include announcements through a loudhailer, publication on websites or community notice boards, or communication through email lists or social media.

## 82. Notice to a person

- (1) The City Manager must cause a notice to be served, as contemplated in subsections (2) and (4), of the City's intention to consider the following applications –
  - (a) determination of a zoning or deemed zoning;
  - (b) rezoning of land;
  - (c) subdivision or amendment of subdivision;
  - (d) consolidation;
  - (e) amendment or imposition of a condition;
  - (f) removal, suspension or amendment of a restrictive condition;
  - (g) *[Subsection 1(g) deleted by amendment on 2016-07-01]*.
- (1A) The City may cause notice to be served as contemplated in subsections (3) and (4) of the City's intention to consider any other category of application contemplated in section 42.
- (2) The notice must be served –
  - (a) on a person whose rights or legitimate expectations are materially and adversely affected if the application is approved;
  - (b) in accordance with section 111 of this By-Law.
- (3) If the City intends to rezone land which it does not own it must give notice to the owner.
- (4) If notice is given in only one official language of the Province, the notice must contain a statement in each of the other official languages of the Province that the City will, upon request delivered within seven days of notification, translate the notice into another official language of the Province.

## 83. Notice to a representative

The City Manager may prescribe a category of application contemplated in section 42 which must be served on –

- (a) a councillor for the area to which the application relates; or
- (b) a named organisation which represents an interest to which the application relates and which is registered with the City for this purpose.

## 84. Notice of no objection

- (1) The City Manager may cause a notice to be served as contemplated in subsection (2) of the City's intention to consider the following applications –
  - (a) departure;
  - (b) consent use;
  - (c) extension of time period;

- (d) consent in terms of or relaxation of a restrictive condition where provided for in the title deed condition;
  - (e) any other form of permission required in terms of the development management scheme.
- (2) The notice must contain at least –
  - (a) the information contemplated in sections 80(1)(a) - 80(1)(d);
  - (b) details of the land use proposal or building plan number, date and version as the case may be;
  - (c) provisions to permit the person to whom notice is given to sign indicating that they have no objection to the proposed application and waiving their right to be notified in accordance with section 82; and
  - (d) information relating to the person's right to have the application advertised to them so that they may comment or object to the application.
- (3) Unless an alternative method of service is authorised by the City Manager, the notice must be served personally on a person whose rights or legitimate expectations are likely to be materially and adversely affected by the approval of the application.
- (4) The procedure in section 82 must be followed if –
  - (a) the information on the notice of no objection is incomplete; or
  - (b) an affected owner refuses to sign a notice of no objection or cannot be contacted to sign the notice.
- (5) If the applicant furnishes a notice of no objection from all the persons the City Manager identifies, then –
  - (a) that date will be regarded as the date of closure of the period for public comment; and
  - (b) the provisions of the Part do not apply, apart from sections 86, 87, 88, and 95.

## **85. Deemed notice to owners in a sectional title development**

- (1) Where there is a sectional title development constituted under the Sectional Titles Act, notification to the Body Corporate concerned is deemed to be notification to all owners in that sectional title development.
- (2) The Chairperson of the Body Corporate must ensure that all owners in the sectional title development are notified.

## **86. Notice to the Provincial Government**

- (1) When an application relating to any of the following is complete (in accordance with section 76), the City must refer the application to the head of the department in the Provincial Government responsible for land use for comment –
  - (a) a development outside of the City's development edge line in the municipal spatial development framework;
  - (b) a rezoning of land zoned for agricultural purposes or conservation purposes;
  - (c) a development prescribed by the City Manager; and
  - (d) a development prescribed by the Provincial Government.
- (2) The City may not decide on an application contemplated in subsection (1) until –
  - (a) it has received comment from the head of department; or

- (b) no comment has been received with 60 days of referral, or such further period agreed by the City Manager, in which event the Provincial Government will be regarded as having no comment.

## **87. Notice to an organ of state other than the Provincial Government**

- (1) An organ of state which is given notice of an application and invited to comment must do so within 60 days of –
  - (a) notification; or
  - (b) receiving all information reasonably necessary to comment if the application is incomplete and the organ made a request for additional information within 14 days of notification.
- (2) An organ of state that fails to comment within the period contemplated in subsection (1) will be regarded as having no comment.
- (3) An organ of state may be given notice by means of email addressed to the Head of Department or Director General of that organ of state.

## **88. Internal circulation**

- (1) The City Manager must forward an application simultaneously to every department of the City which may have a direct interest in the application.
- (2) A department must submit comment relevant to the functional area of that department within the time period set by the City Manager, failing which it will be regarded as having no comment.
- (3) If as a result of circulation to departments, the City Manager requires additional information, the provisions of section 75 apply.

## **89. Intervener**

- (1) A person contemplated in subsection (2) may, within the period contemplated in subsection (3), submit a petition on the prescribed form to the City Manager to be granted intervener status.
- (2) A person may submit a petition only if he or she has not been given notice of the application in terms of sections 82 or 83 and –
  - (a) if the application has not yet been decided – the petitioner has an interest in the application; or
  - (b) if the application has been decided – the petitioner has a pecuniary or proprietary interest which is adversely affected or is able to demonstrate that she or he will be adversely affected by the decision or an appeal in respect of the decision.
- (3) A petition is invalid if it is submitted –
  - (a) more than seven days after the petitioner became aware of the application or might reasonably have been expected to have become aware of the application; or
  - (b) after the effective date of decision contemplated in section 105(2).
- (4) A petitioner must submit together with the petition –
  - (a) if the application has not yet been decided – in accordance with section 90(5), any objection, comment or representations and the reasons therefor that the petitioner wishes the decision-maker to consider;
  - (b) if the application has been decided – a written notice of appeal and grounds of appeal in accordance with section 108(1); and

- (c) an affidavit stating that he or she is not colluding with any applicant, objector or appellant and is willing to act in regard to the application or appeal as the City may direct.
- (5) The City Manager must provide a copy of the petition and the information contemplated in subsection (4) to the existing parties to the proceedings for comment.
- (6) The City Manager may –
  - (a) refuse a petition if it is late;
  - (b) if there is no question that the petition should be granted, grant the petitioner intervener status; or
  - (c) in the event that a question arises as to whether the petition should be granted, refer the petition for determination to –
    - (i) the Municipal Planning Tribunal or the authorised official who must decide the application if the application has not yet been decided; or
    - (ii) the appeal authority if the application has been decided.
- (7) In deciding whether to grant a petitioner intervener status, the Municipal Planning Tribunal, authorised official or appeal authority, as the case may be, must consider at least whether –
  - (a) the petitioner qualifies in terms of subsection (2);
  - (b) no existing party to the proceedings adequately represents the interest of the petitioner;
  - (c) the petitioner represents other persons who have a similar interest in the proceedings and who are not otherwise represented;
  - (d) refusing the petition would impede the ability of the petitioner to protect his or her interest;
  - (e) the petitioner's objection, comment or representations are relevant to the proceedings, different from those of the existing parties, and would assist the decision-maker; and
  - (f) granting the petition would not cause undue delay or otherwise prejudice the interest of any party to the proceedings.
- (8) The decision-maker must notify the petitioner and the existing parties to the proceedings of the outcome of the petition.
- (9) There is no appeal against a determination to grant or to refuse a petition.
- (10) A person who is granted intervener status after an application is decided is regarded as an appellant.

## **90. Objection to an application**

- (1) A person who has been invited to comment or object, or any person in response to a public invitation to comment or object, may object to, comment on or make representations about the application in accordance with this section.
- (2) An objection, comment or representation must be in writing.
- (3) A late objection, comment or representation will not be considered unless the City Manager condones the late submission in terms of subsection (4). (4) The City Manager may condone the late submission of an objection, comment or representation if good cause is shown and consideration of the late objection, comment or representation would not –
  - (a) cause an unreasonable delay; or
  - (b) prejudice the public interest.

- (5) A person who submits an objection, comment or representation must provide –
  - (a) sufficient details of the application for it to be readily identified;
  - (b) their full name;
  - (c) their address and other contact details and the method by which they may be notified;
  - (d) their interest in the application;
  - (e) the reason for their objection, comment or representation, including at least –
    - (i) the effect that the application will have on them or the area;
    - (ii) any aspect of the application that is considered to be inconsistent with policy, and how.
- (6) An objection, comment or representation which does not meet the requirements of subsection (5) may be disregarded.
- (7) The City Manager may keep the information provided under subsections (5)(b) and (5)(c) confidential on good cause shown.
- (8) No person may request the payment of money or any other form of consideration from the applicant or any person involved in the application in return for not submitting an objection or in return for submitting a notice of no objection or a supportive comment.
- (9) No person may offer a person payment of money or any other form of consideration in return for not submitting an objection or for submitting a notice of no objection or a supportive comment.
- (10) Subsections (8) and (9) do not prohibit the request for or the offer to undertake measures to mitigate the impact of the development contemplated in the application.
- (11) A person who contravenes subsections (8) or (9) is guilty an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

## 91. Petition

- (1) The minimum requirements of a petition are that –
  - (a) each page of the petition must contain –
    - (i) sufficient details of the application for it to be readily identified;
    - (ii) a brief statement of and reason for the petition; and
    - (iii) the effect that the application will have on the petitioners or the area;
  - (b) each petitioner must give their full name, physical address and signature;
  - (c) when the petition is submitted, the authorised representative of the petitioners must give their full name, postal address, telephone number and email address or fax number.
- (2) A petition must be submitted within the time allowed for public comment as contemplated in Chapter 7.
- (3) A late petition will not be considered unless the City Manager condones a late submission in terms of subsection (4).
- (4) The City Manager may condone the late submission of a petition if good cause is shown and consideration of the late petition would not –
  - (a) cause an unreasonable delay; or
  - (b) prejudice the public interest.

- (5) Notice given to the person contemplated in subsection (1)(c) will be regarded as notice to all petitioners.
- (6) If support for a petition is collected electronically, the provisions of this section apply as far as possible, provided that no signatures will be required.
- (7) A petition which does not meet the requirements of subsection (1) may be disregarded.
- (8) A petition will be regarded as a representation for the purposes of this Part.

## **92. Response from the applicant**

- (1) Within 14 days of the closing date for comment, the City Manager must provide the applicant with –
  - (a) copies of all comments, representations or objections received;
  - (b) requirements of a department of the City; and
  - (c) a notice informing the applicant of their rights in terms of this section.
- (2) Within 30 days of notification, or within an additional period of 14 days if the City Manager approves an extension before expiry of the 30 days, the applicant may submit to the City a written response to the comments, representations, objections and requirements.
- (3) An applicant who fails to submit a response within the period contemplated in subsection (2) will be regarded as having no response.
- (4) The applicant may elect to not submit a response in terms of subsection (2), in which event the date that the City receives a written communication to that effect will be regarded as the date of the applicant's response.

## **93. Amendment of application before decision**

- (1) The applicant may amend their application at any time after notice has been given in terms of this By-Law and prior to the date a decision is taken –
  - (a) at the applicant's own initiative;
  - (b) as a result of objections and comments made during the public notification process; or
  - (c) at the request of the City.
- (2) If an amendment is material, the City may require additional notification in terms of this ByLaw and may require the recirculation of the application.

## **94. Further notice**

- (1) The City may require that fresh notice of an application be given if a period of more than 24 months has elapsed since the first notice of the application and the application has not been decided.
- (2) The City may determine the manner of giving notice as contemplated in subsection (1).
- (3) The City may require notice of an application to be republished or served again and recirculated to departments at any stage during the processing of the application if new information comes to its attention which is material to the consideration of the application and which adversely affects any person.

## **95. Access to information about an application**

- (1) By lodging an application in terms of this By-Law, the applicant acknowledges that the information contained in the application and obtained during the process may be made available to the public.

- (2) By lodging an objection, representation, comment or appeal, the person doing so acknowledges that information may be made available to the public and to the applicant.
- (3) A file created by the City concerning the application is available for inspection by the public during office hours at any stage during the processing of the application if not being used by the Department.
- (4) After a decision has been taken, the decision and conditions imposed are available to the public on payment of the fee prescribed by the City's Tariff, fees and charges book.

### **Part 3 – Process and criteria for deciding application**

#### **96. Power to conduct inspection**

- (1) An authorised official may enter land or a building for the purpose of assessing an application in terms of this By-Law and preparing a report contemplated in section 97. (2) When conducting an inspection, the authorised official may –
  - (a) request that any record, document or item be produced to assist in the inspection;
  - (b) make copies of, or take extracts from any document produced by virtue of paragraph (a) that is related to the inspection;
  - (c) on providing a receipt, remove a record, document or other item that is related to the inspection;
  - (d) take any photograph that the authorised official considers necessary; and
  - (e) inspect any building or structure and make enquiries regarding that building or structure.
- (3) No person may interfere with an authorised official who is conducting an inspection contemplated in subsection (1).
- (4) The authorised official must, on request, produce identification showing that the City has authorised them to conduct the inspection.
- (5) An inspection under subsection (1) must take place at a reasonable time and after reasonable notice to the owner or occupier of the land or building.

#### **97. Assessment of application**

- (1) The Department must provide a written report for consideration by the decision maker containing –
  - (a) an assessment of the application;
  - (b) a recommendation;
  - (c) where applicable, proposed conditions; and
  - (d) copies of all relevant information to enable the decision maker to take an informed decision.
- (2) The Department must provide the report contemplated in subsection (1) to the decision maker within the time period determined by the City Manager.
- (3) In the event that the Department fails to provide the report within the time period contemplated in subsection (2), the applicant may request the City Manager to take steps to ensure that the report is provided to the decision maker within 30 days of the City Manager deciding that the report must be provided.

- (4) Where a decision is to be taken by an authorised official, the authorised official taking the decision must be senior to or at the same level as the authorised official assessing the application and making a recommendation.
- (5) A registered planner must provide the report contemplated in subsection (1) when dealing with the –
  - (a) adoption or an amendment of the municipal spatial development framework;
  - (b) approval or amendment of the development management scheme;
  - (c) rezoning of land;
  - (d) subdivision of land into more than 20 land units;
  - (e) determination of a zoning;
  - (f) approval of an overlay zone through the amendment of this By-Law;
  - (g) removal, suspension or amendment of a restrictive condition, if a change of land use is involved;
  - (h) amendment, deletion or additional conditions in respect of an existing use right; or
  - (i) phasing, amendment or cancellation of a plan of subdivision or a part thereof.

## 98. Determination of application

The City may in respect of an application –

- (a) conduct any necessary investigation including the power to conduct an inspection as contemplated in section 96;
- (b) approve the application –
  - (i) in whole or in part;
  - (ii) with an amendment provided that the amendment does not materially change the nature of the application;
  - (iii) subject to conditions set out in section 100; and
  - (iv) limit the approval to one or more of the uses included within the zoning or description of the consent use in case of an approval of a rezoning application or a consent use;
- (c) refuse the application;
- (d) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-Law and other applicable law.

## 99. Criteria for deciding application

- (1) An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements –
  - (a) the application must comply with the requirements of this By-Law;
  - (b) the proposed land use must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible;
  - (c) the proposed land use must be desirable as contemplated in subsection (3); and



- (d) in the case of an application for a departure to alter the development rules relating to permitted floor space or height, approval of the application would not have the effect of granting the property the development rules of the next subzone within a zone.
- (2) If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision maker must consider all relevant considerations including, where relevant, the following –
  - (a) any applicable spatial development framework;
  - (b) relevant criteria contemplated in the development management scheme;
  - (c) any applicable policy approved by the City to guide decision making;
  - (d) the extent of desirability of the proposed land use as contemplated in subsection (3);
  - (e) impact on existing rights (other than the right to be protected against trade competition);
  - (f) in an application for the consolidation of land unit –
    - (i) the scale and design of the development;
    - (ii) the impact of the building massing;
    - (iii) the impact on surrounding properties; and
  - (g) other considerations prescribed in relevant national or provincial legislation.
- (3) The following considerations are relevant to the assessment under subsection (1)(c) of whether, and under subsection (2)(d) of the extent to which, the proposed land use would be desirable –
  - (a) socio-economic impact;
  - (b) *[item (b) deleted by amendment on 2016-07-01]*
  - (c) *[item (c) deleted by amendment on 2016-07-01]*
  - (d) compatibility with surrounding uses;
  - (e) impact on the external engineering services;
  - (f) impact on safety, health and wellbeing of the surrounding community;
  - (g) impact on heritage;
  - (h) impact on the biophysical environment;
  - (i) traffic impacts, parking, access and other transport related considerations; and
  - (j) whether the imposition of conditions can mitigate an adverse impact of the proposed land use.
- (4) An application in respect of an existing use or construction work which has commenced in contravention of this By-Law must be dealt with in terms of section 130.
- (5) No decision required to be made in terms of this By-Law may be delayed pending the creation of a policy to guide decision-making on the matter.

## 100. Conditions of approval

- (1) The City, when granting an approval or making a determination in terms of this By-Law, may impose reasonable conditions which arise from the proposed use of land.

- (2) The conditions may include but are not limited to conditions relating to –
- (a) the provision of land needed for public places or the payment of money in lieu of the provision of land;
  - (b) the cession of land or the payment of money;
  - (c) the provision and installation of engineering services and indicate –
    - (i) whether the applicant is required to provide or install engineering services as contemplated in section 65, or pay a development charge, or partly provide or install the engineering services and partly pay a development charge;
    - (ii) if relevant, the development charge payable and the date that it is payable;
    - (iii) if a phasing plan for the development is approved, that the installation of engineering services and the payment of development charges may take place separately for each phase;
    - (iv) if the City will take over responsibility for the engineering services, whether the applicant is required to maintain the engineering services for a specified period of time or provide a maintenance guarantee;
    - (v) a requirement to provide proof that an organ of state or state owned enterprise responsible for the provision of a service, is able to provide that service before the transfer of the first land unit;
  - (d) the provision of land needed by, and other requirements of, other organs of state;
  - (e) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where ownership vests in the City;
  - (f) the registration of public places in the name of the City;
  - (g) the transfer of ownership to the municipality of land needed for other public purposes or community facilities;
  - (h) the implementation of a subdivision in phases;
  - (i) the establishment of an owners' association by the applicant in respect of a subdivision as contemplated in section 61;
  - (j) a requirement to carry forward into the title deed of each land unit arising from an approved subdivision that-
    - (i) every owner of a land unit arising from an approved subdivision becomes a member of the owners' association on registration of transfer in their name and must remain a member whilst owning the land unit; and
    - (ii) the land unit may not be sold or transferred except with the consent of the owners' association which may not be unreasonably withheld;
  - (k) the payment of a administrative penalty as contemplated in section 129 in respect of the unlawful use of land;
  - (l) conditions contemplated in the development management scheme in respect of a particular application.
- (3) A condition contemplated in subsection (2)(b) may require a proportional contribution to municipal public expenditure according to the normal need arising from the approval, as determined by the City in accordance with norms and standards as may be prescribed or in accordance with an approved policy.

- (4) Municipal public expenditure contemplated in subsection (3) includes, but is not limited to, municipal public expenditure for municipal service infrastructure and amenities relating to –
  - (a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
  - (b) environment conservation purposes;
  - (c) engineering services; or
  - (d) municipal public transport.
- (5) Apart from public places and land needed for internal engineering services, any additional land required by the City or another organ of state arising from an approved subdivision must –
  - (a) be acquired subject to any applicable law that provides for the acquisition or expropriation of land;
  - (b) be purchased at the time specified in a condition or in the absence of any time specified in the condition, when the applicant can prove to the City or organ of state that 50% of the saleable land units arising from the subdivision have been sold.
- (6) Where relevant to the type of condition, a condition must contain an objective criterion which must be met.
- (7) The decision maker may not impose a condition that stipulates that approval in terms of other legislation is required.
- (8) If the City approves an application subject to a condition, it must specify the date or event by which a condition must be met (such as before the sale, development or transfer of the land), or whether it applies for the duration of the approval.
- (9) A conditional approval of an application lapses if a condition is not met within –
  - (a) the period for compliance specified in such approval;
  - (b) if no period for compliance is specified in the approval, five years from the effective date of decision; or
  - (c) any period of extension granted in terms of section 107.

#### 101. Further conditions and amendment of conditions

The City may amend or remove a condition imposed or deemed to have been imposed in terms of this By-Law, or impose a condition –

- (a) on application; or
- (b) on its own initiative after notice to the owner and any affected person.

#### 102. Timeframe for making a decision

- (1) If an application complies with all the requirements of this By-Law and any other applicable legislation the decision-maker must decide on the application within 180 days or such other period agreed with the applicant, calculated from –
  - (a) the date the application is complete as contemplated in section 76, in cases where no notice of the application has been given.
  - (b) the latest closing date for the submission of comments, objections or representations, where the City does not receive any comment, objection or representation; or

- (c) the date that the applicant responds to comments, objections or representations or the closing date for a response if the applicant does not respond, where the City receives a comment, objection or representation.
- (2) The City may (without the applicant's agreement) extend the period contemplated in subsection (1) and notify the applicant of the period of the extension and the reasons for the extension –
  - (a) in exceptional circumstances related to the nature or complexity of the application;
  - (b) if the City is in recess; or
  - (c) where the City Manager has taken steps contemplated in section 97(3) to ensure that the report contemplated in that subsection is provided to the decision maker.

### **103. Failure to decide timeously**

If the decision maker fails to decide on an application within the period referred to in section 102, then the applicant may exercise a right of appeal and the appeal authority must decide on the application.

## **Part 4 – Decision**

### **104. Requirement for writing and notification of decision**

- (1) A decision in terms of this By-Law is valid only if it is in writing.
- (2) Within 21 days of a decision in terms of this By-Law, the City must notify the persons contemplated in subsection (3) in writing of –
  - (a) the decision;
  - (b) where the decision may be inspected;
  - (c) if applicable, their right of appeal and right to request reasons; and
  - (d) the effective date of decision contemplated in section 105.
- (3) The City must notify the following persons if applicable –
  - (a) the owner;
  - (b) the applicant, if different from the owner;
  - (c) any person who comments on, objects to, or intervenes in an application; and
  - (d) a person in respect of whom an enforcement action is taken in terms of Chapter 9.

### **105. Effective date of decision**

- (1) The operation of the approval of an application is suspended until the effective date of the decision contemplated in subsections (2) and (3).
- (2) The effective date of a decision in terms of this By-Law is –
  - (a) the date that the City gives notice that no appeal has been timeously lodged and that the decision is accordingly effective; or
  - (b) subject to subsection (3), if an appeal is timeously lodged, the date that the appeal is decided by the appeal authority.
- (3) If an appeal is lodged only against a condition imposed in terms of section 100, the City may determine that the operation of the approval of the application is not suspended.

- (4) In the event that a decision is challenged in an application for administrative review before a competent court, the City may on application suspend the operation of the decision pending the final determination of the review.

#### **106. Errors and omissions**

- (1) The City may at any time correct an error in the wording of its decision as long as the correction does not change its decision or result in an alteration, suspension or deletion of a condition of its approval.
- (2) The City may at any time, of its own accord or on application by an applicant or interested party, upon good cause being shown, condone an error in the procedure provided that such condonation does not have material adverse impact on or unreasonably prejudice any party.

### **Part 5 – Extension of validity of an approval**

#### **107. Extension of validity of an approval**

- (1) Subject to the remaining provisions of this section, and unless another provision of this ByLaw provides otherwise, the City may approve an application for the extension of the validity period of an approval granted or deemed to be granted in terms of this By-Law.
- (2) The City may not grant the extension if –
  - (a) the application for extension is submitted after the validity period has expired;
  - (b) the circumstances which prevailed at the time of the original approval have materially changed;
  - (c) the legislative or policy requirements applicable to the approval which prevailed at the time of the original approval have materially changed;
  - (d) the City believes that new or further conditions of approval are necessary; or
  - (e) an approval for a temporary departure was granted.
- (3) An extension may not exceed five years from the date that the original approval lapses.
- (4) An extension takes effect and is calculated from the date that the original approval lapses regardless of the date upon which the extension is granted.
- (5) A validity period may be extended only once.
- (6) If the City has not decided an application contemplated in subsection (1) by the date of expiry of the original validity period, the use rights at issue may not be exercised until and unless the City extends the validity period.

### **Part 6 – Appeal**

#### **108. Appeal**

- (1) A person contemplated in subsection (2) and an applicant contemplated in section 103 may appeal to the appeal authority by giving written notice of the appeal and grounds of appeal.
- (2) The following persons may appeal against a decision made in terms of this By-Law –
  - (a) the applicant;
  - (b) the owner if the owner is not the applicant;
  - (c) the City Manager;

- (d) a person contemplated in section 89 who is granted intervener status;
- (e) a person contemplated in section 90(1) who submits a comment on or objection to the application which complies with the requirements of section 90; and
- (f) the owner or other person –
  - (i) in respect of whom the City decides in terms of section 127 to withdraw an approval for a temporary departure or an approval granted for a limited period of time;
  - (ii) who is issued with a directive in terms of section 128; or
  - (iii) upon whom an administrative penalty contemplated in section 129 is imposed.
- (3) An appeal contemplated in subsection (1) must be lodged within 21 days of the date of notification of the decision or, in the case of an appeal contemplated in section 103, within 21 days of the expiry of the period referred to in section 102.
- (4) An appeal is invalid if it does not comply with this section.
- (5) The appeal authority may receive relevant information and reconsider the matter afresh.
- (6) The appeal authority must decide –
  - (a) whether the appeal has been lodged timeously; and
  - (b) the appeal according to the criteria for decision contemplated in section 99.
- (7) The appeal authority may –
  - (a) dismiss the appeal and confirm the decision appealed against;
  - (b) uphold part or all of the appeal and –
    - (i) vary the decision appealed against;
    - (ii) set aside the decision and make a new decision; or
    - (iii) set aside the decision and remit the matter to the decision-maker, with or without directions to any person or body to take appropriate steps;
  - (c) decide on an application contemplated in section 103; or
  - (d) refer the appeal back to the advisory panel, if one was appointed, or to the Department with directions to investigate, obtain further information from a relevant department of the City or consider specific facts or issues and to report back to the appeal authority.

## 109. Procedure for appeal

- (1) A person authorised to appeal must lodge the appeal with the City Manager, provided that if the appeal is by the City Manager, the City Manager must lodge the appeal with the appeal authority.
- (2) No later than 14 days after an appeal is lodged, the City Manager must give notice of the appeal to, and invite comment on the appeal in writing within 21 days from –
  - (a) the applicant if the applicant is not the appellant; and
  - (b) any person who submitted an objection to, comment on or representation about the application.
- (3) After receipt of an appeal, the City –
  - (a) may request the Provincial Minister to comment in writing within 60 days on the appeal; and
  - (b) must request such comment if the appeal concerns an application referred to in section 45(1) (a) to (f) of the Land Use Planning Act.

- (4) A late opposition to or comment on the appeal will not be considered unless the appeal authority condones the late submission on good cause shown.
- (5) The appeal authority may not decide on the appeal until all the parties entitled to comment have done so or the time period allowed for comment has lapsed.
- (6) The Department must draft a report assessing the appeal and all comments contemplated in subsections (2) or (3) and must provide the report to the decision-maker for comment.
- (7) As soon as possible and within 150 days after the lodging of the appeal the City Manager must submit the appeal to the appeal authority together with all necessary documentation including the report and comments contemplated in this section.
- (8) The appeal authority must decide on the appeal within 90 days after the City Manager has submitted the appeal and documentation to the appeal authority.
- (9) The appeal authority may, without the agreement of the parties to the appeal, extend the period contemplated in subsection (8) and notify the parties of the extension and the reasons for the extension –
  - (a) in exceptional circumstances related to the nature or complexity of the application; or
  - (b) if the City is in recess.
- (10) The City must within 30 days of a decision of the appeal authority in writing give notice of the decision and the reasons for the decision to –
  - (a) the parties to the appeal; and
  - (b) the Provincial Minister if the appeal concerns an application referred to in section 45(1) (a) to (f) of the Land Use Planning Act.
- (11) The City may determine procedures required for the determination of appeals.

## **Part 7 – Prescribed requirements and notification**

### **110. Prescribed requirements for applications**

- (1) The City Manager may prescribe in relation to applications –
  - (a) information specifications relating to matters such as size, scale, colour, hard copy, number of copies, electronic format and file format;
  - (b) the manner of submission and communication with the City;
  - (c) the method by which a person may be notified;
  - (d) other information requirements; and
  - (e) other procedural requirements.
- (2) A prescription contemplated in subsection (1) may –
  - (a) relate to the whole application or any part of it; and
  - (b) differentiate between types of application, categories of application or categories of applicant.
- (3) The provisions of section 138 apply to a prescription in subsection (1).

### 111. Method and date of notification

- (1) Notification to a person contemplated in this By-Law may be given –
  - (a) by the City by orally informing the person; or
  - (b) in writing –
    - (i) by hand to that person personally;
    - (ii) left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
    - (iii) by registered post to that person's last known residential or business address in the Republic as recorded in the City's information system;
    - (iv) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by subparagraphs (i), (ii) or (iii);
    - (v) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates;
    - (vi) by email;
    - (vii) by fax; or
    - (viii) by some other form of electronic communication contemplated in the Electronic Communications and Transactions Act, 2002 (25 of 2002).
- (2) If the City gives a person notification orally, it must as soon as reasonably possible thereafter record in writing the content of the notification and the date upon which it was given and give service of the record in accordance with subsection (1)(b).
- (3) Unless a person has consented to being notified by fax, email or some other form of electronic communication or the City Manager has prescribed or this By-Law authorises that as the method of notification, if the City uses that method of notification then the City must also serve the notification in the relevant manner provided by subsections (1)(b)(i)-(1)(b)(v).
- (4) Where an owner has authorised a person to represent them in an application, a notification provided to the representative is regarded as having been provided to the owner.
- (5) When any notice must be served on the owner, occupier or holder of any property or right in any property, or their representative, it is sufficient if that person is described in the notice as the owner, occupier or holder of the property or right in question, or their representative, and it is not necessary to name that person.
- (6) For the purposes of this By-Law, the date of notification, if the notification is provided –
  - (a) orally, is the date of oral communication;
  - (b) by hand, is the date of delivery or collection;
  - (c) by registered post, is regarded as the fourth day after the date stamped upon the receipt for registration issued by the post office which accepted the notice; or
  - (d) by email, fax or some other form of electronic communication, is the date that the email, fax or other form of electronic communication is sent, provided that the person concerned has consented to being so notified or the City Manager has prescribed that as the method of notification.



**112. Costs of notification**

The City may, as part of its tariff structure, adopt a tariff for the costs involved in issuing and serving a notification, notice and directive.

**Part 8 – Integrated decisions****113. Notice in terms of integrated procedure**

- (1) The City may, on prior written request and written motivation by an applicant determine that –
  - (a) a public notice procedure carried out in terms of another law in respect of the application constitutes public notice for the purpose of an application made in terms of this By-Law, provided the public notice procedure meets the requirements of this ByLaw; or
  - (b) an application made in terms of this By-Law may be published in accordance with the requirements of notice for a related application made in terms of another law, and which is regulated by a written agreement between the City and the organ of state responsible for administering the other law.
- (2) Unless the City decides that a procedure in terms of another law, as contemplated in subsection (1)(a), is considered to be notice in terms of this By-Law or that the provisions of subsection (1)(b) apply, the City must act in accordance with the requirements of section 79 within 30 days of having notified the applicant that the application is complete.
- (3) The City may enter into a written agreement with other organs of state to avoid duplication in the submission of information or the execution of a process for cases where a proposed development requires an application to the City and other organs of state.

**Chapter 8  
Decision-makers****114. Decision-makers**

- (1) The Municipal Council must prescribe the categories of applications to be decided by –
  - (a) the Municipal Planning Tribunal; and
  - (b) an authorised official.
- (2) An authorised official contemplated in subsection (1)(b) may refer an application to the Municipal Planning Tribunal.
- (3) The appeal authority is the Mayor.
- (4) If the Mayor is unable to act as appeal authority, the Mayor may appoint an acting appeal authority.

**115. Establishment of Municipal Planning Tribunal**

- (1) The Municipal Council must establish a Municipal Planning Tribunal for its municipal area.
- (2) When the Municipal Council establishes the Municipal Planning Tribunal contemplated in subsection (1) it must, subject to section 36 of SPLUMA –
  - (a) determine the number of members of the Municipal Planning Tribunal;
  - (b) determine the number of authorised officials and number of other persons contemplated in section 36 of SPLUMA;

- (c) designate authorised officials, who are in the full-time employment of the municipality, and who have knowledge and experience in any of the disciplines of spatial planning, land use management, land development or the law related thereto to serve as members of the Municipal Planning Tribunal; and
  - (d) appoint persons who are not officials, and who have knowledge and experience in any of the disciplines of spatial planning, land use management, land development or the law related thereto to serve as members of the Municipal Planning Tribunal.
- (3) The City must invite applications or nominations for persons contemplated in subsection (2)(d) to be appointed to the Municipal Planning Tribunal in a format determined by the City and by placing a notice in the media in accordance with the requirements of section 21 of the Municipal Systems Act and SPLUMA.
- (4) The notice contemplated in subsection (3) must require the applications or nominations to be submitted on a form determined by the City containing the information set out in subsection (5) within a specified date to a specified person at a specified address which may be an electronic mail address.
- (5) The application or nomination must be accompanied by at least –
  - (a) the personal details of the applicant or nominee;
  - (b) sufficient information for the City to evaluate the applicant's or nominee's knowledge and experience in matters listed in section 36(1)(b) of SPLUMA, the requirements of this By-Law and any additional criteria that the City has identified;
  - (c) in the case of a nomination, a letter of acceptance of nomination by the nominee;
  - (d) confirmation by the applicant or nominee that he or she is not disqualified in terms of section 38 of SPLUMA;
  - (e) a statement that the nominee will be obliged to commit to and uphold a code of conduct; and
  - (f) the agreement of the nominee that the City may investigate and independently verify the information provided by the nominee.
- (6) An evaluation panel consisting of authorised officials in the employ of the City and appointed by the City to evaluate applications and nominations must –
  - (a) evaluate all nominations received by City by the closing date in response to the invitation and call for nominations in terms of the requirements of SPLUMA, this ByLaw and any further criteria identified by the City; and
  - (b) make recommendations on the appointment to the Municipal Council.
- (7) When evaluating applications or nominations, the Municipal Council must take into consideration –
  - (a) the applicant's or nominee's knowledge and experience of the matters referred in subsection (2)(d);
  - (b) the need for applying the principles of employment equity;
  - (c) the appropriate experience and expertise required for the effective functioning of the Municipal Planning Tribunal;
  - (d) any other criteria determined by the City; and
  - (e) any other criteria prescribed by SPLUMA.
- (8) If no suitable applications or nominations are received as a result of the advertising process, the City must invite and call for nominations for a second time and follow the process set out in subsections (3) to (7).

- (9) If after the second invitation and calling for nominations, no suitable applications or nominations are received, the Executive Authority must designate persons to the Municipal Planning Tribunal who meet the requirements of section 36 of SPLUMA and comply with the additional criteria determined by the City.
- (10) The City Manager must notify the successful applicants and nominees of their appointment as members and, within 30 days after the appointment of the members of the Municipal Planning Tribunal, publish a notice in the Provincial Gazette indicating –
  - (a) the name of the every member appointed or designated; and
  - (b) the term of office of the member.
- (11) The City Manager must within 30 days of the first appointment of the members to a Municipal Planning Tribunal –
  - (a) obtain written confirmation from the Municipal Council that it is satisfied that the Municipal Planning Tribunal is in a position to commence operations; and
  - (b) after receipt of the confirmation referred to in paragraph (a), publish a notice in the Provincial Gazette stating the date that the Municipal Planning Tribunal will commence operation.
- (12) The Municipal Planning Tribunal may commence operation only after publication of the notice contemplated in subsection (11)(b).

#### **116. Term of office for members of the Municipal Planning Tribunal**

- (1) The Municipal Council must stipulate the term of office of an authorised official when designating such authorised official as contemplated in section 37(1) of SPLUMA (2) An authorised official may only serve as a member of the Municipal Planning Tribunal whilst he or she is in the full-time employment of the City.
- (3) The Municipal Council must stipulate the term of office of a member of the Municipal Planning Tribunal who is not an authorised official when appointing such member as contemplated in section 37(1) of SPLUMA.
- (4) The term of office of a member of the Municipal Planning Tribunal may not exceed five years and is renewable once.

#### **117. Conditions of service and Code of Conduct of the Municipal Planning Tribunal.**

- (1) The Municipal Council must determine the terms and conditions of service of and the remuneration to be paid to the members of the Municipal Planning Tribunals who are appointed as contemplated in section 115(2)(d) in accordance with the norms and standards referred to in SPLUMA and other relevant requirements.
- (2) The Municipal Council must approve a code of conduct for members of the Municipal Planning Tribunal, that must have regard to minimum requirements set out in SPLUMA and require a member to at least –
  - (a) generally act in accordance with the principles of accountability and transparency;
  - (b) make decisions fairly, impartially and promptly;
  - (c) treat members of the public and other members of the Tribunal with respect, courtesy, honesty and fairness;
  - (d) make public disclosure of all his or her personal or private business interests regarding any decision to be made in the planning process in which he or she serves, or has been requested to serve;

- (e) abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which he or she has a personal or private business interest, and leave any chamber in which such matter is under deliberation, unless the personal or private business interest has been made a matter of public record, or his or her employer, if any, has given written approval, and the public official or structure within the City with jurisdiction to rule on ethical matters has expressly authorised his or her participation;
  - (f) not receive, seek or offer a gift or favour any under circumstances in which it might reasonably be inferred that the gift or favour is intended or expected to influence a participant's objectivity as an advisor or decision-maker in the planning process;
  - (g) not use the power of any office to seek or obtain special advantage that is not in the public interest nor any special advantage that is not a matter of public knowledge;
  - (h) not use confidential information acquired in the course of his or her duties to further a personal or private business interest;
  - (i) not disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons; and
  - (j) not commit a deliberately wrongful act which reflects adversely on the Municipal Planning Tribunal, the City, government at large or the planning profession by seeking business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means.
- (3) A member who contravenes the code of conduct is guilty of an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

### 118. Indemnity and Legal Representation

- (1) Whenever a claim is made or legal proceedings are instituted against a member of the Municipal Planning Tribunal or authorised official or the appeal authority arising out of any act or any omission by a member, authorised official or appeal authority in the performance of his or her duties or the exercise of his or her powers, the City must, if it is of the opinion that the member, authorised official or appeal authority acted or omitted to act in good faith and without negligence –
  - (a) in the case of a civil claim or civil proceedings, indemnify the member or authorised official or appeal authority in respect of such claim or proceedings; and
  - (b) provide legal representation for such member or authorised official or appeal authority at the cost of the City or pay taxed party and party costs of legal representation.
- (2) If a criminal prosecution is instituted against a member of the Municipal Planning Tribunal, an authorised official or the appeal authority, the City must, if it is of the opinion that the member, authorised official or appeal authority acted or omitted to act in good faith and without negligence or it is in the interests of the City to do so, provide for legal representation for such member at the cost of the City.
- (3) The City must determine by means of a policy or by other means –
  - (a) the terms and conditions of such indemnity and legal representation; and
  - (b) the circumstances in which such indemnity or legal representation may be withdrawn by the City.
- (4) For the purpose of this section “indemnify” means an undertaking to pay the damages, claim or taxed costs awarded by a court against a member of a Municipal Planning Tribunal, authorised official or the appeal authority or agreed to by the City in terms of a formal settlement process.

**119. Vacancy or removal of a member**

- (1) The office of a member becomes vacant if –
  - (a) the member is absent from two consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Tribunal;
  - (b) the member tenders his or her resignation in writing to the chairperson of the Tribunal;
  - (c) the member is removed from the Tribunal under subsection (2);
  - (d) the member dies.
- (2) The Municipal Council may remove a member of the Municipal Planning Tribunal, after giving the member an opportunity to be heard, if –
  - (a) sufficient reasons exist for his or her removal; or
  - (b) the member contravenes the code of conduct.
- (3) The Municipal Council must remove a member of the Municipal Planning Tribunal, after giving the member an opportunity to be heard, if the member becomes subject to a disqualification as contemplated in section 38(1) of SPLUMA.
- (4) The Municipal Council must fill a vacancy on the Municipal Planning Tribunal in terms of section 116 and section 117 in the case of a member who is not an authorised official.

**120. Functioning of Municipal Planning Tribunal**

- (1) The Municipal Council must designate a member of the Municipal Planning Tribunal as chairperson and another member as deputy chairperson to act as chairperson when the chairperson is absent or unable to perform his or her duties.
- (2) If the chairperson and the deputy chairperson fail to attend a meeting of the Municipal Planning Tribunal, the members who are present must elect one of their number to preside at that meeting.
- (3) The Municipal Council may determine that the Municipal Planning Tribunal must constitute itself to comprise one or more panels, with each panel designated to determine an application relating to land in a particular geographic area of the city and/or a particular type or category of application.
- (4) In this section, unless the context indicates otherwise, 'the Municipal Planning Tribunal' includes a panel of the Municipal Planning Tribunal contemplated in subsection (3). (5) The Municipal Planning Tribunal must meet at the time and place determined by the chairperson, provided that it must meet at least once per month if there is an application to consider.
- (6) The Municipal Planning Tribunal must designate at least three members of the Municipal Planning Tribunal to determine an application.
- (7) A quorum for a meeting of the Municipal Planning Tribunal is the simple majority of its appointed members.
- (8) A quorum for a meeting of a panel of the Municipal Planning Tribunal is the simple majority of its designated members.
- (9) The person presiding at a meeting of the Municipal Planning Tribunal has a casting vote in the event of an equality of votes.
- (10) No person, other than a municipal councillor, may make oral submissions at a meeting of the Municipal Planning Tribunal without the permission of the person presiding at the meeting.
- (11) A person seeking permission contemplated in subsection (10) must submit the request to the Municipal Planning Tribunal in writing at least five days before the meeting in question, or closer to the meeting if good cause is shown, and must provide adequate reasons for the request.

- (12) A municipal councillor who intends to make oral submissions to the Municipal Planning Tribunal must give the Municipal Planning Tribunal notice in writing of the intention at least five days before the meeting in question, or closer to the meeting if good cause is shown.
- (13) The Municipal Planning Tribunal may request any person to make oral submissions on any aspect of an application.
- (14) The person presiding at a meeting of the Municipal Planning Tribunal may impose reasonable conditions on oral submissions.
- (15) The Municipal Planning Tribunal must provide any party to the proceedings who is adversely affected by an oral submission with an opportunity to respond to the oral submission.
- (16) Meetings of the Municipal Planning Tribunal must be open to the public, except in so far as the Municipal Planning Tribunal may in special cases otherwise direct.
- (17) The Municipal Council must adopt rules of procedure for the proper functioning of the Municipal Planning Tribunal.
- (18) The City must –
  - (a) ensure the continued functioning of the Municipal Planning Tribunal in accordance with section 38 of SPLUMA; and
  - (b) provide the Municipal Planning Tribunal with an authorised official whose function is to provide administrative secretarial support to the Municipal Planning Tribunal.

#### **121. Advisory panel**

- (1) The Mayor may appoint an appeal advisory panel, including a chairperson to consider and advise or make recommendations to the Appeal Authority on an appeal or on categories of applications which are appealed.
- (2) Municipal Councillors may be appointed to the appeal advisory panel.
- (3) A member of the appeal advisory panel must recuse themselves if they or any of their spouses, partners or family members –
  - (a) has an interest in an appeal; or
  - (b) was involved in any way in the decision that is being appealed.
- (4) The chairperson of the appeal advisory panel must decide when and where the appeal advisory panel must meet.
- (5) An appeal advisory panel –
  - (a) may determine its own procedures; and
  - (b) must apply the criteria contemplated in section 99.
- (6) The quorum for a meeting of the appeal advisory panel is a simple majority of its appointed members.
- (7) The Mayor may dissolve the appeal advisory panel at any time.

#### **122. Technical adviser**

The appeal authority may appoint a technical adviser to advise or assist it with regard to a matter forming part of the appeal.

## **Chapter 9 Enforcement**

### **Part 1 – Introductory provisions for this Chapter**

#### **123. Definitions in this Chapter**

In this Chapter, unless the context indicates otherwise – ‘contravention’ includes a failure to comply with a duty or requirement; and ‘owner’, in addition to the definition in section 1, is deemed to also include –

- (a) if the registered owner is deceased and if an executor has not been appointed – an heir; and if there is no heir or if the City is unable to determine the identity of the heir – the person who is entitled to the benefit of the use of the land or building or who enjoys such benefit;
- (b) if the registered owner is a close corporation that is deregistered – a member of the close corporation at the time of deregistration;
- (c) if the registered owner is absent from the Republic or their whereabouts are unknown – a person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other moneys in respect of the land or building or who is responsible therefor; and
- (d) if the City is unable to determine the identity of a person otherwise defined as owner – a person who is entitled to the benefit of the use of the land or building or who enjoys such benefit.

#### **124. Choice of enforcement measure**

The City may take any one or more of the enforcement measures contemplated in this Chapter, and may take them in any order or combination or with one as an alternative to another in the event of a failure to comply, or sequentially.

### **Part 2 – Complaint**

#### **125. Complaint**

- (1) A person, who is affected by an alleged contravention of this By-Law, may in writing and using the prescribed form or in a manner determined by a policy, request the City Manager to investigate the alleged contravention and to act in terms of this Chapter.
- (2) The City must investigate the complaint within the time and in accordance with the procedure set out in guidelines adopted by the Department.
- (3) The City must inform the complainant of the outcome of the investigation within 30 days of the investigation being completed and the steps to be taken in the event that the City is of the opinion that this By-Law is being contravened.

### **Part 3 – Civil enforcement**

#### **126. Compliance notice**

- (1) The City may serve a notice on an owner or other person if there are reasonable grounds for believing that the owner or other person is in contravention of this By-Law.
- (2) The notice must –
  - (a) describe the land unit;

- (b) describe the conduct constituting a contravention of this By-Law;
  - (c) indicate which provision of this By-Law, condition of approval or other provision the conduct contravenes;
  - (d) if relevant, state that the unlawful conduct constitutes an offence and indicate the penalties;
  - (e) instruct the owner or other person to cease the unlawful conduct and to comply with this By-Law, condition of approval or other provision immediately or within a time period determined by the City, and where relevant must specify the steps to be taken to comply;
  - (f) state that a failure to comply with the notice constitutes an offence and indicate the penalties; and
  - (g) state that, in the event of non-compliance with the notice, the City may take one or more of the following measures –
    - (i) if relevant, take steps contemplated in section 127 to withdraw an approval for a temporary departure or an approval granted for a limited period of time;
    - (ii) take steps contemplated in section 128 to issue a directive in the terms specified in the notice;
    - (iii) apply in terms of section 129 for the determination of an administrative penalty;
    - (iv) apply to a competent court for appropriate relief including the costs of the application; and
    - (v) institute a criminal prosecution.
- (3) If relevant, the notice may advise the owner or other person of their right to apply for rectification of the contravention as contemplated in section 130, and may state that the City intends to take the measures contemplated in subsection (2)(g) in the event that the owner or other person fails to apply for rectification of the contravention within a specified time.
- (4) The notice may invite the owner or other person within a specified time to inform the City what steps have been taken to comply with the notice.
- (5) There is no appeal against a decision to issue or not to issue a compliance notice in terms of this section.

## 127. Withdrawal of approval

- (1) If the City is of the opinion that an owner or other person is not complying with an approval for a temporary departure or an approval granted for a limited period of time, it may serve a notice on the owner or other person –
- (a) setting out the information contemplated in sections 126(2)(a)-126(2)(c); and
  - (b) inviting the owner or other person within a specified time to make written representations on the notice and to give reasons why the approval should not be withdrawn.
- (2) After considering any representations and reasons submitted, and if it is satisfied that this By-Law is being contravened, the City may decide to withdraw the approval contemplated in subsection (1).
- (3) If the City decides to withdraw the approval –
- (a) the City must notify the owner or other person as contemplated in section 104(2); and
  - (b) the approval is withdrawn from the effective date of decision contemplated in section 105(2).



- (4) Once the withdrawal of an approval is effective, the City must –
  - (a) notify the owner or other person of the withdrawal and instruct the owner or other person to cease the activity in question and to take any other which the City considers necessary to comply with this By-Law immediately or within a time determined by the City; and
  - (b) update the zoning register.

## 128. Directive

- (1) If the City is of the opinion that an owner or other person is in contravention of this By-Law, it may serve a notice on the owner or other person –
  - (a) setting out the information contemplated in sections 126(2)(a)-126(2)(c); and
  - (b) inviting the owner or other person within a specified time to make written representations on the notice and give reasons why the City should not direct the owner or other person within a specified time to –
    - (i) submit documentation including a diagram or plan to the City or appoint a professional person selected by the City to conduct an investigation and to report to the City on the nature and extent of the contravention;
    - (ii) demolish a building or part thereof which contravenes this By-Law and restore the building or rehabilitate the land as the case may be to a form and within the time period specified in the directive; or
    - (iii) address another impact of the contravention.
- (2) After considering any representations and reasons submitted, and if it is satisfied that this By-Law is being contravened, the City may decide to issue a directive in terms which are the same as, substantially similar to or less onerous than those contemplated in subsection (1)(b).
- (3) A directive must –
  - (a) set out the directions;
  - (b) include the information contemplated in section 104(2);
  - (c) state that a failure to comply with a duty imposed by the directive constitutes an offence and indicate the penalties; and
  - (d) state that instead of, or in addition to, prosecuting the owner or other person, without further notice the City may apply to a competent court for enforcement of the directive and other appropriate relief including the costs of the application.
- (4) The owner or other person must comply with a directive from the effective date of decision contemplated in section 105(2).

## 129. Administrative penalty

- (1) A person who is in contravention of this By-Law, and who wishes to rectify the contravention in terms of section 130, may apply to the City for the determination of an administrative penalty if the City has not issued a demolition directive (in terms of subsection 128) in respect of the land or building or part thereof concerned.
- (1A) The Municipal Planning Tribunal may, where any person has contravened this By-law, –
  - (a) decide to impose an administrative penalty; and
  - (b) determine the amount of the penalty.

- (2) A person making an application contemplated in subsection (1) must –
  - (a) submit an application;
  - (b) pay the prescribed fee;
  - (c) provide the information contemplated in subsections (7) and (8); and
  - (d) comply with the duties of an applicant in section 78.
- (3) The City Manager may apply to the Municipal Planning Tribunal for an order that a person who has contravened this By-Law must pay an administrative penalty in an amount determined by the Municipal Planning Tribunal, and must provide the information contemplated in subsections (7) and (8) to the extent that it is known to the City Manager.
- (4) If the City Manager makes an application contemplated in subsection (3), the Municipal Planning Tribunal must invite the person concerned within a specified time to make written representations on the application.
- (5) The Department must provide a written report to the Municipal Planning Tribunal.
- (6) The Municipal Planning Tribunal may –
  - (a) call for additional information to decide an application in terms of this section; and
  - (b) draw an adverse inference against a person who fails or refuses to provide, to the satisfaction of the Municipal Planning Tribunal, information contemplated in subsection (2)(c) or paragraph (a).
- (7) After considering the Departmental report, the representations by the City Manager and any representations from the person concerned, if the Municipal Planning Tribunal decides to impose an administrative penalty on a person who has contravened this By-Law, it must determine an amount which –
  - (a) for building work in contravention of this By-Law – may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out, as determined by the City;
  - (b) for land use in contravention of this By-Law – may not be more than 100% of the municipal valuation of the area that is used unlawfully, as determined by the City; and
  - (c) for building work and land use in contravention of this By-Law – must comprise the penalties in both paragraphs (a) and (b).
- (8) When determining an appropriate administrative penalty, the Municipal Planning Tribunal must consider at least the following factors –
  - (a) the nature, duration, gravity and extent of the contravention;
  - (b) the conduct of the person involved in the contravention;
  - (c) whether the unlawful conduct was stopped; and
  - (d) whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.
- (9) The Municipal Planning Tribunal must notify the person who has contravened this By-Law of its decision and if it decides to impose an administrative penalty, the notice must –
  - (a) set out the administrative penalty;
  - (b) include the information contemplated in section 104(2);

- (c) state that the person must pay the administrative penalty to the City within 30 days of the effective date of decision contemplated in section 105(2) or within such further period that the Municipal Planning Tribunal may decide;
  - (d) state that the payment of an administrative penalty in terms of this section does not limit the City's power to investigate an offence or institute a criminal prosecution; and
  - (e) state that, without further notice, the City may apply to a competent court for an order confirming the administrative penalty and other appropriate relief including the costs of the application.
- (10) The City may apply to the High Court for an order confirming the order of the Municipal Planning Tribunal to pay an administrative penalty.

### **130. Rectification of contravention**

- (1) A person who is in contravention of this By-Law may apply to the City in terms of this ByLaw for the necessary approval.
- (2) Subject to subsection (3), a person contemplated in subsection (1) must submit an application for and pay an administrative penalty determined in terms of section 129 before the City may consider an application contemplated in subsection (1).
- (3) If an application for an administrative penalty contemplated in section 129 has been submitted but not yet determined, or an administrative penalty determined in terms of section 129 has not yet been paid, in exceptional circumstances the City may consider an application contemplated in subsection (1) provided that the City, when granting an approval or making a determination, must impose appropriate conditions to ensure payment of any administrative penalty.
- (4) The submission of an application for, determination of, or payment of an administrative penalty in terms of section 129, or the approval of an application contemplated in this section, does not limit the City's power to investigate an offence or institute a criminal prosecution.

### **131. Enforcement litigation**

Notwithstanding that this Chapter may give the City an alternative remedy, the City may apply to the High Court for appropriate relief, including orders compelling the owner or other person to –

- (a) demolish, remove or alter any building, structure or work erected in contravention of this By-Law, and rehabilitate the land concerned; and
- (b) cease or modify conduct in contravention of this By-Law, to comply with this By-Law, or to address another impact of the contravention.

### **132. Urgent matter**

If the City believes that urgent action is required to cease or modify conduct in contravention of this By-Law, to comply with this By-Law, or to address an impact of the contravention, the City may –

- (a) serve an appropriate compliance notice on the owner or other person by telephone, by email or some other form of electronic communication contemplated in the Electronic Communications and Transactions Act, 2002 (25 of 2002) or by placing the notice on the land unit or by a combination of these methods; or
- (b) apply to the High Court on an urgent basis for appropriate relief, including an interdict.

## Part 4 – Criminal enforcement

### 133. Offences and penalties

- (1) A person is guilty of an offence if the person –
  - (a) contravenes a –
    - (i) decision taken or a condition imposed or deemed to have been taken or imposed in terms of this By-Law;
    - (ii) provision of the development management scheme;
    - (iii) uses land in a manner other than permitted by the development management scheme;
    - (iv) compliance notice issued in terms of section 126; or
    - (v) directive issued in terms of section 128;
  - (b) alters or destroys land to the extent that the property cannot be used for the purpose set out in the development management scheme;
  - (c) threatens, obstructs, hinders or fails to permit entry when called upon to do so or uses abusive language to an authorised official or any person lawfully accompanying such authorised official in the exercise of a power conferred in terms of section 135;
  - (d) when called upon by an authorised official to furnish information, furnishes false or misleading information; or
  - (e) supplies particulars, information or answers in an application or in an appeal knowing it to be false, incorrect or misleading or not believing it to be correct.
- (2) Upon conviction of an offence in this By-Law a person is liable to a fine or imprisonment not exceeding 20 years or to both a fine and such imprisonment.
- (3) A person convicted of an offence under this By-Law who, after conviction, continues with the conduct in respect of which he or she was so convicted, is guilty of a continuing offence and upon conviction is liable to a fine or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment, in respect of each day on which he or she so continues with that conduct.
- (4) An owner –
  - (a) who permits their land to be used, or fails to take reasonable steps to ensure that their land is not used, in a manner which constitutes an offence under this By-Law is guilty of an offence and upon conviction is liable to the penalties contemplated in section (2);
  - (b) convicted of an offence contemplated in paragraph (a) who, after conviction, continues with the conduct in respect of which he or she was so convicted, is guilty of a continuing offence and upon conviction is liable to the penalties contemplated in subsection (3).

### 134. Prosecution of corporate body and partnership

A person is personally guilty of an offence contemplated in terms of this By-Law if –

- (a) the offence was committed by –
  - (i) a corporate body established in terms of any law; or
  - (ii) a partnership;

- (b) at the time that the offence was committed the person was a partner in the partnership, or a member of the board, executive committee or other managing body of the corporate body; and
- (c) the person knew or reasonably ought to have known that an offence was being committed and failed to take reasonable steps to prevent the offence.

## **Part 5 – Investigative and enforcement powers of authorised official**

### **135. Powers and functions of an authorised official**

- (1) The City may authorise an official or any other person to act in terms of this section for the purposes of investigating any matter in connection with this By-Law.
- (2) A law enforcement officer appointed by the City is considered to be an authorised official contemplated in subsection (1);
- (3) An authorised official may, subject to subsection (4) and (5), at any reasonable time, and without prior notice, enter and inspect any land, building or premises for the purpose of ensuring compliance with this By-Law.
- (4) An authorised official may at any reasonable time and after reasonable notice has been given to the owner or occupier of the land or building and after obtaining the consent of the owner or lawful occupier or person in control of the building, enter and inspect a private dwelling without a warrant for the purpose of ensuring compliance with this By-Law.
- (5) An authorised official may, if consent is not obtained as contemplated in subsection (4), with a warrant of entry obtained, enter and inspect a private dwelling for the purpose of ensuring compliance with this By-Law.
- (6) The authorised official is not required to give reasonable or any notice to enter land or a building other than a private dwelling and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if –
  - (a) he or she believes on reasonable grounds that a warrant will be issued to him or her; and
  - (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action.
- (7) An authorised official must be in possession of a certificate signed by the City Manager stating that he or she has been designated as an authorised official for the purposes of this By-Law or must show proof that he or she is a law enforcement officer.
- (8) An authorised official must produce a certificate on the request of any person being affected by the exercise of a power in terms of this section.
- (9) An authorised official may not investigate a matter in which he or she has a direct or indirect personal or private interest.
- (10) In ascertaining compliance with this By-Law, an authorised official may –
  - (a) be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;
  - (b) question any person who is or was on that land and who, in the opinion of the authorised official, may be able to furnish information on a matter to which this ByLaw relates;
  - (c) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute a contravention of this By-Law;
  - (d) question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant for to the investigation;

- (e) examine any book, record or other written or electronic information and make a copy thereof or an extract therefrom and remove such document, book, record or written or electronic information in order to make copies or extracts;
  - (f) require a person to produce or to deliver to a place specified by the authorised official, any document, book, record, or any written or electronic information referred to in paragraph (e) for inspection;
  - (g) require from such person an explanation of any entry in such document, book, record or written or electronic information;
  - (h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
  - (i) seize any book, record or other document, details or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this By-Law, provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;
  - (j) direct any person to appear before him or her at such time and place as may be determined by the authorised official and question such person either alone or in the presence of any other person on any matter to which this By-Law relates; and
  - (k) take photographs or make audio visual recordings or tape recordings of any person or anything for the purpose of his or her investigation.
- (11) When an authorised official removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he or she must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.
- (12) Where an authorised official enters any land in terms of subsection (3), a person who controls or manages the land must at all times provide such facilities as are reasonably required by the authorised official to enable him or her to perform his or her functions effectively and safely under this By-Law.
- (13) An authorised official who enters and searches any land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

## **Chapter 10**

### **Naming and numbering of streets**

#### **136. Naming and numbering of streets**

- (1) If a street is created as a result of the approval of an application, the City must approve the naming of the street and must allocate a street number for each land unit located in the street.
- (2) The proposed name of the street and numbers must be submitted as part of the application for subdivision.
- (3) In considering the naming of a street, the City must take into account the relevant policies relating to street naming and numbering.
- (4) The applicant must erect signs displaying the street name according to the City's standards.
- (5) No person may alter or amend a street name approved as contemplated in subsection (1) without the approval of the City.

- (6) No person may display a name of a street unless the name is approved by the City.
- (7) The City may, on its own initiative, alter or amend a street name after complying with the provisions set out in Part 2 of Chapter 7.
- (8) The City may name any unnamed street that arose from the approval of an application approved in terms of this By-Law or planning law.
- (9) The procedure as set out in Chapter 7 applies.
- (10) A person who alters or amends or displays a street name without the City's approval is guilty of an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

## **Chapter 11**

### **Transfer certificate**

#### **137. Transfer certificate**

- (1) A transferor intending to effect the first registration of transfer of a land unit which arises out of an approved subdivision within the geographic area of the City must provide the City with proof to the satisfaction of the City that all the further requirements contemplated in section 54(1) have been met.
- (2) A transferor intending to effect the registration of transfer of a land unit within the geographic area of the City that is indicated on the system as being subject to the action referred to in paragraphs (a) and (b), must provide proof to the satisfaction of the City, that –
  - (a) in cases where a contravention levy was imposed in terms of the Ordinance and or an administrative penalty contemplated in section 129 was imposed – that the levy or penalty has been paid;
  - (b) in cases where a directive has been issued in terms of section 128 – that the directive has been complied with.
- (3) If the City Manager is satisfied that the requirements of subsection (1) and (2) have been met, the City Manager must issue a certificate authorising the transfer and, if the land unit arises out of an approved subdivision, the City Manager must issue a certificate for each land unit and may only issue a certificate for a land unit within a phase approved by the City.
- (4) No person may apply to the Registrar of Deeds for, and the Registrar of Deeds may not register, the transfer of a land unit without the certificate contemplated in subsection (3).
- (5) If a certificate contemplated in subsection (3) is issued in error –
  - (a) the new owner must still comply with all outstanding requirements contemplated in subsection (1), regardless of whether another person also has the duty to do so; and
  - (b) the City is exempt from liability for any damage which may be caused as a result.

## **Chapter 12**

### **General administrative provisions**

#### **138. Policies, procedures, prescriptions, standards, requirements and guidelines**

- (1) The City may adopt a policy, procedure, standard, requirement or guideline for the effective administration of this By-Law.
- (2) Unless the power to prescribe is entrusted to another person or body, the City Manager may prescribe anything which may be prescribed in terms of this By-Law.

- (3) The City must make available on the City's website any prescription contemplated in subsection (2) and may make available on the City's website any policy, procedure, standard, requirement or guideline contemplated in subsection (1).
- (4) An applicable policy, procedure, standard, requirement or guideline applies to an application in terms of this By-Law.

### **139. Delegations**

- (1) The City Manager may –
  - (a) delegate any function, power or duty conferred on the City Manager in this By-Law to an official; or
  - (b) instruct an official to perform any of the City Manager's duties in terms of this ByLaw.
- (2) The Mayor may delegate the power to decide an appeal arising from a decision of an authorised official or a failure to take a decision (section 103) to a political office holder or an authorised official.

### **140. Exemption**

The City may in writing and subject to section 60 of the Land Use Planning Act exempt an application from compliance with the provisions of this By-Law to reduce the financial or administrative burden of –

- (a) the provision of housing with the assistance of a state subsidy; or
- (b) the incremental upgrading of an existing settlement.

### **141. Liability of the City**

The City is not liable for any loss sustained by or damage caused to any person as a result of any act or omission in good faith relating to the performance of any duty under this By-Law, unless gross negligence is proved.

### **142. Savings and transitional provisions**

- (1) Any approval, designation, determination, consent, right, authorisation, confirmation or instruction issued, granted or in force in terms of a law repealed by the Land Use Planning Act, and in existence immediately before the commencement of the Land Use Planning Act, remains in force and where applicable is regarded to have been issued, granted or occurred in accordance with this By-Law subject to the conditions under which it was issued and is valid for the period for which it was granted under the repealed law.
- (2) Despite the repeal of the Ordinance, any action taken or application made before the commencement of this By-Law in terms of a law repealed by the Land Use Planning Act, including a previous zoning scheme, which has not been finalised immediately before the commencement of this By-Law, must be finalised as if the Land Use Planning Act and this By-Law are not in force and as if the previous zoning scheme was not repealed.
- (3) Conduct in contravention of a law repealed by the Land Use Planning Act is regarded as a contravention of this By-Law and the penalties in this By-Law apply where the conduct would constitute an offence under this By-Law.
- (4) When an approval is acted on, a land unit is regarded as having been allocated a corresponding zoning in the development management scheme as determined by the City if –
  - (a) a rezoning application or substitution scheme was approved, but not yet acted on, before the commencement of this By-Law; or



- (b) a rezoning application or substitution scheme is approved after the commencement of this By-Law in accordance with the provisions of a previous zoning scheme (as contemplated in subsection (2)).
- (5) A building plan application that was formally submitted and accepted –
  - (a) before 1 March 2013 and which is still being processed; or
  - (b) on or after 1 March 2013 with the purpose to act on an approval in terms of a previous planning law, must be assessed in accordance with that approval, provided that the building plan application is approved by 31 August 2017.
- (6)
  - (a) An owner whose land on 1 March 2013 was zoned as General Business: Subzone GB3 to GB7 or Mixed Use Subzone MU2 and MU3 may, until 28 February 2023, elect to be regulated by the zoning provisions of either the development management scheme or the zoning scheme in operation on 28 February 2013.
  - (b) An application for a permanent departure from the provisions of the zoning scheme in operation on 28 February 2013 is not permitted.
- (7) Where an owner contemplated in subsection (6) elects to be regulated by the zoning provisions of a zoning scheme in operation on 28 February 2013, all the provisions applicable to that zoning apply and no departure from that zoning may be granted.
- (8) Any reference to the approval in the area of the jurisdiction of the City by the Administrator or Townships Board in a restrictive condition, excluding a condition in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval by the City.

#### **143. Short title and commencement**

- (1) This By-Law is called the City of Cape Town Municipal Planning By-Law, 2015 and comes into operation on a date fixed by the Mayor by proclamation in the Provincial Gazette.
- (2) The Mayor may set different dates for different provisions of this By-Law to come into operation.

**Schedule 1****Structure plans deemed to be a district spatial development framework**

	<b>Name of structure plan</b>
1.	Blaauwberg District Plan: Technical Report
2.	Cape Flats District Plan: Technical Report
3.	Helderberg District Plan: Technical Report
4.	Khayelitsha Mitchells Plain Greater Blue Downs District Plan: Technical Report
5.	Northern District Plan: Technical Report
6.	Southern District Plan: Technical Report
7.	Table Bay District Plan: Technical Report
8.	Tygerberg District Plan: Technical Report

## Schedule 2

### Structure plans deemed to be a local spatial development framework

	Name of structure plan
1.	Constantia Triangle Local Structure Plan
2.	Development Framework for Elsieskraal River Valley
3.	Management Plan for Victoria Avenue, Hout Bay: Oxford Street to Princess Street
4.	Scarborough and Misty Cliffs Structure Plan
5.	Simon's Town Structure Plan
6.	Sunnydale Local Area Structure Plan
7.	Urban Design Framework for Durbanville CBD

## Schedule 3

### City of Cape Town development management scheme

#### Chapter 1 Definitions and interpretation

##### 1. Definitions in this development management scheme

In this development management scheme unless the context indicates otherwise –

"**abattoir**" means a place where animals are slaughtered and prepared for distribution to butchery shops, supermarkets and food markets;

"**additional dwelling unit**" means a dwelling unit that may be erected with the approval of the City in an Agricultural zoning, in addition to a second dwelling, dwelling or residential accommodation for bona fide agricultural workers;

"**additional use right**" means a land use specified in this development management scheme as an activity or use that is permitted in a zoning, provided that any conditions or further provisions specified for such activity or use are complied with;

"**adult entertainment**" means property used for adult film theatres or strip clubs where sexually explicit, live or recorded shows are displayed, but does not include adult services or an adult shop;

"**adult services**" means property used for massage parlours or escort agencies where sexually orientated personal services are provided, unless such services form part of a medical or therapeutic service provided

by a registered medical practitioner or similar registered professional person; but does not include adult entertainment or an adult shop;

**"adult shop"** means property used for the retail sale of pornographic, sexually explicit or erotic material, whether or not such material is displayed for sale, unless such material forms part of a medical or therapeutic service provided by a registered medical practitioner or similar registered professional person; but does not include adult entertainment or adult services;

'advertisement', when used in the context of outdoor advertising, has the same meaning as assigned to it in terms of the City's Outdoor Advertising & Signage By-Law;

**"agricultural industry"** means an enterprise for the processing of agricultural products on or close to the land unit where these agricultural products are grown, and where processing in such proximity is necessary due to the nature, perishability and fragility of such agricultural products; and includes a winery and distillery, but does not include a service trade or abattoir;

**"agriculture"** means the cultivation of land for crops and plants, the keeping and breeding of animals, beekeeping, or the operation of a game farm, and includes such activities and buildings as are reasonably connected with the main farming activities, such as dwelling units for the farmer, farm manager and farm labourers, the packing of agricultural produce grown on the property for delivery to the market, and a plant nursery; but excludes intensive horticulture, intensive animal farming, a farm shop, harvesting of natural resources, and agricultural industry;

**"air and underground rights"** means the development of a defined space above or below a public street, open space, railway line or another transport usage, and the allocation of use rights for such purpose which may include any use with the approval of the City;

**"airport"** means a complex comprising aircraft runways and associated buildings for the take-off and landing of civilian aircraft, as well as facilities for the handling and storage of air freight;

**"ancillary"** means a land use, purpose, building, structure or activity which is directly related to, and subservient to, the lawful, dominant use of the property;

**"animal care centre"** means a place for the care of pets and animals, operated on either a commercial or a welfare basis, and includes boarding kennels and pet training centres;

**"antenna"** means any system of wires, poles, rods, reflective surfaces or similar devices, used to transmit or receive electronic communication signals or electro-magnetic waves;

**"aqua-culture"** means the breeding, for commercial purposes, of water flora or fauna in artificially constructed dams or holding tanks, or suspended from floating supports in natural water bodies;

**"atrium"** means a covered courtyard comprising a void within a building that extends for one or more floors in height, but does not contain floors that penetrate into the void. An atrium contains a floor and a roof or ceiling;

**"authority use"** means a use which is practised by or on behalf of an organ of state, the characteristics of which are such that it cannot be classified or defined under other uses in this development management scheme, and includes a use practised by:

- (a) the national government, such as a military base and installation, police station or prison;
- (b) the provincial government, such as a road station or road camp;
- (c) the City, such as fire services or a municipal depot with related uses, including limited accommodation for staff who are required to be on standby for emergencies;
- (d) a foreign government, such as an embassy or consulate, but does not include a dwelling house where the dominant use is for living accommodation of foreign diplomatic personnel. "average ground level" means the average of the highest and lowest existing ground levels immediately abutting the external elevational plane or wall cutting into the ground of a building or vertical division of a building, and the City may:

- (a) determine the average ground level from measurements supplied on a building plan; or
- (b) deem a level to be the average ground level based on measurements interpolated from a contour plan, local height benchmark or other information held by the City; or
- (c) require the owner or applicant to commission a registered surveyor to measure levels of the ground or interpolate levels, in order to provide the City with sufficient information so that it can determine the average ground level for the purpose of administering this development management scheme;

**"backpackers lodge"** has the same meaning as 'boarding house' except that lodging is provided per bed and not per bedroom;

**"balcony"** means a floor projecting outside a building at a level higher than that of the ground floor, enclosed only by low walls or railings or by main containing walls of rooms abutting such projecting floor, and may include a roof over such floor and pillars supporting such roof;

**"base level"** of a building means an imaginary plane drawn horizontally at the average ground level of the building, or vertical division of the building;

**"basement"** means that space in a building between a floor and ceiling, including such floor or ceiling, which protrudes not more than 1,5m above any point on the existing ground level;

**"bed and breakfast establishment"** means a dwelling house or second dwelling in which the owner of the dwelling supplies lodging and meals for compensation to transient guests who have permanent residence elsewhere; provided that:

- (a) the dominant use of the dwelling house concerned remain for the living accommodation of a single family; and
- (b) the property complies with the requirements contained in this development management scheme for a bed and breakfast establishment;

**"boarding house"** means a building where lodging is provided, and may incorporate cooking, dining and communal facilities for the use of lodgers, together with such outbuildings as are normally used therewith; and includes a building in which rooms are rented for residential purposes, youth hostel, backpackers' lodge, guest house, home for the aged, handicapped or orphaned and residential club; but does not include a hotel, dwelling house, second dwelling or group house;

**"boundary"** in relation to a land unit means one or more of the cadastral lines separating such land unit from another land unit or from a road reserve;

**"boundary wall"** means any wall, fence or enclosing structure erected on or next to a cadastral property boundary, and any other structure, including security devices, such as spikes, barbed wire, razor wire or electric fences, affixed to or on top of a boundary wall;

**"braai room"** means a room which is part of the main dwelling or outbuildings and is used primarily for entertainment purposes and where food and drinks may be prepared, but excludes a kitchen;

**"building"**, without in any way limiting its ordinary meaning, includes:

- (a) any roofed structure;
- (b) any external stairs, steps or landings of a building and any gallery, canopy, balcony, stoep, verandah, porch or similar feature of a building;
- (c) any walls or railings enclosing any feature referred to in paragraph (b) above; and
- (d) any other portion of a building;

**"building line"** means an imaginary line on a land unit, which defines a distance from a specified cadastral boundary, within which the erection of buildings or structures are completely or partially prohibited;

**"builder's yard"** means a property used for the storage of material and equipment which:

- (a) is required for or is normally used for construction work;
- (b) was obtained from demolitions of structures or excavations of ground; or
- (c) is necessary for or is normally used for land development, such as storage of material used for building roads, installing essential services, or for any other construction work, whether for public or private purposes;

**"business premises"** means a property from which business is conducted and includes a shop, supermarket, restaurant, sale of alcoholic beverages, plant nursery, office, service trade, funeral parlour, financial institution and building for similar uses, but does not include a place of assembly, place of entertainment, institution, motor repair garage, industry, noxious trade, risk activity, adult entertainment business, adult services or adult shop;

**"cadastral line"** means a line representing the official boundary of a land unit as recorded on a diagram or general plan approved by the Surveyor General and registered in the Deeds Office;

**"camping site"** means a property in which tents or caravans are used for accommodation for visitors, and includes ablution, cooking and other facilities for the use of such visitors;

**"canopy"** means a cantilevered or suspended roof, slab or covering (not being the floor of a balcony) projecting from the wall of a building;

**"caravan"** means a vehicle which has been equipped or converted for living and sleeping purposes and which can be readily moved;

**"carport"** means a structure for the storage of one or more vehicles that is covered by a roof, provided that not more than two sides may be permanently enclosed;

**"carriageway crossing"**, in relation to a motor vehicle carriageway crossing, means an entrance or exit way, or a combined entrance and exit way, from a land unit to an abutting road;

**"cemetery"** means a place for the burial of human or domestic animal remains, and may include ancillary buildings such as an office and chapel, but does not include a crematorium;

**"clinic"** means a place for the diagnosis and treatment of human illness or the improvement of human health, which has limited facilities and an emphasis on outpatients, provided that a clinic may contain live-in facilities for no more than twenty persons, including patients and staff; and a clinic may include medical consulting rooms, operating theatre, an outpatients centre and a wellness centre with ancillary uses;

**"commercial"** combined with a use, such as 'commercial entertainment', 'commercial conference facility' etc., means an enterprise that is run with the express purpose of making a profit and where there are no or limited social or charitable objectives;

**"common boundary"** in relation to a land unit means a boundary that is common with an adjoining land unit other than a street boundary;

**"conference facility"** means a place of commercial nature where information is presented and ideas or information exchanged among groups of people or delegates whose normal place of work is elsewhere, and may include overnight accommodation and the supply of meals to delegates;

**"container site"** means property used for the storage of shipping or transport containers;

**"contextual framework"** means a plan or written strategy approved by the City as envisaged in item 136(4)(a);

**"coverage"** means the total area of a land unit that may be covered by buildings, expressed as a percentage of the area of such land unit, and shall include all roofed areas; provided that the following portions of buildings shall be disregarded in the calculation of coverage: (a) stoeps, entrance steps and landings;

- (b) open balconies and retractable awnings;

- (c) cornices, chimney breasts, pergolas, flower boxes, water pipes, drain pipes and minor decorative features not projecting more than 500 mm from the wall of the building;
- (d) eaves not projecting more than 1 m from the wall of the building;
- (e) a basement, provided that the finished level of the top of the basement roof slab does not project above the existing ground level;

"**crematorium**" means a place for incinerating corpses in a furnace, and includes ancillary facilities such as a chapel and offices;

"**cultural and social ceremonies**" means the practice of cultural and social ceremonies by any person belonging to a cultural, religious or linguistic community, provided that such ceremonies are lawful;

"**development framework**" means a development framework as contemplated in item 136(4)(b);

"**display**" in relation to a sign, without in any way limiting its ordinary meaning, includes the erection of any structure for the support of such sign;

"**domestic staff quarters**" means an outbuilding which has a floor space of not more than 50 m<sup>2</sup>, including sanitary and cooking facilities, and used for the accommodation of domestic staff employed at the dwelling house concerned;

"**dominant use**" means the predominant or major use of a property, and may consist of primary uses, consent uses or other lawful uses permitted on the property;

"**dwelling house**" means a building containing only one dwelling unit, together with such outbuildings as are ordinarily used with a dwelling house, including domestic staff quarters;

"**dwelling unit**" means a self-contained, interleading group of rooms, with not more than one kitchen, used for the living accommodation and housing of one family, together with such outbuildings as are ordinarily used therewith, but does not include domestic staff quarters, or tourist accommodation or accommodation used as part of a hotel;

"**earth bank**" means land that is shaped to hold back earth or loose rock;

"**eaves**" means a portion of a roof projecting beyond the face of a building, including any gutters;

"**ecosystem**" means a self-sustaining and self-regulating community of organisms and the interaction between such organisms with one another and with their environment;

"**electronic or mechanical playing devices**" means any electronic or mechanical or similar devices which are designed or used for the purpose of playing of any game or for recreational or amusement purposes or where the operator or player is entitled to a limited payout as determined by law and the operation involves the payment of any valuable consideration either by insertion of a coin, token coin, disc or another manner;

"**encroachment agreement**" means an agreement between an owner and the City relating to the projection or overhang of portions of a building or structure from the owner's property onto or over the City's property;

"**entrance steps and landings**" means steps and landings to a building, including any low walls and railings, if such steps and landings are not within the main containing walls of the building;

"**environmental conservation use**" means the use or maintenance of land in a substantially natural state with the object of preserving the biophysical and heritage characteristics of that land, as well as flora and fauna living on the land, and includes associated infrastructure required for such use;

"**environmental facilities**" means facilities for the management, study, interpretation, education, and public appreciation of a predominantly natural area or heritage site; and includes accommodation for staff, support services and associated infrastructure, but does not include tourist facilities or tourist accommodation;

**"environmental site- or activity management plan"** means a plan that documents the management of site preparation, construction and/or operations affecting an environmental resource or an environmentally significant place, its environmental values and management requirements, or both;

**"equipment room"** means a building or a part thereof to accommodate communication equipment associated with telecommunication infrastructure. This can be a separate building used exclusively for the equipment, or it can be a container or a room within a building;

**"erection"** in relation to a building or structure includes:

- (a) the construction of a new building or structure;
- (b) the alteration or conversion of, or addition to, a building or structure; and
- (c) the re-construction of a building or structure which has completely or partially been demolished; and "erect" has a corresponding meaning;

**"erf"** has the same meaning as "land unit";

**"existing ground level"** means the level of the land surface on a land unit:

- (a) in its unmodified state, before any building had been erected or alterations in levels had been made thereon; or
- (b) as established from a plan indicating the contours of the land lodged with and accepted by an official agency such as the municipality or a government department, which depicts the existing level of the ground at or before the commencement date; or
- (c) in a state which has been graded, with the City's approval, for the purpose of development; or
- (d) as determined by the City, if in its opinion it is not possible to ascertain the existing level of the ground due to irregularities or disturbances of the land; and the City may require the owner or applicant to commission a registered surveyor to measure levels of the ground or interpolate levels, which shall be tied to the National Control Network, or where this is not possible, to provide at least two durable reference marks suitably located, in order to provide the City with sufficient information so that it can determine the most appropriate existing ground level for the purpose of administering this development management scheme;

**"expo centre"** means a place for large exhibitions, particularly of a commercial nature where products are displayed to promote trade, or a place for large conventions; and includes a conference facility;

**"factory"** means property containing an industrial manufacturing plant used for the manufacture of goods;

**"factory shop"** means property used for the retail sale of goods to the public, in which the goods concerned have been completely or predominantly manufactured in a factory on the property concerned;

**"family"** means:

- (a) one person maintaining an independent household; or
- (b) two or more persons related by blood, marriage or civil union maintaining a common household; or
- (c) not more than five unrelated persons without dependants maintaining a common household; but does not exclude up to six foster children, or dependants under legal guardianship as part of a household;

**"farm shop"** means a building, located on a farm, where the farmer sells produce grown on the farm and other goods to the general public;

**"filming"** means the preparation of a property for the recording of sound and images as well as the recording of sound and images, moving or still, whether on film or by video tape, electronically or by any other means, but excludes the recording of a private wedding ceremony or other private celebration



or event for the purpose of making a recording thereof for its participants for private purposes, or the recording of current affairs or news for immediate release;

**"flats"** means a building containing three or more dwelling units, together with such outbuildings as are ordinarily associated therewith; provided further that in those zonings where flats are permissible, a building with less than three dwelling units shall also be permissible in a building approved for flats or purposes other than for flats;

**"flood"** means a general and temporary condition of partial or complete inundation of land from the overflow of a body of water;

**"flood-prone area"** means any land area susceptible to being inundated by water from any source;

**"floor"** means the inner, lower surface of a room, garage or basement, and includes a terrace or atrium to which the occupants of a building have access;

**"floor factor"** means the factor (expressed as a proportion of 1) which is prescribed for the calculation of maximum floor space of a building or buildings permissible on a land unit. If the floor factor is known, the maximum permissible floor space can be calculated by multiplying the floor factor by the area of the land unit;

**"floor space"** in relation to any building means the area of a floor which is covered by a slab, roof or projection; provided that:

- (a) any basement or part of a basement not intended as habitable space shall be excluded;
- (aA) any area which is reserved solely for parking or loading of vehicles shall be excluded;
- (b) external entrance steps and landings, any canopy, any stoep and any area required for external fire escapes shall be excluded;
- (bA) passages, access ways and fire escapes not wider than 1,5m, provided that they connect directly from the fire escape, vertical circulation to the entrance doors or both, shall be excluded;
- (c) a projection including a projection of eaves, and a projection which acts as a sunscreen or an architectural feature, which projection does not exceed 1 m beyond the exterior wall or similar support, shall be excluded;
- (d) any uncovered internal courtyard, lightwell or other uncovered shaft which has an area in excess of 10 m<sup>2</sup> shall be excluded;
- (e) any covered paved area outside and immediately adjoining a building at or below the ground floor level, where such paved area is part of a forecourt, yard, external courtyard, pedestrian walkway, parking area or vehicular access, and which is permanently open to the elements on at least the front or long side, shall be excluded;
- (f) any covered balcony, verandah or terrace which, apart from protective railings, is permanently open to the elements on at least the front or long side, and which does not exceed 2,5 m in width, shall be excluded;
- (g) subject to paragraph (h) below, any stairs, stairwells and atriums that are covered by a roof shall be included;
- (h) in the case of multi-level buildings, any stairwells, liftwells, lightwells or other wells, and any atrium, shall only be counted once;

and provided further that floor space shall be measured from the outer face of the exterior walls or similar supports of such building, and where the building consists of more than one level, the total floor space shall be the sum of the floor space of all the levels, including that of basements;

**"freestanding base telecommunication station"** means a freestanding support structure on land or anchored to land and used to accommodate telecommunication infrastructure for the transmitting or receiving of electronic communication signals, and may include an access road to such facility;

**"funeral parlour"** means property where the dead are prepared for burial or cremation and includes facilities for ancillary administrative and religious functions but does not include a crematorium;

**"garage"** means a building for the storage of one or more motor vehicles, and includes a carport but does not include a motor repair garage or service station;

**"greenhouse"** means a structure with the sides primarily made of a transparent material such as glass, perspex or plastic for the purpose of growing of plants or hastening growth of plants under controlled environmental conditions;

**"gross density"** means a measure of the number of dwelling units in a specified area, and is calculated as follows: Gross dwelling density (units per hectare) = Total number of dwelling units in a specified area

Extent of specified area in hectares **"gross leasable area or GLA"** means the area of a building designed for, or capable of, occupancy and/or control by tenants, measured from the centre line of joint partitions to the inside finished surface of the outside walls, and shall exclude the following:

- (a) all exclusions from the definition of floor space;
- (b) toilets;
- (c) lift shafts, service ducts, vertical penetrations of floors;
- (d) lift motor rooms and rooms for other mechanical equipment required for the proper functioning of the building;
- (e) areas reasonably used in connection with the cleaning, maintenance and care of the building, excluding dwelling units for caretakers, supervisors, cleaners or maintenance staff; and
- (f) interior parking and loading bays;

**"ground floor"** means the lowest floor of a building that is not a basement;

**"ground level"**: see "average ground level" and "existing ground level";

**"group house"** means a dwelling unit which forms part of a group housing scheme;

**"group housing"** and **"group housing scheme"** means a group of separate and/or linked dwelling units which may be subdivided but are planned, designed and built as a harmonious architectural entity and integrated with open space in an ordered way;

**"group housing site"** means one or more land units on which a group housing scheme may be erected;

**"guest house"** means a dwelling house or second dwelling which is used for the purpose of supplying lodging and meals to transient guests for compensation, in an establishment which exceeds the restrictions of a bed and breakfast establishment, and may include business meetings or training sessions by and for guests on the property;

**"habitable space"** means space used, designed, adapted or intended to be used by persons for sleeping in, living in, preparation or consumption of food or drink, transaction of business, rendering of any services, manufacturing, processing or sale of goods, performance of work, gathering together of persons or for recreational purposes;

**"halfway house"** means a facility that provides temporary accommodation for residents who have completed a formal treatment programme for substance abuse, but excludes inpatient treatment or similar facilities;

**"harvesting of natural resources"** means the gathering of flora and/or fauna within a conservation-worthy area for sale or use by a person or agency other than a recognised environmental agency; provided that such harvesting:

- (a) is sustainable;
- (b) does not deplete the resources below acceptable levels; and

- (c) is not detrimental to the ecosystem;

**"hazardous substance"** or "hazardous substances" has the same meaning as the definition of "grouped hazardous substance" in the Hazardous Substances Act, 1973 ([Act 15 of 1973](#));

**"height"** of a building means a vertical dimension from a specified level to another specified level, as set out in the development rules of a zoning, measured in metres; provided that -

- (a) chimneys (maximum horizontal dimension of 1,5m),
- (b) flues (maximum horizontal dimension of 1m),
- (c) lift shafts (maximum horizontal dimension of 2,5m and maximum vertical dimension of 2m per lift shaft),
- (d) masts, and
- (e) antennas shall not be counted for the purpose of height control;

**"helicopter landing pad"** means any portion of land, building, structure or part thereof which has been demarcated for the purposes of landing or take-off of helicopters or vertical lift-off aircraft;

**"heritage area"** has the same meaning as described in section 31 of the National Heritage Resources Act;

**"heritage management plan"** means a plan that documents a heritage resource, its heritage values and management requirements. Such a heritage management plan must be subject to public consultation and approved by the City before it may be implemented;

**"heritage place"** means a property, site, area, region, structure, group of structures, open space, public square, street, park, field or natural feature that is worthy of conservation due to its heritage value;

**"heritage register"** has the same meaning as defined in the National Heritage Resources Act;

**"heritage resource"** has the same meaning as defined in the National Heritage Resources Act;

**"home child care"** means the use of portion of a dwelling house or outbuildings by the occupant to provide day care, after school care or instruction for a limited number of infants or children;

**"home occupation"** means the practising of an occupation or the conducting of an enterprise from a land unit, dwelling house, second dwelling, dwelling unit or outbuilding by one or more occupants who reside on the property and includes the sale of alcoholic beverages via internet or any other electronic means provided no alcoholic beverage is stored, received or despatched from the property;

**"horticulture"**: see 'intensive horticulture';

**"hospital"** means a place for the diagnosis and treatment of human illness, with integrated facilities such as operating theatres and live-in accommodation for patients; and includes a clinic and medical consulting rooms;

**"hotel"** means a property used as a temporary residence for transient guests, where lodging and meals are provided, and may include:

- (a) a restaurant or restaurants;
- (b) conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel; and
- (c) premises which are licensed to sell alcoholic beverages for consumption on the property;

but does not include an off-sales facility, dwelling house or dwelling unit;

**"house shop"** means the conducting of a retail trade from a dwelling house, second dwelling or outbuilding by one or more occupants who shall reside on the property;

**"industry"** means a property used as a factory or for such purposes and in or on which an article or part of such article is made, manufactured, produced, built, assembled, compiled, printed, ornamented,

processed, treated, adapted, repaired, renovated, rebuilt, altered, painted (including spray painting), polished, finished, cleaned, dyed, washed, broken up, disassembled, sorted, packed, chilled, frozen or stored in cold storage; including offices, caretaker's quarters or other uses which are subservient and ancillary to the use of the property as a factory; and includes a warehouse, but does not include a noxious trade or risk activity;

**"informal trading"** means the legal selling of products in areas demarcated by the City specifically for these purposes, such as markets and other demarcated areas;

**"institution"** means a property used as a welfare facility such as a home for the aged, retired, indigent or handicapped; or a social facility such as a counselling centre, orphanages or reformatory; and includes ancillary administrative, health care and support services for these facilities; but does not include a hospital, clinic or prison;

**"intensive animal farming"** means the breeding, feeding and keeping of animals or poultry on an intensive basis, but excludes the breeding, feeding and keeping of wildlife;

**"intensive horticulture"** means the culture of plants on an intensive scale, including the culture of plants under a roof or in greenhouses, as well as the sale of self-produced plants on a property;

**"kitchen"** means a room or part of a room equipped for preparing and cooking meals and excludes a braai room, food and drink preparation area or bar facilities in an entertainment area;

**"landscaping"** means the placement of plants, contoured features, water features, paving, street furniture and other soft and hard elements, for the purposes of enhancing the aesthetic appeal, environmental management, amenity and value of a property or area;

**"loading bay"** means an area which is clearly demarcated for the loading and off-loading of goods from commercial vehicles, and which has vehicular access to a public street to the satisfaction of the City;

**"lodging"** means bedroom (or bed, in the case of a backpackers lodge) accommodation which is made available for payment, and the services ordinarily related to such accommodation, and 'lodger' has a corresponding meaning;

**"maximum floor space"** means the greatest total floor space that is allowed for a building or buildings on a land unit, and is calculated by multiplying the floor factor by the area of the land unit or that portion of the land unit which is situated within a particular zoning; provided that where the land unit is situated within two or more zonings to which different floor factors apply, the maximum floor space for the whole land unit shall be the total of the maximum floor space for each zoned portion of the land unit;

**"medical consulting rooms"** means an office or offices and ancillary rooms used by a registered medical professional for human medical or medical-related consultation, where such office is not attached to a hospital or clinic;

**"metropolitan road"** means any public street or road declared by the City as a road of metropolitan significance in terms of a schedule of such roads published and shown on a plan, as may be amended by the City from time to time;

**"mine"** has the same meaning as stipulated in the Mineral and Petroleum Resources Development Act, 2002 ([Act 28 of 2002](#)) and include prospecting or prospecting related activities;

**"mobile home"** means a transportable structure with the necessary service connections, which is designed so that it can be used as a permanent dwelling;

**"motor repair garage"** means a commercial enterprise where motor vehicles are provided with fuel and/or major services such as engine overhauling, spray-painting, panel beating, black-smithery, exhaust fitment, shock absorber fitment or body work, and includes a service station;

**"motor vehicle"** means a wheeled vehicle designed or used for propulsion by means of an internal combustion or electrical engine, and includes a motor cycle, trailer or caravan, but does not include a vehicle moving exclusively on rails;

**"place of entertainment"** means a place used predominantly for commercial entertainment which may attract relatively large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis; including a cinema, theatre, amusement park, dance hall, ball room, gymnasium, facility for betting, electronic or mechanical playing devices, gambling hall and nightclub;

**"place of instruction"** means a place for education or training at pre-school, school or post-school levels, including a crèche, nursery school, primary school, secondary school, college, university or research institute, and ancillary uses such as boarding hostels; or a civic facility for the promotion of knowledge to the community such as a public library, public art gallery or museum; or a place of instruction in sport where the main objective is instruction as opposed to participation by the public as either competitors or spectators; but excludes a reformatory, commercial conference facility, gymnasium and in-house business training centre;

**"place of worship"** means a church, synagogue, mosque, temple, chapel or other place for practising a faith or religion, and includes ancillary uses such as a religious leader's dwelling, office or place for religious instruction; but does not include a funeral parlour, cemetery or crematorium, provided that a dwelling where the occupants engage in worship does not constitute a place of worship;

**"plant nursery"** means a property which is used for the cultivation and sale of plants, gardening products and gardening equipment as a commercial enterprise;

**"plaza"** means an urban open space or square, primarily designed for outdoor use by pedestrians;

**"policy plan"** means a policy adopted by the City, or structure plan, spatial development framework or other plan as approved in terms of this By-Law;

**"porch"** means a roof (not being the floor of a balcony) projecting from the outside of a building above a doorway, and forming a covered entrance to such building, and includes any paved area thereunder and any low walls or railings enclosing such paved area, and any pillars supporting such roof;

**"port"** has the same meaning as in the National Ports Act, 2005 ([Act 12 of 2005](#));

**"Port development framework plan"** means a plan prepared and approved by the National Ports Authority, in consultation with the affected municipality, that reflects the policy for the port development and the land use and development rules within such port;

**"precinct plan"** means a plan, approved by the City, as envisaged in item 136(4)(c) of this development management scheme;

**"premises"** means any shop or restaurant within a building that is not linked in any manner or way with another shop or restaurant in the same building;

**"primary use"** in relation to property means any land use specified in this development management scheme as a primary use, being a use that is permitted without the need to obtain the City's approval first;

**"private road"** means privately owned land which provides vehicle access to a separate cadastral property or properties and which is designated as private road; it may include ancillary access control infrastructure such as a gatehouse, guardhouse, refuse room and utility room, but a driveway on a property and a servitude right of way over a property do not constitute private roads for the purpose of this development management scheme;

**"private open space"**: see "open space";

**"property"** has the same meaning as "land";

**"protected area"** has the same meaning as assigned to it in terms of the National Environmental Management: Protected Areas Act, 2003 ([Act 57 of 2003](#));

**"public nuisance"** means any act, omission or condition which in the City's opinion is offensive, injurious or dangerous to health, materially interferes with the ordinary comfort, convenience, peace or quiet of the public, or which adversely affects the safety of the public, having regard to:

- (a) the reasonableness of the activities in question in the area concerned, and the impacts which result from these activities; and
- (b) the ambient noise level of the area concerned;

**"public open space"** means land which is designated as public open space, under the ownership of the City or other organ of state, with or without access control, and which is set aside for the public as an open space for recreation or outdoor sport, including a park, playground, public or

urban square, picnic area, public garden, nature area; and includes ancillary buildings, infrastructure and uses;

**"public road"** means any highway, thoroughfare, lane, footpath, sidewalk, alley, passage, bridge or any other place of a similar nature or any portion thereof serving as a public right of way, whether for vehicles or pedestrians, established or proclaimed in terms of the former Municipal Ordinance, 1974 (Ordinance 20 of 1974) or any equivalent current municipal by-law and/or national legislation and includes a public street;

**"public street"** means any land indicated on an approved general plan, diagram or map as having been set aside as a public right of way, whether for vehicles or pedestrians or public or urban squares, of which the ownership is registered in favour of or vests in the municipality in terms of this By-Law or any other law;

**"recycling centre"** means a property which is used for the temporary storing, sorting, depositing or collection of paper, plastics, glass, cans, textiles or similar solid waste materials for recycling purposes, but does not include a scrapyard;

**"registered surveyor"** means someone who is registered in terms of the Professional and Technical Surveyors' Act, 1984 ([Act 40 of 1984](#)) as either a professional land surveyor, a professional surveyor or a surveyor;

**"renewable energy structure"** means any apparatus or similar device, or grouping thereof, designed to capture and convert solar radiation into energy for commercial gain, irrespective of whether it feeds into an electricity grid or not, and includes any test facility or structure which may lead to the generation of energy on a commercial basis, but does not include wind turbine infrastructure;

**"restaurant"** means a commercial establishment where meals and liquid refreshments are prepared and/or served to paying customers primarily for consumption on the property, and may include licensed provision of alcoholic beverages for consumption on the property; but does not exclude the option for some customers to purchase food for consumption off the property;

**"retaining structure"** means a wall or structure constructed so as to hold back earth or loose rock;

**"riding stables"** means a commercial enterprise for the stabling of horses and includes riding instruction and the care and hiring of such horses;

**"risk activity"** means an undertaking where the material handled or the process carried out is liable to cause combustion with extreme rapidity, give rise to poisonous fumes, or cause explosion, and includes major hazardous installations and activities involving dangerous and hazardous substances that are controlled in terms of national legislation;

**"risk management and prevention plan"** means a plan, programme or strategy, developed in accordance with guidelines approved by the City, to prevent or minimise danger to the environment or humans from a particular activity or series of activities, and to deal with the consequences should any dangerous event occur;

**"rooftop base telecommunication station"** means a support structure attached to the roof, side or any other part of a building and used to accommodate telecommunication infrastructure for the transmitting or receiving of electronic communication signals;



**"sale of alcoholic beverages"** means the sale or offering for sale to the public of drinks capable of producing intoxication in a consumer, which may be kept, displayed or consumed on the premises;

**"satellite dish antenna"** means apparatus fixed to a structure or mounted permanently on the ground, that is capable of receiving or transmitting communication signals from a satellite;

**"scenic drive"** means a public street which is designated as a scenic drive by the City in recognition of the high visual amenity alongside that public street, including background vistas of mountain, open country, coastline or city;

**"scrapyard"** means a property which is utilised for one or more of the following purposes:

- (a) storing, depositing or collecting of junk or scrap material or articles the value of which depend mainly or entirely on the material used in the manufacture thereof;
- (b) the dismantling of second-hand vehicles or machines to recover components or material; and
- (c) the storing or sale of second-hand parts, poles, steel, wire, lumber yards, tyres, bricks, containers or other articles which are suitable to be left in the open;

**"second dwelling"** means another dwelling unit which may, in terms of this development management scheme, be erected on a land unit where a dwelling house is also permitted; and such second dwelling may be a separate structure or attached to an outbuilding or may be contained in the same structure as the dwelling house; provided that:

- (a) the second dwelling shall remain on the same land unit as the dwelling house; and
- (b) the second dwelling shall comply with the requirements specified in this development management scheme;

**"service station"** means property for the retail supply of fuel, and includes trading in motor vehicles, oil, tyres or motor spares, general repairs to motor vehicles, exhaust fitment, shock

absorber fitment, washing of vehicles, and an ancillary shop; but does not include spray-painting, panel beating or body work;

**"service trade"** means an enterprise which:

- (a) is primarily involved in the rendering of a service for the local community, such as the repair of household and electrical appliances or the supply of household services;
- (b) is not likely to be a source of disturbance to surrounding properties;
- (c) employs at most 10 people;
- (d) is not likely, in the event of fire, to cause excessive combustion, give rise to poisonous fumes or cause explosions; and may include a builder's yard and allied trades, fitment centre for tyres, shock absorbers or exhausts, and similar types of uses; but does not include an abattoir, brick-making site, sewage works, service station or motor repair garage;

**"shelter"** means a structure and unit of accommodation intended for human occupation, constructed of any material whatsoever, even though such material may not comply with the standards of durability intended by the National Building Act;

**"shipping or transport container"** means a large, weatherproof container used for the transport of goods by sea, rail or road, that is usually stored in the open when not in use;

**"shop' or 'shops"** means property used for the retail sale of goods and services to the public, and includes a retail concern where goods which are sold in such a concern are manufactured or repaired; provided that the floor space relating to such manufacture or repair shall not comprise more than 40% of the floor space of the shop;

"shop' does not include an industry, supermarket, service trade, motor repair garage, service station, restaurant, adult entertainment business, adult services, adult shop or sale of alcoholic beverages;

**"sign"** means any sign, sign-writing, mural, graphic design, signboard, screen, blind, boarding or other device by means of which an advertisement or notice is physically displayed, and includes any advertisement or object, structure or device which is in itself an advertisement or which is used to display an advertisement;

**"site development plan"** means a scaled and dimensioned plan which shows development details such as (but not limited to) site layout, positioning of buildings and structures, property access, building designs and landscaping of the proposed development;

**"stoep"** means an uncovered paved area or projecting floor outside and immediately adjoining a building, at or below the level of the ground floor thereof, and includes any low walls or railings enclosing such paved areas or floors;

**"storey"** means that portion of a building included between the surface of any floor and the surface of the next floor above; or if there is no floor above, then up to the ceiling; provided that:

- (a) a basement does not constitute a storey;
- (b) a roof, or dome which forms part of a roof, shall not constitute a separate storey unless the space within the roof or dome is designed for or used for human occupation, in which case it is counted as a storey;
- (c) any storey which is greater than 4,8 m but equal to or less than 7,2 m in height shall, for the purposes of the height measurement, be counted as two storeys, and every additional 4,8 m in height or portion thereof, shall be counted as an additional storey; and
- (d) in counting the number of storeys of a building, the ground floor is the first storey and the next floor above is the second storey;

**"stormwater"** means water resulting from natural processes, precipitation and/or the accumulation thereof, and includes groundwater and springwater ordinarily conveyed by the stormwater system, as well as sea water within estuaries, but excludes water in a drinking-water or waste-water reticulation system;

**"stormwater system"** means constructed and natural facilities, including pipes, culverts and water courses, used or required for the management, collection, conveyance, temporary storage, control, monitoring, treatment, use and disposal of stormwater;

**"street"**: see 'public street';

**"street boundary"** means the boundary between a land unit and an abutting public street or private road; provided that the boundary of a pedestrian way or service lane that cannot or will never be used by motor vehicles, shall be deemed to be a common boundary for the purpose of determining building lines, street centreline setback and site access requirements;

**"street centreline setback"** means the line delimiting the area measured from the centre line of a particular public street, within which no building or other structure, including a boundary fence, may be erected;

**"structure"**, without in any way limiting its ordinary meaning, includes any building, shelter, wall, fence, pillar, tower, pergola, steps, landing, terrace, sign, ornamental architectural feature, swimming pool, fuel pump or underground tank, any building ancillary to service infrastructure provision, and any portion of a structure;

**"supermarket"** means a shop having a total floor space in excess of 400 m<sup>2</sup>, in which a range of goods, including foodstuff and household goods, is offered for sale on a predominantly self-service basis;

**"telecommunication infrastructure"** means any part of the infrastructure of a telecommunication network for radio/wireless communication, including voice, data and video telecommunications, which may include antennas; and any support structure, equipment room, radio equipment or optical communications equipment (laser or infra-red) provided by cellular network operators and any other telecommunication provider; as well as all ancillary structures needed for the operation of



telecommunication infrastructure. Fibre optic installations and point-to-point copper (cable) installations are excluded from this definition;

**"terrace"** means an area to which occupants or users of a building have access, created on a flat roof over a portion of the building, resulting from the setting back of part of the building above such portion;

**"third dwelling"** means another dwelling unit which may, in terms of this development management scheme, be erected on a land unit where a dwelling house and a second dwelling have already been approved or lawfully erected;

**"top of the roof"**, for the purpose of height control, means the top of the roof ridge in the case of a pitched roof, or the top of the parapet where a parapet extends above the roof;

**"total floor space"** of a building means the sum of the floor space of all the levels therein, including basements;

**"tourist accommodation"** means a harmoniously designed and built development, used for holiday or recreational purposes, whether in private or public ownership, which:

- (a) consists of a single enterprise in which overnight accommodation is supplied by means of short-term rental or time sharing only; and
- (b) may include the provision of a camping site or mobile home park; but does not include a hotel;

**"tourist facilities"** means amenities for tourists or visitors such as lecture rooms, restaurants, gift shops, restrooms and recreational facilities, but does not include a hotel or tourist accommodation;

**"transport impact statement"** means a study of the transport impact generated by a proposed development on the existing and planned road system, and recommendation of mitigating measures required as a result of the impact;

**"transport management plan"** means a document or plan specifying how the transport requirements will be accommodated in terms of all modes of transport, such as (but not limited to) public transport, private transport, cycling and walking, and how the parking requirements will be accommodated both on and off a site, including what services associated with parking will be required;

**"transport use"** means the use of land, a building or structure for the operation of a public service for the transportation of goods (including liquids and gases) or passengers by means of rail, road, sea or pipeline, including the use of such land, building or structure for the purpose of a harbour, railway station, bus depot or taxi interchange, a transport undertaking based on the provision of a transport service; and includes a public private undertaking such as a railway station, bus depot, taxi rank, public transport interchange, harbour and ancillary purposes, but does not include an airport or helicopter landing pad;

**"urban agriculture"** means the cultivation of crops, on relatively small areas within the urban area or edge, for own consumption or sale in neighbouring markets; provided that cultivation of a garden at a dwelling by an occupant shall not be regarded as urban agriculture for the purpose of this development management scheme;

**"used"**, in addition to its ordinary meaning, includes 'designated or intended to be used';

**"utility service"** means a use or infrastructure that is required to provide engineering and associated services for the proper functioning of urban development and includes a water reservoir and purification works, electricity substation and transmission lines, stormwater retention facilities, and a waste-water pump station and treatment works, but does not include road, wind turbine infrastructure or transport use;

**"verandah"** means a covered area (not being an area which is part of a yard or parking area) or projecting floor outside and immediately adjoining a building at or below the level of the ground floor thereof; and includes both such area or floor and the roof or other feature covering it, as well as any low walls or railings enclosing such paved area or floor;

**"vertical division"** of a building means a portion of the building bounded by any combination of external and internal walls, with or without openings, which portion is, by design, clearly identifiable as a logical

vertical component from other portions of the building. The City may deem that a building is divided into vertical divisions, where every such division shall have a separate base level for the purpose of administering this development management scheme;

**"veterinary practice"** means a building or part of a building used by a registered veterinary surgeon for medical examinations or surgical procedures on animals, and may include the sale of animal food and related accessories;

**"wallplate"** means the lowest point of a longitudinal member, truss, bracket, pillar, post, structure or any other similar device as determined by the City, supporting a roof;

**"warehouse"** means a building used primarily for the storage of goods, except those that are offensive or dangerous, and includes property used for business of a predominantly wholesale nature, but does not include property used for business of a predominantly retail nature;

**"watercourse"** means:

- (a) a river, stream, channel or canal in which water flows regularly or intermittently;
- (b) a vlei, wetland, dam, or lake into which or from which water flows; and includes the bed and banks of a watercourse;

**"winery"** means a place where wine is made, and may include a selling point to the general public and wine-tasting area; and

**"wind turbine infrastructure"** means a device that converts energy from the wind to electricity that may or may not be linked to an electricity provider's grid or network and comprises a rotor (propeller), a generator, a tower and any infrastructure in support thereof.

## 2. Interpretation

The following provisions govern interpretation of the development management scheme:

- (a) Whenever reference is made to the use of a building, land unit or property, it includes the erection of a building, the use of part of a building and the use of a land unit, whether a building is erected on the land unit or not.
- (b) A sentence in italics is for guidance and should be regarded as not forming part of this development management scheme.

## 3. Methods of measuring distances, heights and levels or the requirement to round up or down

The following provisions apply with regard to measuring distances, levels or height or the requirement to round up or down:

- (a) If required by the City, the owner or applicant shall appoint a registered surveyor to supply or verify information necessary for the City to make a decision about compliance with distances or levels required in terms of this development management scheme.
- (b) Where reference is made or implied to the distance between boundaries or between a building and a boundary, this distance shall be measured in the following manner:
  - (i) The boundary or boundaries and all points of the building shall be projected onto a horizontal plane, and all measurements shall be made on such a plane; and
  - (ii) The distance between a point on a building and a boundary shall be measured at the shortest distance between the point and the boundary.
- (c) Where reference is made to a portion of a boundary 'opposite a building', such portion shall be defined by drawing lines in the manner described in paragraph (b) from points on such building, at right angles to such boundary.

- (d) Any post-construction deviation from a height restriction that does not exceed 300 mm will not be considered a contravention of the provisions of this development management scheme, provided that this deviation provision does not apply for the purposes of making an application.
- (e) If there is doubt about the height of a building or structure, the City may require the owner to appoint a registered surveyor to:
  - (i) certify the actual height of the building or structure in accordance with the provisions of this development management scheme;
  - (ii) certify if a building or structure is in contravention of the provisions of this development management scheme; and
  - (iii) certify that all structures on the property comply with the height restrictions applicable to the property.
- (f) Where reference is made to a distance, ground level, height of a point on a building or other measurement, then such distance, level or height shall be calculated in accordance with recognised geometric principles, and for the purposes of determining contours, from any data set held by the City at or before the commencement date or any data set so determined by the City. In any case where the distance, level or height involved is so irregular that calculation in accordance with these principles is impractical or leads to a result which is clearly not in accordance with the intent of the development management scheme, the City shall determine the distance, level or height concerned for the purpose of administering this development management scheme.
- (g) If it is necessary to determine the number of parking bays, or any other development rule for a land use that can only be complied with in terms of a whole number, it may be necessary to either round up or down the calculation. In such case a measure of 0.5 and above will be rounded up to the next whole number and if less than 0.5 will be rounded down to the next whole number, with the exception that a minimum unit requirement will be 1 (one), except if otherwise stated.

#### **4. Interpretation of boundaries**

Where uncertainty exists as to the boundaries of zones, the following rules apply, in the order listed:

- (a) Boundaries shown as following or approximately following any public street or road shall be construed as following the street or road cadastral boundary.
- (b) Boundaries shown as following or approximately following any land unit boundary shall be construed as following such boundary.
- (c) Boundaries shown as following or approximately following natural features shall be construed as following such features.
- (d) In the event of further uncertainty as to the boundaries of a zone, the City shall make a determination.

#### **5. Interpretation of category of use and zoning**

In the event that there is:

- (a) uncertainty or dispute about zoning categories;
- (b) conflict between the provisions of a zoning map, the development management scheme and the register; or
- (c) uncertainty or dispute about the zoning of property,

the City, after giving due consideration to any relevant representations, shall determine the category of use or zoning, and its decision shall be final.

## **6. Evasion of intent of the development management scheme**

The City may refuse any application in terms of this By-Law if it considers such application to constitute or facilitate an evasion of the intent of this development management scheme or any of its provisions.

## **Chapter 2 Application and approval procedures**

## **7. Development rules applicable to an approved consent use**

- (1) When a consent use is approved, the following shall apply:
  - (a) If such consent use as listed in a specific zoning is a primary use in another zoning, it shall be subject to the most restrictive development rules operating either in such other zoning or in that zoning;
  - (b) If such consent use as listed in a zoning is not a primary use in another zoning, it shall be subject to the development rules in that zoning;
  - (c) The consent use shall be subject to any development rule imposed as a condition in the approval;
- (2) Notwithstanding sub-item (1), the City may impose further conditions including:
  - (a) limiting a consent use for a specified period of time;
  - (b) requiring that a consent use does not adversely affect the potential use of that property for its primary uses in terms of this development management scheme;

### **DIVISION II: ZONING CATEGORIES, BASE ZONINGS AND DEVELOPMENT RULES (items 8 -120)**

This division describes the various zoning categories, base zonings and their respective provisions. It sets out the development rules that apply to each zoning, including primary and consent uses. Zoning categories are grouped into chapters according to similarity of use rights and intensity of development. In turn, the chapters are divided into parts, with each zoning being dealt with as a part. As many of the applicable development rules as possible are contained in the section concerned, but general rules and definitions that apply to all zonings and the development management scheme in general are contained in Division III.

## **Chapter 3 Zoning and use of property**

### **Part 1 – Zonings**

## **8. Zonings**

- (1) All properties that were zoned in terms of a former zoning scheme are deemed to be zoned in terms of this development management scheme.
- (2) The City Manager shall ensure that the zoning of all properties within the municipal area are determined and depicted on the zoning map, and where appropriate, recorded in the register.
- (3) Property situated within a particular zoning is subject to the provisions specified for that zoning under Division II of this development management scheme.

- (4) In addition to the provisions of Division II the general provisions of Division III shall apply in all zonings, and the provisions of any applicable overlay zoning in terms of Division IV shall apply to the land units concerned.
- (5) If legal steps are taken as contemplated in section 50(1) of the By-law, the development rules applicable to the zoning of each land unit remains applicable.

## **9. Subzonings**

- (1) Certain zonings have been divided into subzonings that distinguish between different building forms through different development rules. In order to change or relax the development rules applicable to property regulated by a base or subzoning, either:
  - (a) an application for departure from the development rule(s), or
  - (b) an application for rezoning to another zoning or subzoning must be submitted and approved.
- (2) A rezoning application must be submitted if the change contemplated in sub-item (1) is equivalent to or greater than the permitted floor space or height of the next most intensive subzoning.

## **Part 2 – Uses permitted as of right**

### **10. Primary uses**

The use of property for any purpose specified as a primary use in the zoning of that property is permitted without the approval of the City.

### **11. Additional use rights**

An activity or use described as an additional use right in a particular zoning is permitted in that zoning without the approval of the City, provided that any condition or further provisions specified for such activity or use are adhered to.

### **12. Ancillary uses**

An ancillary use is permitted where a primary use, approved consent use or other lawful use is exercised.

## **Part 3 – Uses permitted only with the City's approval**

### **13. Consent uses**

A consent use as listed under a base zoning in this development management scheme is permitted only if the City grants its approval for such consent use.

### **14. Occasional uses**

- (1) The occasional use of a property for temporary events (including craft markets, circuses, public meetings, religious gatherings, film shoots or other events) may be permitted with the City's approval, even though these events are not in accordance with the use rights of the property concerned, provided that:
  - (a) the occasional use will not have a significant negative impact on surrounding areas, or on the natural and cultural environment;
  - (b) the occasional use is genuinely of a temporary and short term nature, and may not occur for more than 5 days per month or more days as may be allowed by the City; and
  - (c) the occasional use conforms with the City's policies.

- (2) Approval in terms of sub-item (1) above may be granted subject to, but not limited to, the following conditions:
  - (a) the amount of parking and the number of ablution facilities required;
  - (b) the maximum duration or occurrence of the occasional use.
- (3) The City may issue a notice calling for compliance with conditions or for the ceasing of the occasional use by a specific date, where:
  - (a) conditions of approval are not met; or
  - (b) where a public nuisance is caused.

## 15. Special use

- (1) A special use is a use not defined or provided for in this development management scheme, and may be so classified and permitted in any zoning with the approval of the City.
- (2) A special use which has been classified and permitted in a zoning with the approval of the City, must be published in the Provincial Gazette.

## Part 4 – Deemed zoning or determined zoning

## 16. Public open space and public streets

- (1) Any portion of land designated on the zoning map or specified on a General Plan of a registered township as public open space shall be deemed to be zoned as Open Space Zoning 2: Public Open Space.
- (2) All public roads and public streets referred to in this development management scheme are roads proclaimed in terms of the Roads Ordinance, 1976 (Ordinance 19 of 1976) or roads or streets established in terms of the former Municipal Ordinance, 1974 (Ordinance 20 of 1974) or any equivalent current municipal by-law and/or national legislation, unless they are specifically excluded.
- (3) Any public road and public street and any portion of land proclaimed or reserved under any law as public road or public street or the widening or improvement of any such existing public road or street or specified on a General Plan of a registered township, diagram or map as public road or public street, shall be deemed to be zoned as Transport Zoning 2: Public Street and Public Parking.
- (4) Where a proclamation or reservation in terms of sub-item (3) or part thereof is withdrawn or cancelled, the City shall determine a zoning and/or subzoning for a land unit which was subject to such proclamation or reservation, whereafter the land unit concerned shall be deemed to be zoned in accordance with such determination, provided that:
  - (a) the City Manager shall notify the affected land owner; and
  - (b) the City shall consider any representations received in terms of paragraph (a) above prior to making such determination.
- (5) Notwithstanding the provisions in sub-item (4), where only a part of a land unit was deemed Transport Zoning 2: Public Street and Public Parking, such part which was subject to a proclamation or reservation shall be deemed to fall into the same zoning and/or subzoning as that of the rest of the land unit.
- (6) Where a proclamation or reservation is withdrawn or cancelled as contemplated in subitems (4) and (5), such withdrawal or cancellation, including deeming, shall only apply to the land referred to in the relevant resolution, or notice of withdrawal or cancellation.

- (7) Any portion of land which was previously part of a public street but has become the property of an abutting owner through prescription shall be deemed to be zoned as Transport Zoning 2: Public Street and Public Parking; provided that where the City specifically resolves that such portion of land is no longer required for public street purposes, such land shall be deemed to fall into the same zoning and subzoning as that of the abutting land belonging to such owner.
- (8) Where any portion of land (other than land referred to in sub-item (7)) which was previously a public street or public open space vested in or owned by the City, is closed and transferred to an abutting owner, such portion of land shall be deemed to fall into the same zoning and subzoning, including any conditions of approval, if any, as that of the abutting land belonging to such owner provided that:
  - (a) where the intended owner of the public street or public open space does not own the abutting property, or
  - (b) where the intended owner owns abutting properties falling into more than one zoning, or
  - (c) in any other case not provided for herein, the City shall determine which zone shall apply to the property concerned.
- (9) Where the zoning and/or subzoning of a land unit or part thereof is deemed under Part 4: Deemed zoning of this development management scheme, the City shall record such deemed zoning and/or subzoning on the zoning map.

#### **17. Land subject to the provisions of section 13 of the Legal Succession of the South African Transport Services Act, 1989 ([Act 9 of 1989](#))**

- (1) All land subject to section 13 of the Legal Succession of the South African Transport Services Act, 1989 ([Act 9 of 1989](#)) is deemed to be zoned Transport Zoning 1: Transport Use (TR1). (2) Where an agreement has been entered into between the City and the South African Transport Services or any of its divisions or its successors in title in terms of the Legal Succession of the South African Transport Services Act, 1989 ([Act 9 of 1989](#)) or preceding legislation, the provisions and conditions contained within such agreement shall prevail over the provisions of the TR1 zoning.
- (3) The conditions contained in an agreement referred to in sub-item (2) are deemed to be development rules.
- (4) If these development rules are to be altered, this must be done by means of a departure in terms of this By-Law.
- (5) Where additional land use rights are applied for, this must be done by means of rezoning in terms of this By-Law.
- (6) Where land that is owned by the former South African Transport Services or any of its divisions or successors in title has been lawfully zoned to any zoning other than Transport Zoning 1: Transport Use (TR1), such land will be deemed to retain its zoning and be allocated with a corresponding zoning in terms of this development management scheme on the City's zoning map.

#### **18. Land deemed as a heritage area in accordance with the National Heritage Resources Act**

All Heritage Protection Overlay Zones as published in the Provincial Gazette are deemed to be heritage areas in accordance with the National Heritage Resources Act.

#### **19. Special provisions**

The provisions in the following table are deemed to constitute development rules in terms of this development management scheme.

Former zoning scheme in terms of which special zone, special area or special provision was established	Name of former special zone, special area or special provision	Reference number (if applicable)
Municipality of the City of Cape Town Zoning Scheme	Rondebosch Shopping precinct	
	\Schedule 8: Special provisions applicable to certain properties	
Pinelands Zoning Scheme	Special Zone A: Howard Place	
	Special Zone B: Mutual Park	

## Chapter 4

### Summary of zonings

#### 20. Zoning summary table

- (1) Table A contains a summary of the base zonings and development rules as set out in this development management scheme.
- (2) Table A does not supersede the detailed provisions contained in Division II.

Table A: Summary of the zonings and development rules



SINGLE RESIDENTIAL ZONINGS	LAND UNIT AREA (m <sup>2</sup> )	FLOOR FACTOR	MAXIMUM FLOOR SPACE	MAXIMUM HEIGHT ABOVE BASE LEVEL		BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
				To wallplate	To top of roof	Street boundary	Common boundaries		
SINGLE RESIDENTIAL ZONING 1: CONVENTIONAL HOUSING (SR1)	>2 000	N/a	1 500 m <sup>2</sup>	9,0 m	11,0 m	6,0 m	6,0 m	N/a	Window and door placement  Garages, carports and outbuildings  Parking and access  Additional use rights – home occupation, bed and breakfast establishment and home child care
	>1 000 up to 2 000	N/a	1 500 m <sup>2</sup>	9,0 m	11,0 m	4,5 m	3,0 m		
	PRIMARY USES  Dwelling house, private road and additional use rights	N/a	1 500 m <sup>2</sup>	9,0 m	11,0 m	3,5 m	3,0 m		
	>350 up to 650	1,0	N/a	8,0 m	10,0 m	3,5 m	0,0 m (12,0 m from street and 60%) and 3,0 m rest		
	ADDITIONAL USE RIGHTS								
	Second dwelling; home occupation or bed and breakfast establishment or home child care	1,0	N/a	8,0 m	10,0 m	3,5 m	0,0 m (12,0 m from street and 60%) and 3,0 m rest		
	CONSENT USES  Utility services, place of instruction, place of worship,	1,0	N/a	8,0 m	10,0 m	1,0 m	0,0 m (12,0 m from street and 60%) and 3,0 m rest		
		Refer to item 22(a)	Refer to item 22(b)	Refer to item 22(c)	Refer to item 22(c)	Refer to item 22(d)	Refer to item 22(d)		

house shop, institution, guest house, rooftop base telecommunication station, wind turbine infrastructure, open space, urban agriculture and halfway house						& 22(e)	& 22(e)		
<p>SINGLE RESIDENTIAL ZONING 2: INCREMENTAL HOUSING (SR2)</p> <p>PRIMARY USES</p> <p>Dwelling house, second dwelling, utility service, private road, urban agriculture, open space and additional use rights</p> <p>ADDITIONAL USE RIGHTS</p> <p>Shelter, house shop, home occupation, bed and breakfast establishment, home child care, informal trading and any educational, religious, occupational or business purpose subject to conditions</p> <p>CONSENT USES</p> <p>Group housing, boarding house.</p>	1,0	N/A	6,0 m dwelling units	8,0 m dwelling units	Formal township: 1,0 m	Formal township: 0,0 m for 60% and 1,0 m for remainder; 2,5 m between shelters and other buildings	N/a	<p>Parking and access</p> <p>House shop</p> <p>Shelter</p> <p>Informal trading</p> <p>Land constructed as or identified for roads</p> <p>Land used as or identified for firebreaks</p> <p>Approval of building plans</p>	
			8,0 m other dwellings	10,0 m other buildings	No formal township: 1,0 m	No formal township: 3,0 m on perimeter; 2,5 m between shelters and other buildings			
	Refer to item 27(a)		Refer to item 27(b)	Refer to item 27(b)	Refer to Item 27(c) & 27(d)	Refer to Item 27(c) & 27(d)			

place of worship, institution, clinic, place of assembly, place of instruction, office, restaurant, guest house, place of entertainment, service trade, authority use, rooftop base telecommunication station, wind turbine infrastructure, halfway house and veterinary practice									
GENERAL RESIDENTIAL ZONING	SUB-ZONING	DENSITY	COVERAGE	MAXIMUM HEIGHT ABOVE BASE LEVEL		BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
				To wallplate	To top of roof	Street boundary	Common boundaries		
GENERAL RESIDENTIAL SUBZONING 1: GROUP HOUSING (GR1)	PRIMARY USES  Dwelling house, group housing, private road, open space and additional use rights	35 du/ha	N/a	8,0 m	10,0 m	5,0 m external public street 0,0 m internal road Garages 5,0 m from kerb	3,0 m external boundaries 0,0 m internal boundaries	N/a	Design principles  Open space  Parking and access  Site development plan  Flats and home occupation as additional use right  Dwelling house outside group scheme

ADDITIONAL USE RIGHTS		Refer to item 35(b)		Refer to item 35(c)	Refer to item 35(c)	Refer to item 35(e) & 35(f)	Refer to item 35(e) & 35(f)		
Flats and home occupation, subject to restriction									
CONSENT USES									
Utility services, home child care and rooftop base telecommunication station									
		<b>FLOOR FACTOR</b>		<b>To top of roof</b>					
GENERAL GR2 RESIDENTIAL SUBZONINGS (GR2– GR6)		1,0	60%	15,0 m		4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)	8,0 m	Parking and access  Screening  Wind mitigation  Dwelling house and second dwelling
PRIMARY GR3 USES		1,0	60%	20,0 m		4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)	8,0 m	Group housing  Institution, place of instruction and place of assembly  Shop
Dwelling house, second dwelling, group housing, boarding house, guest house,									

flats, private road and open space							
CONSENT GR4 USES		1,5	60%	24,0 m	4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)	8,0 m
Utility service, place of instruction, place of worship, institution, hospital, place of assembly, home occupation, shop, hotel, conference facility, rooftop base telecommunication station and veterinary practice	GR5	2,5	60%	35,0 m	4,5 m; 9 m above 25 m height	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street); 15,0 m above 25,0 m height	8,0 m
	GR6	5,0	60%	50,0 m	4,5 m; 9 m above 25 m height	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street); 15,0 m above 25,0 m height	8,0 m

		Refer to item 41(b)	Refer to item 41(a)	Refer to item 41(c)	Refer to item 41(e)	Refer to item 41(e)	Refer to item 41(d)	
COMMUNITY ZONINGS		FLOOR COVERAG FACTOR		MAXIMUM HEIGHT ABOVE BASE LEVEL	BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
					To top of roof	Street boundary		
COMMUNITY ZONING 1: LOCAL (CO1)  PRIMARY USES  Place of instruction, place of worship, clinic, rooftop base telecommunication station, open space and filming  CONSENT USES  Institution, hospital, place of assembly, cemetery, freestanding base telecommunication station, urban agriculture and veterinary practice		0,8  Refer to item 47(a)	60%  Refer to item 47(b)	12,0 m  Refer to item 47(c)	5,0 m  Refer to item 47(d)	5,0 m  Refer to item 47(e)	N/a	Parking and access  Loading  Screening  Noise mitigation
COMMUNITY ZONING 2: REGIONAL (CO2)  PRIMARY USES  Institution, hospital, place of instruction, place of worship, place of assembly, rooftop base telecommunication station, open space and filming  CONSENT USES  Boarding house, conference facility, cemetery, crematorium, funeral parlour, freestanding base telecommunication station, wind turbine infrastructure, urban agriculture and veterinary practice		2,0  Refer to item 49(a)	60%  Refer to item 49(b)	18,0 m  Refer to item 49(c)	5,0 m  Refer to item 49(d)	5,0 m  Refer to item 49(e)	N/a	Parking and access  Loading  Screening  Noise mitigation

LOCAL BUSINESS ZONING	LAND UNIT AREA (m <sup>2</sup> )	FLOOR COVERAGE FACTOR		MAXIMUM HEIGHT ABOVE BASE LEVEL		BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
				To wallplate	To top of roof	Street boundary	Common boundaries		
LOCAL BUSINESS ZONING 1: INTERMEDIATE BUSINESS (LB1)	>1 000	1,0	N/a	9,0 m	11,0 m	3,5 m	3,0 m	N/a	Garages and carports Parking and access Loading Screening Home occupation, bed & breakfast establishment and home child care Second dwelling House shop
	>650 up to 1 000	1,0		9,0 m	11,0 m	3,5 m	3,0 m		
	>350 up to 650	1,0		8,0 m	10,0 m	3,5 m	0,0 m (12,0 m from street and 60%) and 3,0 m rest		
	>200 up to 350	1,0		8,0 m	10,0 m	3,5 m	0,0 m (12,0 m from street and 60%) and 3,0 m rest		
	≤200	1,0		8,0 m	10,0 m	1,0 m	0,0 m (12,0 m from street and 60%) and 3,0 m rest		
		Refer to item 51(a)		Refer to item 51(b)	Refer to item 51(b)	Refer to item 51(c)	Refer to item 51(c)		
ADDITIONAL USE RIGHTS									
Second dwelling and home occupation or house shop or bed and breakfast establishment or home child care									
CONSENT USES									
Place of									

instruction, place of worship, institution, clinic, place of assembly, guest house, shop, informal trading, service trade, rooftop base telecommunication station, wind turbine infrastructure, halfway house and veterinary practice							
			<b>To top of roof</b>				
LOCAL BUSINESS ZONING 2: LOCAL BUSINESS (LB2) PRIMARY USES Shop, office, dwelling house, second dwelling, bed and breakfast establishment, boarding house, flats, place of instruction, place of worship, institution, clinic, guest house, service trade, utility service, rooftop base telecommunication station, private road, open space and	1,0	75%	12,0 m	0,0 m	8,0 m	Canopy projection	
	Refer to item 56(a)	Refer to item 56(b)	Refer to item 56(c)	Refer to item 56(e) & 56(f)	Refer to item 56(d)	Street corners Parking and access Loading Screening Service station and motor repair garage Informal trading	



veterinary practice								
CONSENT USES								
Place of assembly, informal trading, restaurant, sale of alcoholic beverages, funeral parlour, place of entertainment, adult shop, business premises, supermarket, plant nursery, hotel, conference facility, motor repair garage, service station, authority use, freestanding base telecommunication station, wind turbine infrastructure, transport use and multiple parking garage								
GENERAL BUSINESS AND MIXED USE ZONINGS	SUB-ZONING	FLOOR FACTOR	COVERAGE	MAXIMUM HEIGHT ABOVE BASE LEVEL	BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
					Street boundary	Common boundaries		
GENERAL BUSINESS SUBZONINGS (GB1–GB7)	GB1	1,5	100%	15,0 m	0,0 m up to 10,0 m height; 4,5 m above 10,0 m	0,0 m	8,0 m	Residential incentive in respect of GB7
PRIMARY USES								Hotel floor space concession
Business premises, dwelling house, second dwelling, boarding house,	GB2	2,0	100%	15,0 m	0,0 m up to 10,0 m height; 4,5 m above 10,0 m	0,0 m	8,0 m	Canopy or balcony projection

flats, place of instruction, place of worship, institution, hospital, place of assembly, place of entertainment, hotel, conference facility, service trade, authority use, utility service, rooftop base telecommunication station, multiple parking garage, private road, open space, veterinary practice and filming  CONSENT USES  Adult shop, adult entertainment business, adult services, informal trading, expo- centre, motor repair garage, warehouse,	GB3	2,0	100%	25,0 m	0,0 m up to 10,0 m height; 4,5 m above 10,0 m	0,0 m	8,0 m	Public pedestrian footway along street boundary  Street corners
	GB4	3,0	100%	25,0 m	0,0 m up to 10,0 m height; 4,5 m above 10,0 m	0,0 m	8,0 m	Parking and access  Loading  Screening
	GB5	4,0	100%	25,0 m	0,0 m	0,0 m	8,0 m	Wind mitigation
	GB6	6,0	100%	38,0 m	0,0 m up to 25,0 m height;  $\frac{1}{2}$ (H-25 m) above 25,0 m	0,0 m	8,0 m	Service station and motor repair garage  Informal trading
	GB7	12,0	100%	60,0 m	0,0 m up to 38,0 m height;  $\frac{1}{2}$ (H-38 m) above 38,0 m	0,0 m	8,0 m	
		Refer to item 60(c)	Refer to item 60(a)	Refer to item 60(d)	Refer to item 60(e)	Refer to item 60(e)	Refer to item 60(b)	

freestanding base telecommunication station, wind turbine infrastructure, transport use, helicopter landing pad and service station								
MIXED-USE SUBZONINGS (MU1–MU3)  PRIMARY USES  Business premises, industry, dwelling house, second dwelling, boarding house, flats, place of instruction, place of worship, institution, hospital, place of assembly, place of entertainment, hotel, conference facility, authority use, utility service, rooftop	MU1	1,5	75%	15,0 m	0,0 m up to 10,0 m height; 4,5 m above 10,0 m	8,0 m	Canopy or balcony projection	
	MU2	4,0	100%	25,0 m	0,0 m up to 10,0 m height; 4,5 m above 10,0 m	8,0 m	Parking and access	
	MU3	6,0	100%	38,0 m	0,0 m up to 25,0 m height; ½ (H-25 m) above 25,0 m	8,0 m	Loading Screening Service station and motor repair garage	
		Refer to item 64(a)	Refer to item 64(a)	Refer to item 64(a)	Refer to item 64(c)	Refer to item 64(b)	Informal trading	

	base telecommunication station, transport use, multiple parking garage, private road, open space and filming							
	CONSENT USES							
	Adult shop, adult entertainment business, adult services, informal trading, expo centre, scrap yard, freestanding base telecommunication station, wind turbine infrastructure, helicopter landing pad, service station, motor repair garage, veterinary practice and recycling centre							
INDUSTRIAL SUB-ZONINGS	SUB-ZONING	FLOOR COVERAGE FACTOR		MAXIMUM HEIGHT ABOVE BASE LEVEL	BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
					Street boundary	Common boundaries		

GENERAL GI 1 INDUSTRY SUBZONINGS (GI1– GI2)	1,5	75%	18,0 m	5,0 m	3,0 m	N/a	Boundary walls
PRIMARY USES	4,0	75%	18,0 m, but no restriction in respect of manufacturin g buildings	5,0 m	3,0 m		Parking and access
Industry, restaurant, service station, motor repair garage, funeral parlour, scrap yard, authority use, utility service, crematorium, rooftop base telecommunication station, freestanding base telecommunication station, transport use, multiple parking garage, agricultural industry, private road, open space, additional use rights, veterinary practice and filming	Refer to item 68(a)	Refer to item 68(a)	Refer to item 68(b)	Refer to item 68(c)	Refer to item 68(d)		Loading  Screening  Hazardous substances  Service station and motor repair garage  Factory shop  Adult shop  Informal trading
ADDITIONAL USE RIGHTS							

Factory shop and adult shop								
CONSENT USES								
Abattoir, place of worship, institution, clinic, place of assembly, adult entertainment business, adult services, aqua-culture, informal trading, shop, office, sale of alcoholic beverages, place of entertainment, helicopter landing pad, wind turbine infrastructure and container site								
RISK INDUSTRY ZONING (RI)	2,0	75%	18,0 m, but no restriction in respect of noxious trade, risk activity or manufacturing buildings	5,0 m	5,0 m	N/a	Parking and access	
PRIMARY USE							Loading	
Noxious trade, risk activity, crematorium, rooftop base telecommunication station, freestanding base	Refer to item 75(a)	Refer to item 75(b)	Refer to item 75(c)	Refer to item 75(d)	Refer to item 75(c)		Screening	
							Boundary walls	
							Hazardous substances	

telecommunication station, private road, open space, additional use rights and filming							Service station and motor repair garage
ADDITIONAL USE RIGHTS							Factory shop
Factory shop							Informal trading
CONSENT USE							
Shop, restaurant, informal trading, service station, motor repair garage, industry, scrap yard, abattoir, authority use, utility service, helicopter landing pad, wind turbine infrastructure, container site, transport use, multiple parking garage and recycling centre							
UTILITY, TRANSPORT AND NATIONAL PORT ZONINGS	FLOOR COVERAGE FACTOR		MAXIMUM HEIGHT ABOVE BASE LEVEL	BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
				Street boundary	Common boundaries		
UTILITY ZONING (UT)	As determined by a site development plan (Refer to item 81)						
PRIMARY USES							
Utility service, authority use, rooftop base telecommunication station and freestanding base telecommunication station							
CONSENT USES							
Cemetery, informal trading, funeral parlour, crematorium.							

urban agriculture, airport, wind turbine infrastructure and helicopter landing pad							
TRANSPORT ZONING 1: TRANSPORT USE (TR1)  PRIMARY USES  Transport use, multiple parking garage, utility service, warehouse, rooftop base telecommunication station and container site  CONSENT USES  Business premises, flats, place of assembly, place of entertainment, hotel, conference facility, service station, motor repair garage, service trade, freestanding base telecommunication station, wind turbine infrastructure, airport, helicopter landing pad, informal trading, industry and air and underground rights	2,0	75%	15,0 m for stacked shipping containers  18,0 m for any other building	0,0 m	3,0 m	N/a	Parking and access  Service station and motor repair garage  Informal trading  Air and underground rights
TRANSPORT ZONING 2: PUBLIC ROAD AND PUBLIC PARKING (TR2)  PRIMARY USES	As determined by a site development plan (Refer to item 88)						Deemed zoning  Construction and deposit of materials



Public street, public road and utility service  CONSENT USES  Multiple parking garage, informal trading, wind turbine infrastructure and air and underground rights						Air and underground rights  Proposed public street, street widening and street closure  Informal trading	
NATIONAL PORT ZONING (NPZ)  PRIMARY USES  Land uses as set out in an approved Port development framework plan  CONSENT USES  None	As determined by an approved Port development framework plan (Refer to item 95)					Deemed zoning  Deemed zoning of land transferred to National Ports Authority	
OPEN SPACE ZONING	FLOOR FACTOR	COVERAGE	MAXIMUM HEIGHT ABOVE BASE LEVEL	BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
				Street boundary	Common boundaries		
OPEN SPACE ZONING 1: ENVIRONMENTAL CONSERVATION (OS1)  PRIMARY USES  Environmental conservation use  CONSENT USES  Harvesting of natural resources, environmental facilities, tourist accommodation, tourist facilities, utility service.	As determined by a site development plan (Refer to item 98)						

rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure and cultural and social ceremonies		
OPEN SPACE ZONING 2: PUBLIC OPEN SPACE (OS2)  PRIMARY USES  Public open space and environmental conservation use  CONSENT USES  Environmental facilities, tourist facilities, utility service, cemetery, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure, cultural and social ceremonies, urban agriculture, informal trading, harvesting of natural resources and air and underground rights	As determined by a site development plan (Refer to item 100)	Deemed zoning  Construction and deposit of material  Air and underground rights  Informal trading
OPEN SPACE ZONING 3: SPECIAL OPEN SPACE (OS3)  PRIMARY USES  Open space, private road and	As determined by a site development plan (Refer to item 105)	Approval of consent uses  Informal trading

environmental conservation use								
CONSENT USES								
Environmental facilities, tourist facilities, place of instruction, place of assembly, place of entertainment, plant nursery, utility service, cemetery, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure, cultural and social ceremonies, urban agriculture, informal trading and harvesting of natural resources								
AGRICULTURAL, RURAL AND LIMITED USE ZONINGS	MAXIMUM FLOOR SPACE	COVERAGE	MAXIMUM HEIGHT ABOVE BASE LEVEL		BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
			To wallplate	To top of roof	Street boundary	Common boundaries		
AGRICULTURAL ZONING (AG)  PRIMARY USES  Agriculture, intensive horticulture, dwelling house, riding stables, environmental conservation use, environmental facilities, rooftop base telecommunication station and additional use rights	1 500 m <sup>2</sup> for all dwelling units	N/a	9,0 m for dwelling house	11,0 m for dwelling house	> 20 ha : 30,0 m	> 20 ha : 30,0 m	N/a	Parking  Minimum subdivision size  Agricultural industry  Second dwelling and additional dwelling units
	100 m <sup>2</sup> for farm shop			12,0 m for agricultural buildings other than dwelling house	≤ 20 ha : 15,0 m	≤ 20 ha : 15,0 m		

<p>ADDITIONAL USE RIGHTS</p> <p>Second dwelling and home occupation or bed and breakfast establishment or home child care</p> <p>CONSENT USES</p> <p>Additional dwelling units, guest house, hotel, tourist accommodation, tourist facilities, intensive animal farming, harvesting of natural resources, mine, utility service, freestanding base telecommunication station, wind turbine infrastructure, aqua- culture, animal care centre, farm shop, agriculture industry, veterinary practice and renewable energy structure</p>	Refer to item 109(a)		Refer to item 109(d)	Refer to item 109(d)	Refer to item 109(b)	Refer to item 109(b)		
<p>RURAL ZONING (RU)</p> <p>PRIMARY USES</p> <p>Dwelling house, agriculture and additional use rights</p> <p>ADDITIONAL USE RIGHTS</p> <p>Second dwelling and home occupation or</p>	<p>1 500 m<sup>2</sup> for all buildings</p> <p>100 m<sup>2</sup> for farm shop</p> <p>Refer to item 113(a)</p>	<p>40%</p> <p>Refer to item 113(b)</p>	<p>9,0 m</p> <p>Refer to item 113(e)</p>	<p>11,0 m</p> <p>Refer to item 113(e)</p>	<p>10,0 m</p> <p>Refer to item 113(c)</p>	<p>5,0 m</p> <p>Refer to item 113(c)</p>	N/a	<p>Parking</p> <p>Minimum subdivision size</p> <p>Agricultural industry</p> <p>Second dwelling</p>

bed and breakfast establishment or home child care  CONSENT USES  Guest house, tourist accommodation, tourist facilities, harvesting of natural resources, mine, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure, aqua-culture, intensive animal farming, intensive horticulture, riding stables, animal care centre, farm shop, agricultural industry and veterinary practice								
LIMITED USE ZONING (LU) PRIMARY USES  Only existing lawful uses  CONSENT USES  None	Refer to item 118							No rezoning  Reconstruction of destroyed property

## Chapter 5

### Single residential zonings

The single residential zonings are designed to provide locations for predominantly single-family dwelling houses in low- to medium-density neighbourhoods, with a safe and pleasant living environment. There are controlled opportunities for home employment, additional dwellings and low intensity mixed-use development on a single residential property. In recognition of the different socio-economic circumstances of the city there are two single

residential zonings, one for conventional housing and one for incremental housing (where upgrading of informal settlements is encouraged).

## **Part 1 – Single Residential Zoning 1: Conventional housing (SR1)**

The SR1 zoning provides for predominantly single-family dwelling houses and additional use rights in low- to medium-density residential neighbourhoods, whether these incorporate small or large erven. Limited employment and additional accommodation opportunities are possible as primary or consent uses, provided that the impacts of such uses do not adversely affect the surrounding residential environment.

### **21. Use of the property**

The following use restrictions apply to properties in this zoning:

- (a) Primary uses are dwelling house, private road and additional use rights as specified in paragraph (b).
- (b) Additional use rights which may be exercised by the occupant of a property are home occupation, bed and breakfast establishment and home child care, subject to the following conditions:
  - (i) Except for a second dwelling, only one of the activities listed as additional use rights shall be conducted on any land unit as a primary use. Where more than one such activity is required, the City's approval shall be obtained;
  - (ii) The dominant use of the property shall be a dwelling house for accommodation of a single family;
  - (iii) The proprietor of the activity concerned shall live on the property;
  - (iv) The conditions stipulated in items 23, 24, 25 or 53 (whichever is applicable) shall be adhered to;
  - (v) Any new structure or alteration to the property to accommodate an additional use right shall be compatible with the residential character of the area, particularly with regard to the streetscape, and shall be capable of reverting to use as part of the dwelling house, second dwelling or outbuilding concerned; and
  - (vi) No more than three employees shall be engaged by the occupant in the activity concerned.
- (c) Consent uses are utility service, place of instruction, place of worship, house shop, institution, guest house, rooftop base telecommunication station, wind turbine infrastructure, open space, urban agriculture, veterinary practice and halfway house.

### **22. Development rules**

The following development rules apply:

- (a) Floor factor The maximum floor factor is determined in accordance with the area of the land unit as shown in the following 'Table of floor factor, floor space, height and building lines in 'Single Residential Zoning 1'.
- (b) Floor space The maximum floor space, if applicable, to all buildings on a land unit is determined in accordance with the following 'Table of floor factor, floor space, height and building lines in Single Residential Zoning 1'.
- (c) Height
  - (i) The maximum height of a building, measured from the base level to the wallplate and top of the roof, shall be determined in accordance with the area of the land unit as shown in the following 'Table of floor factor, floor space, height and building lines in Single Residential Zoning 1';

- (ii) Where a building is permitted in this zoning within 3 m of a common boundary, the height will be limited to 4 m measured from base level to top of roof.
- (iii) Notwithstanding the provisions in sub-paragraph (ii), within the first 12 m along a common boundary measured perpendicular from the street boundary line and where a building is not set back from such common boundary, the height is determined in accordance with the 'Table of floor factor, floor space, height and building lines in Single Residential Zoning 1';
- (iv) Earth banks and retaining structures are subject to item 126.
- (d) Building lines - The street and common boundary building lines are determined in accordance with the area of the land unit as shown in the 'Table of floor factor, floor space, height and building lines in Single Residential Zoning 1, subject to:
  - (i) the general building line encroachments in item 121;
  - (ii) where more than four dwelling units are attached to each other, the City may require a common boundary building line of 1 m between a batch of four attached dwelling units and any adjacent dwelling unit; and
  - (iii) further restrictions stipulated in paragraphs (e) and (f) as applicable.

Table of floor factor, floor space, height and building lines in Single Residential Zoning 1

Land unit area (m <sup>2</sup> )	Floor factor	Maximum floor space	Maximum height above base level		Street boundary building line	Common boundary building line
			To wall-plate	To top of roof		
>2 000	N/a	1 500 m <sup>2</sup>	9,0 m	11,0 m	6,0 m	6,0 m
>1 000 up to 2 000	N/a	1 500 m <sup>2</sup>	9,0 m	11,0 m	4,5 m	3,0 m
>650 up to 1 000	N/a	1 500 m <sup>2</sup>	9,0 m	11,0 m	3,5 m	3,0 m
>350 up to 650	1	N/a	8,0 m	10,0 m	3,5 m	0,0 m for first 12,0 m measured perpendicular from street boundary and 0,0 m for 60% of total remaining linear distance along all common boundaries around land unit and 3,0 m for remainder, subject to paragraph d(iii).
>200 up to 350	1	N/a	8,0 m	10,0 m	3,5 m	0,0 m for first 12,0 m measured perpendicular from street boundary and 0,0 m for 60% of total remaining linear distance along all
≤200	1	N/a	8,0 m	10,0 m	1,0 m	



						common boundaries around land unit and 3,0 m for remainder; subject to paragraphs (ii) and (iii).
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- (e) Window and door placement Any portion of a building which contains an external window or door facing onto a common boundary shall:
- (i) be set back a distance of at least 1,5 m away from such boundary; and
  - (ii) the portion of building to be set back from the boundary shall include the door or window, together with such additional length of wall as is required to make up a total minimum length of 3 m.
- (f) Garages, carports and outbuildings
- (i) A garage, carport and outbuildings are permitted within the common boundary building line or on the common property boundary; provided that the garage, carport and outbuilding do not:
    - (aa) extend higher than 3,5 m from base level to top of roof;
    - (bb) contain more than a double garage façade; and
    - (cc) exceed a width of 6,5 m.
  - (ii) For land units of 650 m<sup>2</sup> and less, a garage or carport is permitted up to 1,5 m from the street boundary provided the garage or carport:
    - (aa) is not higher than 3,5 m from base level to top of roof;
    - (bb) does not contain more than a double garage façade; and
    - (cc) does not exceed a width of 6,5 m.
  - (iii) For land units exceeding 650 m<sup>2</sup>, a garage or carport shall not be closer than 5 m from the street boundary, notwithstanding the street building line.
  - (iv) Notwithstanding paragraphs (ii) and (iii), a garage or carport may be erected within the street boundary building line if, in the opinion of the City, compliance with the street boundary building line will not be practical due to the steepness of the ground between the road and the property concerned. The City will determine the street boundary building line in such a case.
- (g) Parking and access (i) Parking and access shall be provided on the land unit in accordance with Chapter 15.

## 23. Home occupation

In addition to item 21(b), the following conditions shall apply where a portion of property is used for purposes of home occupation:

- (a) No home occupation shall include a noxious trade, risk activity, adult entertainment business, adult services, adult shop, sale of alcoholic beverages, motor repair garage, funeral parlour or activities that are likely to generate a public nuisance, including but not limited to panel beating and spray painting, auto electrician, builders yard, welding works, joinery;

- (b) Only goods which have been produced or assembled in the home occupation may be sold from the property;
- (c) No goods for sale shall be publicly displayed and no external evidence of the home occupation shall be visible from a public street, except for an advertising sign in accordance with paragraph (d);
- (d) No advertising sign shall be displayed other than a single, un-illuminated sign or notice not projecting over a public street in accordance with the City's Outdoor Advertising and Signage By-Law, and such sign shall not exceed 0,2 m<sup>2</sup> in area;
- (e) No activities shall be carried out which constitute or are likely to constitute a source of public nuisance, or generate waste material which may be harmful to the area or which requires special waste removal processes;
- (f) Off-street parking shall be provided at a ratio of 1 parking bay per 25 m<sup>2</sup> area used for home occupation unless the City's approval is obtained to waive this requirement. The City may at any stage require additional on-site parking where parking is not sufficient;
- (g) The total area used for all home occupation activity on a land unit, including storage, shall not consist of more than 25% of the total floor space of the dwelling units on the land unit or 50 m<sup>2</sup>, whichever is the lesser area;
- (h) The storage of all goods and equipment connected with the home occupation shall be inside a building or screened from neighbours and the public street;
- (i) Not more than two vehicles may be used in connection with a home occupation, and no one vehicle shall exceed 3 500 kg gross weight;
- (j) The hours of operation shall not extend beyond 08:00 to 17:30 on Mondays to Fridays, and from 08:00 to 13:00 on Saturdays, and shall not include public holidays or Sundays; and
- (k) The City may, at any stage, call for a cessation of the home occupation activity or impose conditions in order to minimise any potential nuisance to surrounding neighbours or the general public.

## 24. Bed and breakfast establishment

In addition to item 21(b), the following conditions shall apply where a portion of property is used as a bed and breakfast establishment, or where rooms are let to lodgers:

- (a) No more than 3 rooms per land unit shall be used for bedroom accommodation for paying guests or lodgers, and no more than 6 paying guests or lodgers shall be supplied with lodging or meals at any time;
- (b) No alcoholic beverages shall be sold except to resident guests for consumption on the premises with meals;
- (c) Guest rooms shall not be converted to, or used as, separate self-catering dwelling units;
- (d) Meals may only be supplied to guests or lodgers who have lodging on the property, employees, and the family residing in the dwelling;
- (e) No advertising sign shall be displayed other than a single un-illuminated sign or notice not projecting over a public street in accordance with the City's Outdoor Advertising and Signage By-Law, and such sign shall not exceed 0,5 m<sup>2</sup> in area;
- (f) Weddings, receptions, conferences, training or any similar activities are not permitted from a bed and breakfast establishment;
- (g) No activities shall be carried out which constitute, or are likely to constitute, a source of public nuisance; and

- (h) On-site parking shall be provided in accordance with the provisions of Chapter 15, provided that the City may at any stage require additional on-site parking if, in its opinion, the parking is not sufficient.

## 25. Home child care

In addition to item 21(b), the following conditions shall apply where a portion of property is used for home child care:

- (a) No more than 6 children shall be enrolled at the home child care facility at any time;
- (b) Services shall be primarily day care or educational and not medical;
- (c) Services shall not operate outside the hours of 07:00 to 18:00 on Mondays to Fridays, and from 08:00 to 13:00 on Saturdays, and shall not include public holidays or Sundays;
- (d) Indoor and outdoor play space shall be provided in accordance with any health requirement or a policy plan as might be approved by the City from time to time, and outdoor play space shall be fenced off from any public street;
- (e) No advertising sign shall be displayed, other than a single un-illuminated sign or notice in accordance with the City's Outdoor Advertising and Signage By-Law, not projecting over a public street, and such sign shall not exceed 0,5 m<sup>2</sup> in area; and
- (f) At least one off-street parking bay shall be provided, plus one additional parking bay which is suitable for the use of parents to drop off or collect their children, unless the City's approval is obtained to waive this requirement. The City may at any stage require additional on-site parking where parking is not sufficient.

## Part 2 – Single Residential Zoning 2: Incremental housing (SR2)

The SR2 zoning facilitates upgrading and incremental housing from an informal settlement to a formal settlement. SR2 may apply to individual land units or to blocks containing an informal settlement. In recognition of the realities of poor and marginalised communities, development rules are not very restrictive and local employment generation is encouraged within this zoning. Once upgrading of an area has reached an appropriate stage, as determined by the City, it is contemplated that the area may be rezoned to SR1 or another appropriate zoning. All properties zoned as Informal Residential Zone in former zoning schemes are converted to SR2 in this development management scheme.

## 26. Use of the property

- (1) The following use restrictions apply to property in this zoning:
  - (a) Primary uses are dwelling house, second dwelling, utility service, private road, urban agriculture, open space and additional use rights as specified in paragraph (b).
  - (b) Additional use rights which may be exercised by the occupant of any unit of accommodation are shelter, house shop, home occupation, bed and breakfast establishment, home child care, informal trading and any educational, religious, occupational or business purpose excluding the sale of alcoholic beverages, provided that:
    - (i) The dominant use of the unit shall remain residential;
    - (ii) No noxious trade, risk activity, adult entertainment business, adult services or adult shop are permitted;
    - (iii) No activities shall be carried out which constitute or are likely to constitute a source of nuisance, including the use of equipment that generates excessive noise, or any activity which results in the generation of dust, fumes, smoke, or waste material which could be detrimental to health, or which requires special waste removal processes;

- (iv) The City may, at any stage, call for a cessation of the land use or activity, or impose conditions in order to minimise any potential nuisance to surrounding neighbours or the general public; and
- (v) The development rules stipulated in items 23, 24, 25, 28, 29 and 30, whichever is applicable, shall be adhered to.
- (c) Consent uses are group housing, boarding house, place of worship, institution, clinic, place of assembly, place of instruction, office, restaurant, guest house, place of entertainment, service trade, authority use, rooftop base telecommunication station, wind turbine infrastructure, veterinary practice and halfway house.
- (d) Multiple uses and buildings where no formal township exists.
- (2) Notwithstanding that primary uses, additional use rights and consent uses in this zoning may be expressed in the singular, more than one such use is permitted where:
  - (a) no formal township has been established legally; or
  - (b) it is not possible to identify individual land units.

## 27. Development rules

The following development rules apply:

- (a) Floor factor The maximum floor factor for all buildings on a property is 1,0.
- (b) Height
  - (i) The maximum height of a building, measured from base level to the wallplate, shall be 6 m for dwelling units and 8 m for all other buildings;
  - (ii) The maximum height of a building, measured from base level to the top of the roof, shall be 8 m for dwelling units and 10 m for all other buildings.
  - (iii) Earth banks and retaining structures are subject to item 126.
- (c) Building lines where a formal township exists - The following building lines apply to buildings, including shelters, on land units zoned SR2 that have been subdivided in a formal township and where the subdivision has been confirmed in terms of this By-Law or other relevant law:
  - (i) Street boundary building line: 1 m;
  - (ii) Common boundary building line: 0 m for 60% of the total linear distance along all common boundaries around the land unit and 1 m for the remainder, provided that:
    - (aa) where more than 4 dwelling units are attached to each other, the City may require a common boundary building line of 1 m between a batch of 4 attached dwelling units and any adjacent dwelling unit, and
    - (bb) no doors or windows shall be erected in a wall that is less than 1 m from a common boundary.
  - (iii) No more than 2 shelters shall be attached to each other without a space of at least 2,5 m between such shelters and any other building or shelter on the land unit, or on any adjacent land unit; and
  - (iv) The general building line encroachments in item 121 also apply.
- (d) Building lines where no formal township exists The following building lines apply to buildings, including shelters, on a property that has not been subdivided as part of a formal township:
  - (i) Street boundary building line: Every building or shelter shall be set back at least 1 m from a street, road or the edge of a temporary road or thoroughfare, as determined by the City;

- (ii) Common boundary building line: 3 m on the perimeter of the property as determined by the City;
- (iii) Where more than 4 dwelling units or shelters are attached to each other the City may require a space of 2,5 m between such dwellings or shelters and any other building or shelter on the property concerned or any adjacent property; and
- (iv) The general building line encroachments in item 121 also apply.
- (e) Parking and access
  - (i) Parking shall be provided on a property in accordance with the following 'Table of parking requirement in Single Residential Zoning 2':

Table of parking requirement in Single Residential Zoning 2

Use of property	Parking requirement
Shelter	None
Dwelling house	One bay
Second dwelling, home occupation	None
Other primary or consent uses	As required by the City

- (ii) The provisions of Chapter 15 which relate to parking and access, do not apply in this zoning.

## 28. House shop

The following conditions apply to a house shop:

- (a) The extent and position of the retail component shall be clearly defined on a plan, and excluding any toilet or change room, shall not exceed 40 m<sup>2</sup> or 40% of the total floor space of the dwelling, whichever is the lesser area;
- (b) In addition to the house shop, the property shall contain a dwelling which shall be occupied by the proprietor of the house shop;
- (c) Any new structure, or alteration to the existing dwelling house, second dwelling or outbuilding, shall conform to the residential character of the area;
- (d) No more than three persons in total shall be engaged in retail activities on the property, including the occupant or occupants and any assistants;
- (e) Only one un-illuminated sign is permitted in accordance with the City's Outdoor Advertising and Signage By-Law, which shall be affixed to the wall of the house shop or boundary wall, and shall not exceed 0,5 m<sup>2</sup> in area;
- (f) The following are not permitted in a house shop: sale of alcoholic beverages, storage or sale of fireworks, storage of gas for sale, sale of gas containers, vending machines, gaming machines, video games or pool tables;
- (g) The area used for a house shop may not open directly onto a bedroom or toilet, and no goods which will be sold from the house shop may be stored in a bedroom or toilet;

- (h) No animals are permitted in the area used for a house shop;
- (i) The house shop shall be adequately ventilated and illuminated, and if perishable food is sold, the City may require refrigeration to be provided;
- (j) The house shop shall not operate outside the hours of 07:00 to 21:00 on Mondays to Saturdays and 08:00 to 13:00 on public holidays or Sundays; and
- (k) Not more than one vehicle may be used in connection with a house shop and shall not exceed 3 500 kg gross weight, including delivery vehicles.

## **29. Shelter**

The following conditions apply to a shelter:

- (a) It shall be the sole responsibility of the occupant or owner of the shelter to ensure the structural, habitability, fire resistance or other standards of a shelter; and
- (b) Any occupant or owner of a shelter who is instructed by the City to take action to remedy a public safety, health or fire risk, and who fails to do so, is guilty of an offence in terms of this By-Law.

## **30. Informal trading**

Informal trading is permitted on land which has been set aside as a road reserve or identified by the City as a future road reserve provided that:

- (a) no permanent structures are erected on the land;
- (b) there is no interference with pedestrian or vehicular movement, or with any municipal utility services; and
- (c) there is no threat to public health or safety.

## **31. Land constructed as or identified for roads**

No building or shelter shall be erected on land which has been constructed as a road or identified by the City as a future road.

## **32. Land used as or identified for firebreaks**

No building or shelter shall be erected on land which has been used, identified or demarcated by the City as a firebreak on a site development plan approved by the City.

## **33. Approval of building plans**

Notwithstanding the fact that individual land units may not have been created or transferred to individuals, the City may approve building plans in terms of the National Building Act for a building relating to a primary use or consent use, except a shelter, provided the City is satisfied that:

- (a) the proposed building is acceptable as a permanent structure in terms of location and use, taking into account any plans to upgrade the area; and
- (b) the applicant has permission from the owner of the land to erect the building.

# **Chapter 6**

## **General residential zonings**

The general residential zonings are designed to provide a healthy, safe, and pleasant environment for urban living at higher densities, in order to promote efficient urban development, manage the pressure of urban growth and reduce urban sprawl. Different zonings and subzonings permit different levels of development intensity,

particularly relating to height and floor space. Within these zonings there are controlled opportunities for home employment and low-intensity mixed-use development.

## **Part 1 – General Residential Subzoning 1: Group housing (GR1)**

The GR1 zoning encourages group housing, which is a medium-density form of residential development, where attention is given to aesthetics, architectural form and the inter-relationship between different components of the development. Opportunities are included for low-rise flats within a group housing project. GR1 also accommodates dwelling houses that are not part of a group housing scheme.

### **34. Use of the property**

The following use restrictions apply to property in this zoning: (a) Primary uses are dwelling house, group housing, private road, open space and additional use rights as specified in paragraph (b). (b) Additional use rights are flats subject to the development rules in item 37 and home occupation subject to the restrictions in item 38. (c) Consent uses are utility service, home child care and rooftop base telecommunication station.

### **35. Development rules for group housing**

The following development rules apply to group housing:

- (a) Design principles All buildings and structures shall be planned, designed and built as a harmonious architectural entity and special attention shall be given to aesthetics, architectural coordination, urban design and landscaping.
- (b) Density The maximum gross density on a group housing site shall be 35 dwelling units per hectare.
- (c) Height (i) The maximum height of a building, measured from base level to the top of the wallplate, shall be 8 m, and to the top of the roof shall be 10 m. (ii) Earth banks and retaining structures are subject to item 126.
- (d) Open space Within a group housing site, outdoor space of at least 50 m<sup>2</sup> per dwelling unit shall be provided, which may include private or communal open space or any functional outdoor space which is inaccessible for motor vehicles, but excludes roads, service yards and parking areas.
- (e) Building lines along the perimeter of a group housing site The following building lines apply along the perimeter of a group housing site: (i) A street boundary building line of 5 m applies where the group housing site abuts an external public street.
  - (ii) Common boundary building lines of 3 m applies along the perimeter of the group housing site.
  - (iii) The general building line encroachments in item 121 apply.
- (f) Building lines within a group housing site The following building lines apply within a group housing site: (i) Street boundary building lines on internal roads are 0 m; provided that any garage door facing the road shall be set back at least 5 m from the kerb of such internal road.
  - (ii) Common boundary building lines within the group housing site are 0 m unless the City requires a building line for fire-fighting purposes, in which case the common boundary building lines shall be 3 m.
  - (iii) The general building line encroachments in item 121 apply.
- (g) Parking and access
  - (i) Parking and access shall be provided in accordance with Chapter 15.
  - (ii) Parking may be provided at the group houses concerned, or part of the required parking at some of the group houses and the remainder in the form of communal parking, or the entire requirement may be provided in the form of communal parking.

### 36. Site development plan

A site development plan of the proposed group housing scheme shall be submitted to the City for approval as provided for in item 123, whereafter the development of the group housing site shall be substantially in accordance with the approved site development plan.

### 37. Flats as an Additional use right in a group housing scheme

The following conditions apply to flats as an additional use right in this zoning:

- (a) The flats shall form an integrated part of the group housing site and shall comply with the development rules for group housing;
- (b) The total floor space of flats shall not exceed 40% of the total floor space of all buildings on the group housing site; and
- (c) The open space requirement for dwelling units in a group housing site shall apply.

### 38. Home occupation as an Additional use right in a group housing scheme

The following conditions apply to home occupation as an additional use right in this zoning:

- (a) The owner shall obtain the written consent of the relevant Owners' Association or all the owners within such group housing scheme if the Owners' Association is not functioning; and
- (b) The provisions of item 23 shall apply.

### 39. Development rules for a dwelling house outside a group housing scheme

- (1) A dwelling house that does not form part of a group housing scheme is exempt from the development rules for group housing.
- (2) The following conditions apply to a dwelling house that does not form part of a group housing scheme:
  - (a) A second dwelling is permitted subject to the provisions for a second dwelling in Local Business Zoning 1;
  - (b) Additional use rights and consent uses applicable to a dwelling house in Single Residential Zoning 1 shall also apply to a dwelling house in this zoning;
  - (c) The development rules for erven greater than 350 m<sup>2</sup> and not exceeding 500 m<sup>2</sup> as stipulated in the 'Table of coverage, height, floor space and building lines in Single Residential Zoning 1' in item 22 shall apply;
  - (d) Parking and access shall be provided on the land unit in accordance with Chapter 15; and
  - (e) The requirements for garages and carports in Single Residential Zoning 1 shall apply.

## Part 2 – General Residential Subzonings (GR2, GR3, GR4, GR5 & GR6)

The GR zonings promote higher-density residential development, including blocks of flats. Different development rules apply to different subzonings, particularly with regard to height and floor space, in order to accommodate variations of built form. GR2 accommodates flats of relatively low height and floor space, GR3



and GR4 cater for flats of medium height and floor space, while GR5 and GR6 accommodate high-rise flats. The dominant use is intended to be residential, but limited mixed-use development is possible.

#### 40. Use of the property

The following use restrictions apply to property in these subzonings:

- (a) Primary uses subject to paragraph (c) are dwelling house, second dwelling, group housing, boarding house, guest house, flats, private road and open space.
- (b) Consent uses subject to paragraph (c) are utility service, place of instruction, place of worship, institution, hospital, place of assembly, home occupation, shops, hotel, conference facility, rooftop base telecommunication station and veterinary practice.
- (c) Notwithstanding the primary and consent uses specified in paragraphs (a) and (b), if the only vehicle access to the property is from an adjacent road reserve that is less than 9 m wide, no building is permitted other than a dwelling house or second dwelling.

#### 41. Development rules for flats, boarding houses and hotels

The following development rules apply to flats, boarding houses and hotels:

- (a) Coverage The maximum coverage for all buildings on the land unit in each subzoning is determined in accordance with the following 'Table of coverage, height and floor factor in General Residential Subzonings GR2-GR6'.
- (b) Floor factor The maximum floor factor for all buildings on the land unit in each subzoning shall be determined in accordance with the following 'Table of coverage, height and floor factor in General Residential Subzonings GR2-GR6'.
- (c) Height
  - (i) The maximum height of a building, measured from the base level to the top of the roof, shall be determined in accordance with the following 'Table of coverage, height and floor factor in General Residential Subzonings GR2-GR6'.
  - (ii) Earth banks and retaining structures are subject to item 126.

Table of coverage, height and floor factor in General Residential Subzonings GR2-GR6

Subzoning	Coverage	Floor factor	Maximum height above base level to top of roof
GR2	60%	1,0	15,0 m
GR3	60%	1,0	20,0 m
GR4	60%	1,5	24,0 m
GR5	60%	2,5	35,0 m
GR6	60%	5,0	50,0 m

- (d) **Street centreline setback** The City may require a street centreline setback, in which case:
- (i) any flats, boarding houses or hotels shall be set back 8 m from the centre line of the abutting public street or streets; and
  - (ii) the provisions of item 122 shall apply.
- (e) **Building lines**
- (i) No building shall be erected so that any point on the building is nearer to a street boundary or a common boundary than the distance specified in the following 'Table of building lines in General Residential Subzonings GR2-GR6', provided that:
    - (aa) the symbol 'H' means the height in metres of the point concerned above the base level, and
    - (bb) where two alternative building lines are prescribed, the greater of the two building lines shall apply.
  - (ii) An outbuilding is permitted within the common boundary building line provided the outbuilding is not higher than 3,5 m from the base level of the outbuilding to the top of the roof.
  - (iii) The general building line encroachments in item 121 apply.

Table of building lines in General Residential Subzonings GR2-GR6

Subzoning	Street boundary building line		Common boundary building line	
	Points up to 25,0 m above base level	Points over 25,0 m above base level	Points up to 25,0 m above base level	Points over 25,0 m above base level
GR2	4,5 m	N/a	4,5 m or 0,6 H (0,0 m up to 15,0 m in height where intersecting a street boundary, for a distance of 18,0 m measured perpendicular from such street boundary)	N/a
GR3				
GR4				
GR5	4,5 m	9,0 m	4,5 m or 0,6 H (0,0 m up to 15,0 m in height where intersecting a street boundary, for a distance of 18,0 m measured perpendicular from such street boundary)	15,0 m (0,0 m up to 15,0 m in height where intersecting a street boundary, for a distance of 18,0 m measured perpendicular from such street boundary)
GR6				

- (f) Parking and access Parking and access shall be provided on the land unit in accordance with Chapter 15.
- (g) Screening The City may require screening in accordance with item 125.
- (h) Wind mitigation The City may:
  - (i) require an assessment of how wind will affect the proposed building and its surroundings; and
  - (ii) impose conditions to mitigate adverse wind effects.

#### **42. Dwelling house and second dwelling**

The provisions of item 21(b) and 22 apply to a dwelling in this zoning. The provisions of item 21(b), 22 and 53 apply to a second dwelling in this zoning.

#### **43. Group housing**

The additional use rights and development rules for group housing in General Residential Zoning 1 shall apply to group housing in this zoning.

#### **44. Institution, place of instruction and place of assembly**

The development rules which apply to an institution, place of instruction and place of assembly in item 47 shall apply to these uses in this zoning; provided that where the institution, place of instruction or place of assembly is situated within a building which is also used for flats or a boarding house, then the coverage, height and building line requirements for the flats or boarding house shall apply.

#### **45. Shops**

The City may grant its approval for a shop or shops to be provided within the ground floor of a block of flats; provided that:

- (a) a policy plan for the area in which such property is situated makes provision for mixed or commercial uses; and
- (b) the gross leasable area of the shops does not exceed 1 000 m<sup>2</sup>, or 25% of the floor space of the ground floor, whichever is the lesser.

### **Chapter 7 Community zonings**

Community zonings are intended for social uses directed at community needs, such as educational, religious, welfare or health services. Community buildings are important social and urban design focal points, and prominent architectural forms should be encouraged. There are two community zonings, with CO1 serving

predominantly local community needs, and CO2, which caters for a wider community and potentially a greater intensity of development.

## **Part 1 – Community Zoning 1: Local (CO1)**

The CO1 zoning provides for local educational, worship and health needs as primary uses, but allowance is also made for the City to approve other community needs which may have a greater impact.

### **46. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are place of instruction, place of worship, clinic, rooftop base telecommunication station, filming and open space.
- (b) Consent uses are institution, hospital, place of assembly, cemetery, freestanding base telecommunication station, veterinary practice and urban agriculture.

### **47. Development rules**

The following development rules apply:

- (a) Floor factor The floor factor on a land unit shall not exceed 0,8.
- (b) Coverage The coverage for all buildings on a land unit shall not exceed 60%.
- (c) Height
  - (i) The maximum height of a building, measured from base level to the top of the roof, is 12 m, provided that there is no height limit for a bell tower, steeple, minaret or similar architectural feature designed to accentuate the significance of a building.
  - (ii) Earth banks and retaining structures are subject to item 126.
- (d) Street boundary building line The street boundary building line is 5 m, subject to the general building line encroachments in item 121.
- (e) Common boundary building line Common boundary building lines are 5 m, subject to the general building line encroachments in item 121.
- (f) Parking and access Parking and access shall be provided on the land unit in accordance with Chapter 15.
- (g) Loading Loading bays shall be provided on the land unit in accordance with item 144.
- (h) Screening The City may require screening in accordance with item 125.
- (i) Noise mitigation The City may require the owner to implement noise mitigation measures if excessive noise is created or likely to be created.

## **Part 2 – Community Zoning 2: Regional (CO2)**

The CO2 zoning provides for a full range of institutional and community needs, which can be of a local or regional scale, and includes health and welfare as well as religious and educational services.

### **48. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are institution, hospital, place of instruction, place of worship, place of assembly, rooftop base telecommunication station, filming and open space.

- (b) Consent uses are boarding house, conference facility, cemetery, crematorium, funeral parlour, freestanding base telecommunication station, wind turbine infrastructure, veterinary practice and urban agriculture.

#### 49. Development rules

The following development rules apply:

- (a) Floor factor The floor factor on a land unit shall not exceed 2,0.
- (b) Coverage The coverage for all buildings on a land unit shall not exceed 60%.
- (c) Height
  - (i) The maximum height of a building, measured from base level to the top of the roof, shall be 18 m, provided that there is no height limit for a bell tower, steeple, minaret or similar architectural feature designed to accentuate the significance of a building.
  - (ii) Earth banks and retaining structures are subject to item 126.
- (d) Street boundary building line The street boundary building line is 5 m, subject to the general building line encroachments in item 121.
- (e) Common boundary building line Common boundary building lines are 5 m, subject to the general building line encroachments in item 121.
- (f) Parking and access Parking on and access to a property shall be provided in accordance with the provisions of Chapter 15.
- (g) Loading Loading bays shall be provided on a land unit in accordance with item 144.
- (h) Screening The City may require screening in accordance with item 125.
- (i) Noise mitigation The City may require the owner to implement noise mitigation measures if excessive noise is created or likely to be created.

### Chapter 8 Local business zonings

Intermediate Business Zoning creates a suitable interface between business districts and adjacent residential areas, where low-impact offices and associated uses are permitted, but where higher impact retail uses are controlled. Local Business Zoning 2 is appropriate for local neighbourhood shops, and allows for a range of compatible land uses.

#### Part 1 – Local Business Zoning 1: Intermediate Business (LB1)

The LB1 zoning provides an intermediate zoning, which can act as a buffer or interface between general business zonings or other high-intensity non-residential uses, and residential areas. The dominant uses should be for residential, office and associated purposes, but limited retail activities are possible with the City's approval.

#### 50. Use of the property

The following use restrictions apply to property in this zoning:

- (a) Primary uses are office, dwelling house, boarding house, utility service, flats and additional use rights as specified in paragraph (b).
- (b) Additional use rights which may be exercised by the occupant of a dwelling house are second dwelling, home occupation or house shop or bed and breakfast establishment or home child care subject to the development rules in items 52, 53 and 54 whichever is applicable.

- (c) Consent uses are place of instruction, place of worship, institution, clinic, place of assembly, guest house, shop, informal trading, service trade, rooftop base telecommunication station, wind turbine infrastructure, veterinary practice and halfway house.

## 51. Development rules

The following development rules apply: (a) Floor factor The maximum floor factor is determined in accordance with the area of the land unit as shown in the following 'Table of floor factor, height and building lines in Local Business Zoning 1'.

- (b) Height
  - (i) The maximum height of a building, measured from base level to the top of the wallplate and to the top of the roof, shall be determined in accordance with the area of the land unit as shown in the following 'Table of floor factor, height and building lines in Local Business Zoning 1'.
  - (ii) Where a building is permitted in this zoning within 3 m of a common boundary, the height will be limited to 4 m measured from base level to the top of the roof.
  - (iii) Notwithstanding the provisions in sub-paragraph (ii), within the first 12 m along a common boundary measured perpendicular from the street boundary line and where a building is not set back from such common boundary, the height is determined in accordance with the 'Table of floor factor, floor space, height, and building lines in Single Residential Zoning 1'.
  - (iv) Earth banks and retaining structures are subject to item 126.
- (c) Building lines The street and common boundary building lines are determined in accordance with the area of the land unit as shown in the following 'Table of floor factor, height and building lines in Local Business Zoning 1', subject to:
  - (i) the general building line encroachments in item 121; and
  - (ii) provisions relating to garages and carports as stipulated in paragraph (d).

Table of floor factor, height and building lines in Local Business Zoning 1

land unit area	Floor factor	Maximum height above base level		Street boundary building line	Common boundary building line
		To wallplate	To top of roof		
>1 000	1,0	9,0 m	11,0 m	3,5 m	3,0 m
>650 up to 1 000	1,0	9,0 m	11,0 m	3,5 m	3,0 m
>350 up to 650	1,0	8,0 m	10,0 m	3,5 m	0,0 m for first 12,0 m measured perpendicular from street boundary and 0,0 m for 60% of total remaining linear distance along all common boundaries around land unit and 3,0 m for remainder, subject to paragraph (d) (iii).
>200 up to 350	1,0	8,0 m	10,0 m	3,5 m	0,0 m for first 12,0 m measured perpendicular from street boundary and 0,0 m for 60% of total remaining linear distance along all common boundaries around land unit and 3,0 m for remainder; subject to paragraphs (d) (ii) and (d)(iii).
200	1,0	8,0 m	10,0 m	1,0 m	

- (d) Garages and carports
  - (i) A garage or carport is permitted within the common boundary building line provided the garage or carport: (aa) does not extend higher than 3,5 m from base level to the top of the roof; and
    - (bb) does not contain more than a double garage façade with a maximum width of 6,5 m.
  - (ii) For land units of 650 m<sup>2</sup> and less, a garage or carport is permitted up to 1,5 m from the street boundary provided the garage or carport:
    - (aa) is not higher than 3,5 m from base level to the top of the roof; and
    - (bb) does not contain more than a double garage facade with a maximum width of 6,5 m.
  - (iii) For land units exceeding 650 m<sup>2</sup>, a garage or carport shall not be closer than 5 m from the street boundary, notwithstanding the street building line.
- (e) Parking and access Parking and access shall be provided on a land unit in accordance with Chapter 15.
- (f) Loading Loading bays shall be provided on a land unit in accordance with item 144.
- (g) Screening The City may require screening in accordance with item 125.

## **52. Home occupation, bed and breakfast establishment and home child care**

The conditions for a home occupation, bed and breakfast establishment or home child care in this zoning shall be the same as those of Single Residential Zoning 1.

## **53. Second dwelling**

The following conditions shall apply to a second dwelling:

- (a) Total floor space of a second dwelling may not exceed the total floor space of the main dwelling unit without the approval of the City. The floor space of ancillary buildings is excluded from this provision;
- (b) A second dwelling shall be constructed in a style that is similar to the architecture of the main dwelling house;
- (c) A second dwelling that is a separate structure to a main dwelling house shall not exceed a height of 6 m measured from base level to the wall plate and 8 m to the top of the roof;
- (d) A second dwelling that is contained within the same building as a main dwelling house shall be designed so that the building appears as a single dwelling house; both units may have a ground floor, or one unit may be on the ground floor and the other unit above;
- (e) The existence of a second dwelling shall not in itself be sufficient reason for the City to grant an application in terms of this By-Law to subdivide the land unit containing the dwelling units;
- (f) The construction of a second dwelling shall be subject to the City's municipal services departments certifying that capacity is available on the services network in the specific area.

## **54. House shop**

The following conditions apply to a house shop:

- (a) The extent and position of the retail component shall be clearly defined on a building plan, and excluding any toilet or change room, shall not exceed 40 m<sup>2</sup> or 40% of the total floor space of the dwelling, whichever is the lesser area;



- (b) In addition to the house shop, the property shall contain a dwelling which shall be occupied by the proprietor of the house shop;
- (c) Any new structure, or alteration to the existing dwelling house, second dwelling or outbuilding, shall conform to the residential character of the area;
- (d) No more than three persons in total shall be engaged in retail activities on the property, including the occupant or occupants and any assistants;
- (e) Only one un-illuminated sign is permitted in accordance with the City's Outdoor Advertising and Signage By-Law, which shall be affixed to the wall of the house shop or boundary wall, and shall not exceed 0,5 m<sup>2</sup> in area;
- (f) The following are not permitted in a house shop unless the approval of the City is obtained: sale of alcoholic beverages, storage or sale of fireworks, storage or sale of gas and gas containers, vending machines, gaming machines, video games or pool tables;
- (g) The area used for a house shop may not open directly onto a bedroom or toilet, and no goods which will be sold from the house shop may be stored in a bedroom or toilet;
- (h) No animals are permitted in the area used for a house shop;
- (i) The house shop shall be adequately ventilated and illuminated, and if perishable food is sold, the City may require refrigeration to be provided;
- (j) The house shop shall not operate outside the hours of 07:00 to 21:00 on Mondays to Saturdays and 08:00 to 13:00 on public holidays or Sundays; and
- (k) No more than one vehicle may be used in connection with a house shop and such vehicle shall not exceed 3 500 kg gross weight, including delivery vehicles.

## **Part 2 – Local Business Zoning 2: Local Business (LB2) (items 55 - 58)**

The LB2 zoning provides for low-intensity commercial and mixed-use development which serves local needs for convenience goods and personal services. Limitations are placed on the scale of such development so that it is capable of integration into the adjacent residential neighbourhood without adversely affecting the amenity of the neighbourhood.

### **55. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are shop, office, dwelling house, second dwelling, boarding house, bed and breakfast establishment, flats, place of instruction, place of worship, institution, clinic, guest house, service trade, utility service, rooftop base telecommunication station, private road, veterinary practice and open space.
- (b) Consent uses are place of assembly, informal trading, restaurant, sale of alcoholic beverages, place of entertainment, adult shop, business premises, supermarket, plant nursery, hotel, conference facility, motor repair garage, service station, authority use, freestanding base telecommunication station, wind turbine infrastructure transport use and multiple parking garage.

### **56. Development rules**

The following development rules apply: (a) Floor factor The floor factor on a land unit shall not exceed 1,0.

- (b) Coverage The coverage for all buildings on a land unit shall not exceed 75%.

- (c) Height
  - (i) The maximum height of a building, measured from base level to the top of the roof, shall be 12 m.
  - (ii) Earth banks and retaining structures are subject to item 126.
- (d) Street centreline setback The City may require a street centreline setback, in which case:
  - (i) all buildings or structures on the land unit shall be set back 8,0 m from the centre line of the abutting public street or streets; and
  - (ii) the provisions of item 122 shall apply.
- (e) Street boundary building line The street boundary building line is 0 m, subject to:
  - (i) the street centreline setback restriction;
  - (ii) minor architectural and sunscreen features may project beyond the street boundary building line provided that such features do not project more than 250 mm beyond the street boundary; and
  - (iii) for service stations the street boundary building line is 5 m subject to the general building line encroachments in item 121.
- (f) Common boundary building line The common boundary building lines are 0 m.
- (g) Canopy projection The City may approve a canopy projection over the street boundary in accordance with the following conditions:
  - (i) The canopy shall not project nearer than 500 mm to a vertical plane through the kerb line or proposed kerb line;
  - (ii) No portion of a canopy projection shall be less than 2,8 m above the pavement;
  - (iii) The City may lay down more restrictive requirements relating to the dimensions, design and materials of the canopy; and
  - (iv) The owner shall enter into an encroachment agreement with the City.
- (h) Street corners The City may require that the owner of a building which is to be situated at a public street corner, and which the City considers to be significant, shall incorporate in the building architectural features which focus visual interest on the corner, and which emphasize the importance of pedestrian movement around the corner; and such features may include building cut-offs, walk-through covered arcades, plazas or other elements.
- (i) Parking and access Parking and access shall be provided on the land unit in accordance with Chapter 15.
- (j) Loading Loading bays shall be provided on the land unit in accordance with item 144.
- (k) Screening The City may require screening in accordance with item 125.

## 57. Service station and motor repair garage

The following additional development rules apply to a service station and motor repair garage:

- (a) Any part of the property of a service station or motor repair garage which is used for the repair of motor vehicles, the storage of inoperable motor vehicles or parts of motor vehicles, empty containers such as oil drums and packing cases, or any other scrap, shall be enclosed with a solid screen wall at least 2 m high, or contained in a building;

- (b) Any service station or motor repair garage that supplies fuel shall comply with the following access requirements:
- (i) The width of motor vehicle carriageway crossings over the street boundary, whether one-way or two-way, shall not exceed 8 m;
  - (ii) A wall, at least 100 mm thick and 350 mm high, shall be erected on the street boundary between different motor vehicle carriageway crossings, and the wall shall continue along such boundary unless the property is otherwise enclosed;
  - (iii) The motor vehicle carriageway crossings shall be limited to two per site unless the total length of a street boundary exceeds 30 m, in which case one additional motor vehicle carriageway crossing may be permitted;
  - (iv) At the point where it crosses the street boundary, a motor vehicle carriageway crossing shall not be closer than:
    - (aa) 30 m to the intersection of a metropolitan road and with any other road of a like status;
    - (bb) 30 m to the nearest point of an intersection where traffic is controlled, or is proposed to be controlled, by a traffic signal or traffic island;
    - (cc) 10 m from the corner of an intersection not referred to above, if such intersection is not splayed, or 5 m from the point where the splay meets the street boundary if such intersection is splayed;
    - (dd) 1,5 m from a side boundary;
    - (v) No fuel pump shall be erected so that the base or island on which the pump stands is less than 3,5 m from the nearest street boundary.

## 58. Informal trading

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's by-law on informal trading.

## Chapter 9 General business and mixed use zonings

The general business zonings are designed to promote economic development in business districts and development corridors, and include a wide range of land uses such as business, residential and community uses, although industrial development is restricted. By contrast, the mixed use zonings are suitable for completely mixed areas in terms of land use, including industrial, business and residential development. Such mixed use zonings need to be applied with care to ensure that conflict between residential and industrial development is minimised.

### Part 1 – General Business Subzonings (GB1, GB2, GB3, GB4, GB5, GB6 & GB7)

The GB zonings provide for general business activity and mixed-use development of a medium to high intensity. Different development rules apply to the different subzonings of GB1-GB7, particularly with regard to permitted

height and floor space, in order to accommodate variations of built form within the city. Very few restrictions relate to use because the aim is to encourage a range of uses, but industry is not permitted.

## 59. Use of the property

The following use restrictions apply to property in this zoning:

- (a) Primary uses are business premises, dwelling house, second dwelling, boarding house, flats, place of instruction, place of worship, institution, hospital, place of assembly, place of entertainment, hotel, conference facility, service trade, authority use, utility service, rooftop base telecommunication station, multiple parking garage, private road, filming, veterinary practice and open space.
- (b) Consent uses are adult shop, adult entertainment business, adult services, informal trading, expo centre, motor repair garage, warehouse, freestanding base telecommunication station, wind turbine infrastructure, transport use, helicopter landing pad and service station.

## 60. Development rules

The following development rules apply:

- (a) Coverage The maximum coverage for all buildings on a land unit is 100%.
- (b) Street centreline setback The City may require a street centreline setback, in which case:
  - (i) all buildings or structures on a land unit shall be set back 8 m from the centre line of the abutting public street or streets; and
  - (ii) the provisions of item 122 shall apply.
- (c) Floor factor The maximum floor factor on a land unit shall be determined in accordance with the following 'Table of height and floor factor in General Business Zonings subject to paragraphs (f), (g) and (h) which provide concessions in line with specific development initiatives that the City encourages.
- (d) Height
  - (i) The maximum height of a building, measured from the base level to the top of the roof, shall be determined in accordance with the following 'Table of height and floor factor in General Business Zonings'.
  - (ii) Earth banks and retaining structures are subject to item 126.

Table of height and floor factor in General Business Zonings

Subzoning	Maximum height above base level to top of roof	Floor factor
GB1	15,0 m	1,5
GB2	15,0 m	2,0
GB3	25,0 m	2,0
GB4	25,0 m	3,0
GB5	25,0 m	4,0
GB6	38,0 m	6,0
GB7	60,0 m	12,0

(e) Building lines

- (i) No building shall be erected so that any point thereon is nearer to a street or common boundary than the distance specified in the following 'Table of building lines in General Business Zonings', where the symbol 'H' means the height in metres of the point concerned above base level.
- (ii) Minor architectural and sunscreen features may project beyond the street boundary building line, provided that such features do not project more than 250 mm beyond the street boundary.
- (iii) The general building line encroachments in item 121 shall apply.

Table of building lines in General Business Zonings

Sub-zoning	Street building line and common building line			
	Points on a building above base level			
	up to 10,0 m	over 10,0 m and up to 25,0 m	over 25,0 m and up to 38,0 m	over 38,0 m
GB1	0,0 m	4,5 m (0,0 m for common boundary)	N/a	N/a
GB2				
GB3				
GB4				
GB5	0,0 m	0,0 m	N/a	N/a
GB6	0,0 m	0,0 m	$\frac{(H - 25,0 \text{ m})}{2}$ (0,0 m for common boundary)	N/a
GB7	0,0 m	0,0 m	0,0 m	$\frac{(H - 38,0 \text{ m})}{2}$ (0,0 m for common boundary)

- (f) Residential incentive in respect of GB7 The floor space of buildings on land that is zoned GB7 may be increased by 30% provided that at least 30% of such floor space is developed and remains in use as flats.
- (g) Hotel floor space concession Where it is proposed to erect a hotel of at least 30 bedrooms within these subzonings, the following portions of such hotel shall be disregarded when calculating the total floor space of the building: (i) Rooms which are used by residents and visitors as dining rooms, banqueting rooms, bars, restaurants, ballrooms, rooms for games and sports, lounges, sitting rooms, reading rooms, writing rooms and conference rooms;
- (ii) Public foyers and areas comprising public or communal stoeps, verandahs, balconies, terraces or sun decks used by hotel residents or visitors;
  - (iii) Barber shops, hairdressing salons, florists and similar enterprises within the hotel for the exclusive use of hotel residents;
  - (iv) Offices forming part of the hotel premises, used solely for the administration and management of the hotel;
  - (v) Kitchens, sculleries, laundries and similar service facilities forming part of the hotel premises;

- (vi) Storerooms appurtenant to the hotel; and
- (vii) Staff quarters appurtenant to the hotel, including corridors, stairs and other means of access within such staff quarters, including all kitchens, dining rooms, recreation rooms, laundries and other such rooms for the exclusive use of staff. If, in the opinion of the City, a room is primarily for the use of persons other than hotel residents, staff or visitors, such room shall be included in the floor space calculation of the building notwithstanding that it may be referred to in sub-paragraphs (i) to (vii) above, and any rooms which are not specifically referred to in sub-paragraphs (i) to (vii) above shall also be included in the floor space calculation of the building.
- (h) Canopy or balcony projection The City may require, and may approve, a canopy or balcony projection over the street boundary in accordance with the following conditions:
  - (i) The canopy or balcony shall not project nearer than 500 mm to a vertical plane through the kerb line or proposed kerb line;
  - (ii) No portion of a canopy or balcony projection shall be less than 2,8 m above the pavement;
  - (iii) The City may lay down more restrictive requirements relating to the dimensions, design and materials of the canopy or balcony; and
  - (iv) The owner shall enter into an encroachment agreement with the City and register a servitude area in the case of a balcony projection.
- (i) Public pedestrian footway along street boundary If the owner provides a public pedestrian footway of at least 3 m wide on the land unit, next to a building situated alongside the street boundary, with a canopy and pavement that ties in with the street pavement, and which is accessible to the public at all times, then in recognition of the urban design contribution to the street environment, the maximum floor space of the building may be increased by twice the area of the public pedestrian footway.
- (j) Street corners The City may require that the owner of a building which is to be situated at a public street corner, and which the City considers to be significant, shall incorporate in the building architectural features which focus visual interest on the corner, and which emphasize the importance of pedestrian movement around the corner. Such features may include building cut-offs, walkthrough covered arcades, plazas or other elements.
- (k) Parking and access (i) Parking on and access to a land unit shall be provided in accordance with Chapter 15. (ii) Except with the approval of the City, no parking bays at ground floor level on a land unit, either outside or within a building, shall be located closer than 10 m to a street boundary, in order to enhance amenity at street level.
- (l) Loading Loading bays shall be provided on a land unit in accordance with item 144.
- (m) Screening The City may require screening in accordance with item 125.
- (n) Wind mitigation The City may:
  - (i) require an assessment of how wind will affect the proposed building and its local surroundings; and
  - (ii) impose conditions to mitigate adverse wind effects.

## 61. Service station and motor repair garage

The development rules applicable to a service station and motor repair garage in Local Business Zoning 2 shall also apply to a service station and motor repair garage in this zoning.

## 62. Informal trading

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's by-law on informal trading.

## Part 2 – Mixed Use Subzonings (MU1, MU2 & MU3)

The MU zonings accommodate a mixture of business, appropriate industrial and residential development. These zonings are particularly suitable at the interface between general business and industrial zonings. Certain uses that could have a negative impact on the surrounding area require the approval of the City. Different development rules apply to the different subzonings of MU1, MU2 and MU3, particularly with regard to permitted height and floor space.

### 63. Use of the property

The following use restrictions apply to property in this zoning:

- (a) Primary uses are business premises, industry, dwelling house, second dwelling, boarding house, flats, place of instruction, place of worship, institution, hospital, place of assembly, place of entertainment, hotel, conference facility, authority use, utility service, rooftop base telecommunication station, transport use, multiple parking garage, private road, filming and open space.
- (b) Consent uses are adult shop, adult entertainment business, adult services, informal trading, expo centre, scrap yard, freestanding base telecommunication station, wind turbine infrastructure, helicopter landing pad, service station, recycling centre, veterinary practice and motor repair garage.

### 64. Development rules

The following development rules apply:

- (a) Floor factor, coverage and height
  - (i) The maximum floor factor and coverage for all buildings on a land unit shall be determined in accordance with the following 'Table of floor factor, coverage and height in Mixed Use Zonings'.
  - (ii) The maximum height of a building, measured from base level to the top of the roof, shall be determined in accordance with the following 'Table of floor factor, coverage and height in Mixed Use Zonings'.
  - (iii) Earth banks and retaining structures are subject to item 126.

Table of floor factor, coverage and height in Mixed Use Zonings

Subzoning	Floor factor	Coverage	Maximum height above base level to top of roof
MU1	1,5	75%	15,0 m
MU2	4,0	100%	25,0 m
MU3	6,0	100%	38,0 m



- (b) **Street centreline setback** The City may require a street centreline setback, in which case:
- (i) all buildings or structures on the land unit shall be set back 8 m from the centre line of the abutting public street or streets; and
  - (ii) the provisions of item 122 shall apply.
- (c) **Building lines**
- (i) No building shall be erected so that any point on the building is nearer to a street or common boundary than the distance specified in the following 'Table of building lines in Mixed Use Zonings', where the symbol 'H' means the height in metres of a point above base level.
  - (ii) Minor architectural and sunscreen features may project beyond the street boundary building line provided that such features do not project more than 250 mm beyond the street boundary;

Table of building lines in Mixed Use Zonings

Subzoning	Street building line and common building line		
	Points on a building above base level		
	up to 10,0m	over 10,0 m and up to 25,0 m	over 25,0 m and up to 38,0 m
MU1	0,0 m	4,5 m	N/a
MU2	0,0 m	4,5 m	N/a
MU3	0,0 m	0,0 m	(H minus 25,0 m) divided by 2

- (d) **Canopy or balcony projection** The City may require, and may approve, a canopy or balcony projection over the street boundary in accordance with, but not limited to, the following conditions:
- (i) The canopy or balcony shall not project nearer than 500 mm to a vertical plane through the kerb line or proposed kerb line;
  - (ii) No portion of a canopy or balcony projection shall be less than 2,8 m above the pavement;
  - (iii) The City may lay down more restrictive requirements relating to the dimensions, design and materials of the canopy or balcony; and
  - (iv) The owner shall enter into an encroachment agreement with the City and register a servitude area in the case of a balcony projection.
- (e) **Parking and access**
- (i) Parking on and access to a land unit shall be provided in accordance with Chapter 15.
  - (ii) In order to enhance the amenity of the street level, no parking bays shall be located closer than 10 m to the street boundary at ground floor level on the land unit either outside or within a building, without the approval of the City.

- (f) Loading Loading bays shall be provided on the land unit in accordance with item 144.
- (g) Screening The City may require screening in accordance with item 125.

#### **65. Service station and motor repair garage**

The development rules applicable to a service station and motor repair garage in Local Business Zoning 2 shall also apply to a service station and motor repair garage in this zoning.

#### **66. Informal trading**

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's informal trading by-law.

### **Chapter 10 Industrial zonings**

The industrial zonings are designed to accommodate manufacturing and related processes, ranging from general industrial uses which may have some impact on surrounding areas, to hazardous or noxious uses which have a potentially high impact and must be carefully managed. Industrial development has particular requirements for road and waste infrastructure, and industrial-zoned land should generally be reserved for industrial purposes to optimise this infrastructure and mitigate potential impacts. In the General Industrial Zoning two different subzonings accommodate variations of built form, and opportunities are provided for consent uses associated with industrial areas, such as factory shops. A specific zoning is provided for noxious and risk industries.

#### **Part 1 – General Industry Subzonings (GI1 & GI2)**

The GI zoning accommodates all forms of industry, except noxious trade and risk activity, in order to promote the manufacturing sector of the economy. Some allowance is made for non-industrial activities, but these should not compromise the general use of the area zoned for industry. It is accepted that the intensive nature of the industrial activity or the scale of the operation could generate some negative impact on adjacent properties.

#### **67. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are industry, restaurant, service station, motor repair garage, funeral parlour, scrap yard, authority use, utility service, crematorium, rooftop base telecommunication station, freestanding base telecommunication station, transport use, multiple parking garage, agricultural industry, private road, open space, filming, veterinary practice and additional use rights as listed in paragraph (b).
- (b) Additional use rights are factory shop and adult shop, subject to the provisions of items 71 and 72, whichever is applicable.
- (c) Consent uses are abattoir, place of worship, institution, clinic, place of assembly, adult entertainment business, adult services, aqua-culture, informal trading, shop, office, sale of alcoholic beverages, place of entertainment, helicopter landing pad, wind turbine infrastructure and container site.

#### **68. Development rules**

The following development rules apply:

- (a) Floor factor and coverage Floor factor and coverage shall be determined in accordance with the following 'Table of floor factor and coverage in General Industrial Zonings'.

Table of floor factor and coverage in General Industrial Zonings

Subzoning	Floor factor	Coverage
GI1	1,5	75%
GI2	4,0	75%

(b) Height

- (i) The maximum height of a building in General Industry Subzoning GI1 shall be 18 m measured from base level to the top of the roof;
  - (ii) No height restriction applies to buildings used for manufacturing purposes in General Industry Subzoning GI2;
  - (iii) Any building in General Industry Subzoning GI2 that is not used for manufacturing purposes shall not exceed a height of 18 m measured from the base level to the top of the roof;
  - (iv) Earth banks and retaining structures are subject to item 126; and
  - (v) Shipping or transport containers, when stored or stacked outside a building, may not extend higher than 15 m above average ground level.
- (c) Street boundary building line The street boundary building line is 5 m, subject to the general building line encroachments in item 121.
- (d) Common boundary building line The common boundary building line is 3 m, subject to the general building line encroachments in item 121.
- (e) Boundary walls Where a land unit has a common boundary with another land unit that is not zoned General Industry or Risk Industry, the City may require a 1,8 m high wall to be erected, to its satisfaction, along the common boundary.
- (f) Parking and access Parking and access shall be provided on the land unit in accordance with Chapter 15.
- (g) Loading Loading bays shall be provided on the land unit in accordance with item 144.
- (h) Screening The City may require screening in accordance with item 125.

## 69. Hazardous substances

Notwithstanding the fact that an activity constitutes a primary use right in terms of this zoning, no activity or use which includes the on-site storage of hazardous substances shall be permitted unless a risk management and prevention plan has been submitted and the City has given approval thereto.

## 70. Service station and motor repair garage

The development rules applicable to a service station and motor repair garage in Local Business Zoning 2 shall also apply to a service station and motor repair garage in this zoning.

## 71. Factory shop

The occupant of an industry may operate a factory shop provided that:

- (a) the total floor space devoted to the sale of goods shall not exceed 10% of the total floor space of all the buildings on the land unit; and

- (b) any goods that are offered for sale but have not been manufactured on the property, must be directly connected with the goods that are manufactured on the property.

## 72. Adult shop

The following development rules shall apply to an adult shop:

- (a) An adult shop shall not be located within 100 m of an existing adult shop, adult entertainment or adult services premises;
- (b) The street front and entrance shall be discreet and unobtrusive, and no pornographic, sexually explicit or erotic material shall be visible from outside the premises;
- (c) Outdoor signage must comply with the City's Outdoor Advertising and Signage ByLaw; and
- (d) No form of public address or sound amplification shall be audible from outside the premises.

## 73. Informal trading

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's informal trading by-law.

## Part 2 – Risk Industry Zoning (RI)

The RI zoning provides for those industries which are noxious in terms of smell, product, waste or other objectionable consequence of their operation, or which carry a high risk in the event of fire or accident. While other uses are permitted with approval, the City should not compromise the capacity of the RI zoning to accommodate noxious trade and risk activities.

## 74. Use of the property

The following use restrictions apply to property in this zoning:

- (a) Primary uses are noxious trade, risk activity, crematorium, rooftop base telecommunication station, freestanding base telecommunication station, private road, open space, filming and additional use rights as listed in paragraph (b).
- (b) Additional use rights are factory shop, subject to the provisions of item 78.
- (c) Consent uses are shop, restaurant, informal trading, service station, motor repair garage, industry, scrap yard, abattoir, authority use, utility service, wind turbine infrastructure, helicopter landing pad, container site, transport use, recycling centre and multiple parking garage.

## 75. Development rules

The following development rules apply:

- (a) Floor factor The floor factor on a land unit shall not exceed 2,0.
- (b) Coverage The coverage for all buildings on a land unit shall not exceed 75%.
- (c) Height
  - (i) No height restriction applies to buildings used for a noxious trade, risk activity or manufacturing in this zoning;
  - (ii) Buildings not used for noxious trade, risk activity or manufacturing purposes shall not exceed a height of 18 m measured from the base level to the top of the roof;
  - (iii) Earth banks and retaining structures are subject to item 126; and

- (iv) Shipping or transport containers, when stored or stacked outside a building, may not be higher than 15 m above average ground level.
- (d) Building lines
  - (i) The street boundary building line is 5 m;
  - (ii) The common boundary building lines are 5 m; and
  - (iii) The general building line encroachments in item 126 shall apply.
- (e) Parking and access Parking on and access to a land unit shall be provided in accordance with Chapter 15.
- (f) Loading Loading bays shall be provided on the land unit in accordance with item 144.
- (g) Screening The City may require screening in accordance with item 125.
- (h) Boundary walls Where a land unit has a common boundary with another land unit that is not zoned General Industry or Risk Industry, the City may require a 1,8 m high wall to be erected, to its satisfaction, along the common boundary.

## **76. Hazardous substances**

Notwithstanding the fact that an activity constitutes a primary use right in terms of this zoning, no activity or use which includes the on-site storage of hazardous substances shall be permitted unless a risk management and prevention plan has been submitted and the City has given approval thereto.

## **77. Service station and motor repair garage**

The development rules applicable to a service station and motor repair garage in Local Business Zoning 2 shall also apply to a service station and motor repair garage in this zoning.

## **78. Factory shop**

The occupant of an industry may operate a factory shop, provided that:

- (a) the total floor space devoted to the sale of goods shall not exceed 10% of the total floor space of all the buildings on the land unit; and
- (b) any goods that are offered for sale but have not been manufactured on the property, must be directly connected with the goods that are manufactured on the property.

## **79. Informal trading**

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's informal trading by-law.

# **Chapter 11**

## **Utility, transport and national port zonings**

Government facilities, whether national, provincial or municipal, should be zoned according to their use, not ownership. For example, municipal offices should be zoned an appropriate business zoning. However, certain government activities cannot be classified into other zonings, and can be included in the Utility zoning. This zoning also accommodates uses and infrastructure required for utility services that are not necessarily owned by an organ of state.

Transport zonings are designed to facilitate efficient operation of the various transport systems. There is a close relationship between transportation and development, and appropriate development can help to promote public transport. Provision is made for controlled mixed-use development in certain transportation zones, provided the

operation of the transport system is not compromised. At times transport systems run along defined corridors but at different height levels, and there are opportunities for air rights and underground rights, whereby appropriate development can be constructed at a different level to the transport system without compromising the operation thereof.

The National Port Zoning has been included to provide for the provisions contained in the National Ports Act, 2005 ([Act 12 of 1005](#)).

## **Part 1 – Utility Zoning (UT) (items 80 - 81)**

The UT zoning provides for utility services such as electrical substations and water reservoirs, which may be supplied by a municipal, government or private agency; and makes provision for government or authority uses, such as prisons and military bases, that are not covered by another use or zoning category.

### **80. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are utility service, authority use, rooftop base telecommunication station and freestanding base telecommunication station.
- (b) Consent uses are cemetery, informal trading, funeral parlour, crematorium, urban agriculture, airport, wind turbine infrastructure and helicopter landing pad.

### **81. Development rules**

The following development rules apply:

- (a) The City may require a site development plan for a primary use, and shall require a site development plan for a consent use application.
- (b) The site development plan as approved by the City shall constitute the development rules for a primary use if applicable, and a consent use.
- (c) The provisions for a site development plan in item 123 shall apply.

## **Part 2 – Transport Zoning 1: Transport Use (TR1)**

The TR1 zoning provides for transportation systems, excluding public roads and public streets, but including all other transport undertakings which serve the public such as airports, harbours, railway lines, bus, railway and other depots associated with public transport uses, public transport terminuses, ranks or holding areas, and cable car stations. Provision is made to approve other uses that can help to support the transport undertaking.

### **82. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are transport use, multiple parking garage, utility service, shop, restaurant, service trade, office, warehouse, rooftop base telecommunication station and container site.
- (b) Consent uses are business premises, flats, place of assembly, place of entertainment, hotel, conference facility, service station, motor repair garage, freestanding base telecommunication station, wind turbine infrastructure, airport, helicopter landing pad, informal trading, industry and air and underground rights, provided that: (i) such consent uses do not detract from transport use as the dominant use; and
  - (ii) if, in the opinion of the City, a consent use application constitutes a significant and permanent change to the property from the intended primary use, the City may require a rezoning application instead.

### 83. Development rules

The following development rules apply:

- (a) Floor factor The floor factor on a land unit shall not exceed 2,0.
- (b) Coverage The coverage of all buildings on a land unit shall not exceed 75%.
- (c) Height
  - (i) The maximum height of a building shall be 18 m measured from base level to the top of the roof;
  - (ii) Earth banks and retaining structures are subject to item 126; and
  - (iii) Shipping or transport containers when stored or stacked outside a building, may not extend higher than 15 m above average ground level.
- (d) Building lines
  - (i) The street boundary building line is 0 m.
  - (ii) The common boundary building lines are 3,0 m.
  - (iii) The general building line encroachments in item 121 shall apply.
- (e) Parking and access Parking on and access to a land unit shall be provided in accordance with Chapter 15.

### 84. Service station and motor repair garage

The development rules applicable to a service station and motor repair garage in Local Business Zoning 2 shall also apply to a service station and motor repair garage in this zoning.

### 85. Informal trading

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's informal trading by-law.

### 86. Air and underground rights

The City may approve a consent use for air or underground rights provided that:

- (a) A site development plan is submitted to the City's satisfaction in terms of item 123;
- (b) The City is satisfied that structural components, clearance and operational characteristics are sufficient to ensure safe and efficient operation of streets, roads or parking;
- (c) Such consent use does not compromise the intended primary use of the land;
- (d) An agreement defining the extent of rights, time period, compensation, ownership and maintenance obligations relating to the property is concluded between the parties concerned and is approved by the City; and
- (e) A servitude in respect of the air or underground rights is registered over the concerned land.

## Part 3 – Transport Zoning 2: Public road and public parking (TR2)

The TR2 zoning provides for public streets and roads, whether constructed or still to be constructed, as well as premises for the public parking of operable motor vehicles. Such parking may be provided in buildings or open parking areas, with or without the payment of a fee, in order to address the need for off-site parking. On-

site parking for a permitted activity in any zoning is considered to be an associated use and do not represent a separate use category that requires separate zoning or approval.

## **87. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are public street, public road and utility service.
- (b) Consent uses are informal trading, multiple parking garage, wind turbine, infrastructure and air and underground rights.

## **88. Development rules**

The following development rules apply:

- (a) The City may require a site development plan for a primary use, and shall require a site development plan for a consent use application.
- (b) The site development plan as approved by the City shall constitute the development rules for a primary use if applicable, and a consent use.
- (c) The provisions for a site development plan in item 123 shall apply.

## **89. Construction and deposit of materials**

No person shall:

- (a) construct a private crossing, bridge or culvert onto, under or across a public street;
- (b) construct or lay a sidewalk on a public street;
- (c) construct a verandah, stoep, wall, steps or other projection in or over a public street;
- (d) deposit or leave any goods, articles, building materials or waste in a public street or road reserve other than for a reasonable period during the course of loading, offloading or removal thereof,

except in accordance with and after the City has given its approval.

## **90. Air and underground rights**

The City may approve a consent use for air or underground rights provided that:

- (a) a site development plan is submitted to the City's satisfaction in terms of item 123;
- (b) the City is satisfied that structural components, clearance and operational characteristics are sufficient to ensure safe and efficient operation of streets, roads or parking;
- (c) such consent use does not compromise the intended primary use of the land;
- (d) an agreement defining the extent of rights, time period, compensation, ownership and maintenance obligations relating to the property is concluded between the parties concerned and is approved by the City; and
- (e) a servitude in respect of the air or underground rights is registered over the concerned land.

## **91. Proposed public street, street widening and street closure**

- (1) The City may indicate on the zoning map:
  - (a) new public streets and public roads which it proposes to establish;
  - (b) public streets and public roads which it proposes to widen; and



- (c) public streets and public roads which it proposes to close.
- (2) Any indications referred to in sub-item (1) are intended for the information of the public, and to assist the City in achieving its planning and development objectives. The base zoning of the property in question does not change until the new public street, widening or closure has been approved in terms of relevant legislation, and any further legal procedures relating to rezoning have been complied with.

## **92. Informal trading**

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's informal trading by-law.

## **Part 4 – National Port Zoning (NP) (items 93 - 96)**

The NP zoning is provided as a zoning in which land use within a national port is controlled by an approved port development framework plan.

## **93. Use of the property**

The purposes for which land may be used in this zoning and any possible land use restrictions thereon are as set out in the Port development framework plan, drafted in accordance with the provisions of the National Ports Act, 2005 ([Act 12 of 2005](#)).

## **94. Development rules**

Development rules as contained in an approved Port development framework plan.

## **95. Port development framework plan**

This zoning will only apply where an approved Port development framework plan exists which reflects the National Ports Authority's policy for port development and control of land use within such a port.

## **96. Deemed zoning of land transferred to National Ports Authority**

All land that is zoned Transport Zoning 1: Transport Use (TR1) and transferred to the National Ports Authority is deemed to be zoned National Ports Zoning (NP) and therefore subject to the provisions of this zoning.

## **Chapter 12 Open space zonings**

Different types of open space fulfil different functions. Certain open spaces have particular importance as nature, cultural heritage or environmental areas and a separate zoning facilitates the management of these areas. Within this zoning provision is made for the development of amenities to meet the needs of tourists and visitors. Other open spaces have a more active role in addressing the sporting and recreation needs of the community. Public open space has an important status because of its contribution to the recreation needs of the general public, and the difficulty of replacing public open space once lost. The development management scheme also recognises special areas of open space that are not designated as public open space, but may be privately owned.

## **Part 1 – Open Space Zoning 1: Environmental conservation (OS1)**

The OS1 zoning provides for the conservation of environmental resources, although cultural heritage resources may also be included. Provision is made for limited, low-impact uses associated with conservation, such as

environmental education, associated infrastructure and facilities for tourists and visitors with the approval of the City.

#### **97. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are environmental conservation use.
- (b) Consent uses are harvesting of natural resources, environmental facilities, tourist accommodation, tourist facilities, utility service, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure and cultural and social ceremonies.

#### **98. Development rules**

The following development rules apply:

- (a) The City may require a site development plan for a primary use, and shall require a site development plan for a consent use application, as well as for any dwelling house which may be erected as a consequence of rights granted in terms of this By-Law.
- (b) The site development plan as approved by the City shall constitute the development rules for a primary use if applicable, and a consent use.
- (c) The provisions for a site development plan in item 123 shall apply.

### **Part 2 – Open Space Zoning 2: Public open space (OS2)**

The OS2 zoning provides for active and passive recreational areas on public land, as well as protection of landscape and heritage areas including woodlands, ridges, watercourses, wetlands and the coastline. It is important to recognise the interests of the general public for access to and preservation of public open space.

#### **99. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are public open space and environmental conservation use.
- (b) Consent uses are environmental facilities, tourist facilities, utility service, cemetery, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure, cultural and social ceremonies, urban agriculture, informal trading, harvesting of natural resources and air and underground rights.

#### **100. Development rules**

The following development rules apply:

- (a) The City may require a site development plan for a primary use, and shall require a site development plan for a consent use application.
- (b) The site development plan as approved by the City shall constitute the development rules for a primary use if applicable, and a consent use.
- (c) The provisions for a site development plan in item 123 shall apply.

#### **101. Construction and deposit of materials**

No person shall:

- (a) construct a private crossing, bridge or culvert onto, under or across a public open space;

- (b) construct or lay a sidewalk on a public open space;
  - (c) construct a verandah, stoep, wall, steps or other projection in or over a public open space; or
  - (d) deposit or leave any goods, articles, building materials or waste in a public open space;
- except in accordance with and after the City has given its approval.

## 102. Air and underground rights

The City may approve a consent use for air or underground rights if:

- (a) Such consent use does not compromise the intended primary use of the land;
- (b) An agreement defining the extent of rights, time period, compensation, ownership and maintenance obligations relating to the property is concluded between the parties concerned and is approved by the City;
- (c) A servitude in respect of the air or underground rights is registered over the land concerned; and
- (d) A site development plan is submitted to the City's satisfaction in terms of item 123.

## 103. Informal trading

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's informal trading by-law.

## Part 3 – Open Space Zoning 3: Special open space (OS3)

The OS3 zoning provides for active or passive recreation and open spaces on land that is not designated as public open space. This land may be owned by private or public bodies, but does not have the status of public open space which requires particular protection. The OS3 zoning is appropriate for relatively large areas where open space has special characteristics that require a separate zoning to ensure that the purpose and function of the open space is maintained. Many other zonings allow for open spaces as primary, consent or ancillary uses and such open spaces do not need to be zoned as OS3. However some land uses such as golf courses, parklands and landscape areas can benefit from this zoning which provides limitations on development, but also allows a range of consent uses to cater for leisure needs and uses compatible with open spaces.

## 104. Use of the property

The following use restrictions apply to property in this zoning:

- (a) Primary uses are open space, private road and environmental conservation use.
- (b) Consent uses are environmental facilities, tourist facilities, place of instruction, place of assembly, place of entertainment, plant nursery, utility service, cemetery, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure, cultural and social ceremonies, urban agriculture, informal trading and harvesting of natural resources.

## 105. Development rules

The following development rules apply:

- (a) The City may require a site development plan for a primary use, and shall require a site development plan for a consent use application.
- (b) The site development plan as approved by the City shall constitute the development rules for a primary use if applicable, and a consent use.
- (c) The provisions for a site development plan in item 123 shall apply.

**106. Approval of consent uses**

The City may only approve a consent use if such use does not compromise the use of land for its primary purpose as open space.

**107. Informal trading**

Informal trading shall only be permitted on sites demarcated for informal trading in terms of the City's informal trading by-law.

## **Chapter 13**

### **Agricultural, rural and limited use zonings**

Agricultural land should generally be protected from developments that render the land less suitable for agriculture, or detract from its aesthetic and cultural value. Aside from sustaining a valuable economic sector, agricultural land can help to promote stability of the urban edge, conserve naturally sensitive areas and maintain rural characteristics which are valued by the community. Unnecessary subdivision of farms should be avoided and economically viable units must be maintained. Agricultural activities should not be subject to unreasonable limitations because the economic viability of the agricultural sector is important.

Complementary activities to conventional agriculture can assist with the viability of the sector, and to this end, compatible uses are permitted as consent uses, provided the latter do not detract from agriculture as the main farming activity. Where non-agricultural uses are permitted, such uses should form an integral part of the agricultural undertaking. A distinction is made between large farms which are zoned AG and smallholdings zoned as RU zoning, which can accommodate a range of peri-urban activities.

A transitional mechanism, the LU zoning, deals with land that was zoned as undetermined in previous zoning schemes, and limits development to existing lawful uses only.

### **Part 1 – Agricultural Zoning (AG)**

The AG zoning promotes and protects agriculture on farms as an important economic, environmental and cultural resource. Limited provision is made for non-agricultural uses to provide owners with an opportunity to increase the economic potential of their properties, without causing a significant negative impact on the primary agricultural resource.

**108. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are agriculture, intensive horticulture, dwelling house, riding stables, environmental conservation use, environmental facilities, rooftop base telecommunication station and additional use rights as listed in paragraph (b).
- (b) Additional use rights, which may be exercised by the occupant of a property as a primary use are second dwelling and home occupation, or bed and breakfast establishment, or home child care, subject to:
  - (i) only one of the activities listed as additional use rights shall be conducted from any land unit, provided this does not apply to a second dwelling, and if more than one such activity is required, the City's approval shall be obtained;
  - (ii) the proprietor of the activity concerned shall live on the property; and
  - (iii) the development rules stipulated in items 23, 24 and 25 whichever is applicable, shall be adhered to.

- (c) Consent uses are additional dwelling units, guest house, hotel, tourist accommodation, tourist facilities, intensive animal farming, harvesting of natural resources, mine, utility service, freestanding base telecommunication station, wind turbine infrastructure, aquaculture, animal care centre, farm shop, renewable energy structure, veterinary practice and agricultural industry.

## 109. Development rules

The following development rules apply:

- (a) Floor space
- (i) The total floor space of all dwelling units on the land unit, including accommodation for bona fide agricultural workers employed on the property, shall not exceed 1 500 m<sup>2</sup>; provided that with the approval of the City this requirement may be relaxed if such accommodation is required for persons who are genuinely engaged for their livelihood in agricultural activities on the land unit;
  - (ii) Any farm shop shall not exceed a floor space of 100 m<sup>2</sup>.
- (b) Building lines
- (i) The street and common boundary building lines are determined in accordance with the area of the land unit, as shown in the following 'Table of building lines in Agricultural Zoning'.
  - (ii) The general building line encroachments in item 121 shall apply.

Table of building lines in Agricultural Zoning

Land unit area	Street boundary building line	Common boundary building line
>20 ha	30,0 m	30,0 m
≤20 ha	15,0 m	15,0 m

- (c) Parking Parking and access shall be provided on the land unit in accordance with Chapter 15.
- (d) Height
- (i) The maximum height of a dwelling house, measured from the base level to the top of the wallplate, shall be 9 m and to the top of the roof shall be 11 m.
  - (ii) Agricultural buildings other than the dwelling houses shall not exceed a height of 12 m measured from the base level to the top of the roof.
  - (iii) Earth banks and retaining structures which in the opinion of the City are associated with bona fide agricultural activities are exempt from the requirements of item 126.
- (e) Minimum subdivision size No new subdivision or any remainder that is zoned and intended to remain zoned Agriculture shall be less than:
- (i) the minimum subdivision size specified in terms of an approved local area overlay zone; or
  - (ii) 20 ha if no such overlay zone exists, unless the new subdivision or remainder concerned is consolidated with a property zoned Agriculture, so as to make up a consolidated land unit of at least the minimum required subdivision size and provided that compliance with

this requirement does not limit the City's powers to refuse a subdivision application that it considers to be undesirable.

### **110. Agricultural industry**

The City may approve a consent use application for an agricultural industry provided:

- (a) it is satisfied as to the desirability of the agricultural industry on the land unit in question;
- (b) the agricultural industry is subservient and related to the dominant agricultural use of the property;
- (c) the agricultural industry does not adversely affect the agricultural potential of the property; and
- (d) the area allocated for purposes of an agricultural industry shall be clearly identified on a land survey diagram.

### **111. Second dwelling and additional dwelling units**

One second dwelling shall be permitted as an additional use right, and additional dwelling units may be erected with the approval of the City, provided that:

- (a) the density of additional dwelling units plus any second dwelling unit does not exceed 1 unit per 10 ha;
- (b) no more than 5 units comprising additional dwelling units plus any second dwelling shall be permitted on a land unit;
- (c) a dwelling for a person engaged in bona fide agricultural activities on the land unit and permanently occupied by such person shall not be regarded as a second dwelling or additional dwelling unit; and
- (d) the development rules in item 53 shall apply to second dwellings and additional dwelling units in this zoning.

### **111A. Renewable energy structures**

The City may approve a consent use application for a renewable energy structure; provided that –

- (a) A site development plan must be submitted to the City for approval.
- (b) The site development plan as approved by the City constitutes the development rules for a renewable energy structure and the provisions for a site development plan in item 123 apply.
- (c) Decommissioning is done in accordance with the following requirements;
  - (i) Any renewable energy structure which is decommissioned or abandoned must be removed by the owner.
  - (ii) When a renewable energy structure is scheduled to be decommissioned, the owner must notify the City.
  - (iii) The owner is responsible for the removal of the structure in all its parts, within 150 days after the date of being decommissioned or abandoned.
- (d) A renewable energy structure is considered abandoned when the structure fails to continuously operate for more than two years.

## Part 2 – Rural Zoning (RU)

The RU zoning accommodates smaller rural properties that may be used for agriculture, but which may also be occupied as places of residence by people who seek a country lifestyle, and who view agriculture as a secondary reason for occupying their property. Such properties may occur inside or outside a recognised urban edge.

### 112. Use of the property

The following use restrictions apply to property in this zoning:

- (a) Primary uses are dwelling house, agriculture and additional use rights as listed in paragraph (b).
- (b) Additional use rights, which may be exercised by the occupant of a property as a primary use are second dwelling and home occupation, or bed and breakfast establishment, or home child care, subject to:
  - (i) only one of the activities listed as additional use rights shall be conducted from any land unit as a primary use, provided this does not apply to a second dwelling, and if more than one such activity is required, the City's approval shall be obtained;
  - (ii) the proprietor of the activity concerned shall live on the property; and
  - (iii) the conditions stipulated in items 23, 24 and 25, whichever is applicable, shall be adhered to.
- (c) Consent uses are guest house, tourist accommodation, tourist facilities, harvesting of natural resources, mine, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure, aquaculture, intensive animal farming, intensive horticulture, riding stables, animal care centre, farm shop, veterinary practice and agricultural industry.

### 113. Development rules

The following development rules apply: (a) Floor space (i) The total floor space of all buildings on a land unit shall not exceed 1 500 m<sup>2</sup>.

- (ii) Any farm shop shall not exceed a floor space of 100 m<sup>2</sup>.
- (b) Coverage The coverage for all buildings on a land unit shall not exceed 40%.
- (c) Building lines (i) The street boundary building line is 10 m.
- (ii) The common boundary building line is 5 m.
- (iii) The general building line encroachments in item 121 shall apply.
- (d) Parking Parking and access shall be provided on the land unit in accordance with Chapter 15.
- (e) Height
  - (i) The maximum height of a building, measured from base level to the wallplate, shall be 9 m, and to the top of the roof shall be 11 m.
  - (ii) Earth banks and retaining structures are subject to item 126.

### 114. Minimum subdivision size

No new subdivision or any remainder that is zoned and intended to remain zoned Rural shall be less than:

- (a) the minimum subdivision size specified in terms of an approved overlay zone; or
- (b) 2 ha if no such overlay zone exists, unless the new subdivision or remainder concerned is consolidated with a property zoned Rural, so as to make up a consolidated land unit of at least the

minimum required subdivision size, provided that compliance with this requirement does not limit the City's powers to refuse a subdivision application that it considers to be undesirable.

### **115. Agricultural industry**

The City may approve a consent use application for an agricultural industry provided:

- (a) it is satisfied as to the desirability of the agricultural industry on the land unit in question; and
- (b) the area allocated for purposes of an agricultural industry shall be clearly identified on a land survey diagram.

### **116. Second dwelling**

The development rules in item 53 apply, provided that a dwelling unit for persons engaged in bone fide agricultural activities on the land unit shall not be regarded as a second dwelling.

## **Part 3 – Limited Use Zoning (LU)**

The LU zoning is a transitional mechanism to deal with land that was zoned as undetermined in previous zoning schemes. Existing lawful uses may continue, but no other uses are permitted. The aim is to progressively phase this zoning out and so no property should be rezoned to this zoning. Any development that requires additional use rights beyond the existing limited use shall require rezoning from LU to another more appropriate zoning.

### **117. Use of the property**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are limited to lawful uses existing at the commencement date.
- (b) Consent uses: None.

### **118. Development rules**

No new building or structure and no change of an existing use or alteration of the external structure of an existing building or structure is permitted.

### **119. No rezoning to this zoning permitted**

No rezoning of any property to this zoning is permitted after 1 March 2013, and if additional uses or development rights are required, a rezoning application to another more appropriate zoning in terms of this development management scheme must be processed.

### **120. Reconstruction of destroyed property**

Property that has been partially or completely damaged or destroyed by accidental causes may be reconstructed in accordance with the development rights that existed prior to the commencement date, provided that building plans for such reconstruction are approved within 12 months from the date of such accidental damage or destruction.

DIVISION III: GENERAL PROVISIONS



## Chapter 14

### General provisions

#### 121. Encroachment of building lines

- (1) The following additional development rules apply with regard to encroachment of building lines:
  - (a) Notwithstanding the building line requirements set out in Division II, the following structures or portions thereof may be erected within the prescribed building lines, provided they do not extend beyond the boundaries of a land unit:
    - (i) boundary walls, fences and gates;
    - (ii) open and uncovered stoeps;
    - (iii) entrance steps, landings and entrance porches;
    - (iv) a covered entrance or gatehouse that has a roofed area not exceeding 5 m<sup>2</sup> and a roof height not exceeding 3 m from floor to highest point;
    - (v) eaves and awnings projecting no more than 1 m from the wall of a building;
    - (vi) cornices, chimney breasts, flower boxes, water pipes, drain pipes and minor decorative features not projecting more than 500 mm from the wall of a building;
    - (vii) screen-walls not exceeding 2,1 m in height above the existing ground level abutting such wall;
    - (viii) swimming pools not closer than 1 m from any erf boundary;
    - (ix) a basement, provided that no part thereof projects above existing ground level;
    - (x) a refuse room required by the City in terms of item 145.
    - (xi) a retaining structure within a street boundary building line, subject to item 126, or any retaining structure located under the existing ground level.
- (2) A building line of 5 m shall apply to any boundary adjacent to a designated metropolitan road, unless otherwise agreed by the City and to which sub-item (1)(a)(i) is also applicable.

#### 122. Street centreline setback

The portion of a land unit falling within a street centreline setback area shall be excluded for the purpose of determining coverage and maximum floor space, unless the owner transfers the portion concerned to the City free of charge. In such case, the portion shall be included for the purpose of determining coverage or maximum floor space on a land unit.

#### 123. Site development plans

- (1) In addition to the zonings that specifically require a site development plan, the City may require a site development plan in respect of the following development types:
  - (a) shopping centres and shopping complexes;
  - (b) business and office park developments;
  - (c) industrial park developments;
  - (d) developments in conservation areas;
  - (e) developments that will be sectionalised;

- (f) incremental residential developments; and
  - (g) major developments where there are concerns relating to urban form, heritage, traffic or spatial planning in general.
- (2) The City may require some or all of the following information for a site development plan:
- (a) existing bio-physical characteristics of the property;
  - (b) existing and proposed cadastral boundaries;
  - (c) the layout of the property, indicating the use of different portions thereof;
  - (d) the massing, position, use and extent of buildings;
  - (e) sketch plans and elevations of proposed structures, including information about external finishes;
  - (f) cross-sections of the site and buildings on site;
  - (g) the alignment and general specification of vehicle access, roads, parking areas, loading areas, pedestrian flow and footpaths;
  - (h) the position and extent of private, public and communal space;
  - (i) typical details of fencing or walls around the perimeter of the land unit and within the property;
  - (j) electricity supply and external lighting proposals;
  - (k) provisions for the supply of water, management of stormwater, and disposal of sewage and refuse;
  - (l) external signage details;
  - (m) general landscaping proposals, including vegetation to be preserved, removed or to be planted, external paving, and measures for stabilising outdoor areas where applicable;
  - (n) the phasing of a development;
  - (o) the proposed development in relation to existing and finished ground levels, including excavation, cut and fill;
  - (p) statistical information about the extent of the proposed development, floor space allocations and parking supply;
  - (q) relationship of the proposed development to the quality, safety and amenity of the surrounding public environment;
  - (r) relationship of the proposed development to adjacent sites, especially with respect to access, overshadowing and scale;
  - (s) illustrations in a three-dimensional form depicting visual impacts of the proposed development on the site and in relation to surrounding buildings; and
  - (t) any other details as may reasonably be required by the City.
- (3) The City may require that the area covered by a site development plan shall extend beyond the site under consideration if, in its opinion, the proposed development will have a wide impact. The City may determine the extent of such area.
- (4) When required in terms of this development management scheme, a site development plan shall be submitted to the City for its approval before any development on a land unit may commence.
- (5) A site development plan shall not be refused if it is consistent with the development rules of a base zoning, overlay zoning, or condition of approval.

- (6) The City may require amendments of detail to the site development plan to address reasonable concerns relating to access, parking, architectural form, urban form, landscaping, environmental management, engineering services or similar concerns.
- (7) The following provisions shall apply with regard to site development plans:
  - (a) Developed of the property shall be generally in accordance with an approved site development plan;
  - (b) If the City considers it necessary, a transport or traffic impact statement or assessment may be required in conjunction with a site development plan, the extent of which shall be determined by the City depending on the magnitude of the development;
  - (c) If the City considers it necessary, a stormwater impact assessment and/or stormwater management plan may be required in conjunction with a site development plan, the extent of which shall be determined by the City depending on the magnitude of the development;
  - (d) In circumstances where a site development plan is required in terms of this development management scheme, no application for building plan approval in terms of the National Building Act shall be granted by the City, unless a site development plan has first been approved; and
  - (e) An approved site development plan shall be considered as setting additional development rules applicable to the base zoning, and any application for amendment shall comply with the City's requirements for such amendments.
- (8) A site development plan will only lapse if replaced by another site development plan.

#### **124. Hazardous substance**

- (1) Any use or ancillary activity that involves the storage or keeping of hazardous substances that may result in an installation being declared a major hazardous installation in terms of occupational health and safety law is not permitted, unless a risk management and prevention plan has been submitted by the owner, and the City has given approval thereto.
- (2) The City's approval in terms of sub-item (1) above does not exempt the owner from applying for permission in terms of other relevant legislation.

#### **125. Screening**

The City may require screening in accordance with the following provisions:

- (a) Any part of a land unit which is used for the storage or loading of goods shall be enclosed with a suitable wall and/or landscape screening;
- (b) Any external utility service or equipment which is required for a building shall be appropriately screened from view from a public street, and such screening shall be integrated with the building in terms of materials, colour, shape and size.

#### **126. Earth banks, retaining structures, support structures and similar devices**

Without the approval of the City:

- (a) no earth bank, retaining structure, column, suspended floor, other device or series of such devices shall be constructed that enables a ground floor of a building to be raised more than 1,5 m above existing ground level, provided that where such raising takes place, the height thereof shall still be measured from existing ground level;
- (b) no earth bank or retaining structure used for holding back earth or loose rock, whether associated with a building or not, shall be constructed to a height of more than 2 m above existing ground level; and

- (c) no series of earth banks or retaining structures shall be constructed to a cumulative height of more than 2,5 m above existing ground level, unless an approximately level area of at least 2 m wide is incorporated between successive embankments or retaining structures for every 2 m of cumulative height.

## 127. Maintenance of property

Property shall be properly maintained by the owner or occupier and shall not:

- (a) be left in a neglected or offensive state, as may be determined by the City;
- (b) contain an unsightly accumulation of papers, cartons, garden refuse, rubble and/or other waste material, as may be determined by the City;
- (c) contain an accumulation of motor wrecks or un-roadworthy vehicles or used motor parts, unless these are part of a primary or consent use in terms of this development management scheme;
- (d) contain outdoor storage of building material, appliances or similar items unless these are:
  - (i) forming part of a primary or consent use in terms of this development management scheme;
  - (ii) being temporarily stored for the purpose of construction in accordance with a valid building plan approval for the property; or
  - (iii) stored in conjunction with the holding of a yard or garage sale with a duration of not more than two consecutive days.

## 128. Parking of vehicles in residential zones

The following development rules apply to the parking of vehicles in the Single Residential zonings and General Residential zonings:

- (a) A motor vehicle owned by an occupant of a dwelling unit and used for commercial activities conducted away from the dwelling unit, may be parked on the property where the occupant resides, provided that:
  - (i) there is adequate space on the property concerned;
  - (ii) no more than one commercial vehicle per dwelling unit shall be parked on the property; and
  - (iii) the gross weight of any such commercial vehicle shall not exceed 3 500 kg.

## 129. Mobile homes and caravans

- (1) A recreation vehicle, such as a mobile home or caravan, may not be used for permanent habitation without the approval of the City, except if the applicable zoning lawfully allows such activity.
- (2) The following additional development rules shall apply with regard to mobile homes approved to be placed on a land unit zoned for residential purposes:
  - (a) The mobile home or caravan shall be sited on a foundation slab and properly anchored;
  - (b) Solid perimeter skirting, of material and colour complementary to the mobile home or caravan, shall be provided from the bottom of the mobile home to the ground surface;
  - (c) The roof and exterior siding of the mobile home or caravan shall be of a non-reflective material; and
  - (d) Any structural additions shall be of materials which, in the opinion of the City, are compatible with the mobile home or caravan.

**130. Base telecommunication station as a primary or consent use**

- (1) A rooftop or freestanding base telecommunication station which may be erected as a primary or consent use in terms of this development management scheme, shall be subject to any relevant requirements of the National Environmental Management Act.
- (2) A rooftop base telecommunication station may not extend more than 3 m in height above the part of the building that it is attached to without the prior approval of the City.
- (3) A freestanding base telecommunication station is not subject to the development rules pertaining to height in the applicable base zoning insofar as it does not exceed a maximum height of 25 m.

**131. Decommissioned antennas or base telecommunication stations**

The following provisions shall apply with regard to decommissioned antennas or base telecommunication stations:

- (a) The owner or operator shall remove all decommissioned infrastructure;
- (b) Where the site has been disturbed, the owner or operator shall rehabilitate the site to its original state or to a state acceptable to the City;
- (c) Where the owner or operator fails to comply with paragraph (a) or (b) above within a period of 90 days from the decommissioning, the City may remove such infrastructure, and rehabilitate the site at the cost of the owner or operator.

**132. Satellite dish antenna systems**

- (1) Any satellite dish antenna with a diameter in excess of 1,5 m shall be placed in a position that minimises the visual impact on the surrounding area to the satisfaction of the City.
- (2) Any satellite dish antenna of 1,5 m in diameter and smaller, and used solely for the purposes of television reception or telecommunication, will not require the City's approval and is excluded for the purposes of height measurement.

**133. Geysers and solar panels or similar infrastructure affixed to the roof of a building**

Any external geysers and associated equipment or solar panels or similar infrastructure affixed to the roof of a building may not at any point be more than 1,5 m above the roof surface, measured perpendicularly from such surface.

**134. Flood-prone areas**

Development in flood-prone areas shall have regard to the City's policy on flood-prone areas.

**135. Electronic or mechanical playing devices**

- (1) A maximum of 5 electronic or mechanical playing devices are permitted within a building in a zoning with primary uses for a business premises, hotel or place of assembly, but excluding house shops.
- (2) Where the floor space of a building on a property zoned for the purpose as set out in subitem (1) exceeds 5 000 m<sup>2</sup>, more than 5 electronic or mechanical playing devices are permitted, provided that:
  - (a) Not more than 5 such devices shall be permitted on a particular premises within such a building; and

- (b) The City may limit the number of such premises in a building where such devices are permitted in order to mitigate their impact on the surrounding uses, be they internal or external to the building or property.

### 136. Package of plans

- (1) The general purpose of a package of plans is to provide for a mechanism to plan and manage the development of large or strategic urban development areas. It is a phased process of negotiation, planning and approvals, whereby increasing levels of planning detail are approved together with conditions for such approvals. Areas where the package of plans approach is used are referred to as Special Planning Areas (SPA), and recorded as Special Planning Areas in Annexure B.
- (2) The City may require a package of plans to be submitted for approval in respect of the following base zonings and overlay zoning:
  - (a) General Residential Subzonings GR2-GR6;
  - (b) Community Zoning 2: Regional;
  - (c) General Business Subzonings;
  - (d) Mixed Use Subzonings;
  - (e) General Industry Subzonings;
  - (f) Risk Industry Zoning; and
  - (g) Subdivisional Area Overlay Zoning.
- (3) A package of plans consists of the following components that are listed in a hierarchy from higher-order to lower-order plans, and the lower-order plans must be in compliance with the higher-order plans.
- (4) The City may require all or any of the following components of the package of plans:
  - (a) Contextual framework:

A Contextual framework lays down broad land use policy for the development and the surrounding area. It may include principles or heads of agreement summarising the general obligations of the City and the developer in relation to the development. The contextual framework may be prepared by the City, or by a land owner or development agency under supervision of the City, and may not be in conflict with a spatial development framework or structure plan approved by the City.
  - (b) Development framework: A development framework identifies overall policy, broad goals, and principles for development within the development. The development framework identifies the range of uses, general spatial distribution of uses, major transport and pedestrian linkages, infrastructure and any limits within the development, including but not limited to density and floor space.
  - (c) Precinct plans: Precinct plans apply to specific areas within the development framework that have common features, functional relationships or phasing requirements. There may be several precinct plans that make up a development. A precinct plan describes in more detail the development objectives and intentions for a specific area in the development, as well as principles for urban form, land use, pedestrian links, traffic movement, floor space and environmental management.
  - (d) Subdivision plans: Subdivision plans, if required, are processed in terms of this By-Law to establish new cadastral boundaries and to facilitate the transfer of land units. Subdivision plans may be approved at any stage after the development framework has been approved, and the provisions of sub-item (6) shall apply.

- (e) Site development plans: Site development plans depict more detailed design and development provisions for one or more land units within a development. These provisions may include, but are not limited to, details relating to land use, floor space, building lines, height, parking requirements, municipal services and landscaping, as well as details relating to the position and appearance of buildings, open space, pedestrian links and traffic movement. A site development plan may be required before or after a subdivision plan, and should provide for the information as required in item 123(2).
  - (f) Building plans: Building plans contain detailed specifications as required by the National Building Act, and once approved by the City, authorise building work to be performed.
- (5) The City may require that the area covered by a contextual framework shall extend beyond the land under consideration if, in its opinion, the proposed development will have a wider impact, and the City may determine the extent of such area.
  - (6) In approving any component of a package of plans, the City shall determine the total floor space or density permitted within the development which must be imposed as a condition of approval.
  - (7) The allocation of floor space shall take into account the carrying capacity of internal and external infrastructure including but not limited to roads and utility services, and any urban design principles approved by the City as part of a rezoning or contextual framework.
  - (8) The approved floor space may remain as 'floating floor space' assigned to the overall development for later allocation, or may be assigned to particular precincts or properties when a precinct plan is approved; and in either case shall be allocated in individual subdivisions or site development plans.
  - (9) When a package of plans is required in terms of this development management scheme, the relevant components shall be submitted to the City for its approval before any development on a land unit can commence, provided that:
    - (a) approval shall not be refused if it is consistent with the development rules of a base zoning, overlay zoning, or condition of approval; but
    - (b) the City may require amendments of detail to the relevant component to address reasonable concerns relating to access, parking, architectural form, urban form, landscaping, environmental management, engineering services or similar concerns.
  - (10) The provisions as contained in item 123 shall apply with regard to site development plans.
  - (11) An approval granted for a component of a package of plans referred to in sub-item (4) (a) to (c) does not lapse.

### **136A.Outbuildings**

Except with the consent of the City, no person shall use or occupy an outbuilding before the erection of the building to which it is an outbuilding.

## **Chapter 15**

### **Parking, loading and infrastructure**

#### **Part 1 – Conventional parking requirements**

### **137. Off-street parking requirements**

The following parking requirements shall apply unless otherwise stated elsewhere in this development management scheme:

- (a) In cases where parking requirements are not stipulated for a particular use, or in terms of a specific condition imposed by the City, parking shall be provided at a minimum ratio in accordance with

the table titled 'Minimum off-street parking requirements'. Where the requirements in this table contradict each other, the most restrictive parking requirement shall apply. The City shall determine off-street parking requirements for land uses not stipulated in the table 'Minimum off-street parking requirements'.

- (b) The second column in the table headed 'Standard areas' refers to requirements that apply to areas with standard parking needs, or where public transport is not specifically promoted or available. The column headed 'PT1 areas' refers to areas where the use of public transport is promoted, but where the City considers the provision of public transport inadequate or where the use of motor vehicles is limited. The column headed 'PT2 areas' refers to areas where the use of public transport is promoted and the City considers the provision of public transport good, or where the use of motor vehicles is very limited.
- (c) The City may approve and shall maintain a plan or plans which indicate the areas it deems to be PT1 and PT2 areas. Such plans shall be recorded in Annexure C and may be amended from time to time upon approval by the City as required.
- (d) If an area has not been specifically identified by the City as a PT1 or PT2 area, then the parking requirements for standard areas shall apply.
- (e) Through the provisions of Chapter 17, the City may develop overlay zonings to set maximum parking requirements for specific areas and/or determine different parking requirements for specific areas, depending on motor vehicle usage or ownership.
- (f) Off-street parking space shall be provided:
  - (i) on the property for which parking is required;
  - (ii) subject to the City's approval, in public parking facilities available in the vicinity; or
  - (iii) in accordance with item 138 below.

### 138. Alternative parking supply

As an alternative to compliance with the off-street parking requirements in terms of this development management scheme, with the approval of the City, an owner may:

- (a) acquire an area of land sufficient for the relevant parking requirements elsewhere, in a location approved by the City; or
- (b) acquire permanent rights to a parking facility or portion of a parking facility elsewhere, in a location approved by the City;

and shall register a notarial tie or servitude against such land or parking facility to link the properties concerned for the purpose of parking, and the owner shall cause the parking concerned to be constructed and maintained in accordance with the City's approval. The cost of registration of the notarial tie or servitude shall be borne by the owner.

Minimum off-street parking requirements



Land use	Standard areas	PT1 areas	PT2 areas
Main dwelling house (SR1 Zoning)	2 bays per dwelling unit (1 bay per dwelling for erven < 350 m <sup>2</sup> )	1 bay per dwelling unit	Nil
Main dwelling house (SR2 Zoning)	1 bay per dwelling unit (Nil per dwelling for erven < 100 m <sup>2</sup> )	Nil	Nil
Second dwelling	1 bay per 2nd dwelling unit	1 bay per 2nd dwelling unit	Nil
Group dwelling	1,75 bays per dwelling unit, plus 0,25 bays per dwelling unit for visitors	1 bay per dwelling unit, plus 0,25 bays per dwelling unit for visitors	Nil
Flats	1,75 bays per dwelling unit, plus 0,25 bays per dwelling unit for visitors	1 bay per dwelling unit, plus 0,25 bays per dwelling unit for visitors	Nil
Bed & breakfast establishment	1 additional bay per guest room	1 additional bay per guest room	Nil
Boarding house, guest house	1,25 bays per bedroom	0,75 bays per bedroom	Nil
Backpackers lodge	1 bay per 6 beds	1 bay per 8 beds	Nil
Hotel	0,75 bays per bedroom, plus 20 bays if licensed	0,75 bays per bedroom, plus 20 bays if licensed	Nil
Retirement home, orphanage	0,5 bays per bedroom	0,3 bays per bedroom	Nil
Creche	1 bay per 10 children, plus stop & drop facility	1 bay per 10 children	Nil
School	1 bay per classroom and office, plus stop & drop facility	1 bay per classroom and office, plus stop & drop facility	Nil
Place of instruction (post-school level)	0,4 bays per student, plus 1 bay per classroom and office	0,4 bays per student, plus 1 bay per classroom and office	Nil

Library, museum	2 bays per 100 m2 GLA	1,5 bays per 100 m2 GLA	Nil
Place of assembly, place of worship, place of entertainment, funeral parlour	1 bay per 6 seats or persons, calculated at 1,4 m2 floor space = 1 person	1 bay per 8 seats or persons, calculated at 1,4 m2 floor space = 1 person	Nil
Sport stadium	1 bay per 4 seats or persons (or as per transport management plan)	3 bays per 20 seats or persons (or as per transport management plan)	Nil
Recreation or sports complex	1 bay per 8 seats or persons	1 bay per 10 seats or persons	Nil
Gymnasium, health club	10 bays per 100 m2 GLA	8 bays per 100 m2 GLA	Nil
Hospital (general and private)	1 bay per bed, plus 3 bays per consulting room	1 bay per bed, plus 2 bays per consulting room	Nil
Clinic, medical consulting rooms	4 bays per consulting room	3 bays per consulting room	Nil
Shops (excluding supermarket)	4 bays per 100 m2 GLA	2 bays per 100 m2 GLA	Nil
Supermarket, shopping centre	6 bays per 100 m2 GLA	4 bays per 100 m2 GLA	Nil
Restaurant	2 bays per 25 m2 GLA	1 bay per 25 m2 GLA	Nil
Offices	4 bays per 100 m2 GLA	2,5 bays per 100 m2 GLA	Nil
Conference centre	6 bays per 10 seats	4 bays per 10 seats	Nil
Motor showroom	3 bays per 100 m2 GLA	3 bays per 100 m2 GLA	Nil
Motor repair garage, service station	4 bays per service bay, plus 4 bays per 100 m2 GLA, minimum 8 bays	4 bays per service bay, plus 4 bays per 100 m2 GLA, minimum 8 bays	Nil
Motor fitment centre	2 bays per service bay	2 bays per service bay	Nil

Industry	2 bays per 100 m2 GLA	1,5 bays per 100 m2 GLA	Nil
Warehouse, storage building	1 bay per 100 m2 GLA	1 bay per 100 m2 GLA	Nil

### 139. Combined parking requirements

Where two or more uses combine to share a common parking area, the City may approve parking requirements that are less than the sum of the parking required for individual uses provided that:

- (a) The City is satisfied that the utilisation of the same parking area by the different use types or activities in the zonings will not result in a concurrent use of the parking area; and
- (b) bays intended for combined uses may not subsequently be reallocated to other uses without the approval of the City.

## Part 2 – Site access and parking layout requirements

### 140. Site access and exits

- (1) The following site access requirements shall apply:
  - (a) The City may require compliance with standard municipal or provincial access spacing guidelines;
  - (b) No vehicular ingress or egress shall be closer than 10 m from an intersection as defined by the prolongation of street boundaries; except for industrial-zoned properties, where the distance shall be 15 m; and
  - (c) The City may restrict or prohibit access if a pedestrian or traffic hazard is created or is likely to be created.
- (2) Vehicle entrances and exit ways to and from property shall conform to the following requirements:
  - (a) Motor vehicle carriageway crossings shall be limited to one per site per public street or road abutting the site;
  - (b) Notwithstanding paragraph (a) above, where the total length of any street boundary of a site exceeds 30 m in length, one additional carriageway crossing may be permitted, provided that no two carriageway crossings are closer than 12 m to each other;
  - (c) The minimum and maximum widths of motor vehicle carriageway crossings shall be in accordance with the following table, titled 'Width of motor vehicle carriageway crossings'.
  - (d) A combined carriageway crossing allows for both entrance and exit, whereas a single carriageway crossing only allows for an entrance or an exit. Direct access to a garage, carport or parking space, or combination thereof, is a combined access.

Width of motor vehicle carriageway crossings

Type of carriageway crossing	Minimum width	Maximum width
Single entrance or exit way	2,7 m	4,0 m
Combined entrance and exit way	5,0 m	8,0 m

### 141. Parking layout requirements

- (1) The following parking layout requirements shall apply unless otherwise stated elsewhere in this development management scheme:
  - (a) Parking layout configuration, minimum dimensions and ramps to a parking area shall be in accordance with the provisions of this development management scheme or an approved site development plan;
  - (b) The layout of any parking area, except for parking in SR1 and SR2 zonings, shall ensure that vehicles can readily leave the site without reversing across the sidewalk, unless approved by the City;
  - (c) A tandem bay accommodating two motor vehicles shall be regarded as one bay for the purposes of this development management scheme; except for single residential zonings, where a tandem bay shall be regarded as two bays;
  - (d) Visitor parking bays shall be clearly demarcated, readily visible and accessible to visitors, and preferably grouped together;
  - (e) Parking areas shall be used for the parking of vehicles which are lawfully allowed on them, and any activity which causes an obstruction for vehicular traffic or pedestrian use of the sidewalk is prohibited;
  - (f) Parking areas shall be constructed and maintained in a state suitable for the parking and movement of vehicles;
  - (g) Notwithstanding paragraphs (a) to (f), the City may lay down more restrictive requirements in connection with parking, site access or motor vehicle carriageway crossing, if considered necessary from a pedestrian or traffic safety point of view.
- (2) The City may require a parking layout plan to be submitted, indicating the way in which it is intended that motor vehicles shall park, the means of entrance and exit, landscaping proposals, and construction details.
- (3) The City may approve or refuse the parking layout plan and impose conditions of approval.

## Part 3 – Unconventional parking requirements

### 142. Parking for the physically disabled

- (1) The City may require parking that is capable of use by persons with physical disabilities to be provided on any land unit, in order to ensure easy and convenient access for such persons to services and facilities generally open to the public and to residential uses.
- (2) In any parking facility serving the public, parking for persons with physical disabilities shall be provided in accordance with the following table, titled 'Physically disabled accessible parking'.

## Physically disabled accessible parking

Total no of parking bays	Required number of bays accessible to the physically disabled
1-50	1
51-100	2
101-150	3
151-200	4
For every additional 100 bays or part thereof	1 additional parking bay

- (3) Parking for the physically disabled shall comply with the following requirements:
- (a) Parking bays shall be a minimum of 3,7 m in width and 5 m in length;
  - (b) Parking and access aisles shall be level;
  - (c) Parking bays shall be located as near as possible to accessible building or site entrances, and shall be located to provide convenient access to kerb ramps;
  - (d) Each parking bay reserved for physically disabled persons shall be marked on the parking surface with the international symbol of disabled accessibility;
  - (e) Additional signage indicating the parking bay as reserved for exclusive use by persons with physical disabilities may be required by the City;
  - (f) Where five or fewer parking bays are provided, at least one bay shall be 4 m wide and marked to provide a parking bay of 2,5 m with an access aisle of 1,5 m, but the bay need not be reserved exclusively for persons with physical disabilities.
- (4) Parking for persons with physical disabilities shall count towards fulfilling off-street parking requirements.

**143. Motorcycle and bicycle parking spaces**

- (1) The City may require that parking be provided for motorcycles and bicycles.
- (2) For every four motorcycle and six bicycle parking spaces provided, a credit of one parking bay may be given towards the parking requirements, provided that:
  - (a) the total credit shall not exceed 2,5% of the parking bays required;
  - (b) the minimum dimension for a motorcycle space shall be 2,2 m in length and 1 m in width; and
  - (c) the minimum dimension for a bicycle space shall be 2 m in length and 0,6 m in width.
- (3) Signage, bollards and racks or other devices for storing bicycles and motorcycles in such bays shall be installed.

## 144. Loading

- (1) Unless the City grants approval to waive this requirement, loading bays shall be provided in accordance with the table, titled 'Minimum off-street loading bay requirements'. The City may determine off-street loading requirements for uses not stipulated in the table.

Minimum off-street loading bay requirements

Land use	Floor space (m2)	Number of loading bays
Offices	0 – 5 000	0
	5 001 – 15 000	1
	15 001 – 30 000	2
	Every additional 30 000 or part thereof	1 additional bay
Business premises (other than offices, supermarket), Industry	0 – 1 000	0
	1 001 – 2 500	1
	2 501 – 5 000	2
	5 001 – 10 000	3
	Every additional 10 000 or part thereof	1 additional bay
Supermarket	0 - 500	1
	501 - 1 0000	2
	1 001 and greater	3 x requirement in row 2

- (2) The following minimum requirements shall apply to loading bays:
- A loading bay shall measure not less than 4,5 m by 10 m for perpendicular loading, and 2,5 m by 12 m for parallel loading.
  - No carriageway crossing to be accessed by loading vehicles shall be less than 3 m in width, and no combined entrance and exit way shall be less than 6 m in width.
  - Covered loading areas shall have a minimum headroom of 3,7 m.

**145. Refuse rooms**

The City may, for the purposes of collecting refuse, require the owner to install a refuse receptacle on a property which shall:

- (a) be of sufficient size to accommodate the refuse generated from the property for one week;
- (b) be located adjacent to a public street, or in a position which will provide acceptable access to a refuse collection vehicle;
- (c) be designed in a manner that is architecturally compatible with the other structures on the property and will screen refuse bins from public view; and
- (d) comply with any other condition or standard requirements that the City may impose relating to access, health, pollution control, safety or aesthetics.

## **Chapter 16**

### **Subdivision of land**

**146. Deemed approval for building line and coverage departures**

When the City grants approval for the subdivision of property containing one or more existing approved structures, so as to locate different structures on separate land units, the City's approval is deemed to have been granted for any building line or coverage departure that arises from the approved subdivision, provided that future structures shall comply with the requirements of this development management scheme.

**147. Subdivision of a property with consent use rights or a temporary land use departure**

If a property that has been granted a consent use right or temporary land use departure is subsequently subdivided, the consent use right or temporary land use departure shall apply to only one of the subdivided portions, unless the City states otherwise by means of a condition of the subdivision.

DIVISION IV: OVERLAY ZONING (items 148-191)

This Chapter deals with procedures to prepare, adopt, replace, amend or recommend overlay zonings and sets out the legal status of an overlay zoning.

## **Chapter 17**

### **General provisions in respect of overlay zonings**

The general provisions apply to all overlay zonings in this division.

**148. Requirements for preparing an overlay zoning**

- (1) Preparation of an overlay zoning shall take into consideration the following requirements where applicable:
  - (a) the development principles contained in the SPLUMA, the LUPA and this By-Law;
  - (b) the City's planning vision and principles as set out in its Integrated Development Plan;
  - (c) desired spatial form, including but not limited to the development of public and private land, infrastructure investment, utilisation of space, spatial reconstruction, location and nature of development, urban edge, scenic routes, areas of strategic intervention, mitigation of development impacts;
  - (d) the principles as set out in an approved spatial development framework or a policy plan;

- (e) environmental and heritage protection and conservation; and
  - (f) the principles of co-operative governance and the duties and objectives of local government as set out in the Municipal Systems Act and the Constitution of the Republic of South Africa, 1996.
- (2) An overlay zoning must not detract from the City's ability to serve the needs of the municipal area as a whole.

#### **149. Identification and numbering**

The City shall approve a distinctive name and number for each overlay zoning when adopting such overlay zoning.

#### **150. Status of overlay zoning**

- (1) An overlay zoning applies to land which the City has designated by notice in the Provincial Gazette as having that overlay zoning.
- (2) Land which has an overlay zoning is regulated by the provisions for that overlay zoning in this development management scheme in respect of –
  - (a) general provisions;
  - (b) specific provisions;
  - (c) use of property; and
  - (d) development rules.
- (3) An overlay zoning may vary the development rules or use rights relating to an area or land unit, or may set new development rules or use rights.
- (4) The provisions of an overlay zoning may be more restrictive or more permissive than the provisions applicable to the base zoning of the property concerned, or may set specific development rules for an area or land unit.
- (5) If the provisions of an overlay zoning are different to, or in conflict with, the provisions of a base zoning, the more restrictive provisions shall apply, unless stated otherwise in the overlay zoning concerned.
- (6) Any development rules in the overlay zoning that exceed or are more restrictive than the limitations of the base zoning are deemed to be approved permanent departures from the provisions in the base zoning.
- (7) The City may grant departures from the development rules or restrictions or provisions of any overlay zoning by following the departure procedures set out in this By-Law.
- (8) The overlay zoning may contain general provisions or specific provisions and the designation must indicate which provisions apply to a land unit, area or to the City.
- (9) The provisions of more than one overlay zoning may apply to a land unit or area.

#### **151. Development rules**

- (1) The development rules may apply generally to all land units designated to have the specified overlay zoning or specific rules may apply to specified land units.
- (2) The City may on its own initiative amend, replace or delete the development rules for an overlay zoning by amendment of this development management scheme.



- (3) The detailed provisions of an overlay zoning must be consistent with a policy plan and the Integrated Development Plan as approved by the City.

#### **152. Process to designate a land unit, area or the city to have an overlay zoning**

- (1) The City may, after following a notice procedure contemplated in section 81 of this By-Law and after considering the objections, comments or representations received, designate a land unit, area or the City to have a specified overlay zoning.
- (2) Prior to designating a land unit, area or the city, the City must have regard to any approved policy plan dealing with the specified overlay zoning.

### **Chapter 18**

#### **Overlay zonings providing specific development directives**

The SAO zoning designates land for future subdivision with development rights by providing development directives through specific conditions as approved in terms of this By-Law. The SAO zoning confirms the principle of development and acceptance of future subdivision of land; but not the detailed layout, which will be determined when an actual application for subdivision is approved. The SAO zoning does not detract from the rezoning to Subdivisional Area as stipulated in this By-Law, but gives effect to such stipulations through the provisions of this development management scheme. The SAO zoning may or may not be used in conjunction with the Special Planning Area mechanism.

#### **153. Use of the property: Subdivisional Area Overlay Zoning**

The following use restrictions apply to property in this zoning:

- (a) Primary uses are as stipulated in the conditions of approval imposed in terms of this By-Law.
- (b) Additional use rights are as stipulated in the conditions of approval imposed in terms of this By-Law and item 154(4).
- (c) Consent uses are as stipulated in the conditions of approval imposed in terms of this By-Law.

#### **154. Development rules: Subdivisional Area Overlay Zoning**

- (1) Land zoned as a Subdivisional Area may be subdivided as contemplated in this By-Law.
- (2) Conditions of approval for rezoning to Subdivisional Area should take into account, but are not limited to, the following:
  - (a) the requirements of an applicable structure plan or spatial development framework as contemplated in section 3 of this By-Law;
  - (b) impact assessments for environment, heritage resources, transport or hazardous installations;
  - (c) main transport routes (d) main land uses and the extent thereof (e) physical development constraints or opportunities;
  - (f) provision of services;
  - (g) bulk infrastructure
  - (h) development density;
  - (i) floor space limitations;
  - (j) open space requirements, and
  - (k) requirements of organs of state.

- (3) The conditions of approval imposed in terms of this By-Law when the property is rezoned to Subdivisional Area shall apply.
- (4) Any existing use or development on a property which is lawful at the time that the property is rezoned to Subdivisional Area may continue as long as the Subdivisional Area zoning remains in place, provided that:
  - (a) The City may approve additional uses and extensions to existing lawful development if these are ancillary to the existing, lawful uses; and
  - (b) Once a subdivision is confirmed, all future development on the subdivision concerned shall comply with the development rules of the base zoning on the confirmed land units, any overlay zonings which may be applicable, and any conditions imposed in terms of this By-Law.

## **Chapter 19**

### **Overlay zonings providing strategic development directives**

#### **Part 1 – Incentive Overlay Zoning (ICO)**

ICO provides a mechanism for designating development incentive measures to land in order to promote development priorities and strategies as may be identified in the integrated development plan or spatial plans approved by the City. The development incentive measures may include, but are not limited to, incentives or concessions relating to parking, height, floor space, coverage and density. Such incentives could involve an increase in the floor space or density otherwise permitted in terms of this development management scheme.

##### **155. General provisions: Incentive Overlay Zoning**

This overlay zoning has no general provisions.

##### **156. Specific provisions: Incentive Overlay Zoning**

This overlay zoning has no specific provisions.

#### **Part 2 – Density Overlay Zoning (DO)**

The DO provides a mechanism for designating development density measures to land in order to establish development priorities and strategies as may be identified in the IDP or spatial plans approved by the City. The development density measures may include the setting of specific minimum or maximum development densities (e.g. erf sizes) given the availability of invested infrastructure or lack of available infrastructure, and may also include incentive measures to encourage and support development priorities and strategies.

##### **157. General provisions: Density Overlay Zoning**

This overlay zoning has no general provisions.

##### **158. Specific provisions: Koeberg Restriction Area Overlay Zoning**

- (1) In this item:
  - (a) ‘Precautionary Action Zoning Zone (PAZ)’ means land within a 5 km radius from a point defined by the co-ordinates X= -52727,4000 and Y= -3727966,6500 in WGS84 transverse Mercator projection;

- (b) 'Urgent Protective Action Zone (UPZ)' means land within a 16 km radius from a point defined by the co-ordinates X= -52727,4000 and Y= -3727966,6500 in WGS84 transverse Mercator projection, but excluding the Precautionary Action Zone (PAZ); and
  - (c) 'development application' means any construction or utilisation of land or any application made to a competent authority for additional or new rights in terms of planning legislation or the zoning scheme regulations, other than that which is already permitted in terms of the development management scheme, and which either increases the transitory or permanent population within the Precautionary Action Zone (PAZ) or the Urgent Protective Action Zone (UPZ) and/or which might compromise the effective implementation of the Koeberg Nuclear Emergency Plan.
- (2) In the Precautionary Action Zone (PAZ):
- (a) no development application shall be approved, except development by the Koeberg nuclear operator ancillary to the siting, design, construction, operation and decommissioning of the Koeberg Nuclear power station in terms of its operating licence;
  - (b) provided land owners may, subject to obtaining the approval of the competent authority, exercise additional or new rights which will not result in any transitory or permanent population growth and where the competent authority is satisfied that the disaster management infrastructure necessary to ensure effective implementation of the approved traffic evacuation model and associated disaster risk management procedures, is adequate.
- (3) In the Urgent Protective Action Zone (UPZ):
- (a) a development application shall only be approved by the competent authority where it is satisfied that the disaster management infrastructure necessary to ensure effective implementation of the approved traffic evacuation model and associated disaster risk management procedures, is adequate;
  - (b) provided land owners may, subject to obtaining the approval of the competent authority, exercise additional or new rights which will not result in any transitory or permanent population growth; and
  - (c) provided in considering development applications for approval in terms of paragraph (a) above, regard shall be had to the following:
    - (i) estimated existing population and envisaged population growth in the UPZ as a result of the proposed development;
    - (ii) impact of envisaged population growth on the effective implementation of the Koeberg Nuclear Emergency Plan and the approved traffic evacuation model;
    - (iii) capacity of disaster management infrastructure to meet the requirements of the Koeberg Nuclear Emergency Plan in relation to the envisaged population growth; and
    - (iv) any other consideration considered relevant which has the potential to detrimentally impact upon the effective implementation of the Koeberg Nuclear Emergency Plan.

### 158A.Third Dwelling Overlay Zoning

- (1) In an area designated to have a third dwelling overlay zoning the following provisions apply to land units with a SR1 or SR2 zoning.
- (2) A third dwelling is a primary use on properties with a SR1 or SR2 zoning.
- (3) In accordance with development rules applied to Third Dwelling Overlay Zoning, the following is applicable:
  - (a) A 1m street boundary building line on land units up to and including 350m<sup>2</sup> in extent.

- (b) Zero parking requirements for the third dwelling use.
- (4) General requirements in regards to Third Dwelling Overlay Zoning include the following:
  - (a) The construction of a third dwelling shall be subject to the City's municipal services departments certifying that capacity is available on the services network in the specific area.
  - (b) The existence or approval of a third dwelling shall not in itself be sufficient reason for the City to grant an application in terms of this By-Law to subdivide the land unit containing the dwelling units.
  - (c) A third dwelling shall be constructed in a style that is similar to the architecture of the main and second dwelling.

### **Part 3 – Small and Micro Enterprise Overlay Zoning (SMEO)**

#### **158B.Use of property: Small and Micro Enterprise Overlay Zoning**

- (1) In this overlay zoning, one or both of the following intensity provisions can be designated to an area or land unit:
  - (a) medium intensity area; or
  - (b) low intensity area.
- (2) In an area or land unit designated to have a medium intensity overlay zoning the following additional primary uses are permitted in the SR1 and SR2 base zones: Restaurant, office, guest house, service trade, place of instruction, place of worship and business premises.
- (3) In an area or land unit designated to have a low intensity overlay zoning the following additional primary uses in the SR1 and SR2 base zones are permitted: Restaurant, office, guest house, place of instruction and house shop.

#### **158C.Development rules: Small and Micro Enterprise Overlay Zoning**

- (1) The following rules are applicable to an area or land unit with an SR1 or SR2 zoning designated to have a medium intensity overlay zoning:
  - (a) floor factor of 1.5 but may not be greater than 1500m<sup>2</sup>
  - (b) at least a third of the floor space of all buildings and structures shall be used for residential purposes.
- (2) The following development rule is applicable to an area or land unit with an SR1 zoning designated to have a medium Intensity overlay zoning:
  - (a) zero street building line.
- (3) The City may impose development rules in order to minimise any potential nuisance to surrounding neighbours or general public as part of designating an area or land unit to have this overlay zoning.
- (4) Any development rules in terms of an approved medium Intensity overlay zoning that exceed, or are more restrictive than, the limitations of a base zoning shall be deemed to be approved departures from the provisions of the base zone.

#### **158D.General provisions: Small and Micro Enterprise Overlay Zoning**

The following provisions apply:

- (1) Medium intensity areas or land units are directly adjacent to identified activity routes or streets and structuring routes.

- (2) Low intensity areas or land units are directly adjacent to identified activity routes or streets and structuring routes or directly adjacent to a medium intensity zone (i.e. it does not have to be along an activity route or street or structuring route).
- (3) Parking requirements apply as per the PT2 area requirement provided for in item 138 and access requirements apply as provided for in item 140.
- (4) The City's municipal services departments must certify that capacity is available on the services network in the specific area, for the additional primary uses.

## **Part 4 – Extensive Residential Use Overlay Zoning**

### **158E. General provisions: Extensive Residential Use Overlay Zoning Use of property**

- (1) Primary uses are dwelling house and private road.
- (2) Additional use rights are second dwelling, subject to item 53.
- (3) Consent uses are home occupation, bed and breakfast establishment, home child care, utility service, place of instruction, place of worship, house shop, institution, guest house, rooftop base telecommunication station, wind turbine infrastructure, open space, urban agriculture and halfway house.

### **158F. Specific provisions: Extensive Residential Use Overlay Zoning**

- (1) No subdivision of land shall be permitted with an erf size of less than 4000 square metres.

## **Chapter 20**

### **Overlay zonings for specific management mechanisms**

These overlay zonings provide mechanisms for designating either city-wide or localised development management rules to deal with specific concerns, over and above the provisions of a base zoning. These overlay zonings should be applied to promote the City's planning principles, goals, objectives and strategies as may be identified in the approved Integrated Development Plan, Integrated Metropolitan Environmental Policy strategies, or spatial plans.

## **Part 1 – Heritage Protection Overlay Zoning (HPO)**

The HPO makes provision for the protection of heritage places entered on the heritage register maintained by the provincial heritage resources authority, and for the protection of heritage areas as provided for in terms of the National Heritage Resources Act. It also provides a mechanism for the protection of heritage places the City considers to be conservation-worthy in terms of its heritage strategies. The HPO enables the designation of such heritage places and heritage areas on the zoning map.

### **159. Deemed Heritage Protection Overlay Zones**

The following heritage places are deemed to have Heritage Protection Overlay zonings and shall be subject to the provisions of this overlay zoning:

- (a) any heritage place that has been entered into the register of heritage resources maintained by the provincial heritage resources authority in accordance with the National Heritage Resources Act;
- (b) any heritage place that has been designated a heritage area in accordance with the National Heritage Resources Act; and

**160. Use of the property: Heritage Protection Overlay Zoning**

The following land use restrictions apply to property in this zoning:

- (a) Primary uses are as stipulated in the base zoning.
- (b) Additional use rights are as stipulated in the base zoning.
- (c) Consent uses are as stipulated in the base zoning, or any use approved by the City as an incentive in terms of item 161(1).

**161. Development rules: Heritage Protection Overlay Zoning**

- (1) The City may approve any use as a consent use in this overlay zoning provided that:
  - (a) such use is consistent with the uses determined to be appropriate in terms of a City approved Heritage Management plan, in order to provide the owner with an incentive to preserve the heritage resource, and
  - (b) the City may require cessation of the consent use right if the heritage place protected in terms of the Heritage Protection Overlay zoning is not maintained and protected to the requirements stipulated in the City's approved Heritage Management plan for the property, or as agreed between the City and the owner, in which case section 127 of this By-Law applies.
- (2) Any development rules in terms of an approved Heritage Protection Overlay zoning that exceed, or are more restrictive than, the limitations of a base zoning, shall be deemed to be approved departures from the provisions of the base zoning.

**162. General provisions: Heritage Protection Overlay Zoning**

- (1) Unless exempted, the following activities affecting a place or an area protected as a Heritage Protection Overlay zone require the approval of the City:
  - (a) any alteration, including any action affecting the structure, appearance or physical properties of a heritage place, whether by way of structural or other works, by painting, plastering or other decoration or any other means;
  - (b) any development, including any physical intervention, excavation, or action other than those caused by natural forces, which may in any way result in a change to the appearance or physical nature of a heritage place, or influence its stability and future well-being, including –
    - (i) construction, alteration, demolition, removal or change of use of a heritage place or a structure at a heritage place;
    - (ii) carrying out any works on or over or under a heritage place;
    - (iii) subdivision or consolidation of land comprising a heritage place, including the structures or airspace of a heritage place;
    - (iv) any change to the natural or existing condition or topography of land; and
    - (v) any permanent removal or destruction of trees, or removal of vegetation or topsoil;
  - (c) addition of any new structure;
  - (d) partial demolition of a structure;
  - (e) alteration to or removal of any historical landscape or any landscape feature, including boundary hedges and mature plantings; or addition or removal of or alteration to hard landscape surfaces, street furniture or signage;

- (f) any below-ground excavation.
- (2) The City may exempt a specific activity or schedule of activities in a geographic area which has been protected as a heritage protection overlay zone from the requirements of sub-item (1).

### **163. Specific provisions: Heritage Protection Overlay Zoning**

- (1) The City may apply specific provisions to a heritage place or heritage area protected as a Heritage Protection Overlay zone, which may be in addition or alternative to the general provisions in item 162, provided it relates to land use and development rules and are recorded in a heritage management plan approved by the City in terms of this By-Law.
- (2) The City must consult the owner or owners of the heritage place or area before introducing specific provisions in respect of the place or area protected as a heritage protection overlay zone.

### **164. Consideration of applications**

- (1) In respect of an application for approval for an activity referred to in items 162 or 163, the City may require from an applicant whatever information it deems necessary to enable an informed decision to be made regarding the application, which may, inter alia, include:
  - (a) details of the activities for which an application is made;
  - (b) a statement of significance or a heritage statement;
  - (c) a statement of conservation policy in respect of the work proposed to be carried out;
  - (d) an annotated recording of the heritage place or parts of the heritage place to be affected by the actions;
  - (e) heritage and historical research; and
  - (f) photographs.
- (2) In considering an application referred to in item 162(1), the City must take into account the effect such activity may have on the significance of the heritage place or heritage area concerned.
- (3) In approving an application referred to in item 162(1), the City may impose any conditions it believes appropriate for the protection and enhancement of the heritage place or area, including inter alia conditions regarding:
  - (a) requirements for landscaping;
  - (b) use of materials and finishes;
  - (c) heritage management plans;
  - (d) recycling or reuse of materials;
  - (e) method statements; and
  - (f) timescales within which work approved must be in place or be completed.
- (4) Approval for an activity in a heritage protection overlay zone as referred to in item 162(1) does not exempt an applicant or owner from obtaining other required approvals.

## **Part 2 – Environmental Management Overlay Zoning (EMO)**

The EMO makes provision for the protection and management of the special natural and environmental characteristics of environmentally-sensitive places and areas, or those that are worthy of protection in accordance with the City's environmental management frameworks, in order to ensure that development responds sensitively to these characteristics, that impacts are mitigated, and to promote sustainable

development for the benefit of the general public, including tourists. The EMO also enables the designation of such environmentally-sensitive places or areas on the zoning map.

#### **165. Development rules: Environmental Management Overlay Zoning**

The City may approve any appropriate use as a consent use in terms of this overlay zoning provided that:

- (a) it considers such use to be desirable or justified in order to provide the owner with an incentive to preserve the environmental resource, and
- (b) the City may require cessation of the consent use right if the environmental resource is not properly maintained and protected to the City's satisfaction, in which case section 127 of this By-Law will apply.

#### **166. General provisions: Environmental Management Overlay Zoning**

- (1) Unless exempted, the following activities affecting the area protected by an Environmental Management Overlay zoning require the approval of the City:
  - (a) any change in land use resulting from an application in terms of this By-Law;
  - (b) any subdivision;
  - (c) addition of any new structure requiring building plan approval in terms of the National Building Act;
  - (d) removal of indigenous vegetation or site clearing, or felling, lopping, topping or otherwise damaging any tree that is either more than 6 m in height or more than 500 mm in diameter, other than for the removal of dangerous branches or bona fide pruning; and
  - (e) any below-ground excavation, or change to watercourses.
- (2) Activities exempt from approval as referred to in sub-item (1) include the following:
  - (a) clearing of invasive alien plant infestations;
  - (b) routine building maintenance and repairs; and
  - (c) any other activity specifically exempted by the City.
- (3) In addition to sub-item (2), the City may exempt from the requirements of sub-item (1) any other activity or schedule of activities in a geographic area which has been protected as an Environmental Management Overlay zone.

#### **167. Specific provisions: Environmental Management Overlay Zoning**

- (1) The City may apply specific provisions in an environmental management overlay zone, which may be in addition or alternative to the general provisions in item 166, provided it relates to land use and development rules and are recorded in an environmental site- or activitymanagement plan approved by the City in terms of this development management scheme.
- (2) The City must consult the owner or owners of the land or area affected by the environmental management overlay zone before introducing specific provisions of an Environmental Management Overlay zoning.

#### **168. Consideration of applications**

- (1) In respect of an application for approval of an activity referred to in item 166(1), the City may require from an applicant whatever information it deems necessary to enable an informed decision to be made regarding the application, which may, inter alia, include:
  - (a) statements of significance;



- (b) environmental, botanical or other audit or research information; and
  - (c) photographs.
- (2) In approving an application referred to in item 166(1), the City may impose any condition it believes appropriate for the protection and enhancement of the area protected by the Environmental Management Overlay zoning, including inter alia conditions regarding:
  - (a) requirements for landscaping;
  - (b) use of materials and finishes;
  - (c) environmental site- and activity-management plans;
  - (d) recycling or reuse of materials; and
  - (e) method statements.
- (3) Approval for an activity in an environmental management overlay zone as referred to in item 166(1) does not exempt an applicant or owner from obtaining other required approvals.

### **Part 3 – Urban Edge Overlay Zoning (UEO)**

The UEO zoning guides development at the urban edge area in order to achieve a sensitive transition between urban and rural or conservation areas, to contain urban sprawl and to protect valuable natural and agricultural resources adjacent to urban development.

#### **169. Development rules: Urban Edge Overlay Zoning**

This overlay zoning has no general provisions.

#### **170. Specific provisions: Urban Edge Overlay Zoning**

This overlay zoning has no specific provisions.

### **Part 4 – Scenic Drive Overlay Zoning (SDO)**

The SDO zoning protects the natural and cultural landscape along important tourist and transport routes, to enhance the scenic experience of travellers and promote the tourism potential of the city.

#### **171. General provisions: Scenic Drive Overlay Zoning**

- (1) Save as provided for in sub-item (3), nothing shall be built, constructed, erected, fixed or placed, whether permanently or temporarily, on land which:
  - (a) abuts the lower side of a scenic drive; or
  - (b) abuts any land (including any street) owned by or vesting in the City which abuts the lower side of a scenic drive so as to project above the level of the nearest point on the abutting pedestrian footway of such scenic drive; or, where no such footway exists, the highest point of the abutting road surface.
- (2) Any vehicle parking area on land referred to in sub-items (1)(a) or (1)(b) shall have a floor or ground level that is 2 m or more below the level of the nearest point on the pedestrian footway of the scenic drive; or, where no such footway exists, the highest point of the abutting road surface.
- (3) Fencing, railings, gates and similar structures which:
  - (a) do not exceed a maximum height at any point of 1,2 m above the nearest point on the pedestrian footway of such scenic drive, or where no such footway exists, the highest point of the abutting road surface; or

- (b) have a visually permeable design to the satisfaction of the City may, in accordance with plans approved by the City, be erected above the level of the nearest point on the pedestrian footway of such scenic drive; or, where no such footway exists, the highest point of the abutting road surface.

#### **172. Specific provision: Victoria Road, Clifton**

No building shall be erected on any site abutting Victoria Road, Clifton, on the upper side of the street, if such building would be more than 13 m above the street level of Victoria Road at points opposite such building.

### **Part 5 – Local Area Overlay Zoning (LAO)**

The LAO zoning provides opportunities for the City to apply specific local development rules that reflect local circumstances. The LAO zoning can provide the City with mechanisms to determine local provisions for encouraging development in support of the local economy, or special management provisions to encourage appropriate development in response to local, cultural, urban design or landscape circumstances. It is important to recognise that the LAO zoning is a tool to be applied by the City in the interests of the city, and local interests needs to be balanced against the interests of the general community.

#### **173. General provisions: Local Area Overlay Zoning**

This overlay zoning has no general provisions.

#### **174. Specific provisions: Strand Beachfront Local Area (LAO/1)**

- (1) The area depicted on Plan LAO/1 is subject to the provisions in this item.
- (2) Prior to the consideration of any application in terms of this By-Law or the National Building Act:
  - (a) the applicant shall furnish the City with a land surveyor's certificate identifying where any predicted rise in sea level will affect the property; and
  - (b) in response to a predicted rise in sea level, the City may require that:
    - (i) a particular street or common boundary building line shall be complied with; or that
    - (ii) the finished floor level of a building shall be raised.
- (3) On request by the applicant, the City shall make available any relevant information it has in order to enable compliance with sub-item (2).

#### **175. Specific provisions: Gordon's Bay Local Area (LAO/10)**

- (1) The area depicted on Plan LAO/10 is subject to the provisions in this item.
- (2) No building on a property zoned SR1 situated below a road shall exceed 4 m above the highest point of the abutting road surface to the top of the roof of such building.
- (3) No building on a property zoned SR1 situated above a road shall exceed a height of 4 m above the highest point of the land along its common boundary.
- (4) Where a property is bordered by a road on more than one side or where both sides of the road are on the same contour level, the City will determine if sub-items (2) or (3) or only the restrictions in the base zoning shall apply.
- (5) The above restrictions apply only where they are more restrictive than the development rules set out in the base zoning.

**176. Specific provisions: Harfield Village Local Area (LAO/2)**

- (1) The area depicted on Plan LAO/2 is subject to the provisions in this item.
- (2) In this item:
  - (a) 'dormer' means an upright window under a gable, built out from a sloping roof;
  - (b) 'facade' means a main containing wall of a building, other than a wall of an internal courtyard; and
  - (c) 'street boundary wall' or 'fence' means any structure erected on or near a street boundary for the purposes of defining such boundary; but shall exclude planting such as a hedge along the boundary or on the structure concerned, or an outbuilding.
- (3) The maximum height of a building, measured from base level to the wallplate, shall be 6 m, and to the top of the roof shall be 8 m.
- (4) All roofs in new developments shall be double-pitched, with slopes of between 35o and 42o.
- (5) No point on any building shall be erected nearer than 1 m to any street boundary.
- (6) The common boundary setbacks specified in this development management scheme shall apply to all dwelling houses, second dwellings, group housing, blocks of flats, residential buildings, or outbuildings to any of the foregoing.
- (7) The coverage provisions of this development management scheme shall apply to all dwelling houses, second dwellings, group housing and blocks of flats or outbuildings on any site smaller than 350 m<sup>2</sup>. Permitted coverage on sites greater than 350 m<sup>2</sup> in extent for all of the above buildings shall be 65%. (8) Any proposed parking or garaging areas and the access thereto shall be shown on building plans submitted to the City, which shall have the right to approve or refuse such plans. These parking and garaging areas shall:
  - (a) not be located forward of the front facade of the main dwelling on a land unit;
  - (b) be subsidiary to the main dwelling, with frontages not exceeding 3 m in width;
  - (c) have a height not exceeding 3,3 m or the eaves line of the main building, whichever is the lowest; and
  - (d) no double garage doors shall be permitted.
- (9) No person shall erect any street boundary wall or fence without the prior approval of the City, and such street boundary wall or fence shall be in accordance with the following provisions:
  - (a) the height of a visually impermeable street boundary wall or fence, including a solid masonry wall, shall not exceed 1,5 m;
  - (b) masonry piers, or visually permeable wooden slats, railings or similar structures, shall not exceed 2,1 m in height, provided that the City shall have the right to demand a height of less than 2,1 m where, in the opinion of the City, such lesser height is required for reasons of aesthetics, safety or the public good;
  - (c) for the purposes of paragraphs (a) and (b), the height of such street boundary wall or fence shall be measured from the level of the footway immediately adjacent to such wall or fence.
- (10) No person shall fell, uproot or cause to destroy a mature tree or hedge without the prior approval of the City.

**177. Specific provisions: Constantia – Tokai Local Area (LAO/3)**

- (1) The area depicted on Plan LAO/3 is subject to the provisions in this item.

- (2) No subdivision of land zoned Single Residential (SR1) shall be permitted with an erf size of less than the minimum erf size specified in Plan LAO/3.

#### **178. Specific provisions: St James – Clovelly Local Area (LAO/6)**

- (1) The area depicted on Plan LAO/6 is subject to the provisions in this item.
- (2) No building erected on any land unit within the area shall have more than two storeys in height.
- (3) The permissible floor factor within any local or general business zone in the area is 0,8.
- (4) With the exception of the properties known as 'Chartfield Private Hotel', 'Strathmore Private Hotel' and 'Sea Breezes', it shall be permissible to erect a hotel on the site of any existing hotel within the portion of the area so described and specified on Plan LAO/6, notwithstanding that such site falls within Single Residential (SR1) zoning.
- (5) Where a hotel is erected in accordance with the provisions of sub-item (4), the following provisions shall apply:
  - (a) the land unit of such hotel shall, subject to the provisions of sub-items (2) and (3), be deemed to be subject to the same development rules that apply to General Residential Zoning: Subzoning 4 (GR4).
  - (b) Land not forming part of such land unit, but which adjoins it, may be added to such land unit, and any land so added shall be deemed to be part of such land unit;
- (6) The following provisos apply to sub-item (5)(b):
  - (a) no land shall be added if
    - (i) the actual floor space of the existing hotel on the existing land unit is less than the permissible floor space for such land unit; and
    - (ii) the existing land unit is large enough to enable the provision of sufficient uncovered parking area as prescribed in Chapter 15 that applies to a hotel;
  - (b) no more land shall be so added than the minimum amount required to enable
    - (i) the permissible floor space on such land unit to equal the actual floor space of the existing hotel; and
    - (ii) sufficient parking area as aforesaid to be provided;
  - (c) for the purposes of paragraphs (a) and (b), 'hotel' includes all outbuildings to an hotel.

#### **179. Specific provisions: Land Above Boyes Drive, Kalk Bay (LAO/7)**

- (1) The area depicted on Plan LAO/7 is subject to the provisions in this item.
- (2) Within the area depicted on Plan LAO/7, no building shall be erected on any land unit and no land unit shall be subdivided unless:
  - (a) the owner of such land unit has satisfied the City that such erection or subdivision is desirable, that a satisfactory road system in accordance with the City's standards for the provision of services is possible, and that the cost of providing and maintaining essential services will not be excessive; or
  - (b) it is proposed to erect a building on a land unit abutting Boyes Drive, in which event such land unit shall be deemed to be subject to the provisions of Single Residential Zoning 1: Conventional Housing (SR1) zoning.

**180. Specific provisions: Marina Da Gama Extensions 1,2 & 4 (LAO/8)**

- (1) The area depicted on Plan LAO/8 is subject to the provisions in this item.
- (2) In this item, 'Marina da Gama Home Owners' association' (formerly known as the Eastlake Association) means an association composed of the owners of properties in Marina da Gama Extensions 1, 2 and 4 in terms of the conditions of title applicable to such properties.
- (3) The following special provisions shall apply to Marina Da Gama Extensions 1, 2 and 4:
  - (a) Before any building may be erected, the person intending to erect such building shall submit to the City building plans drawn in accordance with the National Building Act showing the immediate intended development and the total ultimate intended development of the land unit on which such building is to be erected.
  - (b) Such building plans shall show the nature and colours of all roof coverings, the nature, colours and finishes of all external walls of buildings, free-standing walls and fences, and the positions of all proposed fences, drainage channels, drains and other structures (not being buildings) in relation to the boundaries of the land unit on which the building is to be erected.
  - (c) Such building plans shall, prior to their submission to the City, be submitted to the Marina da Gama Home Owners' association for comment, which association shall furnish its comments to the City in writing within 30 days, failing which the City shall accept the plans for consideration.
  - (d) Before deciding the application, the City shall consider any comments of the Marina da Gama Home Owners' association relating to such building plan, which comments must be made in writing and be submitted to the City with such building plan application.
  - (e) Except with the written approval of the City, no alteration, addition, rebuilding, renovation, renewal, erection of fences, or other work (other than work within a building), and no deviation from or change in the colours of the exterior fabric of any building or of any free-standing wall or fence shown on the approved building plans shall be undertaken or made.
  - (f) In addition to paragraphs (a) to (e), the following provisions shall apply to the area:
    - (i) A building which is a group house or a group of dwelling houses may exceed two storeys in height but shall not exceed three storeys in height; and
    - (ii) Parking and garaging areas for business-zoned properties shall be provided on the land unit of every building in accordance with the provisions of Chapter 15 of this development management scheme; provided that, notwithstanding the provisions of said Chapter, there shall be provided on every such land unit a parking area comprising not less than
      - (aa) one bay for every 20 m<sup>2</sup> of actual floor space of all shops erected thereon; and
      - (bb) one bay for every 30 m<sup>2</sup> of actual floor space of all business buildings erected thereon.

**181. Specific provisions: Hout Bay Local Area (LAO/11)**

- (1) The area depicted on Plan LAO/11 is subject to the provisions in this item.
- (2) No subdivision of land that is zoned Single Residential SR1 shall be permitted with an erf size of less than the minimum erf size specified in Plan LAO/11.

**182. Specific provisions: Noordhoek Local Area (LAO/12)**

- (1) The area depicted on Plan LAO/12 is subject to the provisions in this item.

- (2) No subdivision of land that is zoned Single Residential SR1 shall be permitted with an erf size of less than the minimum erf size specified in Plan LAO/12.

### **183. Specific provisions: Muizenberg Local Area (LOA/13)**

- (1) The area depicted on Plan LAO/13(i) is subject to the provisions in this item.
- (2) All properties situated within this area and zoned Single Residential Zoning 1 (SR1) have the additional use right of a second dwelling, subject to the conditions listed in item 53 of the development management scheme.

### **184. Specific provisions: Landudno Local Area (LAO/14)**

- (1) The area depicted on Plan LAO/14 is subject to the provisions in this item.
- (2) For the purposes of determining existing ground level for determining the height limitation in sub-item (3), the topographical maps issued by the former Divisional Council of the Cape in May 1981, being sheets 6064A, 6064B, 6164B and 6165A, will be used. In case of any dispute, the City shall determine the existing ground level for the purposes of administering the development management scheme.
- (3) No part of any building or structure on a property zoned Single Residential Zoning 1 (SR1) shall be built higher than 8 m above any point on the existing ground level, as determined in subitem (2).
- (4) Notwithstanding sub-item (3), portions of double pitched roofs above a level halfway between the eaves and the top of the roof shall not be included in the determination of height, provided that the pitch of the roof exceeds 20°.

### **185. Specific provisions: whole of the Cape Town CBD Area (LAO/4)**

- (1) The area depicted on Plan LAO/4 is referred to as the Cape Town CBD area and is subject to the provisions in this item.
- (2) The following provisions apply to the whole of the Cape Town CBD area, as depicted on Plan LAO/4:
  - (a) except in the case of service stations, the provisions of items 137, 138, 139, 142, 143 and 144 of the development management scheme (relating to parking and loading requirements) do not apply;
  - (b) notwithstanding the provisions of the development management scheme relating to floor factor, land that is zoned GB7 or MU3:
    - (i) shall be subject to the floor factor specified on Plan LAO/4 for the land unit concerned, unless there is no such specification, in which case the provisions of the development management scheme shall apply; and
    - (ii) the floor factor may be increased by 30%, provided at least 30% of the building floor space remains in use as flats.
  - (c) notwithstanding the provisions of the development management scheme relating to height and building lines, land zoned MU3 with a floor factor of 6,8 or more shall be subject to the same height and building line requirements as for GB7;
  - (d) where it is proposed to erect a hotel that contains at least 30 guest bedrooms:
    - (i) the following portions of such hotel shall be disregarded when calculating the total floor space of the building:
      - (aa) rooms used by residents and guests as dining rooms, banqueting rooms, bars, restaurants, ballrooms, games and sports rooms, lounges, sitting rooms, reading rooms, writing rooms and conference rooms;

- (bb) public foyers and areas comprising public or communal stoeps, verandahs, balconies, terraces or sun decks used by hotel residents or guests;
- (cc) barber shops, hairdressing salons, florists and similar shops within the hotel for the exclusive use of hotel residents;
- (dd) offices forming part of the hotel premises, used solely for the administration or management of the hotel;
- (ee) kitchens, sculleries, laundries and similar service facilities forming part of the hotel premises;
- (ff) storerooms ancillary to the hotel;
- (gg) staff quarters ancillary to the hotel, including corridors, stairs and other means of access within such staff quarters, appurtenant kitchens, dining rooms, recreation rooms, laundries and other such rooms for the exclusive use of staff;
- (ii) Any rooms which are not specifically referred to in sub-paragraph (i) shall be included in the floor space calculation of the building; and
- (iii) If, in the opinion of the City, a room is primarily for the use of persons other than hotel residents, staff or visitors, such room shall also be included in the floor space calculation of the building, notwithstanding that it may be referred to in sub-paragraph (i).
- (e) The street centreline setback shall not apply to land zoned General Business, General Residential or Mixed Use.
- (f) Except with the approval of the City, no parking bays at ground floor (first storey) or second storey level on the land unit, either outside or within a building, shall be located closer than 10 m to the street boundary, in order to enhance amenity at street level.

#### 186. Specific provisions: St Georges Street subarea

- (1) The provisions in this item apply to the subarea of St Georges Street as depicted on Plan LAO/4(i)-(iii).
- (2) Where it is proposed to erect a building or portion of a building, the owner shall submit to the City, for its approval, a context plan with drawings depicting:
  - (a) detailed elevations of all street facades, including all fenestration, balconies, colonnades, canopies, signage and embellishments, the materials to be used, and the colour, finish and texture of such materials; and
  - (b) the relationship between the building concerned and adjacent buildings or portions thereof in regard to facade decoration, the articulation of vertical and horizontal elements, street wall height and massing.
- (3) Except with the approval of the City, glass commonly known as 'reflecting glass' shall not be used in the facade of any building.
- (4) The use of the ground storey portion of a building which is located within 10 m of any street boundary shall not be altered, irrespective of whether such alteration involves the erection of a building, unless:
  - (a) a site development plan has been submitted indicating the purpose for which it is proposed to use such portion, the layout of the pedestrian areas therein and points of access thereto; and
  - (b) the City has approved such site development plan.



- (5) Except with the approval of the City, any new building fronting onto a street shall include a projection over the street, comprising a colonnade, canopy, balcony, awning or similar overhead weather protection structure, to the satisfaction of the City.
- (6) Except with the approval of the City, at least 75% of the width of any new building fronting onto a street shall be erected directly on such street boundary up to a height of 25 m above the mean street level at such boundary.
- (7) Notwithstanding the provisions of the development management scheme relating to building lines, no point on any building shall project beyond an imaginary plane extending back at an angle of 50° from an imaginary horizontal line above the St Georges Street boundary, which line shall be 25 m above the mean level of the street edge at that boundary.

### 187. Specific provisions: Roggebaai subarea

- (1) The provisions in this item apply to the subarea of Roggebaai as depicted on Plan LAO/4.
- (2) For the purpose of this item, the following definitions apply:
  - (a) 'facade' of a building or portion of a building means a main containing wall of such building or portion, other than a wall to an internal courtyard, exclusive of any projections over the street;
  - (b) 'fixed height' of a facade of a building means a precise height, which must be reached and not exceeded, of all points at the top of such facade;
  - (c) 'height' in relation to a building means the height above a datum line of 4,57 m above the low water mark at ordinary spring tide in Table Bay, or the equivalent 3,89 m above mean sea level based on the height beacon established in Roggebaai by the City, and 'fixed height' has a corresponding meaning;
  - (d) 'top' of a facade means the top edge of a fascia, or the top of the parapet, or such other position as the City prescribe having regard to the intent of this item;
  - (e) 'roof storey' means an additional storey which may be permitted above the fixed height of a facade, subject to the conditions as set out hereunder;
  - (f) 'building restriction line' means a line on Plan LAO/4 indicating an internal boundary between two or more portions of an erf to which different height provisions apply; and
  - (g) 'height zone' means that portion of an erf bounded by building restriction lines or site boundaries, or both, to which a particular fixed height is applicable.
- (3) Where a building is to be erected on a property which is shown on Plan LAO/4 and which bears the reference 'FH' on such plan, the fixed height of every facade of each portion of such building shall be the relevant height shown on such plan and specified in the following table, titled 'Fixed height of facades':

Fixed height of facades

Erf number	Fixed height of façade (FH)
85, 86, 110, 112, 113, 114, 115, 116, 117, 128, 129, 130, 131, 132, 134, 171 & 252	36,58 m



- (4) Notwithstanding sub-item (3), the City may permit the erection of water-tanks, airconditioning plant, transformer rooms, storerooms, caretaker's quarters or other structures above the level determined by the fixed height of the facade, provided that:
- (a) a roof storey is erected above such level, and (b) the roof storey comply with the following conditions:
- (i) the height of every point of the roof of the roof storey above the level determined by the fixed height of the facade shall not be less than 2,24 m or more than 3,96 m, and no building, structure or any portion of such building or structure shall project above the level of the roof storey, except machinery rooms required for the lift system of the building;
  - (ii) where a roof storey has been erected on any adjoining property, the height of any proposed roof storey shall coincide with that on the adjoining property;
  - (iii) the roof of the roof storey shall cover the whole of the area of the building below such storey, except over any internal light well areas in such building;
  - (iv) the floor of such roof storey shall not be above the level determined by the fixed height of the facade of the building;
  - (v) the exterior walls of the roof storey shall be set back a distance of 2,44 m from all boundaries of the property, except that no setback shall be required in the case of a common boundary where the roof storey adjoins a building which has a fixed height of facade that is equal to or greater than the building on which such roof storey is erected;
  - (vi) the space within the exterior walls and roof of the roof storey, and only such space, may be used for water-tanks, air-conditioning plant, transformer rooms, storerooms, caretaker's quarters, window cleaning and similar plant and equipment; and
  - (vii) the roof storey may not be served by the main lift system of the building.
- (5) Notwithstanding the provisions of sub-items (3) and (4), the City may permit features such as flagpoles and radio or television aerials to project above the level determined by the fixed height of the facade, subject to such conditions as the City may impose.
- (6) Where a building is to be erected on a property which is identified on Plan LAO/4 and which bears the reference H on such plan, the maximum height of every facade of each portion of such building shall be the relevant height shown on such plan as specified in the following table, titled 'Maximum height of facades':

Maximum height of facades

Erf number	Maximum height of façade (H)
144	44 m
147	89 m
156	37 m
161 & 162	38 m
166	76 m and 14 m
169	46 m
205	38 m
206 & 207	42 m and 17 m

- (7) Where a property does not have a fixed height requirement or maximum height limit as shown in the table above, the height limitation of the applicable base zoning in the development management scheme regulations shall apply.
- (8) Notwithstanding the provisions of the development management scheme, the floor factor of any building that is zoned General Business or Mixed Use is unlimited, and maximum floor space will be determined by the fixed or maximum height permitted for the building.
- (9) Notwithstanding the provisions of the development management scheme, the building lines prescribed for General Business or Mixed Use zonings shall not apply.
- (10) A building on an erf listed in the following table, titled 'Servitude provisions', shall comply with, and be subject to, the provisions and servitudes listed in such table for that erf:

Servitudes provisions

Category	Erf number	Nature of servitude
A	85, 86, 108, 109, 110, 112, 113, 114, 115, 116, 128, 129, 149 & 150	These properties are entitled to a servitude of extension and projection against the remaining extent of Roggebaai.
B	169	This property is entitled to a servitude of extension and projection against the remaining extent of Roggebaai.
C	7, 42, 46, 48, 148 & 171	These properties are entitled to a servitude of extension and projection against the remaining extent of Roggebaai.
D	170	This property is subject to a servitude in favour of the City and the public for pedestrian arcades and underground services over areas indicated as 'servitude areas' on the relevant diagrams, on condition that: Any building to be erected shall in no way interfere with the free use of such pedestrian arcades and underground service areas and no part of the said building may project onto these areas without written approval by the City, provided that supporting columns may be erected to the City's satisfaction. Subject to the above provision and compliance with building regulations, the ends of pedestrian arcades may be enclosed with glazed screens and doors for climatic and security control, subject to the City's approval.
E	163 & 164	These erven are subject to a servitude of pedestrian arcades and underground services over the areas indicated as 'servitude area' on the relevant diagrams. A pedestrian arcade shall be provided of which the floor is level with the adjoining

		sidewalk where it adjoins the sidewalk, and the roof thereof shall at no point be at a height of less than 3,66 m above such floor level, to the City's satisfaction.
F	157	This erf is subject to a servitude of a pedestrian arcade over the area indicated as 'servitude area' on the relevant plan. The building to be erected on this erf shall extend over said servitude area, from a height of 4 m above the datum line (which is 3,89 m above mean sea level) to the full permitted height of the building.
G	166 & 167	Any buildings erected on these erven are required to be set back at ground storey level to comply with the building restriction line shown on the relevant diagram, and that portion of the site which is situated between the site boundaries and the building restriction lines shall be subject to a servitude under the following conditions: The servitude shall remain a right of way in favour of the general public and the City, and shall provide the right of access at all times; The floor of such pedestrian arcade shall be at the level of the adjoining sidewalk where it adjoins said pedestrian arcade, or at such other level as the City may approve, and the roof shall at no point be less than 3,66 m above such floor level; The servitude area shall remain the property of the owner or successors in title, and shall at no time be deemed to vest in the City; A building erected on Erf 166 shall be supported by columns situated against the outside edge of the servitude area on all four sides to form a colonnade, to the satisfaction of the City; A

		similar colonnade may be erected on the Roggebaai Square side of Erf 167.
H	146	No building or structure other than a pedestrian arcade and a canopy over such arcade, basement parking, basement shopping, basement storage, and basement loading facilities shall, without the written approval of the City, be erected in the area marked as a pedestrian arcade and shown as such on the relevant diagram.
I	144, 146 & 147	Vehicular access to each of these erven shall only be from Sauer Street and shall be via the servitude roadway shown on the relevant diagrams, and in the event of one or more of these properties being sold separately, the necessary servitudes as contained in the Deeds of Transfer shall apply.

- (11) Where a property is subject to the servitude provisions of category A in the table above, titled 'Servitude provisions', the first, second and third storeys of a building on such property shall project over the street and public place boundaries to form a pedestrian arcade in accordance with the following provisions:
- The extent and height of the projection shall conform to the dimensions shown on the detailed drawings TPX 7773/1 to 7773/3, reductions of which are depicted on Plans LAO/4(i)-(iii);
  - The projections shall be supported on cylindrical or polygonal columns, each with an overall diameter of 508 mm, spaced in accordance with the dimensions shown on said drawings;
  - The design and detailing of the projections, and of all materials and finishing, shall conform in all respects to the specifications shown on said drawings;
  - All features of the projections, including the jointing of materials, shall line up with the corresponding features of existing adjoining properties, to the satisfaction of the City; and
  - The roofs of the projections shall be level over the whole area thereof, with the exception of any drainage falls which may be necessary.
- (12) Where a property is subject to the servitude conditions of category B in the above table, titled 'Servitude provisions', the whole building at and above the first storey shall project over the public place boundaries to form a pedestrian arcade in accordance with the provisions in sub-items (11)(a) to (11)(e), as specified in sub-item (10).
- (13) Where a property is subject to the servitude conditions of categories A, B or C in the above table, titled 'Servitude provisions', no basement shall be permitted to extend under the servitude area, except with the approval of the City and subject to such conditions as the City may impose.

- (14) Where a property is subject to the servitude conditions of categories D, E, F or G in the above table, titled 'Servitude provisions', the portion of the property to which the servitude applies shall be paved and maintained by the owner of the property to the satisfaction of the City with respect to materials, levels and any other conditions as the City may impose.
- (15) The minimum clear height of any pedestrian arcade shall be 3,66 m and for any vehicular arcade shall be 7 m, and such clear height shall be measured from the highest point of the finished footway or street level within the arcade.

#### **188. Specific provisions: Bakoven, Clifton and Glen Beach Bungalow Area (LAO/5)**

- (1) The provisions in this item shall apply to the Bakoven, Clifton and Glen Beach Bungalow area as depicted on Plan LAO/5(i) and (ii).
- (2) In this item:
  - (a) 'Bakoven, Clifton and Glen Beach Bungalow area' means the area depicted on Plans LAO/5(i) and (ii);
  - (b) 'boundary vegetation' means any vegetation growing on or within 2 m of any site boundary;
  - (c) 'certificate' for the purpose of sub-item (k) means a written statement signed by or on behalf of the head of the relevant service department wherein any boundary vegetation or tree damaged, tampered with or removed, and the cost of replacing same, is set out;
  - (d) 'corrugated' means formed with alternating ridges and troughs so that:
    - (i) the vertical distance between the uppermost points on the ridges and the lowest points on the troughs does not exceed 40 mm; and
    - (ii) the horizontal distance measured between the central axes of the troughs and ridges does not exceed 95 mm;
  - (e) 'drying yards' means any enclosed unroofed area not greater than 20 m<sup>2</sup>;
  - (f) 'lapped' means composed of horizontally overlapping strips of a width not exceeding 150 mm;
  - (g) 'maximum development envelope' means the parameters of the three-dimensional diagram depicted on plans numbered TPZ 11246/1 to TPZ 11246/103 inclusive, and TPZ 11731/1 to TPZ 11731/58 inclusive, and TPZ 11730/1 to TPZ 11730/14 inclusive, but shall exclude any encroachment as noted on such plan;
  - (h) 'pickets' means composed of parallel vertical strips of a width not exceeding 100 mm, with a maximum spacing of 75 mm;
  - (i) 'signs' means any sign depicting a name or any information whatsoever;
  - (j) 'slatted' means composed of parallel vertical strips of a width not exceeding 150 mm; and
  - (k) 'vegetation', without limiting its ordinary meaning, includes any hedge or shrub.
- (3) The following provisions apply to the Bakoven, Clifton and Glen Beach Bungalow area as depicted on Plan LAO/5(i):
  - (a) No point on any structure erected or to be erected on a land unit shall project or extend beyond the maximum development envelope;
  - (b) All exterior walls of any buildings to be erected on a land unit shall have the finished appearance of lapped or slatted timber, or be corrugated;
  - (c) All roof finishes shall be corrugated except where the City approves a slate finish, and the minimum pitch of such roof shall be 15° except where this is prevented by the limits of the maximum development envelope;

- (d) Any freestanding fence shall:
  - (i) be slatted or of pickets; and
  - (ii) shall not exceed 1,25 m in height, other than in the case of the enclosure of a drying yard, for which it may be erected to a height not exceeding 2,1 m;
- (e) Any freestanding wall shall:
  - (i) be plastered, colour-painted masonry; and
  - (ii) shall not exceed 1,25 m in height;
- (f) No drying yard shall be closer than 3 m from any boundary separating a land unit from any public passage or public open space or street;
- (g) No exterior earth-retaining wall shall exceed 1,25 m in height;
- (h) No roof lights, non-masonry chimneys, solar water heaters, satellite dishes or any other features shall be located in, on or above the roof of any building or anywhere else on any site except with the approval of the City;
- (i) No sign shall be displayed on a site without the prior written approval of the City;
- (j) No person shall fell, uproot or cause to destroy a mature tree or hedge without the prior written approval of the City;
- (k) In the event of any boundary vegetation or tree being damaged, tampered with or removed, the City may replace such vegetation or tree at the expense of the owner of the site concerned, in which case a certificate signed by the City Manager shall constitute final proof of such damage, tampering or removal, and the cost of such replacement; and
- (l) No exterior glazing other than that of the clear or frosted type shall be installed in any building on a site.

**189. Specific provisions: Victoria Road, Clifton local area (LAO/5(ii))**

- (1) The provisions in this item shall apply to the Clifton area on the lower side of Victoria Road, as depicted on Plan LAO/5(ii).
- (2) Every main building and outbuilding erected on a site falling in this area shall comply with the following provisions:
  - (a) Except as hereinafter provided, no main building or outbuilding shall be erected so that any point on such building or outbuilding is nearer to a boundary of a site than the distance specified in the following table, titled 'Building setback required in Victoria Road, Clifton area':

Building setback required in Victoria Road, Clifton area

Boundary	Setback required for points on a building
Street	4,5 m
Seaward	One-third the mean depth of site from street boundary to seaward boundary
Other boundaries	6 m or 0,5H, whichever is most restrictive

- (b) In application of the foregoing table, except as hereinafter provided, the following provisions shall apply:
- (i) The symbol 'H' means the height in metre of the point concerned;
  - (ii) The term 'setback', in relation to a particular boundary and to a building or a point on a building, means a distance in metre from such boundary, nearer than which such building or point (as the case may be) may not be located; and
  - (iii) Where, in terms of the table, titled 'Building setback required in Victoria Road, Clifton area' above, two alternative setbacks are prescribed for a particular point or building, the greater of such setbacks shall apply.
- (c) Every storey below the ground storey, other than a storey wholly below the ground level, shall for the purposes of this item be deemed to be the ground storey.
- (d) The width of a main building, measured parallel to Victoria Road, shall not exceed half the total of the street frontages of such site.
- (e) From at least one of the two points where the lateral boundaries of a land unit meets the street boundary, it shall be possible to draw a straight line across such land unit at an angle of 25° to a lateral boundary, so that no building or structure is erected between such line and such lateral boundary.
- (f) No building on such land unit, other than a building which is not more than 18 m from the street boundary, shall exceed 13 m in height.

#### 190. Specific provisions: Camps Bay and Bakoven local area (LAO/9)

- (1) The area depicted on Plan LAO/9(i) is subject to the provisions in this item.
- (2) No building within the Camps Bay and Bakoven area shall exceed three storeys in height.
- (3) No point on the facade of any building within the Camps Bay and Bakoven area shall be more than 10 m above the level of the ground abutting the facade immediately below such point.
- (4) For the purpose of sub-item (3), 'facade' means a main containing wall of a building, other than a wall of an internal courtyard.
- (5) Notwithstanding the provisions of sub-items (2) to (4), within the area shown on Plan LAO/9(ii):
  - (a) no building shall exceed two storeys in height; and
  - (b) no point on any structure shall be higher than 6 m above the existing ground level immediately below such point.



**191. Specific provisions: Gardens, Tamboerskloof, Green point, Bantry Bay and Camps Bay / Bakoven local area (LAO/13(ii))**

- (1) The area depicted on Plan LAO/13(ii) is subject to the provisions in this item.
- (2) All properties situated within this area and zoned SR1 have the additional use right of a second dwelling, subject to the conditions listed in item 53 of the development management scheme.

DIVISION V: ANNEXURES

## Chapter 21 Annexures

### ANNEXURE A LIST OF SPECIAL USES IN TERMS OF ITEM 15

Special use name	Special use definition	Reference number (if applicable)
<p>Integrated rapid transport (IRT) Infrastructure</p> <p>Applicable to 'Transport Zoning 1: Transport Use (TR1)' and 'Transport Zoning 2: Public Road and Public Parking (TR2)'. The City require a site development plan to be submitted for IRT trunk stations and ancillary uses (not for IRT feeder stops) only in the TR2 zoning, to determine development rules. The provisions for a site development plan in item 123 shall apply.</p>	<p>Integrated rapid transport (IRT) infrastructure' means the use of land, buildings</p> <p>or structures for all infrastructure, services and development required for the efficient operation of an integrated rapid transport service for the transportation of passengers including the use of such land, building or structure for the purpose of a bus station, bus stop, interchange, holding area, staging area or depot, and includes ancillary uses</p>	

### ANNEXURE B RECORD OF SPECIAL PLANNING AREAS IN TERMS OF ITEM 136(1)

Special planning area name	Special planning area number	Reference number (if applicable)
Cape Town Film Studios (Dreamworld) Special planning area		

NOTE: Special Planning Areas may be indicated on the zoning map by the code SPA followed by the number of the Special planning area concerned.

ANNEXURE C LIST OF PLANS IDENTIFYING PT1 AND PT2 AREAS IN TERMS OF ITEM 137

Area description	Plan number	Reference number (if applicable)
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