

7.3.3	<b>APPLICATION FOR URGENT ADDITIONS TO THE SYSTEM OF DELEGATIONS</b>
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### 1. PURPOSE OF REPORT

To enable the Executive Mayor (Council) to make an urgent decision on granting additional delegations to the administration to consider land use planning matters.

### 2. APPLICATION FOR CONSIDERATION

The amendment of the existing system of delegations by including the following delegation:

That all the powers of Council to consent to or grant its approval in terms of any condition of title or condition of establishment of a Township, imposed in terms of the Townships Ordinance 33 of 1934, are hereby delegated to the **Director: Planning and Economic Development**.

### 3. DISCUSSION

#### 3.1 Legal requirements

The application for the Administrator's permission to relax land use parameters such as the building line and coverage noted in a Title Deed is submitted in terms of the respective title deed. (Extract below)

*"No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 6,1 metres to the street line which forms a boundary of this erf, nor within 3,5 metres of the rear or 3,5 metres of the lateral boundary common to any adjoining erf."*

### 4. AMENDMENT OF DELEGATIONS TO THE DIRECTOR: PLANNING AND ECONOMIC DEVELOPMENT.

With the implementation of SPLUMA (Spatial Planning Land Use Management Act 16 of 2013) a number of functions administered by Department of Environmental Affairs and Development Planning (DEADP) were delegated to Council. In this instance approval granted by the then Administrator are now approvals granted by Council. In terms of section 45(6) SPULMA and Section 39(4) of the Land Use Planning Ordinance (LUPA) any reference to the Administrator or Township Board in a title deed condition will be a reference to the Council / Municipality who will be the competent authority. (**APPENDIX 3**: Circular: EADP 0009/2015)

The amended delegations as approved by Council on the 25-03-2015 did not include a delegation that enables the Director: Planning and Economic Development to grant permission in terms of the title deed condition where reference is made to the Administrator or Township Board. This delegation is required for the relevant officials of Council to execute their duties

The delegation of this power to the Director: Planning and Economic Development will enable the Land Use Department to dispose of a

number of Land Use Applications without having to refer them to Council for a decision and will also facilitate the expedient approval of building plans impacted on by these restrictive title deed conditions. More than 30 such applications have been submitted and have been awaiting consideration since July 2016.

The delegation of this power to the Director: Planning and Economic Development will also enable him to comply with the legal directive by taking full advantage of administrative and operational efficiency. Refer **APPENDIX 2** for the Standard Operating Procedures.

#### 5. COMMENTS FROM EXTERNAL LEGAL ADVISOR

Refer to **APPENDIX 1**.

#### RECOMMENDED

- (a) that all the powers of Council to consent to or grant its approval in terms of any condition of title or condition of establishment of a Township, imposed in terms of the Townships Ordinance 33 of 1934, are hereby delegated to the **Director: Planning and Economic Development**; and
- (b) that the delegation shall be subject to the following limitations, conditions and directions, namely:
  - (i) All conditions of delegations as contained in the current system of delegations of the Municipality, including the right to sub-delegate a power, duty or function.
  - (ii) Excluded from this delegation, is the power to consent to or grant approval in terms of a restrictive Title condition, in terms of which the Provincial Government acquires private law rights.

#### REASONS FOR RECOMMENDATION

The delegation of this power to the Director: Planning and Economic Development will enable the Land Use Department to dispose of a number of Land Use and Building Plan applications without having to refer them to Council for a decision. The delegation of this power to the Director: Planning and Economic Development will also enable him to comply with the legal directive by taking full advantage of administrative and operational efficiency.

<b>Meeting: Ref No:</b>	5 <sup>th</sup> Council: 2017-01-25 3/5/1/2	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Planning and Economic Development D Lombaard Mayco:2017-01-18</i>
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# APPENDIX 1

The amendment of the existing system of delegations by including the following delegation:

That all the powers of Council to consent to or grant its approval in terms of any condition of title or condition of establishment of a Township, imposed in terms of the Townships Ordinance 33 of 1934, are hereby delegated to the **Director: Planning and Economic Development**.

## EXTERNAL LEGAL COMMENT

**DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT**

 Stellenbosch Municipality  
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Your Ref: J Jansen van Rensburg

Our Ref: AHS/CVDL

Date: 30 June 2016

Dear Sirs,

**RELAXATION OF TITLE DEED CONDITIONS IMPOSED BY THE ADMINISTRATOR**
**Introduction**

- [1] We act in this matter on behalf of Stellenbosch Municipality (the Municipality).
- [2] The Municipality instructed us to provide a written legal opinion regarding the manner in which certain restrictive title conditions should be dealt with in terms of the Stellenbosch Municipality: Land Use Planning By-Law (Planning By-Law) read with Section 47 of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA).
- [3] The details of the advice sought by the Municipality is recorded in an email dated 14 June 2016 and we make specific reference to Paragraph 1 to 5 on page 2 of this email.
- [4] Subsequent to the receipt of the aforementioned instructions, writer hereof had a telephonic discussion with Mr J Jansen van Rensburg of the Municipality. It was agreed between Mr Jansen van Rensburg and writer hereof that it will, in the circumstances and in view of the advice sought by the Municipality, be advisable to meet with the senior town planning officials of the Municipality first to discuss the challenges and difficulties experienced in practice in more detail.
- [5] On 22 June 2016, writer hereof had a discussion session with the involved officials and it was agreed that we would reduce our advice in writing to the Municipality in the form of a memorandum and that it will not be necessary to do a formal legal opinion at this stage. The understanding at the meeting was that any problems experienced in practice by the officials which go beyond the scope of what we state below, will be dealt with on an *ad hoc* basis. Such approach was necessitated in view of the large variety of different kinds of restrictive title conditions which may be encountered in practice. We were however informed that by far the majority of problems experienced by the Municipal officials are of the kind discussed in this memorandum.

**Attorneys Notaries & Conveyancers**
**Directors:** Jonathan Steyler (Managing) | Stoffel Ackermann | Martin Bey | Jacques Bignaut | Darren Brander | Luthfeya Cassim | Tim Chase | Melanie Coetzee | Thabisile Dlamini | Refiqah Fataar Ho-Yeel

Niel Grundlingh | Warren Hamer | Bev l'Ons-Raeburn | Gerhard Kotze | Belinda Lewis | Robert Matlhare | Corlene Mostert | Hennie Mouton | Martine Newman | James Phillipson | Cris Riego de Dios | Martin Sheard | Roshana Solomon | Nicole Stevens | Philip Steyn | Lauren Sullivan | Marilize Swart | Dumisani Tabata | June Theron | Annetjie van Rooyen | Percy van Staden | Ferdinand Verrya | Shereen Volks | Allan White

**Senior Associates:** M Botha | D Du Plessis | H Dyssel | H Ferreira | J Foxcroft | N Hayes | V W Jooste | D Starkey | A Voges | A Wiese

**Associates:** G Barends | S Chettiar | J Greyling | J Hamers | L Mace | N Mentoorn | B Mostert | G Potgieter | K Richards | H Scudamore | T Smit | A Van Vuuren | L Verbeek | T Wainwright | M Williams

**Executive Consultants:** Peter Arnot | Kevin Daniel | Harry Friedland | Lizelle Kilbourn | Graham Liebenberg | Andy McPherson | Andre Swart | Colin Traub | Richard Volks

**Financial Manager:** Cullen Penny

Cape Town: 021 406 9100 | Bedfordview: 011 453 0577 | Centurion: 012 001 1546 | Claremont: 021 673 4700 | Fish Hoek: 021 784 1580 | Illovo: 011 219 6200 | Menlyn: 012 348 1682 | Somerset Mall: 021 850 6400 | Stellenbosch: 021 001 1170 | Table View: 021 521 4000 | Tyger Valley: 021 943 3800

 Registration No: 1992/003316/21  
VAT Reg No: 4670133877



### Restrictive Title Conditions

- [6] For illustrative purposes, we were briefed with a copy of Deed of Transfer No T34514/2013 as an example of the typical title conditions which seem to pose practical problems.
- [7] For ease of reference we repeat Conditions B(6) and (7) as contained in Deed of Transfer No T34514/2013, which state as follows:
- ‘B. *SUBJECT FURTHER to the following conditions imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance Number 33 of 1934 upon the approval of the establishment of Onder-Papegaaiberg Township No. 2 as contained in Deed of Transfer Number T33142/1977, namely –*
6. *This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme.*
7. *No buildings or structure of this erf or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 6,1 metres to the street line which forms a boundary of this erf, nor within 3,5 metres of the rear of 3,5 metres of the lateral boundary common to any adjoining erf.’*

### Background To Restrictive Title Conditions

- [8] It is of some importance to note that the restrictive conditions originate from statutory planning approvals granted by the then Administrator in terms of the Townships Ordinance 33 of 1934 (the Townships Ordinance).
- [9] Conditions B(6) and (7) are simply extracts of the approval conditions imposed by the Administrator in terms of the Townships Ordinance.
- [10] The status of these kinds of conditions is now dealt with in Section 85(1)(c) and 85(2) of the Planning By-Law which states as follows:
- ‘85(1) *The Municipality must comply and enforce compliance with –*
- (c) *conditions imposed in terms of this By-law or previous planning legislation*
- (2) *The Municipality may not do anything that is in conflict with subsection (1).’*
- [11] The Townships Ordinance constitutes ‘*previous planning legislation*’ as envisaged in terms of Section 85(1)(c) and therefore must be complied with.
- [12] The insertion of approval conditions into title deeds of properties does not at all change the legal status of the approval conditions granted in terms of the Townships Ordinance. Such conditions were merely inserted into the title deed of the property as being registerable conditions and were carried forward into the title deed of the involved property, in all likelihood at the instance of the Administrator, with the occasioned benefit of publicity as forming part of the public records of the Deeds Registry. The legal basis of restrictive conditions is the planning approval granted by the Administrator and the conditions imposed at such approval.

- [13] To effectively remove, suspend or amend restrictive conditions of the kind under discussion, it will be necessary to also have the relevant approval conditions imposed by the then Administrator amended or deleted in terms of the Planning By-Law. Differently put, the mere removal, suspension or amendment of a restrictive condition from a title deed will not automatically mean that the corresponding approval condition, imposed by the Administrator, is removed, suspended or amended. The prescribed procedure for the amendment or deletion of approval conditions in terms of Section 66(12) read with Section 15(2)(h) of the Planning By-Law will have to be followed.
- [14] Should the removal, suspension or amendment of a restrictive condition be required, we submit that an application should also be submitted in terms of Section 15(2)(h) for the amendment or deletion of the corresponding approval condition. Should only the restrictive condition be dealt with, the corresponding approval conditions will remain in force. Two different applications will therefore be required in terms of the Planning By-Law. The two applications can be submitted simultaneously and processed in an integrated manner, provided that the procedural requirements for both applications, as prescribed in the Planning By-Law, be followed.
- [15] The aforementioned position is also consonant with Section 78(1) of LUPA which states as follows:
- '78(1) Any approval, designation, consent, right or authorisation issued, granted or in force in terms of a law repealed by this Act, and in existence immediately before the commencement of this Act, remains in force and is regarded to have been issued or granted in accordance with this Act and in terms of the corresponding provisions of applicable by-laws for the period for which, and subject to the conditions under which, it was issued or granted under the repealed law until withdrawn, amended or extended in terms of applicable by-laws.'*

#### **Condition B(6) and (7)**

##### *Condition B(6)*

- [16] The meaning of this condition is plain: Only one dwelling may be erected on this property or other buildings with the consent of the Administrator or the Municipality depending on the circumstances. This condition simply foresees the granting of a consent by either the Administrator or the Municipality, depending on the circumstances. The fact that the consent has been granted or refused by the Administrator or the Municipality (as the case may be) does not require any amendments, suspension or waiver of such condition. The granting of the required consent will simply constitute an instance of compliance with such condition and does not affect the existence or not of the condition. Should a consent be granted it may, depending on the circumstances, be desirable to have such condition removed from the title deed although this will not be a legal requirement.

##### *Condition B(7)*

- [17] Similarly as in the case of Condition B(6), the consent of the Administrator will be required if the building lines are to be relaxed. Again, it will only be a matter of the Administrator granting its consent and the principles discussed in the aforementioned paragraph will similarly find application in such event.
- [18] Specific reference is made to the following provisions in terms of SPLUMA and LUPA, namely:

18.1 Section 45(6) of SPLUMA which states as follows:

*'45(6) Where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the townships board or any controlling authority, such consent may be granted by the municipality and such reference to the administrator, a Premier, the*



*townships board or controlling authority is deemed to be a reference to the municipality.'*

18.2 Section 39(4) of LUPA which states as follows:

*'39(4) Any reference to the approval by the Administrator or Townships Board in a restrictive condition, excluding a restrictive condition in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval by the relevant municipality.'*

- [19] From the aforementioned statutory provisions it follows that any reference to the Administrator or the Township Board in these kinds of conditions, will be a reference to the Municipality who will be the competent authority.
- [20] The Municipality needs to be mindful of the fact that the consents to be granted in terms of the restrictive conditions will almost invariably constitute *'administrative action'* as defined in Section 1 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Many such consents will be tantamount to departure approvals. Specific reference is made to Section 3(1) of PAJA which states as follows:
- '3(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.'*
- [21] It will be desirable for the Municipality to have standard operating procedures or a policy dealing specifically with consents in terms of these kinds of title deed restrictions to ensure that the Municipality at all times acts lawfully when granting or refusing its consent.
- [22] As far as other kinds of restrictive conditions are concerned, we repeat what is stated in Paragraph 5 above. These kinds of conditions normally emanate from a large variety of statutory provisions or from contract between parties and we advise that the removal, suspension or amendment of these kinds of conditions be dealt with on an individual basis.

We advise accordingly.

Yours faithfully

**ANDRE SWART**  
**STBB | Smith Tabata Buchanan Boyes**



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## APPENDIX 2

The amendment of the existing system of delegations by including the following delegation:

That all the powers of Council to consent to or grant its approval in terms of any condition of title or condition of establishment of a Township, imposed in terms of the Townships Ordinance 33 of 1934, are hereby delegated to the **Director: Planning and Economic Development**.

## STANDARD OPERATING PROCEDURE



SOP #: *Relaxation of Title Deed Restrictions*

**Stellenbosch Municipality**  
**Standard Operating Procedures**

<b>SOP #</b>	1PED/2016	<b>Version #</b>	1	<b>Date</b>	13/12/2016
<b>Responsible Directorate</b>	Planning & Economic Development	<b>Responsible Person</b>	Hedre Dednam	<b>Author</b>	Hedre Dednam
<b>Delegation ref #</b>		<b>Description/ Delegation Name</b>	Land use management		
<b>SOP Title</b>	Relaxation of Title Deed Restrictions				
<b>Purpose</b>	To enable an owner of land to apply to relax the building line or to increase the coverage as stipulated in terms of a restrictive condition in the title deed imposed by the Administrator.				
<b>Scope</b>	<p>These types of applications were previously processed by the Department of Environmental Affairs and Developmental Planning, Western Cape. With the implementation of the Planning By-law as well as LUPA and SPLUMA, both the Land Use Planning Ordinance of 1985 (LUPO) and the Removal of Restrictions Act, 1967 (Act 84 of 1967) (amongst others) were repealed on the same date indicated above.</p> <p>Since June 2015, the Provincial Government of the Western Cape communicated that the Department will no longer accept Title Deed relaxation applications as per EADP Circular 0009/2015. <i>If a departure application is to be submitted in terms of the relevant Zoning Scheme, the request for consent for relaxation application will be submitted simultaneously with the departure.</i></p>				

**High Level Process Graph**

**GRAPH IS TOO COMPLEX TO BE ILLUSTRATED**



**CRITERIA FOR DECISION-MAKING**

- (1) When the Municipality considers an application, it must have regard to the following:
- (a) The application submitted in terms of this By-law;
  - (b) The procedure followed in processing the application;
  - (c) The desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses;
  - (d) The comments in response to the notice of the application, including comments received from organs of state, municipal departments and the Provincial Minister in terms of section 45 of the Land Use Planning Act;
  - (e) The response by the applicant, if any, to the comments referred to in paragraph (d);
  - (f) Investigations carried out in terms of other laws that are relevant to the consideration of the application;
  - (g) A registered planner's written assessment in respect of an application for—
    - (i) a rezoning;
    - (ii) a subdivision of more than 20 cadastral units;
    - (iii) a removal, suspension or amendment of a restrictive condition if it relates to a change of land use;
    - (iv) an amendment, deletion or imposition of additional conditions in respect of an existing use right;
    - (v) an approval of an overlay zone contemplated in the zoning scheme;
    - (vi) a phasing, amendment or cancellation of a subdivision plan or part thereof;
    - (vii) a determination of a zoning;
    - (viii) a closure of a public place or part thereof;
  - (h) The impact of the proposed land development on municipal engineering services;
  - (i) The integrated development plan, including the municipal spatial development framework;
  - (ii) The integrated development plan and spatial development framework of the district municipality, where applicable;
  - (j) The applicable local spatial development frameworks adopted by the Municipality;
  - (k) The applicable structure plans;

- (m) The applicable policies of the Municipality that guide decisionmaking;
  - (n) The provincial spatial development framework;
  - (o) Where applicable, a regional spatial development framework contemplated in section 18 of the Spatial Planning and Land Use Management Act or provincial regional spatial development framework;
  - (p) The policies, principles and the planning and development norms and criteria set by the national and provincial government;
  - (q) The matters referred to in section 42 of the Spatial Planning and Land Use Management Act;
  - (r) The principles referred to in Chapter VI of the Land Use Planning Act; and
  - (s) The applicable provisions of the zoning scheme.
- (2)** Where required in terms of applicable development parameters or conditions of approval, the Municipality must approve a site development plan if the site development plan
- (a) Is consistent with the development rules of the zoning;
  - (b) Is consistent with the development rules of an overlay zone, if applicable;
  - (c) Complies with the conditions of approval; and
  - (d) Complies with this By-law.



**References:**

Reference #	Reference Name	Requirements
	Stellenbosch tariff policy	Prescribe the tariffs to be charged
LUPO	Land Use Planning Ordinance	
Act 32 of 2000	Municipal Systems Act	
SPLUMA	Spatial Planning and Land Use Management Act	
LUPA	Land Use Planning Act	
SMLUPB	Stellenbosch Municipality Land Use Planning By-Law, 2015	

**Definitions:**

Name	Description
The delegation shall be subject to the following limitations, conditions and directions, namely :	All conditions of delegations as contained in the current system of delegations of the Municipality, including the right to sub-delegate a power, duty or function
	Excluded from this delegation, is the power to consent to or grant approval in terms of a restrictive Title condition, in terms of which the Provincial Government acquires private law rights.

## Procedure Outline:

Action ref	Procedure Description	Timeframe	Person(s) Responsible	Resources Required	Deliverables	Dependencies	Links to SOP
1	Request the applicant to provide the following information when the applicant request the municipality for a relaxation of title deed restriction : <ul style="list-style-type: none"> <li>Completed Land Development application form</li> <li>Written motivation</li> <li>Power of Attorney for Trust/Company</li> <li>Copy of Title Deed</li> <li>Conveyance Certificate</li> <li>Locality plan</li> <li>Written consents of all affected parties</li> <li>Copy of the site plan indicating the proposed amendments</li> <li>Payment of application fees</li> </ul>	On receipt of request/ application	Planner on duty at planner helpdesk				
2	Obtain a reference number from collaborator for use of payment and request the applicant to use the reference number to pay for the application fee						
3	Cashier issue receipt on presentation of payment	On presentation of payment	Cashier		Receipt issued		Refer the revenue SOP
4	Make a copy of the receipt and add it to the application pack Enter the application and payment information of collaborator and submit the registration pack to registration	2 hours	Admin on duty				
5	Scan application and load on collaborator	2 hours	Registration clerk				
6	Verify the application information for completeness and refer it to the manager planning to allocate is to the responsible planner for specific area	4 hours	Registration clerk/Manager planner				
7	If the information is not complete request additional information to be submitted within 60 days. If the	1 day	Planner				

	information is not submitted close the application						
8	Verify the completeness of the application against the checklist	2 days	Planner				
9	Circulate the request for comment to the relevant internal departments and the ward councilor for comment and request them to provide the comment within 30 days Pend file for follow up within 30 days and send the file to registration		Planner				
10	Comments: <ul style="list-style-type: none"> <li>• Engineering (Civil and/or Electrical-Official)</li> <li>• Building Development Management (Manager)</li> <li>• Planning Advisory Committee (Manager)</li> <li>• Heritage Western Cape (Manager)</li> <li>• Residents: Written consents (already submitted)</li> <li>• Ward councilor: creates awareness in ward and provide feedback where necessary</li> </ul>	30 days	Planner		Comments received		
11	If objections were received consider the comments and issue the objections to the applicant to comment within 30 days Pend file for follow up within 30 days and send the file to registration	30 days	Planner				
12	If no objections were received/ comments sufficient to address objections Consider the application for approval	5 days	Planner				
13	Prepare a report and submit on collaborator to the senior planner, manager and director for approval		Planner				
14	Consider the submission for approval		Director		Application approved		
15	Issue standard approval letter to applicant indicating the outcome and request for appeals to be	21 days	Planning admin				

	lodged within 21 days Pend file for follow up within 21 days						
16	Issue final notification and place a copy on file		Planning admin		Final notice issued		



**Competencies and Approvals:**

Competency Category	Competency Requirement	Competency Assessment
N/A		

**Health & Safety Considerations:**

Name	Description
N/A	

**Applicable Standard Forms/Documents:**

Form #	Name	Description
1	Land Development Application form	Applicant needs to complete the form to request for the relaxation of title deed restrictions
2	Heritage Permit	Heritage Western Cape to issue Heritage Permit in cases where the buildings are older than 60 years
3	Interdepartmental circulation form	Internal Departments provide comment on the interdepartmental comment forms

**Performance Measurement:**

KPI	Unit of Measurement	Target/targets
90% of all relaxation applications finalized within 120 days from date of complete application	% Of decisions issued within 120 days	90%

No	Proposals:
1	Brochure explaining the: <ul style="list-style-type: none"> <li>• Application process</li> <li>• Departments to be consulted</li> </ul>



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## APPENDIX 3

The amendment of the existing system of delegations by including the following delegation:

That all the powers of Council to consent to or grant its approval in terms of any condition of title or condition of establishment of a Township, imposed in terms of the Townships Ordinance 33 of 1934, are hereby delegated to the **Director: Planning and Economic Development.**

**CIRCULAR: EADP 0009/2015**



Head of Department  
Piet van Zyl  
Reference: 15/3/3,  
15/2 and 15/4/1

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**CIRCULAR: EADP 0009/2015**

**ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS, SALGA, SAPI, SACPLAN, AND ALL ORGANISATIONS AND PRIVATE-SECTOR BODIES INVOLVED IN THE SPATIAL AND LAND USE PLANNING SECTOR IN THE WESTERN CAPE**

**AN UPDATE ON THE LAW REFORM PROCESS INCLUDING THE PUBLICATION OF THE LAND USE PLANNING ACT, 2014 (ACT 3 OF 2014) REGULATIONS, THE IMPLEMENTATION OF LUPA IN THE CITY OF CAPE TOWN, TRANSITIONAL MEASURES FOR REMOVAL OF RESTRICTIVE TITLE APPLICATIONS, AND OTHERS**

**1. PURPOSE**

- 1.1. The purpose of this External Circular is to update all relevant municipal office bearers and officials, private sector bodies and other role-players involved in spatial and land use planning in the Western Cape with regards to:
- a. the publication of the regulations in terms of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA);
  - b. the proclamation and implementation of LUPA in the City of Cape Town on 1 July 2015;
  - c. the Department of Environmental Affairs and Development Planning's (henceforth referred to as the Department) response to the joint Circular 1 of 2015 issued by the Department of Rural Development and Land Reform and the South African Local Government Association (SALGA) undated and circulated on 22 June 2015; and
  - d. the transitional measures when dealing with Removal of Restrictive Conditions applications as of 1 July 2015.

**2. THE PUBLICATION OF THE LUPA REGULATIONS**

- 2.1. The Provincial Minister of Local Government, Environmental Affairs and Development Planning has made regulations in terms of Section 76 of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA).



- 2.2. These regulations were published in the Extraordinary Provincial Gazette number 7412 on 26 June 2015. The regulations are attached for your information.
- 2.3. It should be noted though that these regulations will only come in force in a municipality once LUPA has been implemented in that municipality. Refer to Section 3.1 below.

### **3. THE IMPLEMENTATION OF LUPA IN THE CITY OF CAPE TOWN**

- 3.1. As communicated in Departmental Circular EADP 0006/2015, issued on 5 June 2015, LUPA will be implemented in the Western Cape in a staggered manner. Implementation is dependent on municipal readiness and consists of completing the following four actions:
  - a. Municipalities must have adopted and gazetted their Bylaw on Municipal Land Use Planning.
  - b. Municipalities must be at an advanced stage of establishing their Municipal Planning Tribunal. An advanced stage is regarded as having completed Step 7 of the Municipal Planning Tribunal establishment Manual included in Departmental Circular EADP 0003/2015.
  - c. Municipalities must have Council adopted delegations. This includes appointing the Authorised Official(s) and adopting their categorisation of land use applications.
  - d. Municipalities must have Council adopted tariff structures in place for receiving land use management applications in terms of the new legislation.
- 3.2. As the City of Cape Town successfully completed these actions the Acting Premier of the Western Cape signed the proclamation notice for the implementation of LUPA in the City of Cape Town. The proclamation notice was signed on 19 June 2015 and was published in the Provincial Gazette number 7410 on 26 June 2015.
- 3.3. According to the proclamation notice, LUPA will commence, with the exception of the sections listed in the proclamation notice, in the City of Cape Town on 1 July 2015.
- 3.4. As such, all planning applications within the City of Cape Town municipal area must be submitted in terms of the City of Cape Town's Municipal Planning Bylaw.
- 3.5. The City of Cape Town is the only municipality in the Western Cape where LUPA has been implemented.

### **4. THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (ACT 16 OF 2013)(SPLUMA) CIRCULAR 1 OF 2015**

- 4.1. The National Department of Rural Development and Land Reform (DRD&LR) and the South African Local Government Association (SALGA) issued Circular 1 of 2015 on 22 June 2015.
- 4.2. Section 2.3 of the Circular notes that municipalities may continue to operate under the current legislative dispensation once SPLUMA has been implemented, but only insofar as these older-order planning laws are not inconsistent with SPLUMA.



- 4.3. It goes on to state that the "Municipal Planning Tribunal or Authorised Official must take decisions on such applications in accordance with the categorisation of applications and the system of delegations as approved by Council".
- 4.4. The Department does not agree with the guidance contained in Circular 1. The main points of concern include:
- a. The Western Cape Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)(LUPO); the Removal of Restrictions Act, 1967 (Act 84 of 1967)(RoRA); the Less Formal Township Establishment Act, 1991 (Act 113 of 1991)(LFTEA) and the Rural Areas Act, 1987 (Act 9 of 1987)(RAA) were assigned (either entirely or partially) to the Province. These Acts constitute provincial legislation and can only be repealed by the Provincial Parliament. As such these Acts, insofar as they have been assigned to the Province, will remain in force in the Western Cape after 1 July 2015, until repealed by the Premier of the Western Cape;
  - b. The old order legislation must be applied in its full extent as assigned until the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA), comes into operation and repeals those laws; and
  - c. The transitional provisions set out in Section 78 of LUPA will apply in municipalities when LUPA comes into operation in a specific municipal area.
- 4.5. The legislation listed in Item 4.4(a) must continue to be utilised (including decision making structures) until LUPA is implemented. It is not legally advisable to adopt a 'hybrid' situation.
- 4.6. The Department obtained legal advice on this matter and a response has been submitted to both the Deputy Director-General of DRD&LR and the Chief Executive Officer of SALGA, via email dated 30 June 2015, requesting that they amend the said Circular.

#### **5. TRANSITIONAL MEASURES FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS AND RELAXATION APPLICATIONS**

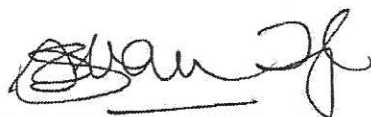
- 5.1. All applications submitted in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967)(RoRA) before the implementation of LUPA a municipality must be processed, advertised, assessed and decided upon in terms of the RoRA.
- 5.2. Once LUPA has been implemented in a municipality, all new applications must be decided by the municipality in question in accordance with their municipal planning bylaw.
- 5.3. With regard to relaxation applications, the 30 June 2015 was the last day on which the Department could sign off relaxation applications for all municipalities within the Western Cape as SPLUMA Section 45(6) replaces "Administrator" in a title condition with "municipality".
- 5.4. On 1 July 2015, the Department will revert all relaxation applications currently in the system to the relevant municipality. The municipality must then decide on and finalise these applications.
- 5.5. The Department will be contacting all the municipalities that currently have relaxation applications in the system. An agreement between the municipality in question and the

Department will need to be reached to ensure that these relaxation applications can be finalised appropriately. It is important to note that this represents a relatively small number of applications and not all municipalities will be affected.

**6. CONCLUDING REMARKS**

6.1. Once again, we thank you for your cooperation and continued support in working towards the implementation and operation of LUPA and the municipal bylaws in all municipalities within the Western Cape.

Yours sincerely



**HEAD OF DEPARTMENT**

DATE: 09.07.2015

7.4	<b>FINANCIAL SERVICES: [CLLR S PETERS]</b>
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7.4.1	<b>SUPPLY CHAIN REPORTING: DEVIATIONS AND RATIFICATIONS</b>
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**1. PURPOSE OF REPORT**

To comply with Regulation 36(2) of the Municipal Supply Chain Management by reporting the deviations and ratifications for the months of October 2016 to December 2016.

**2. DISCUSSION**

To comply with Regulation 36(2) of the Municipal Supply Chain Management by reporting the deviations and ratifications for the months of October 2016 to December 2016. (attached as **APPENDIX 1**).

**RECOMMENDED**

that the monthly financial statutory reporting on Deviations and Ratifications, **be noted.**

<b>Meeting: Ref No:</b>	5 <sup>th</sup> Council: 2017-01-25 8/1 Financial	<b>Submitted by Directorate: Author: Referred from:</b>	Financial Services CFO Mayco:2017-01-18
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**Deviations**

Deviation no:	Date:			Name of contract	Reason	Name of contractor:	Directorate:	Amount
D/SM 14/17	17	10	2016	Wemmershoek WWTW- Communication Ring Link	Emergency should be attended to as soon as possible to minimize any impact on the environment	Kaltron EOH	Engineering Services	R 14 687.73 R 72 299.94
D/SM 15/17	7	10	2016	Emergency relocation erf 412, Franshoek	Safety risk, 4 families living in dilapidated house	JR Wendys cc	Human Settlements and Property Management	R 41 800.00
D/SM 16/17	9	11	2016	Special work of Art(Artists performances)	Festival of lights 2016	Various artists	Community and Protection Services	R 77 500.00
D/SM 17/17	16	11	2016	Appointment of service providers to maintain and clean the public ablution facilities in designated informal settlements in the WC024 area	Facilities need cleaning and maintenance on a daily basis	Ibhunga Cleaning and Brick Paving & Painting Impolo Trading Solutions	Engineering Services	R 167 374.98 R 46 740.00
D/SM 18/17	16	11	2016	To buy from sole supplier	Goods are available from a single supplier	Conlog	Engineering Services	R 15 220.00
D/SM 19/17	16	11	2016	Certificate of emergency: Hiring of a pump to prevent sewage spilling along the R44, Stellenbosch	Stellenbosch Water Services does not have the necessary equipment to handle the magnitude of the workload and a specialist was requested to assist in the emergency	Ian Dickie and Co	Engineering Services	R 67 558.68
D/SM 20/17	16	11	2016	Repair and replace medium voltage cable sat Jan Marais Substation	Only fully equipped service provider with regard to material, tools and equipment and the human resources in the Western Cape to do this work	CBI Electric	Engineering Services	R 870 562.40
D/SM 22/17	6	12	2016	Urgent installation of ventilation system on blower-house at Wemmershoek Waste Water Treatment Plant	Faulty blower units that supplies oxygen into the reactors, Immediate installation of the ventilation must be performed to keep the plant operational as well as the fact that Wemmershoek Wastewater plant discharges into a listed river	KOOLTRON (Pty) Ltd	Engineering Services	R 208 962.00
D/SM 23/17	9	12	2016	Emergency procurement of fire kits	Frequent occurrences of fires; additional stock required during the recess period to assist those in need of been resettled after an incident	Country Building Supplies	Community and Protection Services	R 269 124.00
D/SM 24/17	9	12	2016	Procurement from a selected provider	CSX the sole distribution partner and sole service provider for all existing 3M library products ; certified and trained technicians	CSX Customer services	Community and Protection Services	R 306 000.00
D/SM 25/17	9	12	2016	Wendy houses in Jamestown	Eviction order was granted in favour of Blaauwklippen Agricultural Estate. The Municipality must provide alternative accommodation to the respondents	JR Wendy's cc	Human Settlements and Property Management	R 184 500.00
D/SM 26/17	14	12	2016	Debtor Management	Debtor Management is critical to maintain financial sustainability and further clarification of the bids received was required for the BEC to make recommendations to the BAC which could not be done 31 December.	Geodebt	Financial Services	R 165 391.74

**Ratifications**

Number:	Date:			Description	Reason	Service provider:	Directorate:	Amount:
R/SM 3/17	18	10	2016	Vehicle hire	Vehicle was hired and utilized without an official purchase order	Bidvest Van and Truck rental	Community and Protection Services	R 29 314.09
R/SM 4/17	2	11	2016	Medical assessments: municipal employees	Occupational Health and Safety Act	ICAS	Strategic and Corporate Services	R 1 334 391.09
R/SM 5/17	16	11	2016	Annual tender B/SM 2/16	Ms Nell did not know the tender B/SM 2/16 had expired 30 June 2016	DP Truck Hire	Engineering Services	R 29 640.00
R/SM 6/17	23	11	2016	Payment to the Department of Labour to the amount of R 222 114.17 including interest and penalties / letter of good standing	Non-payment of the initial annual assessment amount dating back to 2009 including penalties and interest resulting in the non-issuing of the letter of good standing	Department of Labour	Strategic and Corporate Services	R 222 114.17



7.4.2	MID-YEAR ADJUSTMENTS BUDGET FOR 2016/17
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### 1. PURPOSE OF REPORT

To table the adjustments budget as envisaged by section 23(1) of the Municipal Budget and Reporting Regulations, for the 2016/2017 financial year, for approval.

### 2. BACKGROUND: LEGAL CONTEXT

In terms of section 28 of the Municipal Finance Management Act (Act no. 56 of 2003), a municipality may revise an approved budget through an adjustments budget process. Only the mayor may table an adjustments budget in the Municipal Council (within the prescribed framework). The latter is regulated by means of the Municipal Budget and Reporting Regulations that came into effect on 1 July 2009.

In terms of section 28(2) of the Municipal Finance Management Act, an adjustments budget:

a) must adjust the revenue and expenditure estimates downwards if there is material under collection of revenue during the current year;

b) may appropriate additional revenue that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for;

d) may authorize the utilization of projected savings in one vote towards spending in another vote;

f) may correct any errors in the annual budget;

In terms of section 23(1) of the Municipal Budget and Reporting Regulations, the above mentioned adjustments can only be done after the mid-year budget and performance assessment has been tabled to Council, but not later than 28 February.

### 3. DISCUSSION

As alluded to above, this adjustments budget addresses adjustments in terms of section 28 (2) a, b, d & f of the MFMA and is further explained as required by section 28 (2) (5) of the legislation.

**APPENDIX 1 (under separate cover)** is an executive summary.

#### **Capital Adjustments Budget**

During the mid-year budget and performance assessment process, inclusive of taking into account actual spending as at 31 December 2016, it was identified that the capital budget had to be adjusted downward to make necessary amendments to various projects in order to accelerate progress on the priorities identified.

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**Effect of the adjustments budget on the current annual budget:**

Taking all proposed adjustments into consideration, will result in the current approved capital budget of R 543 200 043 decreasing with R78 469 661. The proposed adjusted capital budget for 2016/2017 will be R464 730 382. Refer to **APPENDIX 1** for detail (**under separate cover**).

**Material changes to the capital budget:**

Spending on capital projects was evaluated and the cash flow projections in terms of spending on estimated work to be completed by 30 June 2017 were taken into consideration during the adjustments budget compilation process.

**a) Idas Valley (440) IRDP/FLISP**

The installation of the services will commence later than anticipated as the environmental authorization was only received on 25 November 2016. Therefore the budget of R10 400 000 is to be reduced with R5 000 000.

**b) Kayamandi: Watergang/Zone O**

The project is delayed as Zone O is too dense and a significant portion of the serviced sites will be used as a temporary relocation area. Therefore the budget of R7 500 000 is to be reduced with R5 225 507.

**c) Klapmuts: Erf 342**

An appeal was received which could delay the appointment of a contractor. Therefore the budget of R10 950 000 is to be reduced with R7 950 000

**d) Longlands, Vlottenburg**

The project will not commence in this financial year and the budget of R5 300 000 reduced.

**e) Multi-Purpose Centre Klapmuts**

The project was delayed due to the building plans that were approved later than anticipated. Therefore, R9 000 000 reduction is being implemented and deferred to the 2017/18 financial year.

**f) Klapmuts Public Transport Interchange**

The project will commence in this financial year and MIG funding will be utilized. It's requested that R2 404 474 be rolled over to the 2017/18 financial year.

**g) Upgrade Stormwater**

Additional funding is required for the completion of the river bank stabilization programme. Therefore the budget of R2 600 000 is to be increased with R2 150 000.

h) Vehicles Fleet - Solid Waste

Additional funding is required for the procurement of compactors.

Therefore the budget of R1 000 000 is to be increased with R5 508 500

i) New Plankenburg Main Outfall Sewer

This is a multiyear project with 2 Phases. Savings will occur on phase 1. Therefore the budget of R22 500 000 is to be reduced with R5 000 000

j) Upgrade of WWTW Wemmershoek

Additional funding is required to complete outstanding work and extra work in order for the WWTW to operate effectively. Therefore the budget of R2 296 475 is to be increased with R 4 503 525.

k) Bulk Water Supply Pipe Reservoir: Johannesdal / Kylemore / Pniel

The approval for the environmental impact assessment delayed the project. R4,000,000 from the current year is being deferred to the 2017/18 financial year.

l) Bulk Sewer Outfall: Jamestown

The project was delayed due to objections received on the proposed upgrade of the bulk sewer line. R2 500 000 from the current year is being deferred to the 2017/18 financial year.

m) Extension of WWTW: Stellenbosch

This is a multi-year project that commenced in the 2014/15 financial year. The project was delayed because of rock excavations (7000 m<sup>3</sup> of rock) and is therefore unlikely that the total amount would be spent. R22 553 712 from the current year is being deferred to the 2017/18 financial year.

n) Major Drop-offs: Construction – Franschhoek

The project commenced later than expected. Delays were experienced with obtaining the necessary approvals and in identifying the site for construction. It is therefore unlikely that the total amount would be spent. R9 200 000 from the current year is being deferred to the 2017/18 financial year.

o) Electricity Network: Pniel

The project will not commence in this financial year and it's requested that the funds be rolled over to the 2017/2018 financial year. R10 300 000 from the current year is being deferred to the 2017/18 financial year.

**Operational Adjustments Budget**

With the process followed during the mid-year budget and performance assessment, taking into consideration projected spending or projected billed revenue versus what was actually processed, it was identified that the operational budget should be adjusted accordingly.

**Effect of the adjustments budget on the current annual budget:**

The operational income budget of 2016/2017 increases from R 1 440 917 404 to the proposed budget of R1 472 645 087. Refer to **APPENDIX 1** for details (**under separate cover**).

The operational expenditure budget of 2016/2017 increases from R1 380 419 102 to the proposed budget amount of R1 450 845 363. Refer to **APPENDIX 1** for details (**under separate cover**).

**Material changes to the operating budget:*****Operational Income Budget***

The income line items that will have to be adjusted downwards are:

- Electricity- The revenue budget for this line item will have to be adjusted downward with R15 216 761. This is due to a noticeable decline in consumption and the utilization of alternative energy sources by consumers.
- Rental Income: Housing Rental Schemes – The budget for this line item will have to be adjusted downward with R4 501 987. This is due to a reduction in the rental tariff.

However, there are other line items where we anticipate receiving additional revenue, over and above those already included and approved in the annual budget. The following income line items will be adjusted upwards:

- Traffic Fines: Speed Control/Fixed Points – The budget from traffic fines will be adjusted upwards with R38 247 976, this is as result of more fines being issued. The collection of traffic fines also increased during the year.
- Industrial Effluent Charges – The income from industrial effluent charges will be adjusted upwards with R2 101 888.
- Human Settlements Grant – An amount of R 22 732 714 is included in the adjustments budget for the construction of top structures in Kayamandi and Jamestown as well as planning fees for La Motte and Kayamandi Town Centre.
- Interest on investments - The performance of our investment portfolio is better than expected due to the additional surplus cash invested. The budget is R33 268 990 whereas the year-to-date (5 months) actual is R19 681 085. This line item will be adjusted upwards with R8 500 000.

***Operational Expenditure Budget***

Various line items were adjusted (detail included in **APPENDIX 1 (under separate cover)**) due to requests received from user departments and operational pressure to increase efficiencies.



**Impact of any increased spending on the annual budget and the annual budgets for the next two years**

The proposed adjustments are resulting in increased spending on the capital and operational budget for the current financial year and will have an impact over the medium term. This adjustments budget together with actual spending of previous years will be used as basis when reassessing the last two years of the approved Medium Term Budget and Expenditure Framework.

**External Loan for 2016/2017**

After considering the municipality's cash position as at 31 December 2016 and also taking into account the lower capital spending it would be in council's best interest not to take up the external loan of R161 million for the 2016/2017 financial year.

**4. COMMENTS FROM OTHER RELEVANT DEPARTMENTS****Legal Services**

The item is compliant with the relevant legislative framework.

**RECOMMENDED**

- (a) that the Annual Budget Tables as prescribed by the Budgeting and Reporting Regulations, as set out in **APPENDIX 2**, be approved;
- (b) that Council takes note that the Municipality will not be taking up a finance facility (Loan) due to a strong financial position and a positive projected cash flow;
- (c) that the following capital projects be adjusted over the MTREF (2017/2018 & 2018/2019), as follows:

Projects	Funding	2017/2018	2018/2019
Bulk Water Supply Pipe Reservoir: Johannesdal / Kylemore / Pniel	External Loan	9,750,000	0
Bulk Water Supply Pipe Reservoir: Johannesdal / Kylemore / Pniel	MIG	4,725,219	0
Bulk Water Supply Pipe Reservoir: Johannesdal / Kylemore / Pniel	CRR	4,524,781	0
Bulk Sewer Outfall: Jamestown	MIG	4,000,000	0
Bulk Sewer Outfall: Jamestown	CRR	9,500,000	0
Bulk Sewer Outfall: Jamestown	External Loan	-	8,000,000
Extension Of WWTW: Stellenbosch	External Loan	75,276,712	5,000,000
Idas Valley Merriman Outfall Sewer	CRR	8,630,925	0
Idas Valley Merriman Outfall Sewer	MIG	3,569,075	2,000,000
New Plankenburg Main Outfall Sewer	CRR	4,836,650	0
New Plankenburg Main Outfall Sewer	External Loan	9,607,355	0
New Plankenburg Main Outfall Sewer	MIG	9,412,000	26,643,995
Multi-purpose centre Klapmuts	CRR	9,000,000	0
Purchase of Land- Cemeteries	CRR	900,000	0
Major Drop off FH	CRR	9,200,000	0
Resource Centre	CRR	1,250,000	0
Upgrade Gravel Roads- Jamestown	CRR	1,300,000	0
Klapmuts Public Transport Interchange	MIG	2,882,456	0
Klapmuts Public Transport Interchange	CRR	2,404,474	0
Electricity Network: Pniel	CRR	10,300,000	0

(d) that the Service Delivery and Budget Implementation Plan be adjusted accordingly, inclusive of the non-financial information (performance measurement).

<b>Meeting: Ref No:</b>	<i>5<sup>th</sup> Council: 2017-01-25 8/1Financial</i>	<b>Submitted by Directorate: Author: Referred from:</b>	<i>Financial Services CFO Mayco:2017-01-18</i>
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7.4.3	<b>AMENDMENT TO TARIFF STRUCTURE WITH REGARDS TO RENTAL CATEGORY</b>
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**1. PURPOSE OF REPORT**

To request council approval for an amendment to the current tariff structure with regards to the Rental Category.

**2. BACKGROUND**

An application has been received from a NPO to lease space at the Kayamandi Corridor at a discounted rate of 40%. This effectively translates into a discount of 60% whereas the current tariff structure makes provision for a discount of 30% to Non Profit Organisations.

**3. DISCUSSION**

The application is supported by both the CFO and Director: Planning and Economic Development as this is a large group that will be leasing space on a regular basis.

Section 28(6) of the MFMA determines that Municipal Tax and Tariffs may not be increased during a financial year. The proposed amendment to the tariff structure is however, not an increase.

It is being proposed that the general discount to Non Profit Organisations with regards to rental of municipal property remains at 30%, but that the Accounting Officer be mandated to grant a larger discount in meritorious, individual instances.

Should this proposal be accepted, the change in tariff structure would have to be advertised for public participation and due process would have to be followed before implementation.

**4. LEGAL IMPLICATION**

No negative implication. The amendment to the tariff structure will be incorporated into the new tariff book of the 2017/18 Budget.

**5. FINANCIAL IMPLICATION**

There would be a negligible impact on the revenue generated from rental of council venues and space. The loss of income due to increased discounts will in all likelihood be offset by an increased use of council property by Non Profit Organisations.

**6. COMMENTS FROM OTHER RELEVANT DEPARTMENTS**

**Legal Services:**

The item and recommendation are supported.

**7. CONCLUSION**

Enabling the Accounting Officer to use own discretion in this regard will do away with cumbersome administrative processes and will also improve service delivery to the community and community-driven organisations.

**RECOMMENDED**

- (a) that the Sundry Tariffs with regards to the Kayamandi Economic Tourism Corridor as stipulated on page 40 of the 2016/17 Tariff book be amended by the insertion of the following sentence under paragraph (g):
- “In meritorious cases, the Accounting Officer may grant discounts larger than 30% as indicated above”.*
- (b) that the amendment be advertised for comments and objections for consideration before actual implementation.

<b>Meeting:</b>	5 <sup>th</sup> Council: 2017-01-25	<b>Submitted by Directorate:</b>	Financial Services
<b>Ref No:</b>	8/1Financial	<b>Author:</b>	CFO
		<b>Referred from:</b>	Mayco:2017-01-18



7.5	<b>HUMAN SETTLEMENTS: [CLLR PW BISCOMBE]</b>
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7.5.1	<b>IDENTIFICATION OF POSSIBLE TRUST LAND IN PNIEL: STATUS REPORT</b>
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## 1. PURPOSE OF REPORT

The purpose of this report is two-fold, namely:

- a) To provide Council with the legal requirements pertaining to so-called trust land; and
- b) To provide Council with a progress report insofar as it relates to the identification of possible trust land.

## 2. BACKGROUND

### 2.1 Promulgation of rural areas

In terms of the Rural Areas Act (House of Representatives), No 9 of 1987, there are 23 rural areas in the country, classified as so-called “*coloured reserves*”, where certain land is (was) held in trust for the respective communities, of which 12 are in the Western Cape.

### 2.2 Establishment of Pniel

The Pniel Management Board was subsequently established in terms of the said Act. On 30 December 1994 the Pniel Transitional Local Council was established in terms of the Local Government Transitional Act, No 2009 of 1993.

In terms of this proclamation (No 142/1994), read with PN 58/1995, the Pniel Transitional Local Council replaced the Pniel Management Board. As from 17 March 1995 the Transitional Local Council was established, with the powers, duties and function of a Management Board contemplated in the Rural Areas Act.

Further, in terms of this proclamation all assets, liabilities, rights and obligations of the Management Board were devolved and were assigned to the Transitional Local Council. In terms of section 116, specifically, it is stated that “*the ownership of all immovable property of the aforesaid Management Board shall vest in the Transitional Local Council*”.

### 2.3 Establishment of Stellenbosch Municipality

In terms of Establishment Notice P.N. 489/2000, the Stellenbosch Municipality was established. With effect from the effective date Stellenbosch Municipality became the successor in law of the dis-established municipalities (*inter alia* Pniel Transitional Local Council).

In terms of Section 16(5) of the Establishment Notice it was specifically recorded that Stellenbosch Municipality would be the successor in law with reference to the matters set out in the Transformation of Certain Rural Areas Act and the Rural Areas Act.

**3. DISCUSSION****3.1. Legislative regime\*****3.1.1 The Rural Areas Act, No 9 of 1987 (House of Representatives)**

The Rural Areas Act defines an “*incorporated area*” as “*an area consisting of one or more pieces of land (whether contiguous or not) which has been defined by proclamation\* under section 4(1) of Act 24 of 1963 (rural Coloured Areas Act, No 24 of 1963)*”

\*In the case of Pniel, see proclamation 99 of 1968

Section 7 of the Act provided as follows: “*Notwithstanding anything to the contrary contained in any law, but subject to the provisions of sections 8 and 9 of this Act the land in any incorporated area shall on the fixed date vest in the Minister in trust for the community for division, allotment and disposal by the Minister under the provisions of this Act, and the Minister shall cause the title deed of such land to be endorsed accordingly in accordance with the provisions of section 11 of this Act*”

In terms of section 29(1) of the Act the Minister may:-

“*a) determine the persons who are on the fixed date entitled according to local usage to occupy or own land in the are defined int hat proclamation, and their respective rights*”

Section 20(2)(a) of the Act provides that the Minister may, after consultation with a board of management, prepare a plan which provides for, *inter alia*, one or more residential areas in which provision is made for residential erven,business erven and erven for other purposes and for public use, for an agricultural area subdivided into lots of such size, shape and situation as the Minister may determine, and for an outer commonage, being the remaining extent of the board area for subdivision into farms for the exclusive use of registered occupiers of the area who carry on or will carry on farming to the satisfaction of the Minister.

Section 20(2)(b) and (c) are important. It provide that the Minister may, after consultation with the board of management:-

“*b) grant to every registered occupier an erf in the residential area and any other erf which may be allotted to him,*

*c) After an outer commonage has been subdivided into farms under paragraph (a)(iv), grant each such farm to a registered occupier of the board area who carries or will carry on farming to the satisfaction of the Minister”.*

Section 20(3) of the Act provides that, except with the approval in writing of the board concerned, land of which ownership has been acquired in terms of subsection 2(b) and (c), shall not be alienated to any person other than a registered occupier of the board area\* concerned.

\*Board area is defined as:

*“in relation to an existing area or an incorporated area, means the whole area, exclusive any portions thereof which have in terms of Act 24 of 1963 or Law 1 of 1979 or this Act been excluded from the provisions thereof, and includes any area incorporated therein in terms of Act 2 of 1963 or Law 1 of 1979 or this Act”.*

In terms of Proclamation R154 of 31 October 1994 the definition of “Minister” in terms of the Act was substituted with the following definition.

“Minister” means-

- a) *In so far as the administration of a provision of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), been assigned to a competent authority within the government of a province and such provision is applied in or with reference to that province, the authority to whom the administration or that provision has been assigned in that province; or*
- b) *In so far as the administration of a provision of this Act has not been so assigned, the Minister of Land Affairs”.*

In terms of the same proclamation, and under section 235(\*) of the 1993 Constitution, the President assigned the administration of sections 20, 21 to 42, 45, 49, 49A, 50, 52 and 55, and section 53, 54 and 56, is so far as such section are applied with reference to the previous provisions, to a competent authority within the jurisdiction of, *inter alia*, the Government of the Province of the Western Cape.

The Provincial Minister for Housing and Corporate Services subsequently authorises various provincial officials to act on his behalf and in his stead, in terms of sections 20(2)(b) and (c) and section 49(1) of the Rural Areas Act, in order to grant land to registered occupiers and to issue “*grond briewe*” in respect of erven and farms held in trust for a rural community. The same power of attorney also authorises the said officials to give effect to the registration of any land transferred to the municipality, in terms of section 2 of TRANCRAA\*.

### 3.1.2 \*Transformation of certain Rural Areas Act, No 94 of 1998

TRANCRAA was promulgated to give content to section 25(6) of the Constitution. Section 25(6) reads as follows:

*“A person or community whose tenure of land is legally insecure as a result of past racial discriminatory laws or practices is entitled, to the extent provided by an act of Parliament, either to tenure which is legally secure or to comparable redress”.*

TRANCRAA defines “board area” as:

*“an area, or part of an area, consisting of one or more pieces of land, whether they are contiguous or not, to which the provisions of the Rural Areas Act, 1987 applied immediately before the commencement of this Act”.*

The Act defines “*remainder*” as:

*“land situated in a board area other than township land, including land which has been planned, classified and subdivided as an agricultural area or outer commonage in terms of section 20(2) of the Rural Areas Act, 1987”.*

The Act defines “*resident*” as:

*“a person who, at the date of commencement of this Act-*

- a) Ordinarily resides in a board area; or*
- b) Under law is liable for the payment of assessment rates, rent, service charges or levies to the municipality concerned in respect of land situated in a board area”.*

The Act defines “*township*” as meaning:

*“Any township situated in a board area established, approved, proclaimed or otherwise recognised as such under any law”*

Finally, the Act defines “*trust land*” as meaning:

*“land situated in a board area that vests in the Minister in terms of section 7 of the Rural Areas Act, 1987”.*

In terms of Section 2 of TRANCRAA:-

- 1) At the commencement of this Act, all trust land **situated in a township must vest in the municipality** own emphasis of the area where such land is situated, subject to the continued existence of any registered or registrable rights of a person in or over a piece of land in the township;*
- 2) If the ownership of all the land held under a title deed vests in a municipality in terms of subsection (1), the registrar of deeds concerned must make such alterations and entries in his or her registers and such endorsements on any such title deed in terms of the second proviso to section 16 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), as are necessary to give effect to such vesting”*

Section 3(1)(a) of the Act provides that **trust land in the remainder or land in the remainder which vests in a municipality** in terms of a law listed in the Schedule, **may be transferred to any entity** at any time prior to the expiry of the **transitional period**. In terms of section 9, the transitional period is a period of **18 months commencing on a date determined by the Minister** by notice in the Gazette.

Section 3(2) of the Act provides as follows:

*“(2) No transfer of land referred to in subsection (1) must take place unless the Minister is satisfied that, in the event of a transfer to-*

- a) A municipality, the legislation applicable to such a municipality; or*
- b) A communal property association or other body approved by the Minister, the rules of such association or body, make suitable provision for a balance of security of tenure rights and protection or rights of use of-*
  - i) The residents mutually;*



- ii) *Individual members of such a communal property association or other body;*
- iii) *Present and future users or occupiers of land, and the public interest of access to land on the remainder and the continued existence or termination of any existing right or interest of a person in such land'*

Section 3(3) of the Act provides that if, in the opinion of the Minister, the legislation or rules aforementioned do not fully achieve the objects of subsection(s), he or she may determine the terms and conditions for the transfer of such land, in order to achieve such objects.

In terms of section 3(4)(a) of the Act the municipality of a board area may, within three months after the commencement of the Act, and **must within three months after the commencement of the aforesaid transitional period, notify the Minister as to how and when it intends determining to which entity the land referred to in section 3(1) should be transferred.**

Section 3(6) provides that, **if the Minister, after advertising the aforesaid notice, is satisfied with the municipality's recommendation, he or she must inform the municipality of his or her decision and must take steps to transfer such land to the entity concerned.**

In terms of section 4(1), when dealing with the land transferred to a municipality in terms of section 3(6), such municipality:

- "a) must afford residents a fair opportunity to participate in the decision making processes regarding the administration of the land;*
- b) must not discriminate against any resident;*
- c) must give residents reasonable preference in decision about access to the land;*
- d) must not sell or encumber the land, or any substantial part of it, without the consent of a majority of residents at a public meeting called for that purpose;*
- e) is accountable to the residents;*
- f) must manage and record effectively all financial transactions regarding the land; and*
- g) has fiduciary responsibilities in relation to the residents".*

Section 4(2) of the Act provides that, despite the provisions of any law regarding the disposal of municipal land in a township, the residents must be given reasonable preference to acquire land referred to in section 3(1).

From the above it is clear:-

- a) that, in terms of section 2(1) of TRANCRAA at the commencement of the Act, **all trust land situated in a township (must) vest in the municipality** of the area concerned.

In this regard, the definition of "erf" in the Deeds Registries Act 47 of 1937 is relevant, viz:

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*“every piece of land registered as an erf, lot, plot or stand in a deeds registry, and includes every defined portion, not intended to be a public place, of a piece of land laid out as a township, whether or not it has been formally recognised, approved or proclaimed as such”.*

- b) that, in terms of Section 2(2) of TRANCRAA the **Registrar of Deeds must give effect to such vesting**, in terms of the second proviso to section 16 of the Deeds Registries Act.

In the circumstances, it is clear that when section 2(1) refers to property vesting in a municipality, it has the meaning contemplated in the aforesaid second proviso, *viz.* **that the municipality has acquired the land concerned from another authority**, i.e. “*Minister*”, referred to in the Rural Areas Act. **By necessary implication** therefore, “*the Minister*”, however defined, **is divested of any right to deal with such property**, notwithstanding the formal registration thereof.

Accordingly, at the commencement of TRANCRAA, **all trust land situated in the Pniel township vested in the municipality**, and the Minister, however defined, was concomitantly divested of any control or rights in respect of such property.

The fact that ownership remained registered in the name of Minister or the Community of Pniel is irrelevant. Section(2) of TRANCRAA makes provision for bringing the administrative details of the ownership of such property into consonance with the legal consequence of section 2(1) of the Act. **Accordingly, if the circumstances contemplated in section 2(1) exist, it follows that the Registrar of Deeds has no discretion as to whether to comply with the requirements of section 2(2) of TRANCRAA.**

It must also be noted that the **Minister has no role to play in the application of section 2(2) of TRANCRAA**. That Section requires the Registrar of Deeds to give effect to the legal situation that arises upon the coming into being of the jurisdictional facts contemplated in section 2(1) of TRANCRAA.

\*Based on a legal opinion compiled by Adv. I.Jamie, S.C on 19 November 2013.

### 3.1.3 TRANCRAA property report

On 24 March 2016 a meeting took place with representatives of the Department of Rural Development and Land Reform. The purpose of this meeting was to discuss the Department's reports (Phase 1 and Phase 2 reports) on the identification of possible so-called Trust land in Pniel. Copies of the reports are attached as **APPENDIX 1**.

In identifying so-called Section 3 (Trust) land, the Department relied on three sources.

#### 3.1.3.1 Proclamation 78 of 1915

The Pniel Board Area was initially proclaimed by proclamation No 78 of 1915. (See Fig 1 of report 1). This Proclamation was done in terms of

section 27 of the Mission Stations and Communal Reserve Act, No 29 of 1909 (Cape). In terms hereof the Pniel Area, consists of 43.5398ha.

### 3.1.3.2 Surveyor General compilation sheets M 4749, M4750, M4442 and M4444

The total area of Pniel, as per the Surveyor General records is 43.4041ha. This is a discrepancy of 1357m<sup>2</sup> compared to the area mentioned in the proclamation referred to above. (See Fig 2 of report 1)

### 3.1.3.3 Proclamation 99 of 1968 (Cystergrond)

From the noting sheet it is also noted that more land was incorporated (Cyster gronde) through Proclamation 99 of 1968 (See Fig 3 of report 1). This proclamation was done in terms of Section 5 of the Rural Coloured Areas Act, No 24 of 1963. The total area of incorporation was 13.1706ha. Subsequently a portion of this land was transferred back to the Cyster Family Trust. What was left undeveloped was portion 7, measuring 7.2075ha in extent. This was later consolidated with portion 6 (not included in the proclamation), thus now totalling 11.7844ha. Portion 8 has subsequently been subdivided for township establishment, leaving a remainder of 6.8759ha.

The following land was subsequently identified as possible TRANCRAA land (Trust land) by the Department.

- **Remainder Erf 1** (Based on Proclamation 78/1915), measuring 5.2992ha in extent, including the cemetery, as shown on Fig 1.2 of report 2;
- **Portion 8 of Farm 120** (Proclamation 99 of 1968), measuring 6.8573ha in extent.

### 3.1.4 Discussion on possible TRANCRAA land

#### 3.1.4.1 Erf 1

Erf 1 consists of three “portions” of land:

- Road;
- Cemetery; and
- P.O.S (next to river area)

as can be seen from Fig 1, below.



Fig 1:

In my view Erf 1 does not constitute Trust land, but forms part of the township land, i.e. land that vest with Stellenbosch Municipality.

Should our interpretation however, be wrong, i.e. that erf 1 indeed vests with the Minister, then the following “*allocation*” could be considered.

- **Road portion:** Vest with Municipality in terms of Municipal Ordinance
- **Cemetery portion:** Could be transferred to the Congregational Church, should they be interested in managing the facility as a church facility. In such an event the church will have to take over the maintenance of the facility as well. Alternatively it could be transferred to the Municipality (*status quo*) to manage the cemetery (municipal function); and
- **Open Space portion:** If it is indeed deemed (zoned) a P.O.S, then the ownership will vest with the Municipality in terms of the Municipal Ordinance.

### 3.1.4.2 Portion 8 of Farm 1201

Portion 8 of Farm 1201 also consists of 3 portions.

- Dam and surroundings: P.O.S;
- Restitution land; and
- Area next to reservoir: Local Authority  
as can be seen from Fig 2, below.



**Fig 2.**

In my view Farm 1201/8 does not constitute trust land, as it was specifically purchased for its water-rights, and to construct a dam for the town, i.e. a municipal service.

\*Also note that a big portion (approximately 2ha) has already been allocated to the Cyster Family Trust in terms of a Trilateral Settlement Agreement concluded in September 2000 between the Cyster Family Trust, the Priel Transitional Council and the (then) Department of Land Affairs. See letter attached as **APPENDIX 2** for more background.



The Engineering Department is in the process of planning for a further reservoir for the Dwarsrivier area. The area next to the existing reservoir has been identified for this purpose.

Should our interpretation, however be wrong, i.e. that Farm 1201/8 indeed vests with the Minister, then the following “allocations” could be considered.

- **Dam portion:** To be transferred to the Municipality
- **Restitution portion:** To be transferred to the Cyster Family Trust in terms of the Settlement Agreement
- **Area next to reservoir:** To be transferred to the Municipality for municipal use (reservoir).

#### 3.1.4.3 Remainder portions 6/1170 and 1/1176

The above land units consist of 2 portions:-

- **Road**
- **P.O.S**

as can be seen from Fig 3, below.



Similarly, we are of the view that this portion of land does not constitute trust land. Should our interpretation, however be wrong, i.e. that the land indeed vests with the Minister, then the following “allocations” could be considered.

- **Road portions:** Vests with the municipality in terms of the Municipal Ordinance 20/1974.
- **P.O.S:** If it is indeed deemed (zoned) a P.O.S, then the ownership will vests with the Municipality in terms of the ordinance 20/1974. Alternatively it could be transferred to the congregational church, should they be interested, to be used as an extension of the cemetery. Alternatively it could be transferred to a legal entity to be developed.

**Please note:** In terms of the Department of Rural Development & Land Reform's own information document entitled "*A to Z of the TRANCRAA*", a copy of which is attached as **APPENDIX 3**, it is indicated that "*The Pniel area of 55ha is governed in terms of township establishment legislation and **no transformation process is envisaged***".

### 3.1.5 Transitional period: Way forward

Section 3(1) of TRANCRAA provides that trust land in the remainder or land in the remainder which vests in a municipality, may be transferred to an **entity at any time prior to the expiry of the transitional period**.

In terms of Section 9 the transitional period is a period of **18 months** commencing on a date determined by the Minister by notice in the Gazette\*.

\*On 30 September the Minister for Rural Development and Land Reform published a Notice in terms of Section 9(1) (a) of the TRANCRAA Act, a copy of which is attached as **APPENDIX 4**.

In terms hereof the Municipality must, within 3 months after the date of the proclamation, submit to the Minister a report setting out **how and when it intends determining to which entity (if any) the land referred to in section 3 should be transferred**, failing which an elected committee, elected by residents of Pniel, may submit such report to the Minister. A letter has subsequently been submitted to the Minister, setting out the following process plan:

- Step 1:** Submit a report to Council during December 2016, recommending the allocation /transfer of the various portions of land as set out in paragraph 3.1.4 (supra).
- Step 2:** Should Council indeed accept/approve of the proposals/recommendations set out in paragraph 3.1.4 (supra), a notice will be published in a local newspaper(s) during February 2017, soliciting public inputs/comment on the proposed allocation/transfers.
- Step 3:** Simultaneously (February 2017) set up meetings with the Pniel Congregational Church, the Pniel Transformation Committee (established by your Department) and representatives of the Cyster Family Trust, to solicit their inputs/comments on the proposed allocations/transfers.
- Step 4:** Submit inputs/comments (if any) received as a consequence of the public participation process referred to under step 2 and 3 to the Department of Rural Development and Land Reform for their inputs by April 2017.
- Step 5:** Report back to Council during June 2017 on the comments/inputs received, and consider same before making a final recommendation to the Minister;
- Step 6:** Recommend to the Minister the allocations/transfers, as recommended by Council, during July 2017;
- Step 7:** Depending on the decision of the Minister, attend to the establishment of the legal entity agreed upon (where necessary) during Aug/September 2017.
- Step 8:** If approved by the Minister attend to the subdivision and rezoning of the land during September-October 2017; and

**Step 9:** Request the Department to attend to the actual transfer of the properties during November 2017.

**Step 10:** Minister to attend to the actual transfer of the various portions of land (January 2018-March 2018).

#### 4. INPUTS FROM OTHER DEPARTMENTS

##### 4.1 Planning Department

This Directorate supports the conclusion that the land in question vests with the Municipality and that therefore it should be dealt with as set out in paragraph 3.1.4 above.

##### 4.2 Legal Services

The item and recommendations are supported.

#### 5. CONCLUSION

In terms of the Pniel TRANCRAA Property Reports, it is clear that the Department of Rural Development & Land Reform has identified 4 portions of land as **possible** trust land, to be dealt with in terms of Section 3 of TRANCRAA. This department is of the view that these pieces of land already vests with the Municipality.

It is clear from the Department's reports, however, that they have a different view. In light of the above it is

#### RECOMMENDED

- (a) that the content of the notice of the Minister, be noted;
- (b) that the process plan as set out in par. 3.1.5, submitted to the Minister, be endorsed;
- (c) that the Municipal Manager be authorised to attend to the public participation process as set out in paragraph 3.1.5;
- (d) that the proposed allocations, as set out in paragraph 3.1.4, be supported in principle; and
- (e) that, following the public participation process, a progress report be submitted to Council to deal with the submissions received as a consequence of the public participation process, whereupon final recommendations will be made to the Minister regarding the allocation/transfer of so-called Section 3 Trust land.

Meeting: Ref no:	5 <sup>th</sup> Council:2017-01-25 17/4/3	Submitted by Directorate: Author Referred from:	Human Settlements T Mfeya Mayco:2017-01-18
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