APPENDIX 13

STELLENBOSCH MUNICIPALITY

DEVELOPMENT CHARGES POLICY

2024/2025

REVISED

STELLENBOSCH MUNICIPALITY

~~ENGINEERING~~ INFRASTRUCTURE SERVICES DEVELOPMENT CHARGES POLICY

TABLE OF CONTENTS

PAGE

1. DEFINITIONS

In this policy, unless the context indicates otherwise -

1.1 '**Amendment Bill**' means the Fiscal Powers and Functions Amendment Bill, 2020;

1.2 '**applicant**' means a person or entity contemplated in section 45(1) of the SPLUMA who submits a land development application;

1.3 **'bulk service'** means the capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure provision of municipal infrastructure services for the benefit of multiple users or the community as a whole, whether existing or to be provided as a result of a development in terms of the MSDF – the relevant Municipal Master Plan shall be used as a guide to identify such bulk services;

1.4 **'capacity'** means the extent of availability of a municipal infrastructure service, based on the capital infrastructure asset or combination of capital infrastructure assets installed for provision of such municipal infrastructure services;

1.5 **'capital infrastructure asset'** means land, property, building or any other immovable asset, including plant and equipment that accede thereto, which is required for provision of a municipal infrastructure service, limited to immovable;

1.6 **"community facilities"**, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls; conservation purposes, energy conservation, climate change; or engineering services.

1.7 **'developer'** means a person or entity intending to implement or implementing undertaking land development;

1.8 **'development charge (DC)'** means a charge levied by the Municipality or a Municipal Planning Tribunal in terms of section 40(7)(b) of, and contemplated in section 49 of, the SPLUMA, which must-

(a) contribute towards the cost of capital infrastructure assets required to meet increased demand for existing and planned external engineering services; or

(b) with the approval of the Minister, contribute towards capital infrastructure assets required to meet increased demand for other municipal engineering services not prescribed in terms of the SPLUMA;

1.9 **'Engineer'** means an engineer employed by the Municipality or any person appointed by the Municipality from time to time to perform the duties of the Engineer envisaged in terms of this Policy, including the Director: Infrastructure Services;

1.10 '**engineering services**' means a municipal engineering service as defined in section 1 of the SPLUMA;

1.11 **'engineering services agreement'** means a written agreement concluded between the Municipality and a developer, recording their detailed and specific respective rights and obligations regarding the provision and installation of the external engineering services required for an approved land development, and regarding the associated development charge;

1.12 **'external engineering service'** means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area concerned; provided that in circumstances where the characteristics

of a specific area or the design of the relevant engineering service so requires, such services can be located within the boundaries of a land area;

1.13 **'impact zone'** means a geographical zone within which the capital infrastructure assets or system of capital infrastructure assets required to provide bulk services to an approved land development are located (the impact zones are Stellenbosch Town, Klapmuts, Dwars River, Franschhoek, Koelenhof, Polkadraai and Raithby);

1.14 **'internal engineering service'** means an engineering service within the boundaries of a land area which is necessary for the use and development of the land area concerned and which is to be owned and operated by the Municipality or service provider;

1.15 **'land development'** means the erection of buildings or structures on land, or the change of use of land, including township establishment (provision of engineering services infrastructure), the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of the Zoning Scheme;

1.16 **'land development application'** means an application for approval of land development as contemplated in section 41 of the SPLUMA or a building plan application;

1.17 '**land use'** means the purpose for which land is or may be used lawfully in terms of ~~a~~ the municipal land use scheme or of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes;

1.18 **'link engineering service'** means the capital infrastructure assets associated with that portion of an external engineering service which links an internal engineering service to the applicable bulk service, and which is not shared by multiple users or the community generally;

1.19 **'LUPA'** means the Western Cape Land Use Planning Act, 2014, Act. 3 of 2014 (PN 99/2014 of 7 April 2014);

1.20 '**MSDF**' means the current Stellenbosch Municipal Spatial Development Framework contained in the Municipality's approved Integrated Development Plan;

1.21 **'Municipality'** means (a) the Stellenbosch Municipality (WCO24) established in terms of Provincial Notice 489 of 22 September 2000 in terms of the Local Government: Municipal Structures Act, 117 of 1998, and (b) includes all political structures or office bearers, the Municipal Planning Tribunal and municipal staff members to whom authority has been delegated to take decisions in terms of the Municipality's delegation system;

1.22 **'municipal infrastructure service'** means any of the following municipal services, namely potable water, sewerage and wastewater treatment, electricity distribution, municipal roads, street lighting, storm water management, solid waste disposal and public transport, including non-motorised transport. Community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls. Conservation purposes, energy conservation, climate change; or engineering services.

1.23 **'Municipal Planning Tribunal'** means a Municipal Planning Tribunal as defined in the SPUMA, and includes a municipal official authorised to determine land use and land development applications, in terms of section 35 of the SPLUMA;

1.24 '**Planning By-Law'** means the Stellenbosch Municipality: Land Use Planning By-Law published in the Western Cape Provincial Gazette Extraordinary of 20 October 2015;

1.25 **'SPLUMA'** means the Spatial Planning and Land Use Planning Act, 16 of 2013;

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

1.27 '**Zoning Scheme**' means the Stellenbosch Municipality: Zoning Scheme By-Law published in the Western Cape Provincial Gazette Extraordinary of 27 September 2019.

2. INTRODUCTION

2.1. The Constitution enjoins local government not just to seek to provide services to all its inhabitants, but to be fundamentally developmental in orientation and to play a key role in promoting justifiable social and economic development. To this end it *inter alia* has to perform regulatory functions in respect of land use planning and development and ensuring lawful, reasonable and fair administrative government practices.

2.2. Socio-economic development is generally regarded as the passport to reduced poverty, reduced inequality and improved social well-being. New economic development generally also has a positive impact on the municipality's finances. It increases revenue from property rates and service charges by expanding the base of ratepayers. But development associated with economic growth has an impact on the demand for essential engineering services, which are needed to support sustainable social and economic development. Without available infrastructure of adequate capacity, public and private sector investment in Stellenbosch will decline.

2.3. Stellenbosch is as an attractive destination for economic investment. Working towards the MDSF vision of Stellenbosch as the "Valley of Opportunity and Innovation", a number of principles are key, including that future opportunity be allowed to build on existing infrastructure investment. Engineering services infrastructure (water, sewerage, stormwater, roads, street lighting, solid waste and electricity) represents substantial assets for enabling individual and communal development opportunity of different kinds.

2.4. The creation and promotion of an enabling environment for business to grow and create jobs, is fundamental to a competitive and vibrant economy. The potential for large scale upliftment and development may be severely hampered by the lack of attention to necessary infrastructure. The Municipal Council aims to create an economically enabling environment in which investment can grow and jobs can be created while still being able to provide basic services to all its citizens. The equitable and efficient financing of the cost of infrastructure to accommodate new developments is key in this regard.

2.5. Additional engineering services infrastructure must be provided to create additional services capacity to cater for growing needs, and it comes at a high cost. The rationale for DCs needs to be understood in relation to how this particular funding mechanism fits within the municipal fiscal framework. Municipal service delivery is generally financed through a fiscal framework that is based on a clear assignment of fiscal powers and functions that empower municipalities to raise property rates and used charges on electricity distribution, water and sanitation services and solid waste collection.

2.5.1. These primary sources of revenue are supplemented by intergovernmental transfers that support the operating costs of basic service delivery to poor households, as well as related national development priorities. Municipalities may use any operational surpluses generated from this revenue to finance

capital investment programmes, again supplemented by intergovernmental transfers, as well as funds that have been borrowed to finance infrastructure investment programmes.

2.5.2. Municipal development charges complement these sources of capital finance, by providing a direct charge to beneficiaries of existing and planned infrastructure installed to enable an intensification of land use. Development charges are thus an additional source of capital finance, which enhance the efficiency and volume of municipal capital financing through -

- ensuring that the beneficiaries of infrastructure pay a fair share of the costs of installing it, relative to other residents;
- releasing resources that a municipality would otherwise have dedicated to meeting these needs to be spent on other development priorities; and
- providing an additional revenue stream to support municipal borrowing programmes, where applicable.

2.6 For both municipalities and developers to budget and plan efficiently, requires a robust legal basis on which development charges are levied, linked to long term spatial and infrastructure planning systems. Local government may only act within the powers lawfully conferred upon it.

2.7 After the country's first democratic elections, the Legislator was tasked to translate the electoral dream of a "Better Life For All" into legislation. It put the public sector at the heart of the challenge to reduce poverty. Legislation such as the SPLUMA and LUPA followed, both which empowers, qualifies and constrains municipal powers to levy development charges.

2.8 The Municipal Fiscal Powers and Functions Amendment Bill 2020, published for public comment during 2020, provides for a uniform, consistent, transparent and equitable basis on which municipalities can calculate and levy development charges on developers. The Amendment Bill requires that development charges are paid by both the public and private sectors, in order to ensure that a substantial portion of municipal bulk infrastructure investment can be financed on a 'user pays' principle, with the needs of poor households directly and transparently supported through public subsidies, including intergovernmental transfers.

2.9 A Development Charge ('DC') is a once-off capital charge to recover the actual cost of external infrastructure required to accommodate the additional impact of a new development on engineering services. A DC calculation is triggered by a land use change / land development application that will, if approved, intensify the municipal infrastructure demand. The threshold is the level up to which a new land use is deemed to have the same infrastructure impact as the existing permissible use and is determined based on a technical assessment.

2.10 The DC policy is an important tool to provide economic infrastructure and to ensure sustainable infrastructure investment in all the required engineering services. It provides the key details of the Municipality's Development Charges for Engineering Services, covering water, roads, stormwater, sewerage, solid waste and electricity.

2.11 A motivation for DCs is that the incidence of the cost is more accurately and equitably assigned to those who directly benefit from the infrastructure, rather than being spread amongst all ratepayers. The key function of a system of DCs is to ensure that those who benefit from new infrastructure investment, or who cause

off-site impacts, pay their fair share of the associated costs. A primary role of a system of DCs is to ensure the timely, sustainable financing of required urban infrastructure.

3. LEGISLATIVE (REGULATORY) FRAMEWORK

3.1 Source of empowerment

A municipality derives its power to levy development charges from legislation, not from policy. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation). **[1]**

In *Fedsure* the Constitutional Court said that '*[i]t seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law*'. It is trite that "*a local government may only act within the powers lawfully conferred upon it*". **[2]**

> "*A municipality under the Constitution is not a mere creature of statute otherwise moribund save if imbued with power by provincial or national legislation. A municipality enjoys 'original' and constitutionally entrenched powers, functions, rights and duties that may be qualified or constrained by law and only to the extent the Constitution permits*." **[3]**

It is also a well-established principle of South African law that powers given to a public body for one purpose cannot be used for ulterior purposes which are not contemplated at the time when the powers were confirmed. **[4]** Good intentions and public benefits are insufficient. As *Baxter* mentions: "*It does not help that the improper purpose which the public authority sought to achieve was well intentioned, or even that it would benefit the public.*" **[5]**

The powers lawfully conferred upon the Municipality in relation to development charges have been qualified and constrained in terms of national, provincial as well as municipal legislation. A study into this rather dense legislative environment was undertaken to ensure that this policy document will be in line with the current and proposed empowering legislation.

3.2 Relevant legislation

Attention is invited to the provisions of the following legislation.

- The National Constitution.
- Local Government: Municipal Systems Act, 32 of 2000 – ('MSA').
- Stellenbosch Municipality: Zoning Scheme By-Law 2019 – ('Zoning Scheme').

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1 *Akani Garden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd* 2001 (4) SA 501 (SCA) at par [6] and [7].
2 *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Council and Others* 1999 (1) SA 374 (CC) par 56.
3 *City of Cape Town v Robertson* 2005 (2) SA 323 (CC) at par 60.
4 See Baxter, Lawrence. 1984. *Administrative Law*. Juta & Co, Ltd: Cape Town on p. 508 and 511.
5 See *Administrator, Cape v Associated Buildings Ltd* 1957 (2) SA 317 (A) at 329). Also see *South Peninsula Municipality and Another v Malherbe NO and Others* 1999 (2) SA 966 (C) at 981D.

- Municipal Fiscal Powers and Functions Act, 12 of 2007 – ('Fiscal Powers Act').
- The SPLUMA.
- The LUPA.

For ease of reference some of the relevant provisions therein contained, are quoted *verbatim* further below and in Appendix "A".

3.2.1 The National Constitution – ('Constitution')

The Constitution enjoins local government to seek to provide services to the citizens, to be fundamentally developmental in orientation, to *promote* justifiable social and economic development and, together with other organs of state, to contribute to the progressive realisation of the fundamental constitutional rights.

Municipalities derive their fiscal powers from section 229 of the National Constitution. Section 229(1)(a) empowers a municipality to impose rates on property and surcharges on fees for services provided by or on behalf of the Municipality.

It is necessary to distinguish between '*services charges*' and '*development charges*'.

- A service charge is ongoing contributions (usually levied monthly), required to recover the ongoing costs reasonably associated with rendering the service (e.g., refuse removal), including capital, operating, maintenance, administration and replacement costs, and interest charges.
- A Development Charge ('DC') is a once-off capital charge to recover the actual cost of external infrastructure required to accommodate the additional impact of a new development on engineering services. Development charges fall in the section 229(b) category and is not a service fee.

3.2.2 Local Government: Municipal Systems Act, 32 of 2000 – ('MSA')

See Appendix "A" for relevant sections of the MSA. Essentially it deals with the empowerment of local authorities to provide municipal services for the benefit of the local community and the funding thereof by charging service charges or fees for covering the costs thereof. This is achieved by applying tariffs that must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges. DCs are not intended to fund municipal services being rendered.

3.2.3 Spatial Planning and Land Use Management Act, 16 of 2013 – ('SPLUMA')

- Section 40(7)(b) empowers a municipal Planning Tribunal, in the approval of any land development application, to impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges.

- Section 49(4) provides that an applicant may, in agreement with the Municipality or service provider, install any external engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against development charges payable.

- According to section 49(5), if external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 56 of 2003 pertaining to procurement and the appointment of contractors on behalf of the Municipality, does not apply.

[NOTE: 'Applicant' to be read as a 'developer' as defined.]

3.2.4 Western Cape: Land Use Planning Act, 3 of 2014 – ('LUPA')

- Section 40(1) of LUPA empowers a municipality, when approving a land use application, to do so subject to conditions, which conditions the must be reasonable conditions and must arise from the approval of the proposed utilisation of land.

- In terms of section 40(2) such conditions may include, but are not limited to, conditions relating *inter alia* to the provision of engineering services and infrastructure; and the cession of land or the payment of money.

- Section 40(3) empowers a municipality to require in a condition relating to the provision of engineering services and infrastructure that a proportional contribution to municipal public expenditure be made according to the *normal need* therefor arising from the approval, as determined by the Municipality in accordance with norms and standards as may be prescribed. Section 40(12) provides that a municipality may, if appropriate, depart from contributions so determined.

- Section 40(4) provides that such municipal public expenditure includes, but is not limited to, municipal public expenditure for municipal service infrastructure and amenities relating to—

    - community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;

    - conservation purposes, energy conservation, climate change; or engineering services.

- Section 40(5) requires that, when determining the contribution contemplated in subsections (3) and (4), a municipality must have regard to at least—

    - the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;

    - the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;

- the public expenditure on that infrastructure and those amenities that may arise from the approved land use;
- money in respect of contributions contemplated in subsection (3) paid in the past by the owner of the land concerned; and
- money in respect of contributions contemplated in subsection (3) to be paid in the future by the developer of the land concerned.

- Section 40(6) requires that, except for land needed for public places or internal engineering services, any additional land required by the Municipality arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.

3.2.5 Stellenbosch Municipality: Zoning Scheme By-Law 2019 – ('Zoning Scheme')

20. Development charges in terms of this Scheme

(1) The calculation of development charges and whether a development charge is payable, shall be subject to the Municipality's adopted policy.

(2) Where the provision in a particular zone identifies that a development charge is payable for ***intensified*** *primary development* ***rights which came into operation as a result*** *of this Scheme, and where the owner intends to develop according to such intensified rights, such development charge shall be calculated when the building plan is submitted and shall be paid prior to the approval of said building plan.*

(3) Where an application is made in terms of Planning Law, or where application is made for technical approval in terms of this Scheme, the Municipality may impose a condition related to development charges payable where said approval leads to the intensification of land use beyond the primary rights which has been originally approved on the land unit.

(4) Unless an alternative agreement is reached in writing between the owner and the Municipality, no building plan shall be approved on any land unit where an outstanding development charge is payable.

(5) If the Municipality fails to calculate a development charge at the appropriate approval stages as set out in this section, it is deemed that there are no charges related to that development.

[NOTE: 'Owner' to be read as a 'developer' as defined.]

NOTES:

1. 'Landowner' to be read as a 'developer', as defined.

2. Other relevant sections of the Zoning Scheme are quoted *verbatim* in Appendix "A" for ease of reference (i.e. 89, 102, 115, 128, 140, 151 162, 172 and 219 – development charges in the Multi-Unit Residential zone, Mixed-Use zone, Industrial zone, Education zone, Community zone Utility Service zone, Transport-facilities zone, and Agricultural and Rural zone)

3.2.6 (a) Municipal Fiscal Powers and Functions Act, 12 of 2007 – ('Fiscal Powers Act')

This Act was adopted to regulate the exercise by municipalities of their power to impose surcharges on fees for services provided under section 229 (1) (a) of the Constitution; to provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229 (1) (b) of the Constitution; and to provide for matters connected therewith. The date of its commencement is 7 September 2007.

This Act applies to municipal surcharges and municipal taxes referred to in section 229 of the Constitution, *other than* rates on property regulated in terms of the Local Government: Municipal PropertyRates Act, 2004, and municipal base tariffs regulated under the Municipal Finance Management Act, 2003, the Municipal Systems Act, 2000, or sector legislation.

(b) Municipal Fiscal Powers and Functions Amendment Bill

During 2020 National Treasury published the Amendment Bill for public comments (Government Gazette Notice No. 3 of 2020) and awaited comments until the 31st March 2020. Since then, it refined the Amendment Bill in line with the public comments received.

As part of the Cabinet protocols, the Amendment Bill had to be presented to the Directors-General Clusters and Cabinet Committees for their inputs and recommendations before submitting it to Cabinet for approval to table in Parliament for scrutiny. According to National Treasury as of November 2021 these processes were far advanced, and the Amendment Bill is likely to be submitted to Parliament during the first quarter of 2022.

National Treasury previously published various draft *Policy Frameworks* for Municipal Development Charges since the commencement of the 2007 Act. According to those frameworks the guiding principles in relation to development charges were equity and fairness, predictability, spatial and economic neutrality and administrative ease and uniformity. 'Fairness' to ensure that developers pay only for the infrastructure investments which they benefit from. 'Predictability' to enable developers to accurately estimate their liability and hold municipalities to account for the timely delivery of required infrastructure.

Those Policy Frameworks have since been converted into a memorandum of objects to the Amendment Bill. It was part of the document that was published for public comments in the 2020 Government Gazette. Therefore, in the formulation of this policy

document, the focus has been to bring it in line with the underlying thinking encountered in the Amendment Bill and in the '*Memorandum of Objects*' concerned.

The purposes of the Amendment Bill *inter alia* include to amend the 2007 Act, so as to regulate the power of municipalities to levy development charges; to set out the permissible uses of income from development charges; to provide for the basis of calculation of development charges; to provide for municipal development charges policies, community participation and by-laws; to provide for the installation of external engineering services by developers instead of payment of development charges; to provide for the consequences of non-provision of infrastructure by a municipality; to regulate reductions to the obligation to pay development charges through subsidies; to provide for matters relating to the budgeting of and accounting for development charges; to establish an entitlement on the part of municipalities to withhold other approvals or clearances due to non-payment of development charges; and to amend the SPLUMA.

Essentially the Amendment Bill seeks to regulate the power of municipalities to levy development charges in respect of a land development application submitted to the Municipality in terms of section 33(1) of SPLUMA or a municipal planning by-law. Clause 4 of the Amendment Bill proposes the insertion of **Chapter 3A**, which deals with development charges and *inter alia*:

- provides for a power for municipalities to levy development charges and establishes the basis on which they are calculated (Clause 9A);

- allows a municipality which decides to levy development charges to subsidise a land development or category of land developments through reducing the development charges payable where it has set out a criteria for such subsidy in its policy on development charges (Clause 9E);

- permits a municipality to set off the cost of infrastructure installed by the developer against a development charge (Clause 9G);

- deals with the consequences of a municipality not providing infrastructure for which a developer has paid a development charge (Clause 9H)

- provides for mechanism to resolve dispute for a person whose rights are affected by a decision regarding development charges (Clause 9K).

The Amendment Bill proposes amendments to SPLUMA, including *inter alia* the deletion of the definition of ''engineering service'' and inserting the following definitions:

- *'bulk engineering services' means capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure delivery of municipal engineering services for the benefit of multiple users or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework.*

- *'link engineering services' means the capital infrastructure assets associated with that portion of an external engineering service, which links an internal engineering service to the applicable bulk engineering services.*

- ***'**municipal engineering service**'** means a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development management, referred to in Chapter 6.*

The Amendment Bill restricts the scope of engineering services to those already covered in the current definition of engineering services provided in the SPLUMA. These are the provision of water, sewerage, electricity, municipal roads, storm water drainage, gas and solid waste collection and removal required for the purpose of land development. However, some level of flexibility has been provided for municipalities to levy development charges on other engineering services not specified in the SPLUMA, by providing for a municipality to apply to the Minister of Finance for an extension of services to be included in the calculation of development charges.

The Amendment Bill also proposes the following amendments to the SPLUMA.

- The amendment of the empowering provision (section 40(7) of the SPLUMA), by the substitution for paragraph *(b)* of the following paragraph:

  (*A Municipal Planning Tribunal may …)*

  > *in the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges: Provided that the Municipal Planning Tribunal endorses the Municipality's calculation of development charges and, where applicable, the timing for payment thereof as a condition or conditions of approval.*

- The amendment of section 49 by the substitution for subsection (2) of the following subsection:

  > *A municipality is responsible for the provision of external engineering services: Provided that link engineering services are installed by an applicant and that the municipality may require that such services are installed to provide a greater capacity than the land development itself needs, subject to the municipality reimbursing the applicant accordingly, unless the applicant waives his or her claim to reimbursement or the value of installing the additional capacity is set off against the applicable development charges liability.*

- The amendment of section 49 by the addition of the following subsection:

  > *A municipality may agree to contribute towards the cost of link engineering services, where the applicant's provision of link engineering service that meet the minimum standards of the municipality shall result in capacity that exceeds the requirements of the land development itself: Provided that the maximum contribution of the municipality does not exceed the amount which represents the difference between the cost associated with meeting the minimum standard and the cost of the actual requirements of the land development in question.* (Emphasis added).

[NOTE: 'Applicant' refers to a 'developer' as defined.]

If the amendments to SPLUMA (as proposed in the Amendment Bill) go through unamended and the Amendment Bill (unamended) becomes law, the following is noteworthy.

- A **development charge** will mean a charge levied by a Municipal Planning Tribunal in terms of section 40(7)*(b)* of, and contemplated in section 49 of, SPLUMA, which must-
  - contribute towards the cost of capital infrastructure assets required to meet increased demand for existing and planned **external engineering services**; or
  - with the approval of the Minister, contribute towards capital infrastructure assets required to meetincreased demand for other municipal engineering services not prescribed in terms of SPLUMA.
- Section 9A(1)(a) will empower a municipality to levy a development charge in respect of a **land development application** as contemplated in section 33(1) of SPLUMA or a municipal planning by-law.
- Section 9A(4) will require that the amount of a development charge must be-
  - **proportional** to the extent of the demand that theland development is projected to create for **existing or planned bulk** engineering services; and
  - calculated on the basis of a **reasonable assessment of the costs** of providing existing or planned **bulk** engineering services.
- According to the new SPLUMA definition, "**bulk engineering services**" will mean *capital infrastructure assets associated with that portion of an **external engineering service** which is intended to ensure delivery of municipal engineering services for the **benefit of multiple users** or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework.*

- According to the SPLUMA **"external engineering service"** means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area.

3.3 Interpretation

Our higher Courts in recent times have repeatedly stated that when it comes to the interpretation of statutes, the fundamental rule is that the words in a statute must be given their *ordinary grammatical meaning*, unless to do so would result in an absurdity.

There are *three interrelated riders*: the provisions should be interpreted purposively; the provision must be property contextualised and statutes must be construed consistently with the Constitution so that where reasonably possible the provisions should be interpreted to preserve their constitutional validity. It is also well recognised that it is wrong to ignore the clear language of a statute under the guise of adopting a purposive interpretation, as doing so would be straying into the domain of the legislature.

When attributing meaning to the words used in legislation, regard must be had to the context provided by reading the particular provisions in the light of the Act or by-law as a whole and the circumstances attendant upon its coming into existence. The '*inevitable point of departure is the language of the provision itself*', read in context and having regard to the purpose of the provision and the background to it landing on the statute books. It is therefore useful, when looking at the question of the legal requirements to be satisfied when imposing development charges in the context of present-day legislation, to have a historical perspective.

It is therefore important to take cognisance of the Legislative Background provided in Appendix "A" for a proper understanding of the Legislature's intention with DCs'.

4. OBJECTIVES

4.1. The objectives of this policy are to provide a sustainable and equitable framework for the financing of capital infrastructure assets and to ensure that:

4.1.1. The Municipality is able to provide capital infrastructure assets in a timely and sufficient manner to support land development;

4.1.2. Development charges complement other sources of capital finance available to the Municipality and are not utilised as a general revenue source;

4.1.3. Development charges are managed in a predictable, fair and transparent manner; and

4.1.4. Unnecessary litigation in the administration of development charges is minimised.

5. KEY PRINCIPLES OF THE POLICY

5.1. Principles to be applied must be in accordance with the current legislation, ~~as well as Chapter 3A of the Amendment Bill,~~ and further expounded in this policy.

5.2. Development Charges will be levied based on the increased demand that utilisation of intensified land use rights, which came into operation as a result of the Zoning Scheme or approval of new land development applications, are reasonably expected to have on existing and planned external engineering services capacity, irrespective of the geographical location of the development. For example, the traffic generated by a development located along a provincial road, will ultimately end up on the municipal road network that link to the provincial roads. The same applies to the additional stormwater run-off that ends up in downstream municipal networks and river courses, increase in demand and the bulk supply of water, and sewer and solid waste disposal. Factors are allowed in the calculations to reflect the actual usage in terms of industry norms and standards of infrastructure for these cases.

5.3. Four key principles underlie the system of development charges. These are:

5.3.1. ***Equity and Fairness***: Development charges should be reasonable, balanced and practical so as to be equitable to all stakeholders. The key function of a system of development charges is to ensure that those who benefit from new infrastructure investment, or who cause off-site impacts, pay their fair share of the associated costs.

This implies that:

5.3.1.1. The Municipality should recover from developers a contribution that is as close as possible to be full and actual costs of the capital infrastructure assets that are needed to mitigate the impacts of their land developments and to provide external engineering services to their developments;

5.3.1.2. Development charges are levied to recover the infrastructure costs incurred or to be incurred due to land development, and are thus not a form of taxation;

5.3.1.3. Costs which should be covered by development charges can be determined both in relation to the value of pre-installed capital infrastructure assets resulting from historical investments, and the provision of new capital infrastructure assets to meet new capacity requirements; and

5.3.1.4. Development charges are not an additional revenue source to be used to deal with historical backlogs in provision of services, such as backlogs that exist in some historically disadvantaged areas.

5.3.2. **Predictability:** Development charges should be a predictable, legally certain, and reliable source of revenue to the Municipality for providing external engineering services and should be clearly and transparently accounted for. In order to promote predictability in municipal finance systems the costs associated with municipal capital infrastructure assets provided expressly to benefit poor households should be established before subsidies are applied in a transparent manner to fund the liability.

5.3.3. **Spatial and Economic Neutrality:** The primary role of a system of development charges is to ensure the timely, sustainable financing of required capital infrastructure assets.

This implies that:

5.3.3.1. Development charges should be determined based on identifiable and measurable costs so as to avoid distortions in the economy and in patterns of spatial development;

5.3.3.2. Development charges should not be used as a spatial planning policy instrument;

5.3.3.3. Costs recovered should be dedicated only to the purpose for which they were raised; and

5.3.3.4. Development charges should be calculated where possible on a sectoral or geographic scale to more accurately approximate costs within a specific impact zone.

5.3.4. **Administrative ease and uniformity:** The determination, calculation and operation of development charges should be administratively simple and transparent.

6. OBLIGATION TO IMPOSE A DEVELOPMENT CHARGE

6.1. Development Charges Apply

When the Municipal Planning Tribunal or Municipality (delegated authority) approves a land development application which will or may result in intensified land use with an increased demand for external municipal engineering services infrastructure, it may, by imposing a condition of approval ~~in terms of section 66 of the Planning By-Law~~, levy a development charge proportional to the calculated municipal public expenditure that has or may be incurred to satisfy the increased demand according to the normal need arising from such approval.

6.2. Development Charges do not apply

Development Charges do not apply to land development restricted to the exercise of current primary land use rights obtained or approved prior to the commencement of the Zoning Scheme, **unless 13.6 is applicable**.

It also does not apply to the following types of land use applications, as the impact of those land uses have an insignificant impact on engineering services infrastructure and those uses have a social and/or economic benefit to the Municipality and/or the community:

6.2.1. Home / non-commercial early childhood development centres that serve the surrounding community.

6.2.2. Community based churches and places of religious worship (it must be clear that such development will not lead to a significant additional service usage that will have an increased demand on municipal services).

6.2.3. House shops up to the lesser of 30% of the floor area of the buildings on the site or 50m^2 per erf.

6.2.4. Second dwellings – up to a total maximum of five bedrooms per erf will not trigger a Development Charges payment.

6.2.5. Houses or rooms in houses converted to student rooms / communes - up to a total maximum of five bedrooms per erf will not trigger a Development Charges payment. Bedrooms beyond five will be charged per room under the "Student accommodation / Commune / Hostels" DC category.

~~6.2.4.~~6.2.6. Houses or rooms in houses converted to guest houses - up to a total maximum of three bedrooms per erf will not trigger a Development Charges payment. Bedrooms beyond three will be charged per room under the "Guest House" DC category.

6.3. A development charge will be determined by the Municipality in terms of and on the basis of the applicable statutory provisions referred to in paragraph 3.2 above read with this policy.

6.4. A developer must pay to the Municipality the full amount of the applicable development charge due prior to the exercise of any rights to use, develop or improve the land arising from the approval of a land development application, unless in the case of a phased land development –

6.4.1. The Municipality authorises phased payments in the conditions of approval of land development applications, to take into account the timing of the proposed phases of the land development; and

6.4.2. The Municipality may approve payment of the outstanding development charge into an attorney's trust account, in cases where this will enable the completion of infrastructure projects in lieu of Development Charges that are not yet completed at the time that clearance is sought and if such withholding of clearance is deemed to be unfair towards the developer. An example of this is where the Municipality has requested the upgrade or installation of a service in-lieu of Development Charges, of which the upgrade was not an original condition of approval, or which is not specifically triggered by the development, but of which the immediate upgrade will be of benefit to the Municipality and/or the greater public. The conditions for the utilisation of the funds in this trust account shall be stipulated in a letter of undertaking issued by the trust attorney and as agreed to in writing by the Municipality.

6.5. When approving a land development application, the Municipality must stipulate at least the following matters relating to the development charge –

6.5.1. The total amount of the development charge;

6.5.2. The dates/development milestones on which the payment or payments must be made and the amount of such payments;

6.5.3. Whether the Municipality and the developer have agreed that the developer will install any bulk services, as contemplated in paragraph 9; and

6.5.4. Where the developer is to install bulk services instead of the payment of some portion or all of a development charge –

6.5.4.1. The nature and extent of the bulk services to be installed by the developer;

6.5.4.2. The timing of commencement and completion of the bulk services to be installed by the developer;

6.5.4.3. The amount of the developer's fair and reasonable costs of installation, or the process for determining that amount, including the process, after installation, for making any adjustments to an amount specified as determined by the Municipality; and

6.5.4.4. The engineering and other standards to which the installed external engineering services must conform.

6.6. The Municipality and a developer may, and in the circumstances provided for in paragraph 9 must, conclude an engineering services agreement to give detailed effect on the arrangements contemplated in this paragraph 6, provided that an engineering services agreement may not permit any intensification of land use beyond that which was approved.

7. CALCULATION OF DEVELOPMENT CHARGES

7.1. Subject to the provisions of this policy, a development charge shall be calculated with reference to the estimated increased load placed on the external engineering services networks that results from the development in a specific impact zone.

7.2. The capital cost of internal engineering services is for the account of the developer.

7.3. Subject to paragraph 6.3 above and for purposes of calculation of the bulk services component of a development charge, the Municipality must –

7.3.1. Determine a unit cost for each municipal infrastructure service, which unit cost must include all land cost, professional fees, materials, labour and reasonable costs of construction, but must exclude the value of any debts incurred by the Municipality for purposes of funding existing capital infrastructure assets, to the extent that such debt has not been repaid by the Municipality;

7.3.2. Apply a formula, which formula will –

7.3.2.1. Be aimed at determining the impact of the proposed land use on municipal infrastructure services, taking into account current and planned capacity, relative to the impact of the land use occurring at the date of approval of the land development application; and

7.3.2.2. Calculate the amount payable by multiplying the unit cost referred to in paragraph 7.3.2.1, by the estimated proportion of the municipal infrastructure services, including current and planned capacity, that will be utilised by the proposed land development.

7.4. The basis upon which development charges unit costs of the civil services and community services will be determined, as envisaged in paragraph 7.7, shall be consistent with Chapter 3A of the Amendment Bill.

The methodology for calculating unit costs can be summarised as follows, per service and for each impact zone thereof:

- Use an appropriate planning horizon in the future for that service (e.g. 20 years).
- Use town-planning scenarios and engineering master planning to determine what new services are required, such that at that point in the future, the joint capacity of existing and future services matches the number of consumption units that will be in place, being the existing amount plus the future development amount.
- Estimate the costs of the existing and future infrastructure, as though it was all being constructed at the present day, i.e. replacement cost for existing infrastructure or present-day cost for future infrastructure.
- Establish the number of consumption units that the total infrastructure will cater for i.e. existing consumption plus future consumption.
- From the above calculate the cost per unit consumption factor.
- The DC for the development in question is then calculated by multiplying the nett additional consumption needed for that development, by the cost per unit consumption factor.

In this manner the new development is paying its fair share of the infrastructure that it uses in that impact zone, and not financing an existing shortfall nor financing a surplus being created.

7.5. The basis upon which development charges will be determined i.t.o. electricity will be as per NRS 069: Code of practice for the recovery of capital costs for distribution network assets or in terms of any existing of future municipal policy relating to electricity DCs.

7.6. The Municipality must adjust the unit cost for each municipal infrastructure service on an annual basis during the budget preparation process referred to in Section 21 of the Local Government: Municipal Finance Management Act 56 of 2003, to take account of inflationary impacts and must publish the adjusted unit costs within two months of approving the municipal budget. The Municipality will use the Contract Price Adjustment Factor as prescribed in the SAICE General Conditions of Contract for Construction Works (as amended) to determine the annual effect of inflation.

7.7. Where possible, unit costs for each municipal infrastructure service should be re-calculated every five years to take into account the current and planned capacity for each municipal infrastructure service at the date of re-calculation, and any other relevant factors.

7.8. ~~The unit costs were last recalculated for 2022/23.~~ No adjustment factor between 2021/22 and 2022/23 was approved by Council as the new the unit costs were recalculated from scratch. ~~rates became effective immediately.~~ As an escalation factor is still required in some instances, for instance to escalate the value of work done in lieu of DCs over multiple financial years, this increase is hereby confirmed as 14.7415%.

~~7.9. In the event of the Municipality discovering that a gross error has occurred in the determination of the development charges, or if there are justifiable reasons to review the charges, it may, by means of a council resolution, correct such error or review the charges.~~

8. ADJUSTMENT FOR ACTUAL COSTS OR USAGE

8.1. Notwithstanding the provisions of paragraph 7.3, the Municipality may at its own instance or on request by a developer, increase or reduce the amount of the bulk services component of a development charge so as to reflect the actual cost of installation of the required bulk services, where:

8.1.1. there are exceptional circumstances, as motivated by the developer and if accepted by the Council, justify such an increase or reduction. An exceptional circumstance will typically be in the event that it is discovered that a gross error has occurred in the determination of the development charges tariffs, or

8.1.2. a particular land development significantly exceeds the size or impact thresholds set out in the applicable Development Charges tariff tables, or

8.1.3. the ~~actual~~ usage of a particular land use ~~development~~ varies significantly from the usage of the approved Development Charges tariff tables and of which the actual usage is motivated by a professional engineer and can be justified by means of recognised engineering guidelines and/or industry norms and standards~~.~~ or,

8.1.4. w~~W~~here a development is situated outside the urban area, and it is not connected to or uses the bulk infrastructure allowed for in the Development Charge calculation, because it is providing its own bulk services (e.g. private borehole water supply and waste water package plant) ~~or its reduced usage is not already allowed for in the calculation~~, then that portion of the Development Charge must be removed from the calculation ~~adjusted by means of calculations by a professional engineer in terms of this section~~, and the

developer must pay for the installation of his own bulk infrastructure to the approval of the Engineer or,

8.1.5. in the event of the Municipality discovering that an error has occurred in the determination of the development charges tariffs, or if there are justifiable reasons to review the tariffs, it may, by means of a council resolution, correct such error or review such tariffs.

8.2. Where the Municipality adjusts the amount of the bulk services component of a development charge ~~on the basis of actual costs~~ in terms of this section:

8.2.1. the developer is responsible for the costs of performing the calculation of such adjustment, which must be carried out by a registered professional civil engineer appointed by the developer with appropriate experience and expertise having regard to the nature and extent of the proposed land use; and

8.2.2. the actual cost must include, where applicable and without limitation, land costs, professional fees, materials, labour, the reasonable costs of construction and any tax liabilities: provided that all such costs would otherwise have been borne by the Municipality, in the provision and installation of the bulk services concerned.

9. INSTALLATION OF EXTERNAL ENGINEERING SERVICES INSTEAD OF THE PAYMENT OF DEVELOPMENT CHARGES

9.1. The Municipality may agree with a developer that the developer installs all or part of the external engineering bulk services required for an approved land development instead of the payment of the applicable development charge.

9.2. Where a developer installs external engineering services to the technical standards required by the Municipality, as reflected in the applicable conditions of approval of the land development application or as agreed with the Municipality in writing, the developer may set off the fair and reasonable cost of such installation, as determined by the Municipality, against the applicable development charges.

9.3. Any capital infrastructure assets forming part of an external engineering service installed by a developer instead of payment of any part of a development charge shall, upon installation, become the property of the Municipality, and-

9.3.1. the developer shall bear the responsibility of ensuring that ownership or other relevant rights to the affected capital infrastructure assets is or are transferred to the Municipality;

9.3.2. the Municipality must include the applicable capital infrastructure asset gain in its next adjustments budget, in accordance with regulations relating to asset gains, made in terms of the Local Government: Municipal Finance Management Act 56 of 2003.

9.4. The Municipality may require that a developer installs external engineering services to accommodate a greater capacity than that which would be required for the proposed land use alone in accordance with any master plan approved by the Municipality, in order to support planned future development in the vicinity of the approved land development. Where the total fair and reasonable cost of installation of such required external engineering services exceeds the development charge payable by the developer, the Municipality may reimburse the developer the amount in excess of the development charge, in accordance with a written agreement, provided that such infrastructure has been provided for in accordance with an approved master planning programme for such service and which has been approved as a capital project in terms of the budget of the Municipality. This reimbursement is to be within an agreed payment schedule not exceeding three

years from the date of installation unless the developer waives his right to the applicable reimbursement.

9.5. If the developer elects to develop outside the Municipality's approved capital expenditure programme, he or she will have to fund the provision of services to enable such development. There is no obligation on the Municipality to provide services to land simply because an owner wants to develop his/her land and the Municipality is not obligated to re-imburse the developer for such expense. Section 152 of the

Constitution emphasises the fact that the Municipality must structure its administration and budgeting and planning processes to give priority to the basic needs of the community.

9.6. When a developer installs external engineering services instead of payment of a development charge, he or she must adopt the most cost-effective and efficient approach to meet the Municipality's technical standards. The principles of procuring the most cost–effective and efficient services must be followed. Therefore, the installation of engineering services must be provided at costs based on a competitive procurement process and evaluated by the developer's consultant with a recommendation for appointment. Such recommendation must be approved by the Municipality before the appointment of a contractor for this purpose.

9.7. "Upon the "Developer" having complied with all the terms and conditions of an engineering services agreement the "Municipality" undertakes to value the total cost of "Municipal Services", such valuation will be based on the payment certificates as certified by the professional Consulting Engineer. The total value as per the final payment certificate of the project will be used to determine the total cost of "Municipal Services". If the project has been completed in a previous financial year, the total completion value (as normally indicated on the final payment certificate) can be escalated to the year at which time DC payment is to be made. The escalation rate will be the same as the DC annual escalation as approved by council. The outstanding amount of development ~~contributions~~ charges payable ~~as concluded with the "Developer"~~ will be reduced by the value of such "Municipal Services" ~~as provided in terms of this Agreement~~. The outstanding amount will be payable before a clearance certificate is issued by the Municipality, or before an occupation certificate is issued (where clearance certificate is not applicable) or by any stage as indicated by the Municipality in the approval conditions for that development.

10. NON-PROVISION BY THE MUNICIPALITY

10.1. Where the Municipality has agreed to install the required external engineering services and fails to do so within a period of twelve months from the date for completion stipulated in such agreement, the Municipality must return the applicable portion of the development charge paid by the developer, to the developer, with interest charged at the applicable rate for debts owed to the State.

10.2. Notwithstanding the provisions of paragraph 10.1, the Municipality and the developer may agree to:

10.2.1. an extension of the time period for the installation of the required external engineering services by the Municipality: provided that such extended time period may not exceed twenty-four months and provided further that where the Municipality completes the installation within such extended time period, it has no obligation to return the development charge paid by the developer, to the developer; or

10.2.2. an engineering services agreement, or such a revised agreement, in terms of which the developer agrees to install the required external engineering services in whole or in part and, where agreeing to install in part, the time period within which the Municipality will install those external engineering services for which it remains responsible: provided that the extended time period for installation by the Municipality may not exceed twenty-four months and provided further that where the Municipality completes its portion of the installation within such extended time period, it has no obligation to return that portion of the development charge paid by the developer which pertains to the external engineering services installed by the Municipality, to the developer.

11. WITHHOLDING CLEARANCES AND APPROVALS.

11.1. The Municipality shall be entitled to withhold any consent, clearance or approval in respect of a land development in the event where development charges owed by the developer remain unpaid or the developer fails to install external engineering services in accordance with an engineering services agreement entered into with the Municipality.

11.2. The Municipality shall not be obliged to allow any internal or link services to be connected to the bulk services of the Municipality until all development charges have been paid by a developer.

12. SUBSIDIES, ~~AND~~ EXEMPTIONS AND DISCOUNTS

12.1. The Municipality may only subsidise a land development or category of land developments through reducing the development charge payable in respect thereof if it meets one or more ~~any~~ of the following criteria:

- The beneficiaries of the land development must primarily be indigent persons, persons dependent on pensions or social grants for their livelihood, or persons temporarily without income.
- The land development must be for purposes of serving the community, conservation, educational, institutional or public purposes as defined in Schedule 2 to the SPLUMA.
- The applicant for a subsidy must be a registered non-profit or charitable community organisations undertaking social development projects that is beneficial to the community and/or where the applicant is able to demonstrate how the proposed development will have a social and/or economic benefit to the Municipality. The use of any land or buildings, or any part thereof, shall not be for the private financial benefit of any individual, including as a shareholder in a company or otherwise.
- If the bulk engineering services for the land development concerned have been budgeted to be funded through a fiscal transfer from another sphere of government, a subsidy may be granted to the extent of that grant funding.

12.2 Examples of land uses that ~~may potentially~~ qualify for ~~subsidies or~~ automatic exemptions, are the following:

- ~~Breaking New Ground (BNG) (also known as low-cost) housing projects~~ ~~All government~~All government subsidised housing programmes ~~implemented by the Municipality~~ will be automatically exempt from DCs. These projects are approved by council as per the Housing pipeline prior to implementation and such approval should include financial commitments regarding the provision of bulk services for these projects. Such projects would also typically qualify for government grants to fund the upgrade of bulk infrastructure. It is thus not necessary for development charges if the provision of bulk services is to be funded by alternative funding sources. If any bulk upgrades are identified to accommodate the new development during land use approval, then the onus will be on Council to allocate the required funds to the budget as part

of the project implementation.

12.3 Examples of land uses that may potentially qualify for subsidies, subject to council approval, are the following:

- Public schools, hospitals, clinics and other public infrastructure projects developed and funded by government which provides a service to especially the poorer communities may qualify for a potential subsidy. These projects will have a social and economic benefit to the communities and the Municipality in its whole and in so doing will alleviate some institutional and financial pressure on the Municipality in terms of providing social infrastructure and social development programmes.

12.5. Applications and motivations for subsidies must be in writing and addressed to the Director: Infrastructure Services for evaluation, calculation of the applicable development charge as if it were payable, and submission of a recommendation to the Stellenbosch Municipal Council for consideration. Such submission must clearly indicate how the application meets the criteria of 12.1 and / or 12.~~2~~3 above. Should the submission/motivation fail to prove that it meets these criteria, it will not be recommended to council for consideration.

12.6. If a subsidy is granted, the Municipal Council must set out the reasons for its decision, must identify the alternative funding source for the required bulk engineering services to the value of the subsidy, and must budget for and/or obtain funding from an alternative source to the value of the subsidy.

12.7. Before the Municipality grants an individual subsidy, it must:

~~12.4.1.~~12.7.1. ensure that the revenue to be forgone as a result of any subsidy approved by the Municipal Council is reflected in the Municipality's budget (Finance);

~~12.4.2.~~12.7.2. must provide for budgetary provision for the realisation of the revenue forgone to be made, from another realistically available source of revenue (Finance);

12.7.3. ensure that the monetary value of the subsidy, together with the amount of any other payment or payments received by the Municipality towards the capital costs of external engineering services for an approved land development, is at least equal to the development charge calculated in accordance with paragraph 12.4.1.

12.8. A discount for Inclusionary housing units/erven will be applicable if approved by Council in the Stellenbosch Municipality's Inclusionary Zoning Policy (as amended). The discount will be based on the discount rate approved in the aforementioned policy.

13. SPECIAL ARRANGEMENTS

13.1. Rural areas/farms: Development Charges will not be levied in respect of buildings as are reasonably connected with the permissible main farming activities on the farm (e.g. cellar and bottling facilities on a wine farm or a fruit packaging and storage facility on a fruit farm). Development Charges according to the applicable tariff will be levied for any other development on farms requiring approval of land use applications, e.g., a farm stall, function venue, tourist accommodation facilities, conference facilities or other commercial activities. A scientifically calculated reduction factor of 50% will be however be applied to the trip generation rates as specified for such land uses outside of urban areas.

13.2. Gross Leasable Area ("GLA"): When at the time of the Development Charges calculation being done, the GLA figure is not known, it will be deemed to be 15% less than the permissible total bulk (i.e. based on 85% of the total permissible bulk).

13.3. Development Charges In lieu of Parking bays: If the development is located in an area where in the opinion of the Municipality the lack of sufficient on-site parking is currently causing problems, payment of Development Charges in lieu of providing parking bays will not be permitted. Some or all of the following criteria, at the sole discretion of the Municipality, must be met before a Development Charges payment in lieu of parking will be favourably considered:

- If located in the historical CDB core where buildings were historically approved with limited parking provision;
- When a development is situated within a 500m radius of a public transport hub or facility;
- When a development is situated along a primary functional public transport route – provided that the necessary embayment required, is provided;
- When a development is situated along a primary Non-Motorised Transport. route (as defined by the Non-motorised Transport Masterplan) – provided that the necessary facilities are in a good state;
- Where a public parking garage has been constructed that, in the Municipality's opinion, adequately caters for the demand created by the shortfall of on-site parking.

13.4. Provincial roads outside of the urban boundaries are not allowed for. For provincial Roads within the urban boundaries, 20% of the value thereof has been allowed for in the determination of the Development Charges tariffs and therefore this percentage will be allowed to be offset from Development Charges where constructed by the Developer in terms of an engineering services agreement. The offsetting of Development Charges against the full cost of provincial road upgrades would result in an under-recovery of Development Charges for municipal roads. Exception is upgrades to intersections between municipal and provincial roads, where the full amount can be offset from Development Charges.

13.5. Non-motorised transport facilities: A functional and safe non-motorised transport and public transport network will reduce the dependence on private motor vehicles and therefore relieve road congestion and free up capacity on the roads and intersections. The developer may set off its fair and reasonable cost of providing such facilities, as determined by the Municipality, against the applicable development charges if the Municipality is satisfied, based on its non-motorised transport master plan, that those facilities are for the benefit of multiple users/developments and/or the community as a whole.

13.6. Handling of properties with historical land use rights: If a property (especially business and industrial zoned property) has an existing zoning right, it does not necessarily mean that DCs have been paid on the full development potential of the property when such zoning was approved. A DC credit can only be granted if a DC for a specific development or building has been paid in the past, or if there are existing permanent, legal buildings (has building plan approval) on the site which service demand has already been absorbed into the bulk service networks. Otherwise there is no justification for granting such a credit. The onus to prove that DCs have been paid is on the Developer/Applicant. DC's will be payable before building plan approval.

13.7. Temporary Departures: No Development Charges will be levied in respect of temporary departure approvals; provided that:

13.7.1. If, in the Municipality's opinion, any external engineering services upgrades are required to meet increased demand due to the impact of the temporary land use concerned, even if of a temporary nature, the developer must construct such upgrade at own cost; and

13.7.2. if an application for an extension of a temporary departure is granted, Development Charges will be levied due to the prolonged impact on services.

13.8. Where a development's Development Charges are utilised to upgrade a specific service in order to create the required capacity, and the Development Charges for that specific service category is not sufficient to cover the cost of the upgrade, the Director: Infrastructure Services**,** at his discretion, will determine if Development Charges from the other service categories can be utilized to cover the cost. Factors to be taken into consideration include the status of bulk services in the development area, the practicality and timing to secure alternative sources of funding, etc. ~~Electrical Development Charges may not be used to cross fund civil engineering infrastructure and vice versa.~~ The Community Facilities Development Charges must be ring fenced and not utilised on engineering ~~civil or electrical~~ infrastructure.

13.9. Where a service other than a bulk service needs to be modified/relocated in order to accommodate a development, and such modification/relocation is the municipality's responsibility, but cannot be implemented by the municipality due to time and/or budget and/or operational constraints, such work may be offset from DCs. An example would be if a municipal service is located on private property, without a servitude, and such service needs to be relocated to allow building work.

13.10. Where a change in land use leads to a lower impact than the original land use, and leads to a specific service being in a "credit" in terms of the DC for that service, such credit cannot be refunded, or be offset from the DCs of any of the other services. The reason for this is that the original impact has already been catered for in terms of bulk services, that expense does not fall away due to the lower impact of the changed land use. Furthermore, should the new land use in future change back to ~~it's~~its original use, a DC will not be applicable, as it would be deemed that such DC had been paid when the original land use had been implemented.

Example – a new 2 residential erf subdivision is approved – DCs are paid before subdivision clearance. Then afterwards, it is consolidated, no DC payable because impact on (say roads/trip generation is less for one erf than 2 erven.). Afterward, again subdivided into the original 2 erven – no DC is now payable because a DC was already paid when the 2 erven were originally subdivided.

~~13.9.~~13.11. Outdoor Function / Picnic Areas: Where such an outdoor area is provided as an alternative seating space for the formal seating (GLA) in a restaurant/deli/tourist facility, in other words the outdoor area will not lead to additional guests, then DCs will not be applicable for the outdoor area. The total number of persons to be accommodated at any point in time at the establishment will then be limited to the capacity of the restaurant/deli/tourist facility, which must be stated in the application and in the application's motivation. ~~If~~If, however the seating of an outdoor area is additional to the formal seating (GLA) in a restaurant/deli/tourist facility, then DCs will be charged for that outdoor area as well.

Appendix "A"

Legislative background and relevant statutory provisions

Legislative background

1. The Townships Ordinance, 33 of 1934 – ('Townships Ordinance')

Before 1 July 1986 (i.e., the commencement date of the Land Use Planning Ordinance, 15 of 1985), land use applications in the Province of the Cape of Good Hope were dealt with in terms of the Townships Ordinance, 33 of 1934.

It *inter alia* provided in section 35 *ter* that an enhancement levy was due to the local authority concerned by the owner of any land of which the *value* is or has increased in consequence of '*provisions*' being or having been '*prescribed*' (i.e., zoning rights granted). The intention clearly was that the levy would serve as the developer's contribution towards the cost of providing or upgrading municipal services infrastructure required to serve development undertaken, based on the approved enhanced rights.

2. The Venter Commission

Under the Townships Ordinance, however, the settling of the question of a basis on which engineering services should be provided by the township establisher and the local authority concerned, was one of the biggest single factors that retarded the township establishment process and the rapid and effective production of new residential sites.

On 26 June 1982 the State President therefore appointed a commission to inquire into and make recommendations *inter alia* regarding methods which may promote the provision of sufficient residential erven and reduce the cost thereof. The commission became known as the Venter Parliamentary Commission (the 'Venter Commission').

At that stage the regulation of costs of township establishment in the Cape Province was based on the recommendations of the 1970 Niemand Commission. These included the basic principle that the existing municipality rate payers should not be expected to carry the burden of services for the new township but that the arrangements between the township owner and the municipality should be such that the municipality did not make a profit out of the township owner or the purchaser of his erven either. In short, the basis for cost liability was supposed in all cases to be the principle of equal treatment, in accordance with which the inhabitants of the old town should not subsidise the new township and neither should the old derive benefit from the new township.

The Venter Commission published three reports, respectively dated 29 March 1983, 16 June 1983 and 30 November 1983. It assumed, for purposes of those reports, that the concept of '*internal services*' referred to the engineering services network that was internal to the township

concerned, but that it did not include the higher order services situated within the area of the township concerned that were generally classified as '*external services*' and were able to serve adjacent areas as well. It recommended **[1]** that '*the township establisher should accept responsibility for the installation and financing of all engineering services that are internal to the township, and the local authority should accept responsibility for the installation and financing of external engineering services.*'.

3. The Land Use Planning Ordinance, 15 of 1985 – ('LUPO')

Many of the recommendations of the Venter Commission were adopted by the then Cape Province Provincial Government and served as points of departure for the drafting of the Land Use Planning Ordinance, 15 of 1985 ('LUPO').

Section 42(1) of (the now repealed) LUPO, empowered the competent authority to grant a land use application, subject to '*such conditions as he may think fit*'. Section 42(2) of LUPO is particularly noteworthy. It read as follows:

> '*Such conditions may, having regard to-*
>
> *(a) the community needs and **public expenditure which** in his or its opinion **may arise** from the authorisation, exemption, application or appeal concerned **and** the public expenditure **incurred in the past** which in his or its opinion facilitates the said authorisation, exemption, application or appeal, and*
>
> *(b) the various **rates and levies** paid in the past or to be paid in the future by the owner of the land concerned, **include conditions** in relation to the cession of land or the **payment of money which is directly related to requirements** resulting from the said authorisation, exemption, application or appeal in respect of the provision of necessary services or amenities to the land concerned*.' [Emphasis added].

LUPO no longer catered for enhancement levies but introduced an arrangement in terms of which local authorities could require, as a condition of approval, a contribution towards specified public expenditure. The qualification was that such expenditure (incurred in the past or that may arise) should (a) in the opinion of the authority, facilitate the land use approval; and (b) had to be directly related to requirements *resulting* from such approval, *in respect of the provision of necessary services or amenities to the land concerned*.

The reason why local authorities were required to take into consideration '*the various rates and levies paid in the past or to be paid in the future by the owner of the land concerned'*, relates to how *loans,* as mechanism to finance infrastructure investment programmes, fits within the municipal fiscal framework. When loans are taken up for this purpose, municipalities repay same *inter alia* by using income from those sources. In other words, even the owners of vacant land contribute towards the cost of existing infrastructure that was or new infrastructure that will be provided with borrowed funds. To disregard their previous and future contribution would therefore be in conflict with the requirement that municipality should not make a profit out of the developer.

4. Conclusion

Development charges are nor a new revenue source or tax for municipalities, but a once-off infrastructure access charge imposed by a municipality on a developer as a condition of approval of a land development that will result in intensification of land uses and an increase in the use of or need for municipal engineering infrastructure.

All the new order local government and planning legislation and language used therein, can easily induce an exaggerated sense of the extent of the substantive shift that it is brought about. Actually, the new order regime very much replicates that which previously subsisted in terms of the old order legislation and provides for the substantive continuity of the regulatory structure.

The new order legislation merely refined statutory arrangements relating to development

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1 Par 3.6 Venter Commission 2nd Report sub-paragraph 10.

charges whilst the underlying principles in respect thereof, remained the same. People working with the legislation shall appreciate the pattern today is not something essentially different to what it was yesterday and because different language is used in the legal framework one shouldn't allow that to confuse oneself into thinking of it as some sort of a legal revolution. The underlying principles still represent an equitable division of development costs between the local authority and the developer.

Relevant statutory provisions

The National Constitution – ('Constitution')

- Section 229(1)(b) empowers a municipality, if authorised by national legislation, to impose other taxes, levies and duties.
- According to section 229 (2) the power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the Municipality, or other taxes, levies or duties-
  - may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
  - may be regulated by national legislation.

Stellenbosch Municipality: Zoning Scheme By-Law 2019 – ('Zoning Scheme')

20. Development charges in terms of this Scheme

(1) The calculation of development charges and whether a development charge is payable, shall be subject to the Municipality's adopted policy.

(2) Where the provision in a particular zone identifies that a development charge is payable for intensified primary development rights which came into operation as a result of this Scheme, and where the owner intends to develop according to such intensified rights, such development charge shall be calculated when the building plan is submitted and shall be paid prior to the approval of said building plan.

(3) Where an application is made in terms of Planning Law, or where application is made for technical approval in terms of this Scheme, the Municipality may impose a condition related to development charges payable where said approval leads to the intensification of land use beyond the primary rights which has been originally approved on the land unit.

(4) Unless an alternative agreement is reached in writing between the owner and the Municipality, no building plan shall be approved on any land unit where an outstanding development charge is payable.

(5) If the Municipality fails to calculate a development charge at the appropriate approval stages as set out in this section, it is deemed that there are no charges related to that development. (0)

89. Development charges in the Multi-Unit Residential zone

(1) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law.

(2) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation because

of this Scheme.

(3) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(4) The Municipality shall consider additional development charges in at least the following instances where building plans for primary rights are submitted:

(a) any new development where a group housing or retirement village scheme exceeds the density per hectare as indicated below for the various former scheme areas:

(i) 20 units per hectare in former Stellenbosch scheme area and former Section 8 scheme area;

(ii) 30 units per hectare in former Franschhoek scheme area;

(b) any new development where the total floor area exceeds the following:

(i) in former Stellenbosch and Franschhoek scheme areas:

- *40% for erven up to 1499m2 (factor of 0.4)*
- *50% for erven op to 1749m2 (factor of 0.5)*
- *60% for erven up to 1999m2 (factor of 0.6)*

(ii) in former Section 8 areas: (0)

- *100% of the land unit (factor of 1.0)*

(c) where consolidation is undertaken which results in a greater floor area threshold applying than set out above for the original land unit size;

(d) any new development where a direct or indirect limitation applied on the development potential of the land unit by a condition of approval or the provisions of the former zoning scheme.

102. Development charges in the <u>Local Business</u> zone

(1) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law.

(2) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation as a result of this Scheme.

(3) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(4) The Municipality shall consider additional development charges in at least the following instances where building plans for primary rights are submitted:

(a) any development which exceeds the previously approved development extent or land use on a land unit which was zoned "Restricted Business", "Specific Business" or "Minor Business" in the former Stellenbosch or Franschhoek schemes;

(b) any development where the floor area exceeds 150% of the area of the land unit (factor of 1,5);

(c) any development where consolidation is undertaken which results in the intensification of land use which is greater than that applicable on the individual erven; and

(d) any new development where a direct or indirect limitation applied on the development

potential of the land unit by virtue of a condition of approval or the provisions of the former zoning scheme.

115. Development charges in the Mixed-Use zone

(1) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law.

(2) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation because of this Scheme.

(3) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(4) The Municipality shall consider additional development charges in at least the following instances where building plans for primary rights are submitted:

(a) any new development where the total floor area exceeds the following:

(i) in former Franschhoek scheme area:

- *255% of the area of the land unit (coverage of 85% on 3 floors) for business related buildings;*
- *150% (coverage of 50% on 3 floors) for flats and any other residential buildings;*

(ii) in former Section 8 scheme areas:

- *300% of the area of the land unit (floor factor of 3,0) for business related buildings;*
- *100% of the area of the land unit (floor factor of 1,0) for flats and any other residential buildings);*

(iii) in former Stellenbosch scheme areas:

- *425% of the area of the land unit (coverage of 85% on 5 floors) for business related buildings;*
- *185% of the area of the land unit (coverage of 85% on ground and 50% on 2 more floors) for flats and any other residential buildings (excluding hotel and guest house);*
- *285% (coverage of 85% on ground and 50% on 4 more floors) for hotels and guest house.*

(b) any new development where a direct or indirect limitation applied on the development potential of the land unit in terms of a condition of approval or the provisions of the former zoning scheme.

128. Development charges in the Industrial zone

(1) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law.

(2) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation because of this Scheme.

(3) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(4) The Municipality shall consider charging development charges in at least the following instances where building plans for primary rights are submitted:

(a) any new development where the total floor area exceeds the following:

(i) in former Franschhoek and Stellenbosch scheme areas:

- *225% of the area of the land unit (coverage of 75% on 3 floors);*

(ii) in former Section 8 scheme areas:

- *150% of the area of the land unit (floor factor of 1,5);*

(b) any new development where a direct or indirect limitation applied on the development potential of the property by a condition of approval or the provisions of the former zoning scheme.

140. Development charges in the Education zone

(1) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation because of this Scheme.

(2) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(3) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law.

151. Development charges in the Community zone

(1) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation because of this Scheme.

(2) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(3) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law. (0

162. Development charges in the Utility Services zone

(1) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation because of this Scheme.

(2) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(3) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law.

172. Development charges in the Transport Facilities zone

(1) The Municipality shall, prior to approval of a building plan for a primary right, determine whether the building to be approved constitutes an increase in development rights which is greater than the rights which existed in the former scheme, and should this be found to be the case, require that a development charge in accordance with section 20 of this Scheme.

(2) The Municipality shall at least consider imposing development charges in the following instances:

(a) any new development or expansion of business-related ancillary uses to passenger transport uses;

(b) any new petrol filling stations or expansion of existing filling stations;

any new development where a direct or indirect limitation applied on the development potential of the land unit by a condition of approval or the provisions of the former zoning scheme.

219. Development charges in the Agriculture and Rural zone

(1) A development charge is payable in terms of section 20 in instances where a building plan is submitted to utilise intensified primary development rights which came into operation as a result of this Scheme.

(2) The Municipality shall, prior to approval of such a building plan, determine the extent of such additional rights and calculate the required levy, which shall be paid by the landowner prior to the approval of said building plan.

(3) The Municipality may impose development charges for any additional use or consent use application in accordance with Planning Law.

Local Government: Municipal Systems Act, 32 of 2000 – ('MSA')

According to the MSA a **'***municipal service***'** means a service that a municipality is empowered to provide and which it provides or may provide to or for the benefit of the local community. Irrespective of whether such a service is provided (or to be provided) by the municipality through an internal mechanism or by engaging an external mechanism.

- Section 4 (1)I provides that the council of a municipality has the right to finance the affairs of the municipality by

o charging fees for services; and

o imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.

- Section 4(2) provides that the council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty *inter alia* to-

o exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;

o strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner; and

o promote and undertake development in the municipality.

- According to section 11(3) a municipality exercises its legislative or executive authority *inter alia* by imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies.

- Section 74 of the MSA requires that a municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of the MSA and any other applicable legislation. In terms of section 74(2) a tariff policy must *inter alia* reflect at least the following principles, namely that-

o tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;

- tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;
- the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.

- Section 75A of the MSA deals with the general power of municipalities to levy and recover fees, charges and tariffs. It provides that a municipality may-
  - levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and

    recover collection charges and interest on any outstanding amount.