FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

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SUBJECT: COMMENTS ON PROPOSED AMENDMENTS TO THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL)

DUE: 1 APRIL 2019

In terms of section 17 of the Local Government: Municipal Systems Act, Act 32 of 2000, the public and interested parties or groups are given the opportunity to submit comments, recommendations or input to the municipality in respect of the policy relating to the amendments to the City's Municipal Planning By-Law.

1. COMMENTARY

The Municipal Planning By-Law (MPBL) of 2015 and as amended is decidedly not "user-friendly" and an awkward document to navigate. It appears to be a compilation of three separate documents. There are three sections (1, 64 and 123) of definitions contained in this By-Law suggesting that it has just been cobbled together as an afterthought. One of the main purposes of the MPBL, and in particular the Development Management Scheme (DMS) portion of it, is to serve as a tool to inform general public (i.e. lay people not trained in law) as to what kind and form of development is deemed permissible, all in the interests of creating a better built environment for all. By those standards this current formulation of the MPBL is a step backwards and getting worse. In the interests of efficient, open and accountable administration it is argued that it is time to rewrite this By-Law, or at least restructure how it is set out so as to make it a more user friendly document. Responding in seriatim is difficult as a result of this cobbling effort. If the legal fraternity find it is impossible to write a document that is both legally watertight and written in a way accessible to the lay public, then in the interests of open and accountable administration that serves the people the administration is meant to serve, then we would argue that the City administration at least has a moral duty to produce a compendium that translates the legal wording into basic principles, preferably with illustrations, that does make it accessible to the people it affects.

Regarding the issue of the determination of "Height"
We agree that the current regulations pertaining to height have been problematic and acknowledge that this City might be trying to decrease the associated administrative burden. However, we believe that the City is misguided in believing that the current proposal is going to be that "silver bullet" that will solve the problem, nor even that this is the kind of issue that is best solved by finding that "one silver bullet". As attractive as the proposed solution may appear, we do not believe it will be that one silver bullet. The City does not attempt to regulate other aspects of building form by relying on just one mechanism and argue it as misguided and foolhardy to attempt it again. Doing so is to "put all one's eggs in one basket" so to speak and produce a system vulnerable to all sorts of unforeseen consequences no matter how well-meaning the intentions were. The proposed reliance on a **central ground level map** system has issues that have not yet been proved can be satisfactorily resolved in practice.

For a start, at a conceptual level focusing on height per se misses the point as it is not the actual height of buildings that matters as there is no absolute ideal height to a building. Instead, what is important in determining the quality of a piece of build environment is the way buildings relate to each other and for there to be a degree of parity in the massing, scale and typology of the buildings that make up a particular context in order for them to work together. Height is only a component of that and not in itself sufficient to achieve the desired ends. Indeed focusing singularly only on height instead of on general parity in the massing, scale and typology produces all sorts of contrivances working against producing quality architecture and quality environments. For example, focusing purely on height rather than on other measures that would control more for general massing, scale and typology (such as had been done traditionally by controlling for number of storeys) encourages developers to demolish old buildings that were built with generous floor to ceiling heights to be replaced with poor quality buildings built with minimum floor to ceiling heights in order to squeeze in extra floors, or without roof gardens, or interesting roofscapes, or other interesting architectural features, all just to be able to squeeze into the permissible height restriction.

Then at the purely practical level, there are all sorts of other issues. A regulation that makes it all about height opens a can of worms as to exactly the way that height is going to be calculated in reality and in planning, once the building is built. It focusses attention onto just height and the inevitable arguments about millimetres as if that is what really matters. (It is not! It is parity in the massing, scale and typology of the buildings that determines how well they work together, not their height per se.)

Furthermore, contrary to what may be assumed, one of the main issues is NOT one of a lack of accuracy of available data, but rather one of how to derive a fair and reasonable approximation of natural ground level in light of the fact that there has already been considerable manipulation of natural ground level in most parts of the City. It would be grossly unfair to simply use existing ground levels, no matter how accurately they are derived, because in many cases they have been manipulated and that will unfairly advantage those who have already built up their land, sometimes illegally, and disadvantage those that have not.

It is also grossly unfair for the City to think it can morally absolve itself of this problem by putting out a little notice informing all land owners of a right to object to the way their ground level will be deemed to be within a certain time period after which their rights fall away. These notices are often missed and besides which most would not even understand what has happened and how this has impacted on them negatively until it is too late. When the impact becomes known, what recourse would the owner have other than to take the City to court? This is a highly undesirable situation for all.

We are not saying that the City should not set out to develop a **central ground level map**. Indeed, such would have all sorts of other uses if made publicly available to designers and to officials as something against which design proposals could be assessed in context.

Instead we are just saying it is misguided and foolhardy to attempt to control for such an important aspect of the built environment with just one simplistic rule and believe that this one “silver bullet” will do the job properly, fairly and efficiently. This issue needs to be looked at holistically and from first principles as to what is actually going to be fostering the kinds of built environment that is desired. The use of a central ground level map may be one of the tools in the suite of regulations employed as in the way other aspects of built form are regulated through a suite of regulations, but definitely should not be relied on to be the sole criterion.

Third dwellings

Third dwellings were a previous option only in certain overlay areas, but not in all. Still the City has not demonstrated that they have performed an impact study with full analysis. Again it is argued that the City has taken a simplistic view as to what is good for a city. It is not densification per se that is good. It is the benefits that can come from densification if densification is done properly, that are good. Densifications done badly result in the

overcrowded slum conditions that are the very conditions that were the original motivation and justification for planning control legislation being introduced in the first place to try and stop.

A mindless drive to densify at all costs is completely counter-productive and takes us right back to what we were trying to avoid in the first place. Problems with densification done badly are far reaching and impacting on well-being in all sorts of ways (by way of example, see link[1]).

The City Council has been arguing that densification will allow workers to be closer to their employers, but due to poor public transport, residents often rely upon their privately-owned motor vehicles. This actually increases local and citywide traffic congestion. Arguable emphasis should rather be placed on improving public transport and businesses should be encouraged to move further away from the City centre and closer to where people actually live.

There are also issues of how allowing a third dwelling impacts on the street when the expectation (rightly or wrongly) is that each dwelling be serviced by at least one garage and usually two. As it is, we have already seen examples of the Municipal Planning Tribunal routinely passing departure applications for banks of garages built right on the street boundary, seemingly completely oblivious to the negative consequences thereof and of how such is completely country to the stated end goals for the City.

As we are in a situation of neither your average official nor the majority members of the Municipal Planning Tribunal having any idea of the gravity of issues at stake, it is woefully misguided for the City to be just giving away the right to add a third dwelling without proper controls governing that way this is executed from an urban design and building typology point of view in order to make sure the result is desirable.

This is not to say that the option to allow a third dwelling should not be contemplated as an option in the future, but only once the implications of this have been thoroughly tested and worked up with a concomitant set of design controls to go with it.

Section 79 (5)
We support the removal of **Section 79 (5)** where previously the City Manager was allowed to exempt an application from a public participation process. However, we want to see better administrative adherence to Sections 79 to 84 inclusive.

Emergency housing
While we can appreciate that there may be good intensions behind the proposed changes to give the District Manager such powers to act swiftly, we believe giving a District Manager such drastic powers without any recourse and due checks and balances is dangerous and potentially more dangerous than the good that can come of it. As South Africans, we should know this all too well having seen this play out at the national level in the way our constitutional governmental structural was conceived, giving sweeping powers to a president, imagining that position being filled by a leader of the calibre of Nelson Mandela, only to discover how bad it was when such a position is captured by somebody of a completely different nature and intentions. We need to work from the assumption that any position of power is vulnerable to being captured and used for corrupt or party political purposes. What would there be left to stop a captured official from declaring, for example, the Rondebosch commons or even Kirstenbosch Gardens, areas for emergency housing for purely party political reasons. What then would be the appeal process and how long would that take?

Process for registration of a named organisation
By omission, this By-Law must identify the **process for registration of a named organisation** in terms of Section 83 (b) and that would include the registration as an organisation with their local Sub-Council for this purpose. That all organisations applying are accepted and a proper registry of contact details is maintained for notification purposes by the City.

[1] http://www.ncsociology.org/crowding.htm

The serving of notices
Then **Section 79 (2) [may] must** serve notices for (b) or (c) as applicable in terms of Sections 82 or 84 respectively.

Include motivation
In our experience Section 80 is almost never followed completely. Sub-section (c) must include "and reason by motivation" in "the purpose **and reason by motivation** of the application to which the notices relates;" to help explain why the departure is needed and applications for departure should only be granted on the basis of merit in that granting the departure would result in a better situation for the built environment as a whole and be in the public good, not only just for the individual, than would be the case if the applicant was forced to stick to the rules. Conversely, for example **safety** and negative **impact** on neighbours and the neighbourhood in general, **economically** or otherwise must be considered **valid reasons** for objecting and grounds for refusal in granting such departures.

Update those on distribution list
In the interests of the process being an open, fair and transparent, (as all organs of government are mandated to be), all objectors need to be put on an email distribution list and kept up to date with changes of the status, date of tribunal hearing and so on. Such is currently not the case allowing for deliberate abuse and obfuscation of the process.

Completing a form
We do not believe it is a bad thing for objectors to be obliged to complete a a standard form as contemplated in amended Section 90 (2), (5) (f) and Section 108 (1) as long as we are given the option of signing and returning it electronically in terms of the Electronic Communications and Transactions (ECT) Act #36 of 2005 and as amended. (Note: This document still refers to an earlier version of the ECT Act.)

We understand the reasoning behind Section 95 (3) in providing copies in compliance with the Promotion of Access to Information Act #2 of 2000 and that admin fees may be levied for the cost of hard copies. However, when there is a departure, land use or rezoning requiring named organisations to be notified, the **owner**, as the interested party, should see that the named organisations are proactively **sent an electronic copy with motivation**, as required by the City, to the named organisations for free (gratis) in order to expedite the process. It is not acceptable for organisations to be expected to carry the costs incurred because of the actions of others.

Description and clarity of precise process to be followed
By omission, although the Tribunal and appeal process (Section 109) are already contained, the **defined departure, land use and rezoning processes** cannot be found in this entire document.

Our experience is that the City marks affected neighbours on a locality map for the plans walker as to which erven owners must be contacted for signatures on the plans and signing of individual "No Objection" forms. Named organisations are also contacted. The ward councillor is informed and a sufficiently large block on the plans must be left vacant for their stamp. If there are no objections, then the building plans may be passed in a separate exercise. With the receipt of a single objection, the motivations for the objection are forwarded to the City's Municipal Planning Tribunal for a decision. If the objections are routinely overridden by the Municipal Planning Tribunal regardless of merit, this calls into question the value of the tribunal and whether it is doing what it ought to be doing!

Not a political process
Is there any other By-Law in the City where the appeal authority, as in Section 114 (3), (4) and 121 (1), (7), is the Mayor or, in fact, any political figure as in Section 121 (2)? Wherever **Mayor** appears in this By-Law, it should be **changed to City Manager** and Section 121 (2) must be deleted as provided in the Municipal Systems Act #32 of 2000, Section 62 (4) as this was intended for municipal councils smaller than 15 members, which is certainly not the case

in Cape Town with 231 councillors. **References to councillors** in Section 120 (10) and 121 (2) must be **deleted**.

We believe it is highly problematic that the highest appeal authority in the City should culminate in political appointees and worse still if that be in a single person. Such is a recipe for party political patronage and corruption.

National Heritage Resources Act and the deletion of Item 18 of Schedule 3
We fail to see how the deletion of **Item 18** of Schedule 3 that recognises a heritage area in accordance with the National Heritage Resources Act will help preserve our historical buildings. Surely the Heritage Protection Overlay Zones were just a reflection, and thus helped the City to comply with the Provincial Gazette of deemed heritage areas in accordance with the National Heritage Resources Act. Likewise, the deletion of reference to a City heritage management plan in **Section 163**, which leaves one to assume there is no longer a plan. We accept there is a constitutional requirement for mutual competency, but the City must not abdicate its responsibilities.

Land units less than 350m^2
We object to allowing the street boundary building line of **land units less than 350m^2** to be moved from 3.5m to 1.5m by way of right. There can be many situations where this would be most undesirable (ex. spread of fire and disease). Building to the common boundary up to second or third storeys should only be allowed on the front portion of the property from the 3.5m street building line back to 12m from the street boundary as for the rest of the plot sizes and to a maximum of one storey i.e. 4m height maximum along the remaining back common boundaries.

"Section 23 (a) no home occupation shall include a shop"
We note that "Section 23 (a)" states that "no home occupation shall include a shop". We question the motivation for this. Firstly, this will be difficult to implement, especially in the informal areas. Secondly, we question why prohibition is a good thing. The so-called "shop house" as a building typology is revered the world over as a good thing. Shops by their nature tend to have a positive interface with the street. Having the ability to live above one's own shop is a good thing regarding security, ease of getting to work and a very good thing for this supports small and medium enterprises. Indeed great nations are famous for being a nation of shop owners.

Base telecommunication station
For health reasons[2], we are against base "minor freestanding **base telecommunication station**, minor rooftop base telecommunication station" on residential properties. We may all need to be living in Faraday cages if this rampant spread of these broadcasting devices persists. At the very least, all applications should undergo a public participation process.

Toll roads
We are **opposed to** any **toll roads**. The City's Legal Services might want to argue that if Sanral won't maintain the national roads locally without a toll road being required (with or without tags), then the City can force Sanral to at least apply for re-zoning as required in this By-Law, which will trigger a public participation event. We feel that this is a flimsy argument Therefore, there is no need for the insertion of Part 3A: Transport Zoning 3: Toll Road (TR3) (items 92A-B) and 92A (a) and (b).

Site development plan
We applaud **92B** Development rules requiring a **site development plan**. We prefer that proper urban design be undertaken with re-zonings not being allowed unless the urban design impact and full implementation thereof, being assessed.

Section 136B the maximum height of a boundary wall
Regarding **Section** 136B, we believe the principles behind the original reasons for the implementation of the boundary wall policy have been forgotten and compromised beyond

[2] https://ehtrust.org/key-issues/cell-phoneswireless/5g-networks-iot-scientific-overview-human-health-risks/

recognition. Having a street boundary only 25% compliant in terms of visually permeable is about as bad as a national matric pass rate of a similar order. Such is totally unacceptable. It should be at least in the order of 80% with any departures therefrom considered only on the basis of merit.

In contrast to this we believe that greater lenience should be granted for the erection of high walls backwards of the street building line at which point high blank walls, with other security devices such as electric fences would have no detrimental effect on the eyes on the street surveillance and building frontages and on the aesthetic appearance of the street scape.

We applaud the effort of defining "visually permeable" in the second set of definitions (Section 26), but Section 171 (3) (b) does not go far enough and should actually stipulate 80% visually permeable. Even the City's current Fencing Guidelines state 40% visually permeable and not 25% as proposed.

We believe no barbed / razor wire or broken glass should not be allowed on top of STREET boundary walls. Spikes should only be permissible if they form a continuation of the vertical bar, such as palisade fences, otherwise not.

Parking bays in Section 138
Parking bays in **Section 138** should not be increased due to densification. In this way, it will enforce the use of public transport. We reiterate the point that densification is only positive if we convert to an urban non-car dependent form of development.

Minimum width of carriageway crossing from 7m to 4m
We caution that **Section 140**'s moving the minimum width of carriageway crossing from 7m to 4m could have the unintended consequences of causing more applications for departures meaning more admin work for the City, neighbours and named organisations.

High and low intensity residential land
Regarding the deletion of 158B, C and D on SME Overlay Zoning and replacing with **high and low intensity** residential land, public transport accessibility overlay zoning, we are concerned that the concomitant rules that should go with these have not been defined and believe that the full implications of this need to be thoroughly investigated with control design guidelines put into place first.

2. SUMMARY POINTS

It is recommended, for the reasons set out in this report, that:

- This By-Law be rewritten / restructured in a more user friendly form incorporating all definitions in one section, for example;
- The central ground level map needs to be averaged over several properties while including storeys in the height rules;
- References to third dwellings should be deleted for now while businesses should be encouraged to move further from the City;
- References to emergency housing should be deleted;
- This By-Law needs to include the process for registration of named organisations;
- Notices **must** be served in Section 79 (2);
- Section 80 needs the insertion of **and reason by motivation** in "the purpose **and reason by motivation** of the application to which the notices relates";

- Notification to objectors regarding the status, dates of tribunal hearing, etc. needs to be communicated;

- Forms need to be able to be sent, signed and received electronically;

- Safety and security and economic impact must be valid reasons for objection on the proposed form;

- Owners must be responsible for providing free electronic copies of plans, “no objection” form and motivation reasons for departures, land use and re-zonings to all neighbours, commenting and objecting bodies;

- The departures process needs to be defined in the By-Law;

- The reference to Mayor and politicians must be removed from this By-Law as it stands in conflict of administration without political interference;

- The National Heritage Resources Act must be obeyed and the City needs to retain competency in developing and implementing a heritage management plan;

- The relaxed restrictions for 200 to 350 square meter properties should be deleted;

- The reference to “shop” in Section 23 (a) needs to be deleted;

- “Minor freestanding base telecommunication station and minor rooftop base telecommunication station” on residential properties should be deleted;

- All references to “toll roads” should be deleted;

- The minimum visual permeability of walls and fences should be 80%;

- Barbed / razor wire or broken glass should not be allowed on top of boundary walls;

- References to spikes on boundary walls should be deleted unless they are a continuation of the vertical fence bars;

- Electric fences should be nearly 100% visually permeable;

- Garage doors should not be placed on the boundary or beyond the building line, but should be a minimum of four meters back from the boundary;

- Parking bays should not be increased in Section 138 to allow for third dwellings;

- Section 140’s 7m for carriageway crossings should be maintained; and

- References to high and low intensity needs to be withdrawn and rethought.

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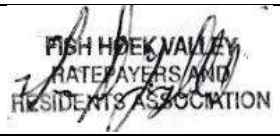
SIGNATURE	
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