

**PO Box 31010  
Grassy Park  
7888**



**Email: [gctca1@gmail.com](mailto:gctca1@gmail.com)  
Tel: 021 671 4355  
Fax: 088 021 671 4355  
Mobile: 083 254 8724**

CTZS Operational Office  
16th Floor  
Tower Block, Civic Centre  
Cape Town  
Email: [lums@capetown.gov.za](mailto:lums@capetown.gov.za)

**30<sup>th</sup> September 2010**

Dear Sir / Madam

### **COMMENT ON THE PROPOSED CAPE TOWN ZONING SCHEME**

The City has largely ignored all past comments submitted, which remain essentially valid. These comments highlight a number of fundamental issues, many of them previously emphasised in the earlier 2010 & 2008 comments from the GCTCA. Most of these comments have, contrary to expectation, not been addressed in the Final Draft of the CTZS. We therefore once again submit, as addendum to this document, the previous submissions made in 2008 and our submission of earlier this year. Find attached: GCTCA IZS Comments May 2008.pdf & GCTCA CTZS Comments May 2010.pdf

**Comment pertinent to the most recent amendments are included below.**

The proposed CTZS will have a profound and permanent negative impact on the areas falling under the City of Cape Town. This Zoning Scheme will decimate the unique character of the area and is supportive of social discord. Not excluding the myriad of previous technical input, the CTZS is not supported for these reasons. We have attempted to influence the overall outcome of the proposal with constructive input through the participatory process, however it is quite evident that the bulk of our submissions have been ignored and in a number of cases pertinent aspects have actually degenerated in contrast to our submissions.

The Alliance, having close interaction with the public, has become aware that the vast majority of general populace is not aware of either the technical content, or the ramifications of the proposed CTZS. It is therefore our contention that the public participation process with regard to informing the residents has failed dismally. Further to this, the Alliance has obtained Senior Counsel's Opinion on the outcome of the current ZS process.

In summary the opinion is as follows:

1. To be sound, new legislation must be based on effective public consultation.
2. Effective public consultation requires that the public is fully informed about the outcomes of the new legislation.
3. For the reasons outlined in Problem 1 above, the information provided about the ZS is incomplete and therefore the public is not fully informed about the outcomes.
4. Therefore, if proceeded with through the current process, the new ZS legislation would be unsound and open to challenges in the courts to set it aside.

One of the simple examples of the flawed process presents itself in the form of the advertised facility whereby the public could visually inspect the existing zoning as well as those proposed, for any area. On inspection of these P&BDM maps it was found to have errors. Under these circumstances it is unacceptable to place before the public any proposal for consideration and comment when there are fundamental inconsistencies reflected on official documents and which have such a material influence on their decision making process.

The CTZS in its current form reflects administrative expediency in contradiction to the general public interest and as such the fact that there has been no Strategic Environmental Assessment informing the process to-date has only served to exacerbate its unacceptable outcomes. Further to this a recent Mayoral Committee decision with regard to the 'Densification Policy' supports the absolute need for a full assessment. This 'Densification Policy', (which is legislatively supported through the CTZS) rides on the decision to first obtain full understanding for the overall ramifications, before approval is supported.

The implementation of a new 'Notification Policy for Land Use Applications' lends even further support to the view that administrative expediency has usurped the requirement for public opinion and the requirement for Civil Society oversight. As a consequence of this policy, it can be expected that the severe detrimental cost to the receiving environment has been exacerbated.

We again raise the issue of the CTZS being pushed ahead prior to the completion of the Spatial Development Framework even though some concessionary gestures in the form of some overlay zones will “allegedly” offer some protection at very localised level.

**THE FOLLOWING REPRESENTS COMMENT PERTINENT TO THE MOST RECENT AMENDMENTS TO THE CTZS.**

**OVERLAYS**

The introduction of overlays exercise, which is seen to be of paramount importance to the requirement for the full understanding of all the ramifications associated with the Zoning Scheme is still not complete. Under these circumstances any submission to Province for approval prior to the completion of this exercise reflects a severely flawed administrative process and is further disingenuous towards the public and the public participation process.

**HEIGHT LIMITATIONS**

There has once again been an increase to the height limitations which have been incrementally increased from the first draft in spite of comments and objections. This, as previously communicated is totally unacceptable especially in single residential areas where it will have a marked negative impact on the nature of single residential precincts. The concomitant impact on visually sensitive areas like mountain slopes will be even worse and is therefore totally unacceptable. Lower height limits should be imposed and where there is a need for higher limits, let an application for overlays inform the decision to allow for appropriate 'cheek by jowl' buildings in single residential areas. Alternatively an application for rezoning to general residential would also inform any decision in this regard.

**RECOMMENDED REVISED WORDING OF THE DEFINITION OF "EXISTING (NOW ORIGINAL) GROUND LEVEL" \***

The following is the Greater Cape Town Civic Alliance's (GCTCA's) recommendation as to how the proposed new Cape Town Zoning Scheme should define "Existing Ground Level" which the GCTCA is proposing to be called "Original Ground Level" .

It is important to note, of course, that the existing Provincial Government 2007 Critical amendments will no longer be applicable to the new Cape Town Zoning Scheme.

The following recommendation has been prepared in conjunction with leading Cape Town Registered Architects and Land Surveyors.

## 1. Recommended revised definition showing alterations from the IZS final draft.

Words added in blue [square brackets]

Words deleted in red (curved brackets)

“(Existing) [Original] ground level” means the level of the land surface on a [land] unit:

- (a) in its unmodified state [before any buildings have been erected or any alterations in levels have been made thereon - or if this can not be determined from actual measurements then]
- (b) as established from a plan indicating contours of the land lodged with an official agency such as the municipality or a government department, [or a plan which has been previously produced by a Registered Land Surveyor,] which depicts the (existing) [original] level of the ground [at or before the commencement date]; or
- (c) in a state which has been graded, with councils approval, for the purpose of development; or

[c] as determined by (council) [a Registered Land Surveyor], if in (its) [his/her] opinion it is not possible to ascertain the (existing) [original] level of the ground due to irregularities or disturbances of the land, and Council may require the owner or applicant to commission a Registered Land Surveyor to measure levels of the ground or interpolate levels, in order to (provide Council with sufficient information so that it can) determine the most appropriate original ground [levels which will be tied to the National Control Network, where this is not possible to provide at least two durable reference marks suitably located] for the purpose of administering this zoning scheme.

## 2. Recommended revised definition resulting from the above.

“Original ground level” means the level of the land surface on a land unit:

- (a) in its unmodified state before any buildings have been erected or any alterations in levels have been made thereon – or, if this can not be determined from actual measurements, then
- (b) as established from a plan indicating contours of the land lodged with an official agency such as the municipality or a government department, or a plan which has been previously produced by a Registered Land Surveyor, which depicts the original level of the ground ; or
- [c] as determined by a Registered Land Surveyor], if in his/her opinion it is not possible to ascertain the original level of the ground due to irregularities or disturbances of the land, and Council may require the owner or applicant to commission a Registered Land Surveyor to measure levels of the ground or interpolate levels, in order to determine the most appropriate original ground [levels which will be tied to the National Control Network, where this is not

possible to provide at least two durable reference marks suitably located] for the purpose of administering this zoning scheme.

**Motivation:**

The term “existing” can be misleading as to whether it is the existing as it is today or read as in an unmodified state, existing before any developmental changes to the land surface. To avoid the confusion it should be changed to “original” everywhere). Therefore where “existing” appears in the zoning scheme referring to the definition above it should be changed to “original”.

It is strongly felt that leaving the determination up to the Council will not provide the accuracy and consistency that is desirable. Flood lines are determined by an Engineer as he / she has the appropriate knowledge to determine this. A registered Professional Land Surveyor similarly has the most knowledge to determine an appropriate original ground level.

Registered Land Surveyors have a wealth of topographical plans mostly from actual survey in their offices which could be an important key in determining the existing ground level. In subsection (b) the adding of a plan which has been produced by a Registered Professional Land Surveyor is very important.

Subsection (c) has been removed as it should be the original ground level that should determine the parameters for a development and not the levels at or before the commencement date as this is much too open to abuse and misinterpretation.

By tying surveys commissioned by Council to the National Control Network or where not possible to two durable reference marks will make checking of levels in the case of a dispute easier and possibly provide evidence of original ground level for surrounding properties in the future.

**Establishment of the Average Ground Level before the Proposed Permissible 8m Height of Building:**

Here similarly as above it should be the Registered Land Surveyor who determines the average ground level and not Council and this should also be tied to the National Control Network or where not possible to provide two durable reference marks.

The definition for establishing this average ground level, (especially where the ground falls irregularly and slopes in more than one direction) must be better defined to allow various components of a building to each have their own highest and lowest levels established for the purposes of establishing each of their own average ground levels.

Yours sincerely

Gavin Smith  
Chairman : Planning & Land Use Management  
Greater Cape Town Civic Alliance

Chairman : Len Swimmer | Vice-chairmen : Philip Bam, Gavin Smith  
Secretary : Alan Jackson | Treasurer : Graham Noble

*The GCTCA is an alliance of over 100 associations dedicated to improving the lives of all Capetonians, in civic matters.*