

7 May 2010

The GCTCA's comments on the CTZS Final Draft

The GCTCA believes that the CTZS will have an extremely important impact on the appearance, functioning and development of Cape Town, and that this impact will be felt for many years. We support the intention to rationalize the diverse existing zoning schemes. However, we are convinced that the Final Draft CTZS, like its previous drafts, falls far short of what is required and should not be implemented in its present form. The draft should be referred back to the City of Cape Town for further work.

1. Inadequate treatment of concerns raised in the past

1.1 Fundamental issues not addressed

The City has largely ignored all past comments submitted, which remain essentially valid. Those comments highlight a number of fundamental issues, many of them briefly picked up in these 2010 comments from the GCTCA, most of them not yet addressed in the Final Draft of the CTZS.

1.2 Development and infrastructure investment

The GCTCA accepts that development will slowly but usually inadequately be followed by infrastructure. It would be far preferable that infrastructure investment should lead development and shape growth to a vision as it should be agreed within the City's Spatial Development Framework (CSDF). The City should invest positively in infrastructure where densification and major development is planned, rather than put out a half-baked CTZS, as this Final Draft is, that would encourage inappropriate densification in parts of the City where the required infrastructure cannot be developed in the medium term.

1.3 Why is the Final Draft still based on 'one-size-fits-all'?

Cape Town residents who have commented over the years on the five drafts have on each occasion overwhelmingly rejected the one-size-fits-all approach, which still is the basis of the Final Draft. We still maintain it is inappropriate. The City appears to have equated "rationalization" with "integration" and that in turn with "standardization". This has placed a disproportionate emphasis on standardizing development control instead of determining appropriate development rules that recognize the different requirements in different areas. This will inevitably lead to a loss of many of the characteristics that attract people to different areas of the City. All drafts of the CTZS omit the provisions in different existing zoning schemes that provide some protection for those areas.

1.4 Why does the CTZS still precede the CSDF and District Plans?

Many aspects of the CTZS require prior agreement on fundamental issues that will be resolved only in the CSDF and District Plans, and the City has admitted this, for example in attempting to explain the unsatisfactory way Overlay Zones are treated in the Final Draft. Finalization of the CTZS should therefore be held back until the SDF and District Plans have been completed.

1.5 The real purpose of the IZS

The prime reason to develop a new zoning scheme is to protect a socially, economically, geographically, architecturally and ecologically diverse Cape Town in an environmentally sustainable way, not merely to make the work of City officials easier. .

1.6 Minimum erf sizes

Minimum subdivision sizes should not be policy guidelines (subject to personal interpretation by officials). They should be governed by objective ‘densification conditions’ which need to be strict and should be different in High Density, Medium Density and Low Density sectors of the City.

2. Legal issues

Public participation

The GCTCA does not believe that the City has taken sufficient account of the concerns expressed by residents, nor has adequately adjusted subsequent drafts to meet these concerns.

2.1 The South African Constitution and Municipal Systems Act

The GCTCA is not convinced that the CTZS adequately ensures sustainability or promotes a safe and healthy environment as required by the Constitution and by the Municipal Systems Act.

2.2 Integrated environmental management

The GCTCA is not convinced that the CTZS adequately meets the requirements of such environmental legislation as NEMA and the Integrated Coastal Management Act, nor of City policies and strategies relating to the environment. In our view, the Final Draft CTZS does not adequately comply with legislative requirements to ensure environmental sustainability.

2.3 Development and planning legislation

In the GCTCA’s view, this Final Draft CTZS is substantially worse than the fourth draft in that it merely paraphrases section 11 of the Land Use Planning Ordinance 15 of 1985 (“LUPO”) and does not provide any meaningful adjunct to reflect the City’s sustainable development mandate. In addition, the GCTCA is not convinced that the Final Draft CTZS complies with the Physical Planning Act’s requirement that it be consistent with relevant structure plans. It is certainly not consistent with the 1988 Guide Plan for the Cape Metropolitan Area.

3. Densification and the conditions under which it should take place

The GCTCA agrees that the City needs densification. But that densification needs to be focussed to take place where the principles spelt out in the Provincial SDF can be achieved.

4. Development “rules, conditions and criteria”

As the GCTCA has repeatedly said, the development conditions briefly and ineffectively noted for each Zone need to be fleshed out. We believe that the thoughtful preparation of strict development rules, conditions and criteria would make it possible for residential areas of all socio-economic levels to achieve high levels of densification to meet the criteria of the PSDF. The addition of expanded rules, conditions and criteria could, we believe, mitigate many of the present shortcomings of the CTZS.

5. Second dwelling “as of right”

The GCTCA is strongly opposed to the notion of secondary dwellings becoming a primary right. They should remain a consent use, as well as be subject to strict rules and conditions.

6. Benefits of developing a satisfactory zoning scheme

Zoning regulations give legal force to planning frameworks and policies. Satisfactory zoning regulations will benefit everyone : the general public by ensuring that the present diversity and assets are conserved and that appropriate development can proceed in designated nodes and corridors; owners and developers who can then be clear about what is permitted where and what is not permitted; planning officials whose time will be saved by clear and unequivocal regulations about what is permitted and what is not; our wonderful City of Diversity, whose unique features will be protected from unnecessary damage and degradation; the public and, most especially the poor.

7. Environmental consequences

7.1 Lack of compliance with NEMA, Integrated Environmental Management (IEM) and other principles has been pointed out previously

The City responded to 2005 comments on Draft 2 about this lack of compliance by saying ‘Noted. Will investigate’. There is no evidence of any investigation or consideration of this point in subsequent drafts.

7.2 The City is obliged to promote sustainable development

Among the general objectives stated in earlier drafts was to ‘promote integrated and sustainable development’. It is not clear how Draft 4 could give effect to that objective. It is equally unclear how the IZS could achieve such further stated objectives as ‘promote sound environmental management and, where appropriate, conservation of important natural and cultural resources’ or ‘enhance the quality of the built environment’ or ‘promote employment and the opportunity for affordable housing in appropriate locations’, or ‘guide urban growth and contain urban sprawl’.

It would seem far more likely that the enactment of the IZS as described in Draft 4, lacking Overlays or any effective provision to protect sensitive areas, would consequently allow densification in unsuitable areas, create infrastructure investment needs that would be impossible to meet, lead to urban sprawl over scenic landscapes, and probably create conditions that could lead to social degradation and even perhaps slums in middle class suburbs.

8. Base zones

The GCTCA has repeatedly pointed out difficulties and inadequacies in the present Base Zone definitions, and has suggested ways around these difficulties. All of these inputs have been ignored.

9. Overlay zones

9.1 Overlay Zone shortcomings illustrate the need for the CTZS to follow the SDF

The GCTCA has repeatedly pointed out the urgent need for Overlay Zones to protect areas that for a variety of different reasons are sensitive to the one-size-fits-all approach which the CTZS has adopted. We were originally informed that the unique requirements of particular areas (e.g. for specific rules to preserve the specific character or environmental, scenic, heritage or social attributes of an area) would be dealt with by way of “overlay zones” but these do not presently form part of the CTZS.

9.2 Aspirant and missing Overlay Zones

The GCTCA has made many suggestions for new Overlay Zones. The answer has been that these must await completion of the City’s draft SDF. Which is a further demonstration that the CSDF must indeed precede the CTZS and further underscores our recommendation that the CTZS not be implemented at this stage. Without Overlay Zones for protection of cultural

coastal and mountain landscapes, for example, the Final Draft CTZS would in our view cause considerable damage to these sensitive environments.

9.3 Procedures for establishing new Overlay Zones

Overlay Zones would go a long way to mitigate some of the undesirable impacts of the Final Draft CTZS, yet it provides no adequate process for establishing new Overlay Zones.

10. Heritage

The CTZS and other aspects of the City's regulation of building in Cape Town exhibits a disregard for cultural and historical resources, sites, precincts and landscapes. There is no mention of the recently accepted inventory.

11. Need for special protection to be given to steeply sloping areas

Mountain landscapes are part of what is special about Cape Town and mountain slopes are particularly vulnerable to insensitive building development, in particular buildings that are excessively high and bulky. We suggest that special development rules be included in the CTZS.

12. Need for special protection to be given to the coastline

Certain areas should be afforded special treatment. For example, the Integrated Coastal Management Act requires that the implementation of planning legislation must take account of the unique characteristics of the coastal protection zone. The Cape Town coastline is of such economic importance to the City that it should be given special protection in the CTZS. We suggest that appropriate development rules be included in the CTZS.

13. Need for special protection to be given to wetlands

The Alliance is concerned that seeps, sponges, springs, streams, rivers, floodplains and wetlands are not provided with any form of protection whatever in the CTZS. We suggest that special development rules be included in the CTZS.

14. Need for special protection to be given to urban biodiversity conservation areas

We recommend that special development rules for these irreplaceable areas be included in the CTZS.

15. Need for special protection to be given to areas with potential for urban agriculture

We recommend that special development rules be included in the CTZS.

16. Need for special protection to be given to urban transition areas

We suggest that special development rules be included in the CTZS.

17. Conditions / criteria for the exercise of rights

The GCTCA has offered suggestions to utilize the considerable potential that exists to overcome shortcomings in the CTZS through development and strengthening of the conditions that are presently there only in embryonic form. These suggestions have been ignored.

18. Definitions and rules for height

The GCTCA has pointed out problems that exist in the present definitions of height and has offered suggestions of possible ways to overcome these difficulties. These problems remain unchanged in the Final Draft.

19. Urban transition zone

We suggest that special development rules be included in the CTZS.

20. Implementation and enforcement

All legislation is meaningless without effective implementation and enforcement. The GCTCA believes this is a major absence in the CTZS.