

7 May 2008

GCTCA COMMENTS ON THE 4TH DRAFT INTEGRATED ZONING SCHEME

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A) Fundamental Issues

1. Inadequate treatment of comments on past drafts

1.1 Why were fundamental issues not addressed?

When the Alliance and a large number of civic associations in Cape Town on draft 2 of the IZS, most requested that the draft as a whole, as well as the underlying thinking be abandoned. We suggested that the City should start again, and we do not understand why the City did not do that. Draft 4 has many of

Draft 2's fundamental flaws, some of which we believe to be fatal. Considerable work will be required to prepare a revised Zoning Regulations Scheme, which inescapably must be made available for public comment.

1.2 Why is Draft 4 still based on 'one-size-fits-all'?

The main objection the Alliance and all civic bodies who commented on Draft 2 in 2005 was that one set of Base Zones would not work for a City as geographically diverse as Cape Town. That problem is exacerbated if the IZS is used as a 'blunt instrument' to allow densification non-selectively in every single corner of the City. The Alliance recommended in 2005 that the City prepare perhaps five or seven zoning schemes, worded in similar language and using the same concepts and definitions, one scheme for each geographically different part of the City, plus a fully elaborated set of Overlay Zones.

1.3 Why were Overlay Zones omitted from Draft 4?

To compound the present problems even further, Draft 4 entirely lacks Overlay Zones, which were sketchily included in previous drafts and which were thought to represent the only mechanism in the IZS to protect, for example, mountain slopes, coastlines, wetlands and river catchments, biodiversity hotspots, recreationally important areas, heritage areas and areas whose character might get lost. As it is proposed in Draft 4, therefore, the IZS is fatally flawed and unworkable.

1.4 Why were mountain slopes and other sensitive areas not given protection in Draft 4?

In comments on Drafts 2 and 3, and in direct interactions with the City during 2007, we repeatedly requested that provisions be added to Draft 4 to protect mountain slopes from the damage caused by allowing buildings with excessive height, bulk and coverage. We were asked to put this request in writing, which we did. Yet all of these please went unanswered.

1.5 Why were Draft 2 comments made 'anonymous'?

It is almost impossible to find all of one's own comments in the table of responses.

1.6 Why were undertakings not carried out?

The City offered a brief blanket response to 50 or so detailed Draft 2 comments on Overlay Zones, saying that they had since been 'totally reworked', also that '... the IZS ... will include all existing properly declared overlay or special areas'. There is no evidence that this had been done.

In its responses to comments on Draft 2, the City said that the Overlay Zones would be 'totally reworked'. There is no evidence in Draft 4 that this has been done. Similarly, the City said compliance with NEMA would be 'investigated'. There is no evidence of that either. These are just two examples of undertakings not carried out.

2. **Legal status**

2.1 Threats to the zoning scheme's legal validity

Several factors threaten the validity of the IZS as presented in Draft 4. These include its incompleteness (see comment 3.2) and the suggestion to promulgate the IZS as a municipal by-law (comment 6.1). Zoning regulations will be of vital importance for the future development of Cape Town over the next 20 to 30 years and it is essential that they not be vulnerable to a legal challenge.

2.2 Threats to the effectiveness of the zoning scheme

The overriding issues are that the 4th Draft of the IZS is incomplete and insufficient time has been provided for effective public participation. Thus the 4th Draft IZS is fundamentally flawed and therefore cannot give rise to legislation which is legally sound. There has to be a major revision of the Zoning Regulations Scheme followed by effective Public Participation on a fully complete scheme. A final public presentation of the final document will then be needed. All of this will require more time

and adequate time must be allowed. The allow for the protection of the important diversity of the City as well as its appropriate future development.

3. Incompleteness of Draft 4

3.1 Overlays missing from Draft 4

In spite of repeated requests from civic bodies to include complete Overlay Zones in Draft 4, and in spite of the assurance given in the City's responses to Draft 2 comments, Annexures B & C on Special Uses (3.2.8) and Former Special Zones (3.3.8) are blank, as are Annexures D to K on Overlay Zones (Chapters 16 & 17). The excuse given is that the Annexures will be completed once the City's Spatial Development Framework and eight District Plans project reach a stage when the areas requiring Overlays have been identified.

3.2 Incompleteness invalidates public participation

The greatest shortcoming of IZS Draft 4 is that it is incomplete and this brings into question the legal validity of the Public Participation process and the soundness of any resulting legislation. This renders the present round of public consultation ineffective as stakeholders are unable to tell how a future IZS with Overlays might or might not affect them. To enable stakeholders to comment meaningfully a complete Draft must first be prepared and presented.

3.3 Legal requirement for adequate public participation

Section 3 of the Promotion of Administrative Justice Act (PAJA) requires, among other things, 'a clear statement of the administrative action' to be given to persons whose rights and legitimate expectations might be adversely affected by a contemplated administrative action. A materially incomplete draft document does not satisfy the 'clear statement' requirement. Without effective public participation, the IZS will be fundamentally flawed and could be challenged in court at some time in the future, and set aside.

4. Lack of effective public participation

4.1 Language and presentation

Draft 4 is a difficult document for non-professionals to read, understand and comment on and most of the people required to comment are in that category. In particular, residents who were not involved in commenting on past drafts are only now getting to grips with the difficult concepts involved. All those living in poorer areas of Cape Town and particularly the many whose mother tongue is not English, have not had adequate opportunity to understand and comment on the Draft 4 proposals. The latter require a written translation of at least a summary of the proposals, plus appropriate public workshops so that they can understand and comment on what is being proposed.

4.2 Time allowed to comment on Draft 4

As outlined above, more time is required for effective presentation of Draft 4 to non English-speaking residents. In addition there has been insufficient time for the Alliance to consult its member associations fully, to identify issues of concern to communities who have not hitherto been aware of the IZS and its implications, and to develop ideas which have emerged to date and which might hold the potential to overcome some of the IZS's present shortcomings. All communities require more time to comment meaningfully on Draft 4.

5. Lack of time to produce an satisfactory Integrated Zoning Scheme

5.1 Urgency and need for a new zoning scheme

The Alliance understands the benefits of one coherent zoning scheme in order to implement the Spatial Management Framework and the District Spatial Structure Plans in an effective and efficient way. However the current proposals are fundamentally flawed. Moreover, the objective of a unified scheme

is neither urgent nor has it to be attained at any cost. There are well-established zoning schemes in place in every part of the City. Thus, contrary to statements that have been made, Province cannot demand that the City enact a new scheme; this is for the City to decide.

5.2 The real purpose of the IZS

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

5.3 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; the wonderful City of Diversity, whose unique features will be protected from unnecessary damage and degradation; the public and, most especially the poor.

5.4 Other remedies for current problems

Mechanisms exist (for example section 7 of the National Building Regulations) to deal with the shortcomings of these schemes (such as the lack of height restrictions in some areas). Alternatively, if the consolidated IZS takes time to perfect, then the old schemes can be updated where necessary. Urgently approving the IZS is not the only means of addressing current needs.

6. **The IZS as a municipal by-law**

6.1 The need to enact zoning schemes through LUPO

In its 2005 comments on Draft 2, the Alliance said a duly made zoning scheme can only have legal force if enacted in terms of section 39 of the Land Use Planning Ordinance (LUPO), but suggested that certain procedural provisions relating to the internal operation of the scheme (e.g. Chapter 2 in Draft 4) were not matters of zoning and could be better enacted in the form of by-laws. The Planning Law governing zoning is LUPO. However, instead of enacting a revised scheme under LUPO, Draft 4 as a whole is now being seen as a draft by-law. Legal opinion is that this would be unnecessary and misdirected. The zoning regulations should be enacted directly under LUPO.

6.2 A possible by-law for non-zoning aspects

Consideration could be given to enacting the provisions of Chapter 2 of Draft 4 as a by-law, specifying the procedures for implementation of the zoning scheme, as suggested in 2005.

7. **Lack of compliance with NEMA and related national legislation**

7.1 Lack of compliance with NEMA has been pointed out before

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 Draft 4.

7.2 The City is obliged to promote sustainable development

Among the IZS’s stated general objectives is 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, allowing densification in unsuitable areas, creating infrastructure investment needs that will be impossible to meet, allowing urban sprawl over scenic landscapes, and possibly creating conditions that could lead to social degradation and even perhaps slums in middle class suburbs, might achieve the opposite of some of these objectives.

7.3 The need for a Spatial Development Framework

It is unclear how Draft 4 could give effect to the IZS's stated objectives if the City has not first both completed its Spatial Development Framework (SDF), which is part of its Integrated Development Plan (IDP), and undertaken a strategic assessment of the environmental impact of the spatial development framework. Has such an SDF been initiated?

7.4 The need to apply the NEMA principles

Although the IZS is to be made under the pre-constitutional Land Use Planning Ordinance (LUPO) which does not reflect the requirements of post-constitutional legislation that environmental issues and public participation be integrated into decision-making processes that may have a significant effect on the environment, legal opinion is that the City should apply the National Environmental Management Act (NEMA) principles in preparing the IZS as zoning schemes clearly have the potential to affect the environment significantly. It is difficult to see how it would be possible for the City to give effect to the NEMA principles unless it has first undertaken studies to evaluate the potential environmental impacts of the introduction of the IZS.

7.5 The need to apply Integrated Environmental Management (IEM)

Publications of the national Department of Environmental Affairs and Tourism (DEAT) since 1988, as well as Chapter 5 of NEMA, address the need to apply IEM guidelines and environmental management procedures to zoning plans. Although it is not legally mandatory, the Alliance urges the City to follow the IEM guidelines in developing its zoning scheme in order to reduce to a minimum the significant risks of environmental damage an ill-conceived zoning scheme could cause, some of which have been referred to in this document.

7.6 The need for an Environmental Management Framework (EMF)

The EIA Regulations of NEMA provide for Environmental Management Frameworks (EMFs) to guide land use planning and decision making. Has provision been made for an EMF as part of either the preparation of the City of Cape Town IZS or the District Plans project? The City's reply to a similar question on Draft 2 was that the 'implications . . . had been carefully considered'. A White Paper relating to zoning schemes was attached in hard copy to the Alliance's 2005 comments on the City's Draft 2 IZS. We challenge that assertion and request evidence of any such consideration. We again recommend that the City undertake an EMF.

7.7 The need for a Strategic Environmental Assessment (SEA)

Although zoning schemes are no longer a 'listed activity' in terms of section 24 of NEMA (requiring mandatory environmental assessment), it would in the Alliance's view be difficult for the City to comply with such NEMA principles as ensuring that 'development must be socially, environmentally and economically sustainable', 'that a risk-averse and cautious approach is applied' and 'that the negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied' without undertaking an environmental assessment. Although it is not legally mandatory, the Alliance urges the City to undertake an SEA in order to ensure the environmental sustainability of the new zoning scheme.

7.8 The need for the IZS to comply with policies and provide for future needs

It is a requirement of the IZS, especially if it is to be styled an ‘Integrated’ Zoning Scheme, that it comply with the South African Constitution and all relevant national and provincial laws, as well as with City policies. In preparing its zoning scheme the City should have regard to policies that in the course of preparation. These include the Densification and Urban Edge Strategies currently in preparation, both of which will have significant implications for urban planning. The zoning scheme will need to be an important instrument through which those policies will be implemented. They also include the Biodiversity Strategy, which is likely to require the imposition of restrictions on the use of land in certain areas in order to create ecological corridors, protect wetlands and other sensitive areas etc. A zoning scheme is an appropriate legal instrument to use for this purpose.

7.9 The need for regard to policies likely to affect future coastal land use planning

In preparing its zoning scheme the City should have particular regard to policies in preparation that are likely to have significant implications for zoning and land use rights in coastal areas. These include the Climate Change Sea Level Rise Risk Assessment and the Integrated Coastal Management Strategy. The Climate Change study may well identify areas in which no development should be permitted and identify coastal set-back lines, seaward of which building should be prohibited. The Integrated Coastal Management Strategy may well address many of the issues that municipal or provincial authorities will have to address once the National Environmental Management: Integrated Coastal Management Bill which is currently before Parliament becomes law. These include: identifying coastal management objectives for particular areas of the coast, delineating set-back lines, demarcating areas to be included in a coastal protection zone inland of the high water mark, and designating coastal access land over which a public servitude will be created to facilitate public access to the seashore. All of these have the potential to significantly affect the development rules applied under a zoning scheme.

8. **Terms of reference of the City’s IZS Task Team**

In discussions with the City’s IZS Task Team the Alliance has suggested approaches other than ‘one-size-fits-all’ to achieve the densification and other objectives the Zoning Regulations the City requires the zoning scheme to achieve. For example, we have suggested a 3-component matrix model (see 9.2 below), a five- or seven-fold zoning scheme and a model involving three Intensity Overlays covering the City. Members of the Task Team were not able to discuss these alternatives with us. As we understand it, our suggestions fall outside the remit for a ‘single zoning scheme’ given to the IZS Task Team. If this is true, the Alliance requests that the City urgently review the terms of reference (mandate / remit) given to the IZS Task Team to ensure that all possible means to cater for diversity are thoroughly investigated and all suggestions aimed at developing the best possible zoning scheme for Cape Town are considered.

B) General Issues

9. **The need to find alternatives to ‘one-size-fits-all’**

9.1 The need to develop a new model

The Alliance strongly believes that the IZS urgently needs to be restructured in order to overcome the problems caused by a ‘one-size-fits-all’ scheme. We suggest three components to this restructuring. If we had had more time, we would have elaborated in greater detail. The Alliance requests the opportunity to make inputs (along with other stakeholders) into the process of selecting which of the models will work best for Cape Town and Alliance recommends that the City develops and fully describes whichever model is selected.

9.2 3-component matrix model proposed by the Alliance

The Alliance recommends a major revision of the Zoning Regulations Scheme on a Matrix basis with the following three components:

a) Further Sub-zones to accommodate Cape Town’s diversity

The first component would be to divide Single Residential (SR1, SR2) and other Base Zones into Sub-zones based on a variety of parameters and specifications, such as low, medium and high densification, as has already been started in the Local Business (LB), General Business (GB) and some other zones. These Base Zones and Sub-zones should form the ‘vertical’ components of a ‘matrix’ zoning scheme.

b) Further elaborated, objective development criteria and conditions

The second component would be the addition of greatly elaborated criteria and conditions for the exercise of the different development rights (e.g. height, coverage) on offer within each (Base and Overlay) Zone and Sub-zone, and for each Primary, Additional and Consent Use on offer in those Zones and Sub-zones. In addition, clear and objective criteria and conditions should be set within each Zone and Sub-zone to regulate subdivisions below preset minimum erf sizes. We believe that this would make the scheme more objective, fairer, easier and less onerous to administer, and much less open to variable interpretation by officials and developers. The Alliance considers this suggested amendment the most important of all those it is currently putting forward.

c) Fully deployed Overlay Zones and Sub-zones, populated on the Precautionary Principle

Overlay Zones and Sub-zones should be added to provide the ‘horizontal’ components of the proposed matrix zoning scheme. The Overlays would modify the Primary, Additional and Consent Uses on offer in the relevant Base Zones and Sub-zones, would modify the development rights on offer, and would define criteria and conditions to be met to exercise them.

9.3 Some implications of the Alliance’s model

The following are some of the implications that would follow from adopting the 3-component matrix model for a new City of Cape Town zoning scheme.

- a) Some Base Zones (e.g. SR1, SR2) will require division into Sub-zones to provide for diversity.
- b) In particular, within the 3-component matrix zoning scheme, the Single Residential (SR1 Conventional Housing and SR2 Incremental Housing) Zones will need to be subdivided into Sub-zones suitable for Low Density, Medium Density and High Density development. The definitions of these Sub-zones will need to be made on the basis of : i) objective, quantifiable criteria formulated for the purpose, and ii) an adequate environmental assessment.
- c) The assigning of properties to different Sub-zones within the 3-component matrix zoning scheme will be best done by first drawing up an objective (and as far as possible quantitative) set of criteria for each Sub-zone.
- d) Initially, every property in the Single Residential Zones (SR1 Conventional Housing and SR2 Incremental Housing) should be provisionally assigned to an appropriate Sub-zone. This step should be carried out using the criteria, but in a cautious and risk-averse manner, provisionally assigning each property to the least densified Sub-zone that it might qualify for. When the City’s District Plans and Densification Policy reach a more advanced stage, the opportunity will arise to re-assign some of these properties / areas to more densified Sub-zones, where appropriate.
- e) Within the 3-component matrix zoning scheme, the Development Rules section in the description of each Zone and Sub-zone should be expanded to describe Conditions Required for Development.

10. **Densification, infrastructure and community development**

10.1 City of Cape Town Densification Policy

Cape Town certainly needs densification in certain areas, most especially around identified nodes and transport corridors. However, to allow densification to occur just anywhere, including in areas unsuited for densification, would in the Alliance’s view cause great damage. If densification is to be one of the objectives of the City’s zoning scheme, then its formulation must be consistent with the City’s Draft Densification Policy, which no-one except a few politicians has yet seen.

10.2 Densification and infrastructure

The Alliance accepts that infrastructure follows rather than precedes densification but rejects the assertion that has been made that densification and infrastructure are not related. However, densification should only be allowed in areas where the City is likely, now and in the future, to be able to continue to invest incrementally in infrastructure to keep up with the needs created by progressive densification. To allow for densification in those areas where no meaningful incremental infrastructure investment is envisaged or will be possible in the foreseeable future would be irresponsible.

10.3 Densification causing slum development

The Alliance's greatest concern is that the most damaging results of 'blunt instrument' densification will be experienced in middle-class residential areas, for example on the Cape Flats, where some greedy property owners could exercise poorly defined development rights to subdivide inappropriately and add second dwellings where they do not belong. If the rules are not written a little more carefully, areas where inappropriate subdivisions and second dwellings are allowed could become slums, where property values are likely to decline, instead of vibrant but safe residential suburbs, where property values will continue to rise. The view of the Alliance is that it should be possible to develop objective criteria to allow small subdivisions and densification only where such densification is likely to have beneficial consequences. Revised Zoning Regulations should define how they will accord with and give effect to the City's draft Densification Policy.

11. **The need for further Base Zone Sub-zones**

To allow for geographical diversity and differing densification, Single Residential and Incremental Residential Zones need to be divided into Sub-zones (see 23 and 24).

12. **Overlay Zones**

12.1 District Plans project and other policy studies

The Alliance has been told that the reason IZS Overlay Zones and other parts of the IZS were missing from Draft 4 is that the information on which they are to be based will only become available once the District Plans project and other policy studies (like the Densification Policy, the Urban Edge Strategy, the Biodiversity Strategy, the Climate Change Sea Level Rise Risk Assessment and the Integrated Coastal Management Strategy) reach a certain stage. It cannot be stated strongly enough that, in the estimation of the Alliance, if the IZS had to be enacted without protective measures such as the Overlay Zones, and if the scheme would allow greater densification than currently, appalling damage would result. The Alliance would very strongly oppose the IZS being further considered, approved and enacted without a fully developed set of Overlays and without satisfactory protection for all sensitive areas. We have also been told that the District Plans project is expected to produce its first products by the end of 2008. We find this difficult to accept as many of the posts of planners for the project still remain unfilled. And, after all, we were told in July 2007 that those first products would appear in October 2007, yet the project still has nothing whatever to show us except an incomplete list of planning documents still missing dozens of documents that different civic associations in August 2007 requested be added to the first incomplete list.

12.2 The legal basis for Overlay Zones

A zoning scheme consists of rules for the use of land and there can only be one set of rules at a time. Legal advice has suggested to us that 'Overlays' can therefore only be overlays of policy, not rules. 'Overlays' must be made for specific conditions that pertain over specific areas of land. This means that the district plans and local area plans must first be completed in order to define the diverse areas where common 'overlay' conditions exist and to define rules within these 'overlays'. Clarity is needed on this issue. The Alliance requests that the City urgently establishes a sound legal basis for Overlay Zones, so that they form a legally enforceable component of the Zoning Regulations Scheme. A zoning scheme consists of rules for the use of land and there can only be one set of rules at a time. 'Overlays' can

therefore only be overlays of policy, not rules. ‘Overlays’ must be made for specific conditions that pertain over specific areas of land. This means that the district plans and local area plans must first be completed in order to define the diverse areas where common 'overlay' conditions exist and to define rules within these ‘overlays’.

12.3 Overlays and the IZS

In the Alliance’s view the IZS as described in Draft 4, without Overlay Zones, is unworkable. We believe enormous damage would result from owners and developers exploiting the development rights allowed in Draft 4’s descriptions of Base Zones without any further restrictions imposed by Overlays. We have been told that the areas that might require Overlays, as well as the features needing protection, and hence the candidate Overlays themselves, might be identified in the course of the City’s new and embryonic District Plans project and subsequently taken through an appropriate environmental assessment (see Section 6 above) including a process involving public participation followed by eventual consideration by the City for approval. However at this stage we do not know what the Overlays might look like, we have no certainty that an adequate number will be approved eventually by the City, and we have no proof they will be effective. Therefore it would be entirely unacceptable to the Alliance for the City to enact and start implementing an IZS before the Overlays are in place. More recently, it has been suggested that the legal basis for enacting Overlay Zones might not be sound, and that there might be a possibility they could be challenged in court.

12.4 Categories of Overlay Zones

Overlay Zones and Sub-zones need to be of three broad types.

- a) Generic areas (like mountain slopes or wetlands) where the IZS rules would apply.
- b) Specific areas (resembling LUPO Special Areas, like Harfield Village, or the Pinelands Garden Village, or Camps Bay with its Resolution 98) where the IZS rules as well perhaps as a set of particular rules could apply (if approved), and where a community structure could play an advisory role (if required).
- c) A single erf in some instances, e.g. for Heritage assets.

All three of these categories could theoretically exist within the Overlay Zones to be established (listed in 12.6).

12.5 Overlays and the 3-component zoning scheme matrix model

The matrix structure for the zoning scheme outlined above proposes Base Zones and Sub-zones as the ‘vertical’ components and with Overlay Zones and Sub-zones as the ‘horizontal’ components of a Matrix scheme (see Section 9), with a set of detailed criteria and conditions attached to each of the land uses and development rights offered in each vertical and horizontal element of the matrix. It goes without saying that these three components are interdependent and thus the scheme depends on all three components being fully developed.

12.6 Work needed on Overlays

The Alliance would have liked more time to try and elaborate on Overlay Zones and their description. We have not been given the time to do that. The Alliance requests that the City prepare the following for a Draft 5 IZS for public comment.

- a) The City should prepare draft generic templates for different categories of Overlay Zones (see 12.6) as a matter of urgency, and make these drafts available to interested parties (such as this Alliance and its member associations) for comment ahead of the publication of a revised Scheme.
- b) The City should at the same time start preparing draft generic descriptions (frameworks) of a series of different generic Overlay Zones and Sub-zones as outlined below. Each Zone and Sub-zone would require its own set of selection criteria, as well as a description of the land uses and development rights on offer as well as a set of criteria and conditions for the exercise of each of these uses and rights in each Overlay Zone and Sub-zone.

- Coastal Overlay Zones, with perhaps a set of Sub-zones
- Mountain Area Overlay Zones, with perhaps a set of Sub-zones
- Wetland Overlay Zones, with perhaps a set of Sub-zones
- Catchment Overlay Zones, with perhaps a set of Sub-zones
- Biodiversity Overlay Zones, with perhaps a set of Sub-zones
- Heritage Overlay Zones, with perhaps a set of Sub-zones
- Recreational / Scenic Route / Landscape / ‘Sense-of-place’ Overlay Zones, perhaps defined as a set of Sub-zones within the overall category
- Transitional / Urban Edge / Fire Protection Overlay Zones, perhaps defined as a set of Sub-zones within the overall category

12.7 Work needed on Overlays

Once draft generic definitions of these categories of Overlay Zones have been drawn up, the public should be given the opportunity both to comment on them and to propose specific areas and sites for provisional registration within particular Overlay Zones.

12.8 Application of the Precautionary Principle in including possible Overlay Zones

All of the candidate sites so suggested should be included as fully fledged Overlay Zones within the revised scheme that is published for public comment. In other words, we recommend that, while the City waits for the District Plans project to take its natural course, the Precautionary Principle (PP) be applied to the process of including candidate Overlay Zones in the IZS. The PP can be stated in this context as ‘when faced with uncertainty (in this case on which Overlay Zones should be included), one should proceed with caution’ (by provisionally including all candidate sites, and later remove those that the District Plans project reveals not to require such protection).

13 Conditions / criteria for the exercise of use rights and development rights

13.1 Purpose and functioning of proposed additional conditions and criteria

The Alliance is of the belief that great potential exists, through the definition of more specific, objective and detailed definitions of development rules, conditions and criteria attached to different use and development rights, to add to both the flexibility and the effectiveness of the zoning scheme, and to the matrix or set of interrelated schemes we believe Cape Town requires. This potential has not yet been explored, and we do not have the time available to give any further attention to this topic before the City’s deadline date for comments on Draft 4. These conditions and criteria represent one of the three essential components of the 3-component zoning scheme model proposed in Section 9 above. The idea would be to have the IZS define for each Base Zone and Sub-zone (the ‘vertical’ component of the zoning scheme’s matrix structure), as well as for each Overlay Zone and Sub-zone (the ‘horizontal’ component) a ‘menu’ of potential land uses (Primary, Additional and Consent) and development rights (heights, bulk etc.), each with a set of clearly defined, quantifiable and objective conditions needing to be satisfied rights before the use or development right offered in that Sub-zone can be granted.

13.2 Example of a condition for the exercise of a development right (second dwelling)

As a simple illustrative example, for instance, a list of special conditions (besides those already listed in IZS section 5.1.3, most notably condition f), could be given for second dwellings, which are listed as an Additional Use Right in the Single Residential 1 Zone (IZS SR1, 5.1.1 b). The Alliance would like to add further criteria and conditions and to make the conditions objective and quantifiable, perhaps including such items as access and off-road parking, within 5km of schools, library and a range of shops, within 1.5km of regular public transport . . . etc . . . In each Base Zone and Sub-zone and each Overlay Zone and Sub-zone in the zoning scheme based on this 3-component matrix structure, a ‘menu’ of Primary Use, Additional Use and Consent Use Rights, as well as a ‘menu’ of development rights (including subdivision rights) could be offered. In order to qualify to invoke any of those rights,

the owner / developer will have to demonstrate that the relevant criteria and conditions required are met. Provided the criteria and conditions are clear, objective and quantitative, implementation of the scheme should be relatively simple.

13.3 Example of a condition for the exercise of another development right (building line)

As a second illustrative example, a list of special conditions could be defined for the exercise of a zero-metres building line right offered in densified residential Sub-zones. One of these could be that the two adjacent property owners agree to share a common wall. A second could be that the two properties form part of a 'block application' involving several properties. Further conditions could define parking, proximity to shops and frequent public transport and so forth.

13.4 Example of a condition for the exercise of a subdivision rights

The Alliance is of the belief that subdivisions creating very small properties can work well in certain situations and have disastrous results, like slums, in other situations. Where the situation is favourable, property values can rise as a result of this densification, and both safety and quality of life can be enhanced. In unfavourable situations, the opposite will occur. With careful thought, the determining factors could be translated onto clear and objective criteria that would be easy to apply but impossible to subvert. Examples of such criteria might include the properties forming part of a 'block application' involving several properties, and access both to recreational facilities and to relatively safe Public or Private Open Space that is not to be used for parking. The Alliance did not have the time to develop these ideas further before submitting these comments, but would like to contribute ideas in the future.

13.5 Different 'levels' of conditions / criteria for use/ development rights in different Sub-zones

It should also be possible to set different 'levels' of criteria and conditions for similar rights offered in Sub-zones differing in levels of densification. For example, the minimum erf size in the low-density Sub-zone of SR1 might be 500m², in the medium-density Sub-zone might be 400m², and in the high-density Sub-zone might be 150m². However, the latter would only be allowed if very strict criteria and conditions were met, including conditions resembling IZS clauses 6.1.2 (a) and (d) relating to Group Housing (GR1). The Alliance seeks the opportunity to try to help develop for consideration by the City some thoughts on possible clear and objective development criteria to allow densification and subdivision of small erven where these will be appropriate. The Alliance recommends that such differing 'densification preconditions' should be set for building heights, bulk, cover and offsets in different Base Zones and Sub-zones, appropriate to the densification level of that Sub-zone.

13.6 Different minimum erf sizes in different Sub-zones

The Alliance recommends that in each Base Zone and Sub-zone strict such 'densification preconditions' should be set for subdivisions setting different minimum erf sizes for different levels of density to be allowed in different areas. The most widely differing extremes would probably need to be set in different situations. In some Mountain Area Overlay Sub-zones, the minimum erf size might need to be 8,000m², while in the most highly densified residential areas the minimum erf size (subject to the kinds of conditions and criteria suggested in 13.4, might be as low as 100m².

13.7 'Environmental management preconditions' in different Overlay Zones and Sub-zones

The Alliance particularly recommends that 'environmental management preconditions' like slope, catchment, hard surface cover, run-off, infiltration and mountain aspect be developed (they do not exist at present) to regulate building heights, bulk, cover and offsets in for Mountain Slope Subzones / Overlays. Besides ensuring managed run-off on slopes, these preconditions must ensure that massive buildings are not built on mountain slopes. The Alliance similarly recommends that equivalent 'environmental management preconditions' for Wetland, Catchment, Coast and other Overlay Zones and Sub-zones. As an example, these must ensure no building within a 30m buffer zone above 1:200

flood levels around wetlands. It is irresponsible to allow building on wetlands at all and not only 'except where human life is threatened'.

C) Specific Issues

14. Definitions and rules for height

14.1 Proposed new definition of 'height'

It is clear that work has been done within the IZS Task Team to try and standardize the definitions and rules relating to building heights. The effort put into this is appreciated. However, the Alliance wishes to recommend changing the definitions and rules as they appear in Draft 4 and believes considerable benefit would result from introducing the concept of '8m Plate' (or any other height of Plate) into the IZS. (This is different from the height of a building's Wall Plate.) The '8m Plate' can be defined as a plane running through four points in the air, each 8 metres vertically above one of the corners of a property. Where the terrain is sloping, the '8m Plate' will be an inclined plane.

14.2 Benefits of using 'Plate Height' to limit building heights

One of the benefits of using the 'Plate Height' definitions is that it eliminates most obvious ways of manipulating heights to get around height restrictions. Another is that on sloping terrain it confines buildings more closely to the profile of the site, avoiding tall shapes and encouraging the division of large buildings into smaller inter-connected parts.

14.3 Proposed '8m Plate' height restriction in all residential areas

The Alliance recommends that the Plate method of defining and regulating building heights be adopted universally in Draft 5 and that the height limit in all Single Residential Zones and Sub-zones (SR1, SR2) should be the 8m Plate. The Alliance believes that all building within the Single Residential Zones SR1 Conventional Housing and SR2 Incremental Housing, and all of their Sub-zones still to be differentiated, should be kept entirely below the '8m Plate'. We are convinced that to exceed that height (for example on erven larger than 1000m² in size, or in residential areas intended for the highest densification) would cause endless problems. In areas where some erven are smaller, it would in most instances eventually result in slums with no future hope of recovery. Very satisfactory levels of densification can be achieved with buildings kept below 8m height. The 8m Plate limit works particularly well on mountainsides and in areas that view mountains.

15. Proposed Coastal Overlay Zone (and Sub-zones)

15.1 Need for special protection to be given to the coastline

The City of Cape Town coastline is of such importance to the City that it should be given special protection in the IZS. Thus the Alliance urges that a Coastal Overlay Zone be established all around the coast, including the sea frontage in all developed areas and all Rural, Agricultural, Conservation and other undeveloped areas within 1km of the sea that are not part of a Biodiversity Overlay Zone, a Wetland Overlay Zone or a Heritage Overlay Zone. Such a Coastal Overlay Zone should reinforce the City's "Coastal Development Guidelines for Cape Town", a draft of which has just been issued to Sub-Councils for comment.

15.2 Need for compliance with future climate change policies

Account needs to be taken of likely implications of expected future climate change scenarios (as for example predicted and assessed in the City's Climate Change Sea Level Rise Risk Assessment, see 7.9) in designing the Coastal Overlay Zone and its Sub-zones.

15.3 Sub-zones within the Coastal Overlay Zone

The Alliance recommends that Sub-zones such as the following be created within the Coastal Overlay Zone:

- a) a Coastal Environmental Management Sub-zone
- b) a Coastal Urban Management Sub-zone
- c) a Coastal Business and Industrial Sub-zone
- d) a Harbour and Dockland Overlay Sub-zone

The Alliance also recommends that if it is decided that further protection over and above that provided as a result of 13.4, is required for any part of the Coastal Overlay Zone, and if such measures / arrangements are approved by the City, then these areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted.

15.4 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to the Coastal Overlay Zone and its Sub-zones be defined.

15.5 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

16. **Proposed Mountain Area Overlay Zone (and Sub-zones)**

16.1 Need for special protection to be given to mountain 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. A Mountain Area Overlay Zone should be created for all areas with an average slope greater than 1:8 provided they are not part of either a Biodiversity Overlay Zone or a Heritage Overlay Zone. All properties that fit this definition should be included in the Mountain Area Overlay Zone.

16.2 Sub-zones within the Mountain Area Overlay Zone

The Alliance recommends that if it is decided that further protection is required for any part of the Mountain Area Overlay Zone, and if such measures / arrangements are approved by the City, then these areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted.

16.3 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to the Mountain Area Overlay Zone and its Sub-zones be defined. The Alliance also recommends that concrete and other pillars, columns and spaces under houses be prohibited and that a 6 metre height limit to wall-plate be imposed within all Single Residential (SR1, SR2) Zones and Sub-zones in the Mountain Area Overlay Zone. The Alliance recommends that it be made obligatory for buildings on mountain slopes to avoid an upright, bulky appearance and form, and rather to be built as a series of smaller forms following / mimicking the profile of the slope.

16.4 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

17. **Proposed Wetlands Overlay Zone (and Sub-zones)**

17.1 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 IZS Draft 4. These are all ecosystems of high

potential environmental and recreational value and a great many have already been destroyed by injudicious development that should not have been allowed. If the predicted implications of expected Climate Change hold any truth at all, then rainfall and runoff can be expected to become more erratic and the consequences of encroachment on aquatic systems could become more and more serious. All remaining aquatic systems in anything near a natural state urgently require effective protection.

17.2 Sub-zones within the Wetland Overlay Zone

The Alliance recommends that a Wetland Overlay Zone be created to include all areas:

- a) where the water table can be above ground level for a period during at least one winter in four, or
- b) which are within 30m above the 1:200 year flood level, and are not part of either a Biodiversity Overlay Zone or a Heritage Overlay Zone.

The Alliance recommends that if it is decided that further protection is required for any part of the Wetland Overlay Zone, and if such measures / arrangements are approved by the City, then these areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted.

17.3 Provisional assignment of properties to the Overlay Zone and its Sub-zones

The Alliance recommends that all properties that fit that definition be included in the Wetland Overlay Zone and that the Precautionary Principle be invoked to include sites whose status is doubtful, rather than exclude them. Their exclusion would be a task of the District Plans project, based on information to be collected within that project.

17.4 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to the Wetland Overlay Zone and its Sub-zones be defined. No subdivision of property or new construction of any kind except boathouses, slipways, walkways, paths, roads or bridges should be permitted within 50m of the 1:200 year flood level and not on any land that might once have been below the 1:50 year flood line. The Alliance further recommends that the alteration of existing buildings must not involve an increase in the size or encroachment on the potentially flooded area and that construction of boathouses, slipways, walkways, paths, roads or bridges should depend on the outcome of an Environmental Impact Assessment (EIA) and be subject to the approval of an Environmental Management Plan (EMP).

17.5 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

18. **Proposed Catchment Overlay Zone (and Sub-zones)**

18.1 Need for special protection to be given to catchments

The increasing hardening of surfaces due to densification and proliferation of roads, carparks, driveways, patios, even gardens etc being covered with impervious surfaces together with other unpredictable weather conditions is bound to increase the frequency and severity of peak flash floods. Sand from building sites and blockages in watercourses caused by litter, dumping, invasive vegetation and general debris exacerbate the problem. To mitigate a reduction in flooding the watershed or catchment of the water body needs to be correctly managed not just the watercourse. Therefore we suggest that the IZS includes watershed or catchment management overlay zones supported by guidelines and policies.

18.2 Sub-zones within the Catchment Overlay Zone

The Alliance recommends that if it is decided that further protection is required for any part of the Catchment Overlay Zone, and if such measures / arrangements are approved by the City, then these

areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted.

18.3 Provisional assignment of properties to the Catchment Overlay Zone and its Sub-zones

The Alliance recommends that all properties that fit that definition be included in the Catchment Overlay Zone and that the Precautionary Principle be invoked to include sites whose status is doubtful, rather than exclude them. Their exclusion would be a task of the District Plans project, based on information to be collected within that project.

18.4 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to the Catchment Overlay Zone and its Sub-zones be defined.

18.5 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

19. **Proposed Biodiversity Overlay Zone (and Sub-zones)**

19.1 Need for special protection to be given to urban biodiversity conservation areas

Still to be added, being areas where threatened species, habitats or biological communities are known to occur.

19.2 Sub-zones within the Biodiversity Overlay Zone

The Alliance recommends that if it is decided that further protection is required for any part of the Biodiversity Overlay Zone, and if such measures / arrangements are approved by the City, then these areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted.

19.3 Provisional assignment of properties to the Biodiversity Overlay Zone and its Sub-zones

The Alliance recommends that all properties that fit that definition be included in the Biodiversity Overlay Zone and that the Precautionary Principle be invoked to include sites whose status is doubtful, rather than exclude them. Their exclusion would be a task of the District Plans project, based on information to be collected within that project.

19.4 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to the Biodiversity Overlay Zone and its Sub-zones be defined.

19.5 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

20. **Proposed Sensitive and Transition Area Overlay Zone (and Sub-zones)**

20.1 Need for special protection to be given to protection of sensitive and transition areas

Still to be added, being areas that are not part of a Biodiversity Overlay Zone, a Mountain Slope Overlay Zone, a Wetland Overlay Zone, a Catchment Overlay Zone or a Heritage Overlay Zone but which have been identified as being of importance as tourist attractions or as areas forming the visual surroundings of important scenic routes or recreational sites.

20.2 Sub-zones within the Sensitive and Transition Area Overlay Zone

The Alliance recommends that if it is decided that further protection is required for any part of the Sensitive and Transitional Area Overlay Zone, and if such measures / arrangements are approved by the City, then these areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted

20.3 Assignment of properties to the Sensitive and Transition Area Overlay Zone and its Sub-zones

The Alliance recommends that all properties that fit that definition be included in the Sensitive and Transitional Area Overlay Zone and that the Precautionary Principle be invoked to include sites whose status is doubtful, rather than exclude them. Their exclusion would be a task of the District Plans project, based on information to be collected within that project.

20.4 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to the Sensitive and Transitional Area Overlay Zone and its Sub-zones be defined.

20.5 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

21. Proposed Urban Edge, Transitional and Recreation Overlay Zones (and Sub-zones)

21.1 Need for special protection to be given to urban edge, transitional and recreation areas

Still to be added, being areas that are not part of any other of the above Overlay Zones but which include areas of Urban Edge, important recreation areas or areas between the Urban Edge and adjacent Conservation, Rural or other Overlay Zones where fires are known to arise from time to time, these areas being relevant to the Fire Protection aspects of the City's Urban Edge Policy.

21.2 Sub-zones within the Urban Edge, Transitional and Recreation Area Overlay Zone

The Alliance recommends that if it is decided that further protection is required for any part of the Wetland Overlay Zone, and if such measures / arrangements are approved by the City, then these areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted

21.3 Provisional assignment of properties to these Overlay Zone and its Sub-zones

The Alliance recommends that all properties that fit that definition be included in the Wetland Overlay Zone and that the Precautionary Principle be invoked to include sites whose status is doubtful, rather than exclude them. Their exclusion would be a task of the District Plans project, based on information to be collected within that project.

21.4 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to these Overlay Zones and their Sub-zones be defined.

21.5 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

22. Proposed Overlay Zone (and Sub-zones) for other sensitive areas

22.1 Need for special protection to be given to

The Land Use Management System of which the IZS is to form part is supposed, according to the Introduction to Draft 4, 'to ensure sustainable land use and development, to accommodate economic growth for the needs of a growing population, and to protect areas of natural and cultural significance'. It is currently missing the features (like Overlays) that could enable it to do that. The height, coverage and bulk limits set in Draft 4 for the Single Residential Zone (SR1), for example, provide even less protection for steeply sloping areas than do the existing zoning schemes. The omission of any reference to the Transitional Zone requirement between the high density areas of general development and the Urban Edge will have severe negative impacts on environmentally sensitive areas such as wetlands and mountain slopes. Thus it is essential that the City defines a set of Overlay Zones for revised Zoning Regulations for public consultation (see Issues 8 and 12 to 17).

22.2 Sub-zones within the Overlay Zone

The Alliance recommends that if it is decided that further protection is required for any part of the Wetland Overlay Zone, and if such measures / arrangements are approved by the City, then these areas should be accorded the status of Sub-zones. The Alliance also recommends that detailed descriptions of each Sub-zone be drawn up and criteria for qualification of sites to be included be drafted

22.3 Provisional assignment of properties to the Overlay Zone and its Sub-zones

The Alliance recommends that all properties that fit that definition be included in the Wetland Overlay Zone and that the Precautionary Principle be invoked to include sites whose status is doubtful, rather than exclude them. Their exclusion would be a task of the District Plans project, based on information to be collected within that project.

22.4 Specific use rights and development rights for each Sub-zone

The Alliance recommends that Primary, Additional and Consent Rights and development rights appropriate to the Overlay Zone and its Sub-zones be defined.

22.5 Specific conditions and criteria for each Sub-zone

The Alliance recommends that appropriate criteria and conditions for the exercise of the different use and development rights offered in each Sub-zone be drawn up.

23. Role of community structures

23.1 Advice from communities

The Alliance believes that communities all over Cape Town, both through their elected representatives on the City Council and through their civic, environmental, heritage and other associations need to play a larger role than in the past in planning decision making. They already have a role in, for example, commenting on Consent Use applications. Their role can be expanded in the implementation of the City's zoning scheme, especially if the community body demonstrates its capacity to fulfil that role. That role needs to be mentioned in the next zoning scheme draft.

23.2 Qualifications and performance required of community structures

The Alliance recommends that the following additional paragraph be added to IZS Chapter 2 Section 2.2 under the heading 'Advice from community bodies' :

2.2.4 The municipal manager shall consult in planning decision making those non-governmental civic, environmental, heritage and other associations that are registered in the City's database, are active in areas that are affected and are representative and actively encourage participation by residents in those areas.

23.3 Applications not approved

The Alliance recommends that the following amendments be made paragraphs in IZS Chapter 2 Sections 2.3, 2.4 and 2.8 :

2.3.1 Council ~~may~~ shall . . . approval, in consultation with the community body/bodies consulted in terms of paragraph 2.2.4.

2.4.1 Council may impose conditions . . . for a consent use, in consultation with the community body/bodies consulted in terms of paragraph 2.2.4.

2.8.1 Where Council ~~may~~, in terms of this zoning scheme, call for

23.4 Applications not approved

The Alliance recommends that the following additional paragraph be added to Section 2.8 under the heading Developments not approved :

2.8.3 If, in the Council's opinion, any development occurs which either does not have the required approval, or which does not comply with permission given, the Council must serve notice on the owner and/or person responsible requiring a) compliance with the approval or b) demolition and removal of the development by a date specified in the notice.

24. Implementation and enforcement

All legislation is meaningless without effective implementation and enforcement. In the Alliance's view, current problems result not infrequently from half-hearted decision-making and sometimes a lack of enforcement. More still to be added.

25. Single Residential Zones (and Sub-zones)

25.1 The Single Residential Zone (SR1) should be divided into three Sub-zones

SR1 should be divided into at least three Sub-zones, High Density (SR1a), Medium Density (SR1b) and Low Density (SR1c). This differentiation has already been started within General Residential, within Local Business Zones, within General Business Zones and within Mixed Use Sub-zones. Differentiation of such different areas on the basis of objective criteria to cater for the differing densification, geographical and environmental conditions in different areas is an urgent need and represents a major challenge for the revision of the scheme.

25.2 Height limits

Height should be measured as Plate Height (see 14) and the universal height limit for all Single Residential Sub-zones should be 8 metres Plate Height. To exceed that height would do damage in residential areas of every densification level and every socio-economic level. And very satisfactory densification levels can be achieved without allowing Plate Heights to exceed 8m. In the IZS Draft 4, height is defined according to erf size. This is not a logical definition when height is a common factor to defining the character of an area rather than the character of an erf size especially where erf sizes vary in an area. Once a height limit has been defined, this should apply to erven of all sizes.

25.3 Development rights and conditions / criteria to make densification possible

The Alliance believes that the thoughtful preparation of development rules, conditions and criteria (see 13) would make it possible for residential areas of all socio-economic levels to achieve high levels of densification. In the High Density Sub-zone, it would be necessary for joint development proposals to be put together by groups of adjacent properties, rather in the same way Group Housing is planned. Building on common boundary must be with neighbour's consent or as part of a group housing project ie. 'group housing' and 'group housing scheme' means a group of separate and/or linked dwelling units, planned, designed and built as a harmonious architectural entity and integrated with open space in an ordered way; and such dwelling units may be cadastrally subdivided. Without consent of neighbour, one could be severely over-shadowed by the other 8m and the common gap between buildings reduced from 3m to 1.5m or less – a worst-case scenario but entirely possible. By treating both sides of the common boundary in the same way as group housing, 'planned and designed as a harmonious entity' this problem is overcome. The way in which single residential housing becomes

group housing (as allowed for in the IZS due to building on common boundary and lack of minimum erf size) needs to be elaborated and defined.

25.4 Second dwelling

The City has identified second dwelling as a densification tool. In order that it only be used in Medium Density and High Density sectors of the City, it should at most be an Additional Use Right, governed by ‘densification preconditions’ that are strictly enforced.

25.5 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 should be different in High Density, Medium Density and Low Density sectors of the City.

25.6 Dealing with relics of past planning mistakes

Areas where inappropriate blocks of flats have been mistakenly allowed in the past should be rezoned back to SR1 and their inappropriate blocks left for the moment as relics, to be demolished some time in the future when they start to go derelict.

25.7 Redefining Primary, Additional and Consent Uses

B&Bs and house schools (‘home child care’) should be consent rights, if not additional rights.

26. **Incremental Residential Zones (and Sub-zones)**

26.1 The Incremental Residential Zone (SR2) should be divided into three Sub-zones

SR2 should be divided into at least three zones, High Density (SR2a), Medium Density (SR2b) and Low Density (SR2c). Second dwelling should be a primary use in SR2a, and additional use in SR2b and a consent use in SR2c, perhaps. Group housing, boarding house, house tavern sale of alcoholic beverages and place of entertainment can perhaps be consent uses in SR2a but not SR2b or SR2c.

26.2 Development rights in different SR2 Sub-zones

Coverage, heights and building lines should be different in SR2a, SR2b and SR2c. Parking and access development rules should be different in SR2a, SR2b and SR2c.

26.3 Conditions and criteria to exercise development rights

Development rules for consent uses must be objective, not open to widely different interpretation, and much more detailed.

26.4 Development rules to regulate informal trading

Much more detailed development rules are required for informal trading. These must be objective and must be different in SR2a, SR2b and SR2c.

26.5 Building on wetlands

Paragraph 5.2.8 in Draft4 of the IZS needs to be entirely rethought. Building on wetlands is unacceptable and dangerous in the long term. The seriousness of the problem is acknowledged but the problem is a symptom of a deeper malaise, which needs to be put right and cannot be accepted as a fait accompli.

26.6 House shops

There are valid reasons why house shops are provided as Additional Use rights in SR2 areas but these reasons do not apply in areas that are zoned SR1. Residents in these areas do their shopping at shopping centres and resent House Shops in their residential area. There are no valid reasons why

House Shops should be allowed as a Consent Use in SR1 zones and this should be deleted in IZS 5.1.1 (c).

26.7 House taverns and shebeens

Province amended LUPO to allow the legalization of shebeens but the IZS Draft 4 facilitates the creation of shebeens, legal or otherwise, in spite of widespread resistance to shebeens from the public in all residential areas SR1 and SR2. Neither Province nor the City have conducted any survey or referendum on the issue but peaceful marches as well as violent protest have taken place against shebeens in general, which strongly suggests that the public do not want shebeens in any form. From where then does the mandate come for the legalization or encouragement of shebeens? The 4th Draft commits SR2 to Consent Use for shebeens and homes that sell alcoholic beverages. SR2 includes areas which are the very areas most affected by alcoholism, violent crimes associated with alcohol abuse and foetal alcohol syndrome. There is also a high correlation between shebeens and the sale of drugs? Although prior approval is required for any consent use experience shows that shebeens start operating first and maybe seek consent when threatened. Furthermore there is rarely any cessation of operations if consent is not granted, and the Police, the City and Province fail to control illegal shebeens. The two uses 'house tavern' and sale of alcoholic beverages should be removed from residential zones.

27. **General Residential Zones (and Sub-zones)**

Still to be added. Far more detailed development rules need to be written for these zones, setting out objective preconditions for all primary uses, additional uses and consent uses in far greater clarity.

28. **Local Business Zones (and Sub-zones)**

Still to be added. Development rules need to be prepared which are far more detailed than those in Draft 4. They must be objective and based on the relative impact of different kinds of facilities that could be considered here. Preconditions must be objectively drawn up and framed in such a way that affected neighbours can also objectively and quantitatively monitor the outcomes.

29. **General Business Zones (and Sub-zones)**

Still to be added. There is a need to divide these zones still further, to redefine primary, additional and consent uses differently in the new LB zones and, most important of all, to draw up totally new, objective and clear development rules and preconditions for all the different uses defined in each zone. These zones need such objective preconditions more urgently than any other zones in the scheme.

30. **Mixed Use Zones (and Sub-zones)**

Still to be added. The same applies, but more so.

31. **General Industry Zones (and Sub-zones)**

Still to be added. The same applies.

32. **Risk Industry Zone, Utility and Transport Zones, Utility Zone, Transport Zone**

Still to be added. The same applies.

33. **Open Space Zones**

Still to be added. The same applies.

34. **Agricultural, Rural and Limited Use Zones (and Sub-zones)**

34.1 New Agricultural Sub-zones needed

There is an urgent need to create a new zone (AG2) for agricultural small-holdings and food-production allotments in an urban context. The hope is that the District Plans project will identify areas

that can be secured for this purpose, for example seasonally flooded areas at present being invaded for housing, plus buffer areas between residential and even industrial areas and land of conservation value. The IZS needs to define the zone in anticipation of land becoming available for this purpose. This AG2 could have entirely different rules from AG1. For example it should only have temporary and service buildings.

34.2 New Rural Sub-zones needed

There is an urgent need to create a new zone (RU2) for rural land that should not be subdivided (as envisaged in Draft 4), should not have reduced building lines, should not have second dwellings (in some cases should not have primary dwellings) and should not become a loose urban sprawl over all of the City that is not formally part of the TMNP. A large part of the RU should not be further subdivided nor even built upon and should be protected to preserve recreational areas, landscapes and buffer areas between the City and the TMNP. The actual areas to be so protected should be delineated in the District Plans project. Revision of the Zoning Regulations needs not only to create the zone into which this land should be categorised and defined, but the broad area that could perhaps be eventually confirmed in this zone, should in the Revised Scheme be provisionally included in it on the Precautionary Principle (PP) approach of acting with caution to prevent damage that might possibly otherwise be caused while waiting for the District Plans project to be completed.