GREATER CAPE TOWN CIVIC ALLIANCE

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Director: Chief Director
Urban Planning and Environment,
City of Cape Town,
Civic Center,
Cape Town

Delivered by hand to: SUSAN MATTHYSEN

Dear Sir / Madam

RE: **COMMENTS ON THE PROPOSED INTEGRATED ZONING SCHEME ("IZS') FOR CAPE TOWN AND THE SOUTH PENINSULA**

On behalf of The Greater Cape Town Civic Alliance we thank you and your officials for the extention of time afforded to us in the submission of our comments pertaining to the proposed Integrated Zoning Scheme ("IZS").

We attach hereto a joint submission from the Alliance. The Alliance represents a large proportion of the total population of the City of Cape Town and is made up of the following registered Associations:

Athlone Crawford Civic Association
Belvedere/Greater Lynfrae RA
Bergvliet Meadowridge R.A.
Bishopscourt Village R A
Blaauwberg R A
Bo-Kaap Civic
Bothasig R A
Brooklyn Rugby Ysterplaat R A
Camps Bay R A
City Bowl R A
City Wide Forum
Constantia Hills R A
Constantia Property O A

Barbarossa Residents Group
De Waterkant - Bo Kaap Civic AllianceR A
De Waterkant R A
Edgemead R A
Far South Peninsula C F
Fernwood RA
Fish Hoek & Clovelly R A
Friends of Rondebosch
Green Point & Sea Point R A
Harfield Village R A
Helderberg R.A./ Inwoners Aks
Heritage Forum
Inner City Bowl R A
Kenridge The Hills R P A
Kommetjie RRA
Llandudno Civic A
Lotus River Ottery Grassy Park (LOGRA) RA
Milnerton R R A
Misty Cliffs R A
Monte Vista R A
Newlands R A
Noordhoek Conservancy
Noordhoek Enviroment Action
Old Oak C F
Pinelands R A
RondeBosch R R A
Rosebank Mowbray R A
Scarborough R R A
South Peninsula Public Participation
Tableview R A
Thornton R A
Walmer Estate R A

It is the wish of these Associations that an IZS be developed that:

- complies with the Constitution and all National and Provincial laws
- takes full account of the Natural and Urban diversity of Cape Town, which make it such an attractive city
- takes proper account of the wishes and interests of residents and property owners in the various distinct areas, and limits the scope for officials and Council committees to override such wishes in the alleged unproven interests of the greater community.
- protects the unique heritage of the city and integrates sympathetically with the Table Mountain National Park and other protected natural reserves.

- protects the rights of residents and the privacy of their homes, and gives residents and property owners the right to provide input to the decision-making process where deviations to the zoning scheme are involved.

For the reasons as set out below, the concept "one size fits all" as embodied in the draft IZS is unsatisfactory and impractical. Instead we recommend a separate zoning scheme for each area with similar relevant characteristics, but framed in a consistent way with identical wording where appropriate. We consider that such a concept would better support the objectives set out in the introduction to the Draft IZS than the concept embraced in the Draft.

We consider also that, before authorising implementation of any development, the Council should be required to ensure that the infrastructure affected by such development can cope with the additional load. The comments set out in this document refer, wherever possible and for ease of reference, to the numbered sections of the IZS.

1. Preamble of the IZS

In the preamble to the proposed IZS the City proposes to introduce the draft scheme in terms of section 156(1) and (2) of the Constitution. According to a legal opinion obtained from Senior Counsel by the Alliance the draft IZS can only become law in terms of the Land Use Planning Ordinance 15 of 1985 (LUPO), not in terms of section 156 of the Constitution as proposed by the City.

Section 156 of the Constitution empowers a municipality (in this case the City of Cape Town) to administer the zoning scheme and also make by-laws for the effective administration of the scheme subject to the provisions of s 156(3).

We therefore submit that s156 only grants a Municipality executive powers to administer a scheme and the power to legislate by means of by-laws is limited by section 156(2) to effective administration. It follows that the IS can only come into being via the relevant provisions of LUPO, more specifically s14(4) and s17 of LUPO.

2. Section 1.1.2 of the IZS

We note that the IZS contains a provision relating to the severability of a provision of the zoning scheme which if struck down as invalid by a court and that this will not affect the validity of the remaining provisions of the IZS. We specifically request Council to consider whether such a provision is legally defensible in the context of zoning scheme regulations.

3. **Section 1.1.4 of the IZS**

We note that the IZS contains a reference to "all approved departures, consents and land use conditions" without detailing or explaining the origin of such approvals. This section of the IZS is vague and does not adequately convey its intended meaning.

4. **Section 1.2 of the IZS**

We note that this section states that the general purpose of the proposed IZS is, among other things, "to promote and implement the applicable planning and development principles adopted by the relevant national, provincial and municipal spheres of government from time to time". We believe that the ambit of this provision is impractical in that it purports to comply with not only those principles that have been adopted but also those that will be adopted in the future. The City of Cape Town cannot purport to embrace and support principles which have not yet been formulated nor commented on by members of the public. In other words, subparagraph (a) of section 1.2.1 implies support of policies which may conceivably be contrary to the interests of the City's inhabitants. Accordingly, subparagraph (a) should be omitted from section 1.2.1 of the IZS.

5. **Section 2.4 of the IZS**

We object to the fact that point 2.4.5 (a) of the 1st draft IZS has been removed in its entirety and ask that it be reinstated and that the verb "may" in its first sentence be changed to "must". To avoid abuses and irremediable, deleterious effects on a residential area, it is essential to, as was previously included: "limit the consent use rights to a particular owner or occupant of the property, and such consent shall lapse if the owner or occupant concerned vacates the property. In order to avoid abuses and irremediable, deleterious effects on a residential area it is essential, in our view, to "limit the consent use rights to a particular owner or occupant of the property, and such consent shall lapse if the owner or occupant concerned vacates the property."

6. **Section 3.2 of the IZS**

Ad "Consent Uses"

Sections 3.2.2 – 3.2.5 of the IZS would appear to grant Council the authority to approve uses listed in Part II as Consent Uses without first affording interested and affected parties the opportunity to comment or otherwise provide input in the decision-making process. We object strongly to such an approach and believe that a decision can only be made on the granting of such application once the application for consent use has been made, properly advertised and the reasonable concerns and objections of all interested and affected parties properly considered by the Council. To hold otherwise denies members of the public and property owners of the right to have input into decisions which may have an impact on their environments and would amount to an unlawful limitation of such rights.

Ad "Occasional Uses"

The effect of section 3.2.11 of the proposed IZS is that persons engaged in film shoots will not need permission from Council for such activity provided they do not use the property in question for more than 8 days in a year and they do not cause a public nuisance. We feel that this approach does not take cognisance of the fact that film shoots can be enormously disruptive to the general public and that significant damage can be caused to the environment during a film shoot over a short period of time. It would therefore appear that the IZS in its current form proposes inadequate controls over this potentially disruptive activity.

7. **Section 5.1 of the IZS**

Ad "Objective"

We object to the substantive changes to the text of the first draft of the IZS. Specifically, we object to the removal of the following references to:

- "*promote the stability of residential neighbourhoods*"; and
- "(low intensity mixed use development) *that is compatible with residential areas*" [our emphasis].

The result of these amendments to the text is a statement of intention in the IZS that veers towards imposing upon residential communities an undesirable form of mixed usage and increased density that will certainly not achieve the objective of providing "a safe and pleasant living environment", and nor does it promote the stability of residential neighbourhoods. We therefore suggest that the original preamble to this section of the IZS be restored as the statement of intent.

Ad "Use of the Property"

***Ad* section 5.1.1 (a)**

We do not believe that second dwellings should be included as a primary use in Single Residential Zone 1. The inclusion of second dwellings as a primary use would potentially allow the undesirable impact of doubling the number of families occupying a residential area within this zone. This section of the IZS enables opportunistic and ill-considered development to take place. It hardly needs to be stated that this would place significant additional strain on the existing infrastructure notwithstanding the argument that the overall bulk, coverage and setbacks remain as if a single residence was constructed. The service infrastructure of many areas within the jurisdiction of the City of Cape Town was not designed to carry the additional use potentially imposed by this definition of "primary uses". The full potential impact of section 5.1.1. (a) of the IZS has not been given proper consideration. The development of second dwellings properties in terms of this section will be both inappropriate and undesirable in many cases with the additional

concern that such development may have a detrimental effect on both the use and enjoyment of properties by neighbouring landowners and potentially also on the value of these neighbours properties.

Section 5.1.1 (a) also includes, as a primary use, "the additional use rights as stipulated in subparagraph (c)." We do not believe that the additional use rights referred to in this clause and set out in 5.1.1 (c) should be granted as a primary use as a matter of right. These should rather be included as a consent use, subject to our comments on Consent Uses set out in paragraph 3.2 of these comments.

For the above reasons, we object to uses, other than single dwelling, being included as Primary Uses for Single Residential Zone 1. Any additional uses (i.e. in addition to the Primary Use of "dwelling house") should be subject to a consent use application, which would in the very least allow members of the public to participate in the decision-making process with regard to such applications.

***Ad* section 5.1.1 (b)**

Any Consent Uses in terms of the IZS ought to be subject to our comments on Consent Uses set out in section 3 of these comments. We specifically object to the listing of places of worship, institutions and house taverns as uses requiring only a Consent Use approval in SR1. The IZS in its current form would facilitate the wholly inappropriate use of land without due regard to the specific environment or physical attributes of a given area. We consider it completely inappropriate to use a single residential property for a place of instruction (unless it is for private, single person instruction), or a place of worship, institution, house shop, or a house tavern. This would give rise to impacts which are undesirable in a residential area. For example, the increase in traffic congestion and parking required for these uses is inconsistent with the nature of a single residential area. Although such uses may be appropriate in certain circumstances they will not be so across the entire jurisdictional area of the Unicity. We therefore suggest that each of these Consent Uses should rather be subject to rezoning process to facilitate such use.

It is with dismay that we see that rooftop base stations are either a Primary Use or a Consent Use throughout the draft IZS. We feel very strongly that the Council should not support a proliferation of cell phone/broadband masts, regardless of whether they are free-standing or situated on roofs as a long-term study has not yet been conducted that verifies the safety of these masts and especially the safety of the combined emissions that a cluster of these masts will produce. We suggest that Council should have due regard to the well-known report by the Scottish Parliament (Stewart Report, May 2000) on this issue, which report recommends a cautionary approach. Further, many cities around the world do not allow these installations near schools and other similar institutions. However, the draft IZS, in its current form, such installations are accorded Primary Use status in the zones which, traditionally, have been where schools are situated, namely, Local Business Zone 2, the General Business Zones and the Mixed Used Zones. We object strenuously to the provisions of the IZS that give such installations Primary Use status. Instead of this Council should be encouraging the sharing of cell phone masts and the promotion of satellite use.

***Ad* section 5.1.1 (c)**

We note that there is no express reference to the need for consultation with interested and affected residents regarding these Additional Use Rights (page 161, point 3.1 notwithstanding). This is unacceptable. We expressly require that all consent use or departure applications should be considered only after full public participation. The relevant decision-maker must give due consideration to the opinion of interested and affected residents. Where appropriate, such Additional Use Rights must be subject to a rezoning application to facilitate such use.

Section 5.1 of the draft IZS (Objective) states that "Limited employment and additional accommodation opportunities are possible as primary or consent uses, provided that the dominant use of the property remains residential, **and the impacts of such uses do not, in the Council's opinion, adversely affect the surrounding residential environment**" (our emphasis). Please note that we object to the addition of the words "in the Council's opinion", as it is the neighbouring residents who will have to live with the additional use and, therefore, the view and/or input of such residents regarding the proposed additional use are of paramount importance. Furthermore under Definitions, "consent" and "consent use" do not make any reference to the opinions of affected residents being taken into consideration. We reiterate our view that affected residents have a right to have input into the decision-making process which may have an impact on their environment. The IZS should take this into account and not attempt to preclude the opinion of members of the public with regard to the granting of additional uses as a matter of rights which uses may have an adverse impact on the use and enjoyment of their properties.

Development Rules: Coverage

We object to the current permitted coverage figures unless "second dwelling" is omitted from the list of Primary Uses in Single Residential Zone 1.

The draft IZS, in its current form, allows conventional housing (SR1) single residential properties to have dwellings with a maximum height above the base level of 9m with 50% coverage on all plots greater than 500m². This is inappropriate as no distinction is made as to whether the properties are within an urban or suburban, peri-urban, or rural area. These restrictions will result in undesirable or inappropriate developments.

By way of example, and taking this provisions of the IZS to its logical extreme, this means that a three-storey house with 50% coverage, on a mountainside erf of 4 000m² or larger, will be unregulated. Accordingly, Council would have no control over a developer who wishes to build a 6 000m² house on a 4 000m² plot, with a second dwelling and ancillary buildings in an area close to the urban edge or adjacent to the Table Mountain National Park. An even greater adverse impact would arise from a 12 000m² house constructed on an 8 000m² plot at the interface with the urban edge and adjacent to the Table Mountain National Park, which the draft IZS seemingly would also allow with no control.

Development Rules: Height

The proposed increase in height of buildings in the draft IZS in respect of Single Residential Zone 1 is unacceptable. The development rules regarding height allow for a drastic increase i.e. from 9 metres to 12 metres for a pitched roof or 10 metres for a flat roof. The proposal allows three stories in SR1 and SR2. The proposed increase is not acceptable and will result in undesirable and inappropriate development in a single residential area where privacy, views and sense of place need to be respected. It will have the effect of making residential areas look like flatlands and change the character of residential areas. We request the Council to consider this proposed change very carefully given the implications. In Constantia, as well as many other low-density single residential areas, there is an existing restriction of two storeys. Changing this will, we believe, interfere with entrenched rights, particularly if views are adversely affected and, further, this impact will potentially give rise to litigation. In order to avoid a whole host of problems that a relaxation of height restrictions will give rise to, we suggest that the *status quo* (two storey buildings and a maximum height of 8 metres) should remain as the norm.

Further clarity is required relating to the number of stories permitted. It appears from the table that on a property of less than 500sqm a height to eaves of 6m is permitted with an additional room in the roof space provided that roof is double pitched and that pitch falls between 32 and 45 degrees. We suggest that the maximum permitted height (storeys) on erf sizes 350-1000 m² may NOT exceed two storeys of normal height. A storey not to exceed 3.0m in height

With regard to section 5.1.2 (b)(v) of the IZS we object to the permitted height of garages on street boundaries unless section 5.1.2(e) of the IZS is amended in order to take into account our comments listed below.

We would request Council to consider the following:

- that a grading of coverage to give more control to avoid adverse visual impact on mountainsides be introduced.

- the criterion of ‘coverage’ should be replaced by ‘bulk’ as it is not the footprint on the ground that should be an issue in low density areas but the total floor space of a building in its setting and its environment.

- the inclusion of a sliding scale of ‘bulk’ which should be related to the size of the plot so that undesirable and inappropriate developments can be avoided, particularly in respect of those plots which are situated on mountainsides, ridges, along scenic routes and public open space as well as protected natural environments.

- the degree of slope on mountain sides to be taken into account in formulating development proposals

Development Rules: Building Lines

With regard to Building Lines we reject the common boundary building line of zero for plots 350-500m² as being undesirable, and we suggest that:

- a street boundary line of 3.5m be mandatory for all erfs greater than 400m²;
- the common boundary building line for all erfs greater than 400m² should be 1.5m;
- the common building lines on all properties smaller than 200 m² should be set at 1.5m. Further, Council should only waive this requirement where there is an acceptance of the proposed reduction of the setback by the adjoining neighbour(s). This facilitates the optimal and orderly development of adjoining properties by their owners. It also protects the rights of existing owners many of whom could suffer a material detrimental effect through this reduction in the required side space and who at the time of purchase could not reasonably have anticipated this change.

Development Rules: Garages with Building Lines

We object to this section of the IZS in its current form. We firmly believe that a garage should be subject to the same setbacks and building lines as any other building work subject to the approval of the waiving of this requiring only the affected neighbour /neighbours approval. In addition, we feel that garages must comply with the street boundary line, but may be erected within the common boundary line.

It is illogical to prevent encroachment of a dwelling into the sidespace but not that of a garage as the material effect on the adjoining property is the same. This also raises the possibility of "conversion" of garages to other uses at some later stage. Their encroachment would then become contrary to the scheme. This is an unworkable clause and must be omitted from the IZS. Garages have a particularly negative effect on the scale of the streetscape and their profusion on the street boundaries of properties reduces visibility of the street from dwellings which has a negative effect on crime prevention. The maximum setback of garages should be encouraged.

Development Rules: Parking and Access

We do not believe that the parking requirements set out in the table are adequate and would like to see this increased to a minimum of two bays per single residential property (SR1) except where it can be shown that adequate street parking exists. This will prevent subdivision of properties without proper parking provisions further congesting the already congested road infrastructure.

Subdivision and Density Standards: Minimum Subdivision Area

We support the creation of minimum subdivision areas and believe that the overlay zones controlling these subdivisions must be established prior to implementation of the zoning scheme. This is particularly relevant with respect to the existing infrastructure and its current loading.

Subdivision and Density Standards: Maximum Density

We support the creation of maximum density controls and again believe that the overlay zones controlling these densities must be established prior to implementation of the zoning scheme.

Section 5.1.5 of the IZS: Second Dwelling

We firmly believe that no second dwelling house should be permitted as of right in SR1 unless on a separate subdivided erf of greater than the minimum erf size of 433m². Accordingly, we reject the concept of the second dwelling as a primary right in the area.

Section 5.1.7 of the IZS: Bed and Breakfast Establishment, Accommodation of Lodgers

With regard to sub-paragraph (b) we note that it has been amended to state that a liquor licence should be first obtained before liquor can be sold in a bed-and-breakfast, but we reiterate our view that a bed-and-breakfast should not be allowed to sell liquor at all, as it is open to abuse and absurd in the context of the stated provision of bed and breakfast.

With regard to sub-paragraph (g) we find it unacceptable that the final words of this point, "... unless the prior consent of the Council is obtained" effectively negate the restriction of floor area to 40% or 50 m². This clause could allow the Council to permit 99% floor area devoted to home occupation which would make a mockery of the whole intention of the statement of intent at the beginning of section 5.1 of the IZS.

Section 5.1.8 of the IZS: Home School

With regard to sub-paragraph (f) of the first draft of the IZS, we appreciate that this clause has been removed in its entirety, but we nevertheless still object to the inclusion of a home school as a Primary Use in SR1 by virtue of it being an Additional Use right stipulated in section 5.1.1.(c) of the IZS. As a home school holds the potential for giving rise to noise and potentially other nuisance factors, such use should be subject to the requirement of obtaining input from interested and affected residents. The inclusion of a Home School as a Primary Use in SR1 effectively negates the obligation to obtain such input.

In addition, we submit that Home Schools should not permitted on properties of erf size less than 860 m².

Section 5.1.9 of the IZS: Guest House as a Consent Use

With regard to sub-paragraph (c), we object to the change in this clause which has resulted in its not imposing any restriction to the exact number of rooms which may be used, or the number of guests which may be accommodated or fed. In addition, we object to the fact that the IZS now refers to business functions which may be conducted on the property, which latter point contains potential for serious disturbance of a residential neighbourhood

Section 5.1.10 of the IZS: House Shop

We foresee that House Shops could be problematic, turning primarily residential areas into business areas, thereby encouraging commercial encroachment into residential areas and thereby changing the character of these precincts often negatively. The sale of liquor, fireworks, gas containers, and the presence of vending machines, video games and pool tables should be forbidden, however, the IZS says, *"unless prior written approval of the council is obtained"*. No mention is made of gambling machines. We feel that in SR1 a house shop should be limited to what is made on the premises. A limit on the number of people employed is the business (and also vehicles) should also be imposed.

Section 5.1.11 of the IZS: House Tavern

While we understand the need for greater flexibility with regard to zoning restrictions in the lower income areas so that people have more employment opportunities, we would like to emphasise the statement in the document that *"additional uses should not adversely affect the surrounding residential environment or the community"* (in objective for SR2 but not SR3). **It is a fact of life that a house tavern or shebeen does just that**, often making the living conditions of people close to it unbearable. The lower income groups have to struggle with adverse conditions anyway and allowing shebeens to operate so easily will just compound these conditions. It is not right that there is an attitude that the poorer people do not need tranquility and aesthetic surroundings.

No mention is made whether gambling machines will be allowed

Single Residential Zone 2: Incremental Housing (SR2)

While we understand that development rules in these areas cannot be as restrictive as in the SR1 we hope the City realises that the poor too need a basic quality of life and that they too feel the affect of noise and light pollution; anti-social behaviour; lack of open spaces and vistas. While it is true that the people who would live in these areas often need to make their living in an informal way, this should not impinge on other people's rights. They should not be expected to live in inferior conditions just because they are poor. The Consent Uses plus the Additional Use Rights would seem to be able to cover just about anything anybody would like to do with their dwelling with very little control as the City would not have the manpower to police the nuisance activities outlined in (c) (iv) and (v).

The IZS envisages that "once upgrading of an area has reached an appropriate stage, as determined by the Council, it is contemplated that the area may be rezoned to SR1 or another appropriate zone" Given the very divergent standards applied to SR2 it seems fanciful to expect conditions to be prevalent that allow for an upgrade to SR1

8. **Sections 12.1 and 12.2 of the IZS**

We recommend that some sort of controls or restrictions, particularly on the consent uses in respect of OS1 need to be established.

Tourist facilities should also be a consent use (not a primary use) with limiting condition for OS2 as they can take a variety of shapes and sizes many of which might not be suitable

9. **Sections 13.1 of the IZS**

We note that consent use for mining is not appropriate in an urban agricultural context. Furthermore, no minimum erf size is specified and this is left at the discretion of the Council. We feel that this should be revisited and a minimum erf size established to protect the integrity of agricultural areas.

The height of dwelling houses should be retained at two storeys (not three).

10. **Concluding remarks**

In addition to the abovementioned specific comments on the content of the IZS, we also make the following general comments in conclusion:

1. The IZS gives the reasons for the introduction of the IZS as:
   - rationalisation of the 27 existing zoning schemes some of which are discriminatory/do not recognise current realities;
   - to reduce unnecessary administrative burdens;
   - to promote sustainable development and economic growth in identified, suitable areas;
   - to balance sustainable development and conservation of important natural and heritage resources;
   - respond to the current realities which Cape Town faces, including rapid urbanization;
   - recognise the realities of the poor and disadvantaged with a range of housing options and promotion of economic opportunities such as self-employment from home;
   - to support densification as the City is a growing Metropolis (which can also be expanded to include slowing urban sprawl and the optimum use of existing infrastructure).

2. Although these reasons are valid and many aspects of the proposed IZS are indeed an improvement and commendable, we are nevertheless concerned that a number of these reasons put forward for an integrated zoning scheme actually support our argument that a 'one-size-fits-all' zoning scheme is not only undesirable but also inappropriate.

3. In response to each of the reasons above there are many arguments including:
   - There are a number of less restrictive alternatives e.g. The 27 existing zoning schemes could be rationalised to say 5 to10 similar zoning schemes or merely those that are racially discriminatory can be amended.
   - There are a number of less restrictive alternatives to achieving the desired results.
   - The inability or unwillingness to enforce zoning restrictions does not justify the replacement of light & service industrial zoning schemes with general industrial zoning so as to "reduce administrative burden".
   - The endorsement given to sustainable development in fact supports our own argument that the IZS is inappropriate to achieving this.
   - All "current realities" must be considered. One of the "current realities" that Council has to take into account is the restricted capacity of the built infrastructure and natural environment in many areas. The City's own Metropolitan Spatial Development Framework recognised the limitations of existing infrastructure (particularly roads and transport) and recommended that densification should be encouraged along (public) Transportation Corridors where the effects of densification could be absorbed. Another "current reality" is that the diverse nature of Cape Town is one of its major attractions to tourists (and potential new residents) the one-size-fits-all IZS threatens this diversity.
   - The argument that economic opportunities must be promoted does not support the infringement of rights and/or legitimate expectations of residents in the lower-middle, middle and higher income areas.
   - Advancing the policy of 'densification' seems to become the only argument for the unilateral imposition of the IZS. However, this argument does not justify the infringement of fundamental equality, property, privacy, environmental and administrative justice rights as well as non compliance with national legislation.

4. The proposals in the IZS have not met the requirements of the National Heritage Resources Act in that the City has not fulfilled its duty to establish heritage areas as required whenever a spatial development framework is prepared. Therefore the City would be failing in its statutory duty to protect and manage conservation worthy places and areas if these were not identified, mapped and listed before the adoption of the IZS.

5. The proposals made in the IZS are tantamount to 'densification by stealth'. Yet there are no traffic management or transport plans that accompany the proposed densification which will occur on an unprecedented scale. Spatial development and traffic planning officials ought to be well aware of the enormous traffic problems that arise from roads that are not suited to high levels of traffic. We therefore ask that a traffic management transport plan be submitted to coincide with the IZS so that the City is not strangled by congested roads.

6. It is clear that the City of Cape Town is purporting to operate under its Constitutional competency as local government in regulating 'municipal planning' in developing the IZS. The matter is not as simple as that, however, because local government is bound to operate within the ambit of applicable national and provincial legislation which may have a bearing on the exercise of the City's powers in this regard. Our comments under the preamble on page 1 refer.

7. The adoption of the proposed IZS for Cape Town in its current form would be in conflict with the rights to equality, property, privacy, environment enshrined in the Constitution. The Constitution compels municipalities, councillors and officials to respect the rights of citizens and other persons protected by the Bill of Rights. However, it is clear from the second draft of the IZS that it has the potential to infringe some of the fundamental rights contained in the Constitution. In particular we refer to the following:

   - The imposition of restrictions through a zoning scheme qualify as non-acquisitive deprivations of property (the recognised definition of 'property' includes 'property rights'). Therefore the imposition of a zoning scheme must clearly be carried out in terms of a law of general application and must not be arbitrary. In our view, the application and effect of the IZS is certainly arbitrary. In the application of overlays, very similar areas are treated differently. For example Fish Hoek, Mountainside and Llandudno are subject to an overlay which further restricts height but neighbouring and similar suburbs such as Clovelley and Hout Bay do not (even though residents and civic associations from all of these areas requested such an overlay). The application of these different overlays is tantamount to an arbitrary deprivation of property rights.

   - The effect of the universal application of one single residential zoning scheme over all the varied existing single residential zoning schemes will be different for owners in different areas. For example, the proposed 9 m plus roof height restriction has a markedly different effect on the owners in different areas. In many of the current zoning scheme areas the height restriction in single residential areas is currently 2 storeys, some schemes have 3 storey restrictions and some have no height restriction at all. In Kommetjie (currently 2 storey/8m to mid pitch restriction) and the Strand –where there currently are no height restrictions. Similarly the impact on owners and neighbours of light industrial and service industrial erven when these become zoned general industrial will be different to those owners and neighbours of erven already zoned general industrial. The effect of the deprivation is therefore contrary to the right to equality and is therefore clearly arbitrary.

   - As a zoning scheme is normally only introduced during the establishment of a township, suburb or development, persons buying a property within any suburb have a reasonable expectation that buildings on neighbouring properties will be confined by restrictions in the zoning scheme (and if they wish to transgress any of these restrictions they must apply for an departure from the zoning scheme which would afford interested and affected parties the opportunity to object to the departure). Given this knowledge an owner can build or alter his home so as to ensure privacy on his property through the design and placement of features such as windows and doors. In many instances this privacy can also be reasonably obtained

and expected for external portions of the home such as verandas, swimming pools, pergolas, etc. This privacy of place also allows the privacy of intimate relationships, the privacy for self-development and the protection of information about oneself.

- The relaxed building line and height restrictions proposed in the second draft of the IZS and, for example, the inclusion of second dwelling as a Primary Use right now means that this reasonable expectation of privacy may be permanently and negatively affected as areas of their home lose their privacy as buildings on neighbouring properties encroach upon or give them vantage into or onto areas that were previously out of sight and/or earshot. This will be compounded in those areas where minimum sub-divisional areas have been dropped or lowered allowing subdivision and 'new' neighbours where it may not have been possible before.

- Section 24 of the Constitution places a duty on the City of Cape Town to protect the environment through administrative and legislative means. However, in many respects the type of development intended to be given effect to by the IZS does not adequately adhere to these requirements. For example, unless restrictive overlay zones are radically extended the IZS will fail to meet requirement of 24(b) (i) of the Constitution. Increased density and coverage will lead to various negative impacts on the environment, including increased stormwater flow, increased sewerage flows, increased traffic on residential streets, etc. Furthermore, in areas where the infrastructure is already near or at maximum capacity such as the Noordhoek Valley this will lead to increased air and water pollution, ecological degradation (particularly in lower & middle density suburbs and environmentally sensitive areas). Similarly the changing of light and service industry zoning into general industrial zoning will allow increased air, noise, water and solid waste pollution, etc. in areas (such as Heron Park & Fish Eagle Park adjacent to the environmentally sensitive Noordhoek wetlands) which were originally restricted to light/service industrial industry for specific and valid reasons

- Similarly unless restrictive overlay zones are radically extended the IZS will fail to meet requirement of section 24(b)(ii) of the Constitution. Increased densities and double dwellings etc. will change the nature and specific character of numerous neighbourhoods, many of which are older than sixty years, and thus fail to promote the preservation of our cultural and historic heritage environment. Further, the term 'ecologically sustainable development' in section 24(b)(iii) of the Constitution implies that development must be restricted by the ecological carrying capacity of each area. In many areas this is being ignored and the IZS will only worsen the situation. For example, parts of the Noordhoek wetland have collapsed ecologically and expert reports have recommended that further development in the Noordhoek/Fish Hoek Valley be restricted. Similarly the Wildevoëlvlei waste water treatment works (WWWTW) is running at 84% capacity by nutrient loading with the remaining capacity already 'taken' by approved and soon to be approved developments. There is no 'extra' sewerage treatment capacity to cater for all the development proposals for the Noordhoek Valley currently with the City let alone the manner and type of densification envisaged by the IZS. In addition, there is already a problem with the phosphate discharge levels from the WWWTW and once the capacity of the plant is reached the quality of the discharge will rapidly deteriorate with

potentially disastrous ecological results. Although this could be resolved by upgrading key infrastructure but this is unlikely to happen anytime in the near future given that the WWWTW is one of the City's BEST performing wastewater treatment works and the City is apparently several hundred million if not billions of Rands behind in upgrading its remaining wastewater treatment works many of which have similar capacity restraints and most with discharge qualities very far from the minimum DWAF standards legally required. The City's planning department and the 1st and 2nd drafts of the IZS however ignore the City's own consultant's recommendations and infrastructure capacity restraints. The Constitutional imperative of section 24 is thus being ignored.

- The issue of 'sustainability' with regard to the provision of services has been made a fundamental object of local government as well as the object of encouraging the involvement of communities and community organisations. However Council interpretation of these as well as the relative importance of the promotion of 'social development' and a 'healthy environment' against the promotion of 'economic development' leaves something to be desired.

8. The adoption of a one-size-fits-all IZS for Cape Town would therefore be in conflict with certain fundamental rights contained in the Constitution. In particular, the adoption of the IZS would therefore negatively affect many residents' fundamental rights to privacy, property and the environment.

9. The **second draft of the IZS seems to have incorporated very little of the comments and objections submitted by numerous parties and individuals on the first draft of the IZS**. In order to evaluate why these suggestions were not given due consideration **we request written reasons for any rejection or discarding of our comments, suggestions, alternatives and objections**. It appears that the reasons for the rejection of certain comments and/or objections have in many cases not been decided on rational reasons but for 'policy' reasons.

10. Some of the new zonings proposed, such as the change of Light/Service Industrial to General Industrial, regularises current illegal land use. This shows bad faith and/or ulterior purpose on the part of the City.

11. The National Environmental Management Act, 1998 (NEMA) sets out the principles of national environmental management in Chapter 1, this chapter is copied in full in Schedule 1.1 of the proposed IZS with the precursor "Municipal decisions makers shall take into account the following principles derived from National Laws, provincial Laws and Policies." However despite them being printed in the draft IZS there are a number of the NEMA principles that in our view are not being adequately followed in the proposed IZS, in particular:

    - 2(2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, physiological, developmental, cultural and social interests equitably.
    - 2(3) **Development must be socially, environmentally and economically sustainable**.

- 2(4)(a) Sustainable development requires the consideration of all relevant factors including the following:
    - (vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
    - (viii) that 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
- (b) Environmental management must be integrated. acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option
- [Definition 1(iii) - "best practicable environmental option' means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term"]
- (g) Decisions must take into account the interests, needs and values of all interested and affected parties,…
    - The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
- (r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure. (Our emphasis

12. Each of the provisions above and in particular the portions that have been emphasised in bold are NEMA principles that have not been adequately adhered to by Council with regard to the IZS.

13. IEM procedures are more fully elaborated in a Guideline document provided by the Department of Environmental Affairs and Tourism, "A national strategy for Integrated Environmental Management in South Africa", Compiled by Reuben Heydenrych and Paul Claasen, April 1998, which stipulates IEM procedures for Land Use zoning plans and schemes (4.2). We have appended a scanned copy of Section 4.2 "The IEM procedure for land use zoning plans and schemes". <u>It is clear from this policy document that several procedural measures prior to the drafting of this draft zoning plan should have been completed, inter alia Environmental Authority review of the original proposal, Scoping and Strategic Environmental Assessment. None of these procedural measures have been followed by the City of Cape Town</u>. No alternatives have been identified or significant issues identified during Scoping, as there has been no Scoping process. In fact there appears to be no informed basis for any of the proposals put forward.

14. In failing to comply with the requirements of NEMA regarding integrated environmental management the process followed to date by the City of Cape Town is fundamentally flawed. The drawing up of the IZS should have been preceded by a SEA and approval from the Provincial Minister of Environmental Affairs and Development Planning and later informed by the outcomes of the SEA. In not doing so the Council appears to be in conflict with NEMA and the constitutional environmental right of all residents.

15. The Urban Structure Plan for the Cape Metropolitan Area (Peninsula) (previously the 1988 Guide Plan) is a statutory planning document that contains provisions of relevance to the proposed IZS. Section II 4.1.4 of the Structure Plan refers to the "Peninsula's Mountain Area". This section makes it clear that the 'Peninsula's Mountain Area' is an area quite different from the remainder of the Cape Metropolitan Area, and is an area where:

    - "the natural beauty and recreation potential" must be protected,
    - where the emphasis must be on "nature conservation and the development of recreational opportunities",
    - where "urban densities must be kept as low as possible" and
    - where the existing road links "are not expected to carry the additional traffic that will result" for expected development.

    The proposed IZS, in its current form, appears to conflict with these provisions of the Urban Structure Plan insofar as the IZS proposes densification of residential areas on a substantial scale. It hardly needs stating that this will impact on the natural beauty of the area.

16. **In summary, we are of the view that the IZS is fundamentally flawed for several reasons, including the following**:

    - The implementation of the IZS will affect residents' fundamental property, privacy, and environmental rights guaranteed in the Bill of Rights within the South African Constitution. The reasons given to justify the implementation of the IZS, particularly the single residential zoning proposals, do not meet the requirements of provision 36 of the Constitution that allows the limitation of rights by government under certain circumstances. Residents in the areas represented by the Coalition of Ratepayers have acquired their properties under the expectation that they will enjoy these protections and therefore the protection of their property rights and the environment of their neighbourhood. We foresee that an era of extended litigation will arise if a new uniform set of development regulations and rules was to be imposed on property owners without regard to legitimate expectations that existing norms will continue to be applied

    - The proposals also do not meet the statutory provisions of Part II 4.1.4 of the Urban Structure Plan for the Cape Metropolitan Area (Peninsula) (previously the 1988 Guide Plan) that provides that urban development in the Peninsula Mountain Area be kept as low as possible.

- There is confusion as to under what legislation the IZS will be implemented. If implemented as a by-law as suggested by the preamble to the second draft of the IZS this will put it in conflict with the existing zoning schemes and the existing zoning schemes will prevail on building lines and the IZS on all remaining provisions. If the existing zoning schemes are to be replaced by the IZS Council should have followed a process laid out by the DEADP and there does not seem to be any evidence of this.

- We therefore stress the importance of co-coordinating the adoption of the new IZS with any overlay zones that may be requested in terms of the conditions set out in the second draft of the IZS, so as to avoid time gaps and possible legal challenges.

- We are concerned about the over-abundance of "consent uses" many of which should just be deleted as they will result in less certainty from the developers' and the public's perspective and therefore more unnecessary work for officials and concerned public (the potential alternative, however, that they become "primary uses" is opposed).

- Too much is left to the discretion of the Council (either officials or Council committees). Firmer regulations need to be in place so that only the occasional applications for consent, departures, rezoning or subdivision will be applied for. It seems that the IZS is trying to be all things to all people and that in some areas it is being driven by the desire to achieve short-term goals that may in the long term have significant negative impacts. Once it is adopted there will be opportunity to change it, but this will be very limited.

- We hereby request a commitment that further input on this document (and further drafts thereof) will be possible and that your consultants will respond to our comments, queries and uncertainties as suggested in the introductory section of this letter and facilitate a more empowered response from the public generally.

- We would like to emphasise that certain residential areas on the Peninsula have a unique environment and sense of place (and therefore require special treatment in terms of any zoning scheme regulations). It may be possible to be deal with this using the overlay method. However, the basic regulations contained in the current draft document need to be strengthened to be able to deal successfully with this area (and others) in an unambiguous manner. Regulations based on sound planning principles should automatically transcend variations in political dominance (which will occur naturally as time goes on) and allow for responsible and sustainable planning to the benefit of the City as a whole.

- Zoning provisions entail a legal obligation on the local authority to enforce compliance and afford a right to others to enforce compliance with that obligation. It is, therefore, imperative that the public must insist on an unambiguous a document, with as few decisions left to discretion as possible because such vagueness frequently this leads to unethical practices and should be avoided.

Yours faithfully

Coalition of Ratepayers

Athlone Crawford Civic Association

Barbarossa RA

Belvedere/Greater Lynfrae RA

Bergvliet Meadowridge R.A.

Bishopscourt Village R A

Blaauwberg R A

Bo Kaap Civics

Bothasig R A

Brooklyn Rugby Ysterplaat R A

Camps Bay R A

City Bowl R A

City Wide Forum

Constantia Hills R A

Constantia Property O A

Barbarossa Residents Group

De Water Kant RA

De Waterkant - Bo Kaap Civic AllianceR A

De Waterkant R A

Edgemead R A

Far South Peninsula C F

Fernwood RA

Fish Hoek & Clovelly R A

Friends of Rondebosch

Green Point & Sea Point R A

Harfield Village R A

Helderberg R.A./ Inwoners Aks

Heritage Forum

Hout Bay RA

HoutBay & Llandudno Heritage Trust

Inner City Bowl R A

Kenridge The Hills R P A

Kommetjie R & R A

Llandudno Civic

Lotus River Ottery Grassy Park (LOGRA) RA

Milnerton R R A

Misty Cliffs R A

Monte Vista R A

Newlands R A

Noordhoek Conservancy

Noordhoek Enviroment Action Group

Old Oak C F

Paul L.Oppenheimer-Individual supporter

Pinelands R A

Private Individual

RondeBosch R R A

Rosebank Mowbray R A

Scarborough R R A

South Peninsula Public Participation

Tableview R A

Thornton R A

Walmer Estate R A