

K Amended categorisation scheme, 2017

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AGENDA

10TH COUNCIL MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY

2017-07-26

7.3.3	AMENDMENT OF THE EXISTING CATEGORISATION OF APPLICATIONS, AMOUNTS PAYABLE TO THE STELLENBOSCH MUNICIPAL PLANNING TRIBUNAL AND APPOINTMENT OF AN ADDITIONAL INTERNAL MUNICIPAL PLANNING TRIBUNAL MEMBER IN TERMS OF SPATIAL PLANNING AND LAND USE MANAGEMENT ACT NO 16 OF 2013 (SPLUMA)
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1. PURPOSE OF REPORT

To motivate and seek approval from Council to amend the existing decisions (approved in Item 8.6 dated 27 May 2015). Further to propose to Council to appoint an additional Internal Municipal Tribunal Members, to amend the existing categorisation of applications and adjust the remuneration of external Municipal Tribunal member's fees in line with market value.

2. BACKGROUND

During 2015 Council authorised the establishment of a Municipal Planning Tribunal (MPT) for Stellenbosch Municipality (WC024) in line with new planning legislation which include the Spatial Planning and Land Use Management Act No 16 of 2013 (SPLUMA), the Western Cape Land Use Planning Act No 3 of 2014 (LUPA) as well as the Stellenbosch Municipal Land Use Planning By-law (2015).

Council took a series of decisions during 2015 [*Resolution 8.6 dated 27 May 2015 as **APPENDIX 1***] and [*item 7.4 (36th Council Meeting dated 25 of November 2015 as **APPENDIX 2***] in line with the above mentioned land use planning legislation. Amongst others Council approved the appointment of external public Municipal Planning Tribunal Members, the remuneration for external MPT members, the categorisation of applications, and the appointment of an authorised employee (the Director for Planning and Economic Development) to consider and determine certain applications in line with Council's approved categorisation.

During 2016 not one Municipal Planning Tribunal meeting was conducted, amongst others as a result of the existing categorisation of applications approved by Council.

The purpose of this item is to amend the existing categorisation of applications in terms of SPLUMA, LUPA and the Land Use Planning By-law to amend the remuneration of External Municipal Planning Tribunal Members in line with the SACPLAN professional fees and appoint additional second Internal Municipal Planning Tribunal members.

3. DISCUSSION

3.1 AMENDMENT OF THE CATEGORISATION OF APPLICATIONS

In May 2015 Council approved the existing categorisation of applications as seen in **APPENDIX 1** under resolution (g). The main reasons are the categorisation of applications (which refer only major developments to the MPT, few of which occur in the area as a result of infrastructure and planning policy limitations) and the fact that that the existing categorisation only refers land use applications to the MPT with "Substantive Objections".

In terms of Section 35 of SPLUMA, only Council can categorise applications which must be considered by the Municipal Planning Tribunal.

Section 35 of SPLUMA reads that (1) *A municipality must, in order to determine land use and development applications within its municipal area, establish a Municipal Planning Tribunal.*(2) *Despite subsection (1), a municipality may authorise that certain land use and land development applications may be considered and determined by an official in the employ of the municipality.* (3) *A municipality must, in order to determine land use and land development applications within its municipal area, categorise development applications to be considered by an official and those to be referred to the Municipal Planning Tribunal.*

Linked to the above the SPLUMA Regulation Chapter 3 Regulation 15 read that (1) *if a municipality decides not to authorise an official to consider and determine certain land development and land use applications, the Municipal Planning Tribunal must consider and decide all land use and land development and land use applications that is submitted to the municipality.*

- (2) *If a municipality authorises an official to consider and determine certain land development and land use applications as contemplated in section 35(2) of the Act, it must consider the following aspects in its categorisation of land development and land use applications:*
- (a) *type of land development or land use application;*
 - (b) *scale and nature of the land development or land use application;*
 - (c) *the potential impact of the right granted if the land development or land use application is approved;*
 - (d) *the level of public participation required;*
 - (e) *whether or not the land development or land use application is in line with the municipality's spatial development framework and other relevant policies;*
 - (f) *any other aspect that the municipality considers appropriate; or*
 - (g) *any combination of the aspects referred to in paragraph (a) to (f).*
- (3) *If the municipality decides to categorise land development and land use applications according to the type of application referred to in subregulation 2(a), it may use the standard categorisation of land development and land use applications contained in provincial legislation or contemplated in Schedule 5, subject to any modifications and qualifications as the municipality deems necessary.*
- (4) *The municipality must determine which category of land development and land use application must be considered and determined by the authorised official and which category must be considered and determined by the Municipal Planning Tribunal and may use the standard division of functions contained in Schedule 5.*

In view of the nature of applications in the municipal area and the repeated objections by members of the public, the administration proposes that Council amend the existing categorisation of applications in keeping with the statutory requirements of SPLUMA, LUPA and Section 15 of the Land Use

Planning By-law (2015) by repealing resolution (g) and (h) of Item 8.6 of 27 May 2015 by replacing it with the following table:

Table 1 : Categorisation of Land Use applications i.t.o the Land Use Planning By-law (2015)

NO	APPLICATION TYPE	COUNCIL	Category 1 Municipal Planning Tribunal	Category 2 (AO/AE)
Actions in terms of Sections 11 and 22 of the Western Cape Land Use Planning Act 2014 and Section 35(3) and 47(2) of the Spatial Planning and Land Use Management Act, 2013				
1.	Approval / amendment of Spatial Development Framework	X		
2.	Approval / amendment of Zoning Scheme	X		
3.	Approval / amendment of an Overlay Zone for the zoning scheme 15(2)(j) of the Land Use By-law read with section 12 & 13 of MSA	X		
4.	Title Deed Relaxations to enable minor departure applications SPLUMA 47(2)			X
5.	Categorisation of applications	X		
Application types as per section 15 of the Stellenbosch Municipal Land Use Planning By-law (2015)				
6.	15(2)(a) Rezoning of Land		X OBJECTIONS	X NO OBJECTIONS
7.	15(2)(b) a permanent departure from the development parameters of the zoning scheme		X OBJECTIONS	X NO OBJECTIONS
8.	15(2)(c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;		X OBJECTIONS	X NO OBJECTIONS
9.	15(2)(d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;		X OBJECTIONS	X NO OBJECTIONS
10.	15(2)(e) a consolidation of land that is not exempted in terms of section 24;			X
11.	15(2)(f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;		X OBJECTIONS	X NO OBJECTIONS
12.	15(2) (g) a permission required in terms of the zoning scheme ;			X
13.	15(2)(h) an amendment, deletion or imposition of conditions in respect of an existing approval ;			X
14.	15(2) (i) an extension of the validity period of an approval			X
15.	15(2) (j) an approval of an overlay zone as contemplated in the zoning scheme ;	X		
16.	15(2)(k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram ;			X
17.	15(2)(l) a permission required in terms of a condition of approval ;			X
18.	15(2)(m) a determination of a zoning ;			X
19.	15(2)(n) a closure of a public place or part thereof;		X OBJECTIONS	X NO OBJECTIONS
20.	15(2)(o) a consent use contemplated in the zoning scheme;		X OBJECTIONS	X NO OBJECTIONS
21.	15(2)(p) an occasional use of land ;			X
22.	15(2)(q) to disestablish a home owner's association			X
23.	15(2)(r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;			X

24.	15(2)(s) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.			X
25.	15(2)(6) When the Municipality on its own initiative intends to conduct land development or an activity contemplated in subsection (2), the decision on the application must be made by the Tribunal in accordance with this Chapter and Chapter IV and no official may be authorised to make such a decision.		X	
26.	15(2)(l) Amendment of Site Development Plan			X
27.	15(2)(l) Compilation / Establishment of a Home Owners Association Constitution / Design Guidelines			X

Note: "OBJECTIONS" above refer only to submissions indicating objection to the proposed development / activity and not comment submitted with proposed conditions and mitigation measures.

3.2 AMENDMENT OF PROFESSIONAL FEES FOR EXTERNAL MPT MEMBERS

Item 8.6 resolution (e)(ii) reads that *:that the MPT public members be remunerated at the following rates:(ii) that the four members of the public that sit at every meeting be remunerated at R300,00 per hour, with no more than 10 hours being set aside per meeting and that the rate be reconsidered annually in the budget:...*

It will be recommended that the hourly rate be amended according to Category B of the South African Council of Professional Planners (SACPLAN) professional fees rate (**APPENDIX 3– National gazette No. 38078 dated 10 October 2014**) from R 300.00 per hour (which has no professional fee foundation) to R 1 000.00 hour per hour. The appointed External Municipal Planning Tribunal Members meets the criteria of SACPLAN Category B as their expertise are of private consulting firm in practice standard whom have adequate expertise and relevant experience to perform the work of a planning nature and whom can carry the direct technical responsibility for one or more specific activities.

3.3 APPOINTMENT OF ADDITIONAL INTERNAL MUNICIPAL PLANNING TRIBUNAL MEMBERS

Read with resolution f Item 8.6 dated May 2015, it is recommended to expand the internal members from a minimum of 3 internal MPT members by appointing an additional 3 secondi members whom are employed by Council. It is thus recommended that the following three members be appointed:

1. Environmental Planner
2. Head of Transport
3. Manager: Integrated Development Planning

4 LEGAL SERVICES

Council will comply with the provisions of SPLUMA, LUPA and the Land Use Planning By-law.

5 FINANCIAL SERVICES

That the professional fees for external MPT members be amended in line with SACPLAN professional fees for external consultants.

MAYORAL COMMITTEE MEETING: 2017-07-19: ITEM 5.3.3**RECOMMENDED**

- (a) that Council rescind the approved categorisation of applications as per resolutions (g) and (h) of Council Item 8.6 dated 27 May 2015 and replace it with the table below in line with Section 35 of SPLUMA:

NO	APPLICATION TYPE	COUNCIL	Category 1	Category 2
			Municipal Planning Tribunal	(AO/AE)
Actions in terms of Sections 11 and 22 of the Western Cape Land Use Planning Act 2014 and Section 35(3) and 47(2) of the Spatial Planning and Land Use Management Act, 2013				
1.	Approval / amendment of Spatial Development Framework	X		
2.	Approval / amendment of Zoning Scheme	X		
3.	Approval / amendment of an Overlay Zone for the zoning scheme 15(2)(j) of the Land Use By-law read with section 12 & 13 of MSA	X		
4.	Title Deed Relaxations to enable minor departure applications SPLUMA 47(2)			X
5.	Categorisation of applications	X		
Application types as per section 15 of the Stellenbosch Municipal Land Use Planning By-law (2015)				
6.	15(2)(a) Rezoning of Land		X OBJECTIONS	X NO OBJECTIONS
7.	15(2)(b) a permanent departure from the development parameters of the zoning scheme		X OBJECTIONS	X NO OBJECTIONS
8.	15(2)(c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;		X OBJECTIONS	X NO OBJECTIONS
9.	15(2)(d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;		X OBJECTIONS	X NO OBJECTIONS
10.	15(2)(e) a consolidation of land that is not exempted in terms of section 24;			X
11.	15(2)(f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;		X OBJECTIONS	X NO OBJECTIONS
12.	15(2) (g) a permission required in terms of the zoning scheme ;			X
13.	15(2)(h) an amendment, deletion or imposition of conditions in respect of an existing approval ;			X
14.	15(2) (i) an extension of the validity period of an approval			X
15.	15(2) (j) an approval of an overlay zone as contemplated in the zoning scheme ;	X		
16.	15(2)(k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram ;			X
17.	15(2)(l) a permission required in terms of a condition of approval ;			X
18.	15(2)(m) a determination of a zoning ;			X

19.	15(2)(n) a closure of a public place or part thereof;		X OBJECTIONS	X NO OBJECTIONS
20.	15(2)(o) a consent use contemplated in the zoning scheme;		X OBJECTIONS	X NO OBJECTIONS
21.	15(2)(p) an occasional use of land ;			X
22.	15(2)(q) to disestablish a home owner's association			X
23.	15(2)(r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;			X
24.	15(2)(s) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.			X
25.	15(2)(6) When the Municipality on its own initiative intends to conduct land development or an activity contemplated in subsection (2), the decision on the application must be made by the Tribunal in accordance with this Chapter and Chapter IV and no official may be authorised to make such a decision.		X	
26.	15(2)(l) Amendment of Site Development Plan			X
27.	15(2)(l) Compilation / Establishment of a Home Owners Association Constitution / Design Guidelines			X

Note: "OBJECTIONS" above refer only to submissions indicating objection to the proposed development / activity and not comment submitted with proposed conditions and mitigation measures.

- (b) that Council amend resolution e (ii) of Council Item 8.6 dated 27 May 2015 in line with SACPLAN professional fees (Category B) from R300. 00 per hour to R 1 000, 00 per hour to a maximum remuneration equal to five hours per meeting. The appointed External Municipal Planning Tribunal Members meets the criteria of SACPLAN Categories B as their expertise are of private consulting firm in practice standard whom have adequate expertise and relevant experience to perform the work of a planning nature and whom can carry the direct technical responsibility for one or more specific activities;
- (c) that Council amend resolution f of Council Item 8.6 dated 27 May 2015 to expand the internal members from 3 internal MPT members to 6 by appointing additional 3 secondi members whom include:
1. The Environmental Planner
 2. Head of Transport
 3. Manager: Integrated Development Planning; and
- (d) that Council authorise and delegate the Municipal Manager to appoint Internal Municipal Planning Tribunal Members fulfilling the designations in accordance with the requirements set in the Land Use Planning By-law (2015), the Land Use Planning Act (2014), and the Spatial Planning and Land Use Planning Act (2013).

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