



DEVELOPMENT MANAGEMENT SCHEME COMPLIANCE ADVISORY: 3 OF 2021

SECOND AND THIRD DWELLINGS AS AN ADDITIONAL USE RIGHT IN TERMS OF THE CITY OF CAPE TOWN DEVELOPMENT MANAGEMENT SCHEME

1. PURPOSE OF ADVISORY

- 1.1. The purpose of this advisory is to indicate the Departmental position in consideration of second and third dwellings as an additional use right within certain zoning categories of the City of Cape Town Development Management Scheme (DMS).
- 1.2. This advisory follows Departmental Circular 2 of 2020 on the same matter.

2. BACKGROUND

- 2.1. Second dwellings are permitted as an additional use right within:
 - Single Residential Zoning 1: Conventional Housing (SR1);
 - Local Business Zoning 1: Intermediate Business (LB1);
 - Agricultural Zoning (AG); and
 - Rural Zoning (RU).
- 2.2. Third dwellings are permitted as a further additional use right within:
 - Single Residential Zoning 1: Conventional Housing (SR1); and
 - Single Residential Zoning 2: Incremental Housing (SR2).
- 2.3. An owner of land zoned as above, may exercise the additional use, subject to compliance with the conditions listed respectively in items 25A and 25B of the DMS (together with any applicable development rules within the relevant zoning and any other potential restrictions, e.g. title deed restrictions).
- 2.4. In the AG zone, owners will also need to comply with Item 111(a), which requires that the density of additional dwelling units plus any second dwelling unit does not exceed 1 unit per hectare. Additional dwelling units are not the same as a second dwelling and is applicable only in the AG zone. It is defined as *'a dwelling unit that may be erected with the approval of the City in an agricultural zoning, in addition to a second dwelling, dwelling or residential accommodation for bona fide agricultural workers.'*

3. PROCESS TO ALLOW A SECOND DWELLING OR THIRD DWELLING AS AN ADDITIONAL USE RIGHT

3.1. Responsibility of owner

- 3.1.1. Exercising a second or third dwelling additional use right in SR1 or a third dwelling additional use right in SR2 does not require a land use application. The responsibility is on the owner who is submitting a building plan application to ensure that the conditions listed in either item 25A or 25B and other DMS development rules (or any other restrictions, e.g. title deed restrictions) are complied with.
- 3.1.2. In the AG zone, owners will also need to comply with Item 111, which deals with density, maximum number of units.
- 3.1.3. The area of a second dwelling or a third dwelling is calculated in terms of the definition of "floor space" in the DMS.

3.2. City: Customer interface (CI) responsibilities

- 3.2.1. All building plans need to be sent to Land Use Management (LUMS) for clearance.
- 3.2.2. LUMS will either:
 - provide clearance, or
 - advise about the need for compliance with the DMS, that will include compliance with the requirements of either item 25A (a)-(f) or 25B (a)-(f).
- 3.2.3. Should clearance be obtained, proceed to accept the plan for Building Development Management (BDM) processing.

3.3. City: Land Use Management (LUMS) responsibilities

- 3.3.1. Second dwelling or third dwelling building plans must be assessed for compliance against item 25A or 25B respectively, together with the relevant development rules in the applicable zoning.
- 3.3.2. If a second dwelling is greater than 60 sqm or for a third dwelling of any size or for a second dwelling in a LB1, AG or RU zoning, the owner must be informed that a development charge (DC) is payable or potentially payable. Owners must also be advised that they need to obtain clearance from the Electricity Department or Eskom (if not already attached with building plan submission) for all second dwellings (any size) or third dwellings (any size). Circulation to LUMS after this will not be required again.

SECOND AND THIRD DWELLINGS AS AN ADDITIONAL USE RIGHT IN TERMS OF THE CITY OF CAPE TOWN DEVELOPMENT MANAGEMENT SCHEME

- 3.3.3. Guidance on how to check for compliance with item 25A or 25B conditions is provided in Section 4: Compliance with Item 25A or 25B conditions of the DMS below.
 - 3.3.4. Land use applications associated with a second or third dwelling (e.g. development rule departures, including departures from either item 25A or 25B (a) to (d)), should only be circulated to the Transport Directorate when there are other engineering issues that may need input, e.g. additional carriageway crossing, street building line departure or when it is proposed in a LB1, AG or RU zoning. Circulation to the Electricity Department or Eskom for all second dwellings (any size) and third dwellings (any size) is at all times required for all areas, i.e. Eskom- and City-supplied areas, when there is a land use application.
 - 3.3.5. Payment of a development charge (DC) for a second or third dwelling cannot be made a condition of approval for an associated land use application.
 - 3.3.6. Following a LUM application approval process, a building plan will still need to be submitted which needs to be cleared and where the applicant needs to be informed of a DC payment, if required.
- 3.4. City: Building Development Management (BDM) responsibilities
- 3.4.1. A second dwelling or third dwelling building plan should not be circulated to the Transport Directorate, unless there is an additional engineering issue, such as e.g. an additional connection, access point or when it is proposed on an LB1, AG or RU zoning.
 - 3.4.2. The applicant needs to provide proof that the DC has been paid, if this was required, before a building plan can be approved. Proof of electricity capacity from the Electricity Department or Eskom must also be provided before a building plan can be approved.

4. COMPLIANCE WITH ITEM 25A OR 25B CONDITIONS OF THE DMS

Guidance on how to evaluate a second or third dwelling against the item 25A or 25B conditions is provided below.

4.1. Condition 25A (a) and 25B (a)

- 4.1.1. "25A (a) The total floor space of a second dwelling may not exceed the total floor space of the main dwelling unit without the approval of the City. The floor space of ancillary buildings is excluded from this provision;"

SECOND AND THIRD DWELLINGS AS AN ADDITIONAL USE RIGHT IN TERMS OF THE CITY OF CAPE TOWN DEVELOPMENT MANAGEMENT SCHEME

- 4.1.2. "25B (a) The total floor space of a third dwelling may not exceed the total floor space of the main dwelling without the approval of the City. The floor space of ancillary buildings is excluded from this provision;"
 - 4.1.3. This condition is self-explanatory. The floor area of any second or third dwelling may not be more than the floor area of the main dwelling on the property. The sum of all floor areas of all structures may also not exceed the relevant maximum floor factor or floor space requirement in the relevant zoning.
- 4.2. Condition 25A (b) and 25B (b)
- 4.2.1. "25A (b) The City may require that a second dwelling be constructed in a style that is similar to the architecture of the main dwelling house;"
 - 4.2.2. "25B (b) The City may require that a third dwelling be constructed in a style that is similar to the architecture of the main dwelling house;"
 - 4.2.3. It may be determined by LUMS at its discretion that the appearance of the second dwelling or third dwelling must be similar to the main dwelling on the property.
 - 4.2.4. The following aspects may be circumstances to determine that this condition be met:
 - 4.2.4.1. Where a clear and distinctive architectural style exists for the main dwelling (e.g. Cape Dutch architectural style) it may be required that the second or third dwelling must be built in the same style.
 - 4.2.4.2. Where no clear architectural style is obvious in the main dwelling, it generally should not be a requirement that the second or third dwelling be built in the same style.
- 4.3. Condition 25A (c) and 25B (c)
- 4.3.1. "25A (c) A second dwelling that is a separate structure to a main dwelling house shall not exceed a height of 6 m measured from existing ground level to the wall plate and 8 m to the top of the roof;"
 - 4.3.2. "25B (c) A third dwelling that is a separate structure to a main or second dwelling shall not exceed a height of 6 m measured from existing ground level to the wall plate and 8 m to the top of the roof;"

**SECOND AND THIRD DWELLINGS AS AN ADDITIONAL USE RIGHT IN TERMS OF THE CITY OF CAPE TOWN
DEVELOPMENT MANAGEMENT SCHEME**

- 4.3.3. Notwithstanding the height requirements in the development rules of the relevant zoning, a second dwelling or third dwelling must conform to the height requirements stipulated in this condition.
- 4.4. Condition 25A (d) and 25B (d)
- 4.4.1. "25A (d) A second dwelling that is contained within the same building as a main dwelling house shall be designed so that the building appears as a single dwelling house; both units may have a ground floor, or one unit may be on the ground floor and the other unit above;"
- 4.4.2. "25B (d) A third dwelling contained within the same building as a main dwelling or second dwelling must be designed so that the building appears as a single dwelling house; all units may have a ground floor, or one unit may be on the ground floor and the other units above;"
- 4.4.3. This condition is self-explanatory.
- 4.5. Condition 25A (e) and 25B (e)
- 4.5.1. "25A (e) The existence of a second dwelling shall not in itself be sufficient reason for the City to grant an application in terms of this By-Law to subdivide the land unit containing the dwelling units;"
- 4.5.2. "25B (e) The existence of a third dwelling shall not in itself be sufficient reason for the City to grant an application in terms of this By-Law to subdivide the land unit containing the dwelling units;"
- 4.5.3. The intention of a second dwelling and third dwelling as an additional use right in certain zonings is not to create more land units, but to provide for higher densities on current land units.
- 4.5.4. Where a second or third dwelling is proposed with a simultaneous subdivision application, such application will have to be considered on its own merit (taking into account inter alia the criteria stipulated in section 99 of the City of Cape Town Municipal Planning By-law, 2015 (MPBL).
- 4.6. Condition 25A (f) and 25B (f)
- 4.6.1. "25A (f) The construction of a second dwelling is subject to the certification by all relevant municipal service department Directors, or their delegates, that capacity is available on the services network in the specific area."

SECOND AND THIRD DWELLINGS AS AN ADDITIONAL USE RIGHT IN TERMS OF THE CITY OF CAPE TOWN DEVELOPMENT MANAGEMENT SCHEME

- 4.6.2. "25B (f) The construction of a third dwelling is subject to the certification by all relevant municipal service department Directors, or their delegates, that capacity is available on the services network in the specific area.
- 4.6.3. The Transport Directorate has issued a memo to state the development charges applicable to second or third dwellings in SR1 zonings and third dwellings in SR2 zonings.
- 4.6.4. Irrespective of whether there is a DC payable, in cases where specific engineering issues need to be clarified by the Transport Directorate, like additional access and additional service connections, proposals must be circulated to the relevant district engineer for comments. Proposals for additional use rights for second dwellings in the LB1, AG or RU zonings also need to be circulated.
- 4.6.5. Circulation to the Electricity Department or Eskom for all second dwellings (any size) and all third dwellings (any size) in all areas is at all times required when there is a land use application involved.

5. EXCEPTION TO THE PROCEDURE IN 4.6

- 5.1. In addition to 4.6, endorsement must also be obtained in respect of the Traffic Evacuation Model (TEM) for properties located within the Urgent Protective Action Zone (UPZ) of the Koeberg Restriction Area Overlay Zoning. This endorsement will relate to capacity available to disaster management infrastructure necessary to ensure effective implementation of the approved traffic evacuation model and associated disaster risk management procedure.
- 5.2. If this endorsement cannot be obtained (as part of 25A(f) or 25B(f)), the additional use right for a second or third dwelling in SR1 or third dwelling in SR2 or second dwelling in LB1, AG or RU zoning is not permitted on the relevant property in this area.

6. NON-COMPLIANCE WITH CONDITIONS (A) TO (F)

- 6.1. In the event that there is non-compliance with any of the conditions stipulated in 25A (a) to (d) or 25B (a) to (d), a permanent departure application from that condition or conditions will be required, which must be assessed against the criteria as set out in Section 99 of the MPBL.
- 6.2. Conditions 25A (e) and (f) and 25B (e) and (f) are not regarded as development rules and may therefore not be departed from.



PLEASE NOTE

Always consult the City of Cape Town Municipal Planning By-law, 2015 (as amended) before any land use application is submitted to the Department.