



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

MUNICIPAL PLANNING BY-LAW

Presented by: Fiona Ogle
Date: Monday, 22 June 2015
Stadium

Making progress possible. **Together.**

Overview of presentation

1. Introduction
2. City of Cape Town Municipal Planning By-Law
3. Changes to the DMS
4. Lunch
5. DRDLR – SPLUMA principles
6. DEADP – Relevant considerations
7. DEADP – Criteria for removal of restrictions
8. DEADP – Provincial approval ito LUPA (s 53 of LUPA)

Outcomes

- Informed on the relationship between SPLUMA, LUPA and the By-law.
- Informed on how the transitional provisions will be applied in respect of planning applications, RORs, decision makers and appeals.
- Informed on Provincial decision making.
- Informed about the City of Cape Town Municipal Planning By-law.

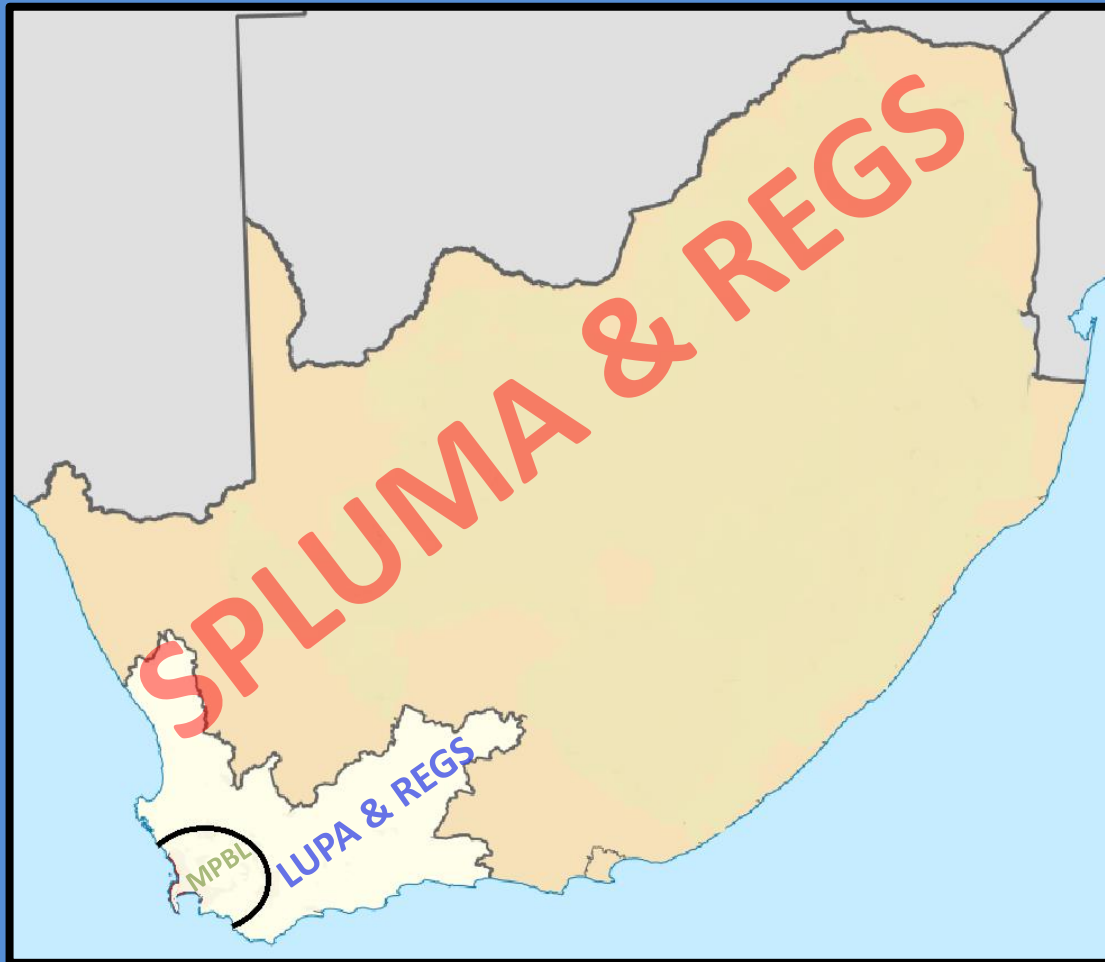
CONSTITUTION

	NATIONAL GOVERNMENT	PROVINCIAL GOVERNMENT	LOCAL GOVERNMENT
Allocation of powers	SPLUMA	LUPA	BY-LAW
Part A of Schedule 4	Regional Planning & Development Urban & Rural Development		
Part A of Schedule 5	s 44 (2)	Provincial Planning	
Part B of Schedule 4	Subject to 155 (7)	Subject to 155 (6) (a) and (7)	Municipal Planning
Section 155(7) Section 155(6)(a) & (7)	Regulating the exercise by Municipality of their executive authority	Monitoring, support, capacity building and regulation of Municipality	



PART A - THE PLANNING LEGISLATIVE FRAMEWORK

1 JULY 2015



Legislative Framework

- Constitution
 - SPLUMA + regulations
 - MSA
 - PAJA
-

National

- LUPA+ regulations
-

Provincial

- Municipal planning by-law
and DMS
-

Municipal

Laws to be repealed

- **LUPO 1985 and all regulations**
- **Removal of Restrictions Act, 1967**
- **Physical Planning Act, 1991**
- **Development Facilitation Act, 1995**
- **Rural Areas Act 1987**
- **Less Formal Townships Establishment Act, 1991**
- **Regulations in terms of the BCDA, 1984**

SPLUMA – relevant provisions

SDFs

- Process requirements
- Content requirements
- 5 years to create

LUMS /DMS

- Content
- Process and criteria for amendment

MPTs

- decision makers

**Authorised
Officials
(AOs)**

- Categorisation of applications



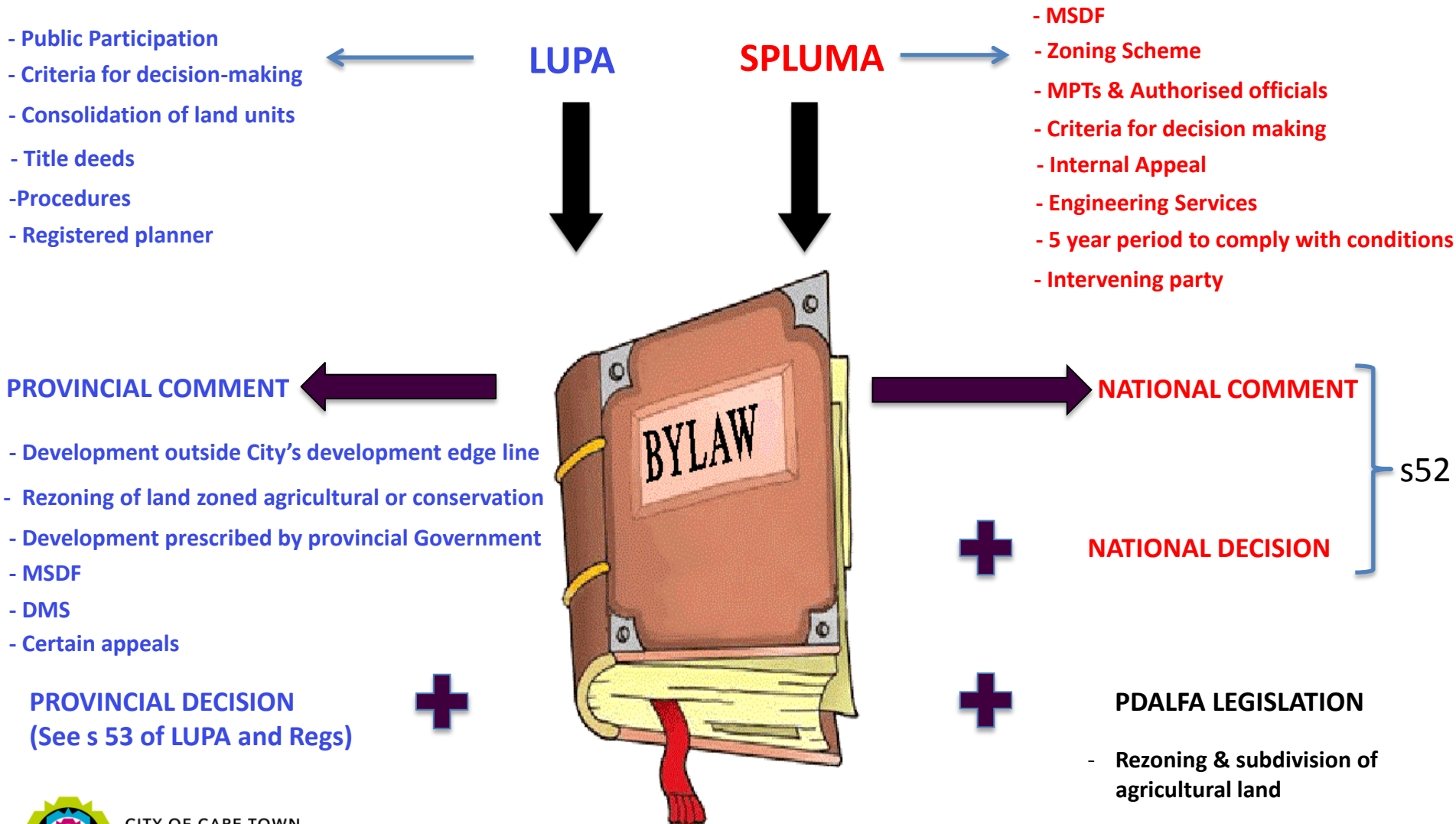
SPLUMA – relevant provisions

- **Set of principles for decision-making**
- **Minimum requirements for:**
 - **decision-making**
 - **procedures**
 - **timeframes**
- **Enforcement**
- **Parties – Intervener**
- **Appeal authority**

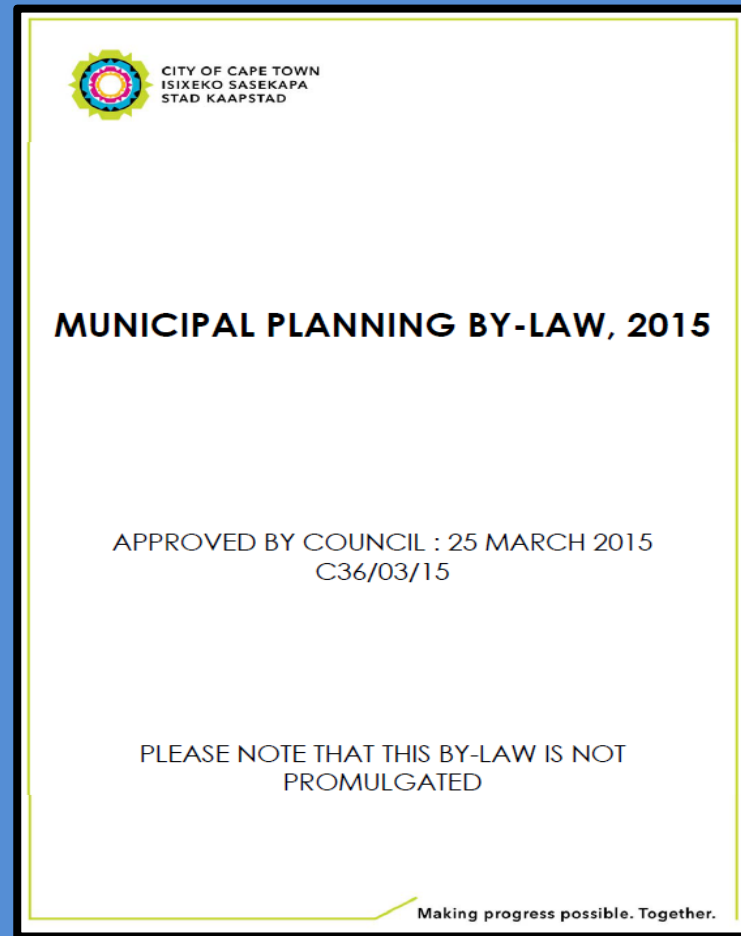
LUPA – relevant provisions

- Provincial spatial planning
- Provincial decision making on listed applications
- Sets minimum requirements for municipal planning matters.
- Sets minimum content for MSDF, Zoning Schemes.
- Sets principles.
- Regulations:
 - Additional approval by province
 - Transitional clauses for RoRs

Relationship of MPBL to SPLUMA and LUPA



PART B - THE MUNICIPAL PLANNING BY-LAW (MPBL)



Structure of By- law

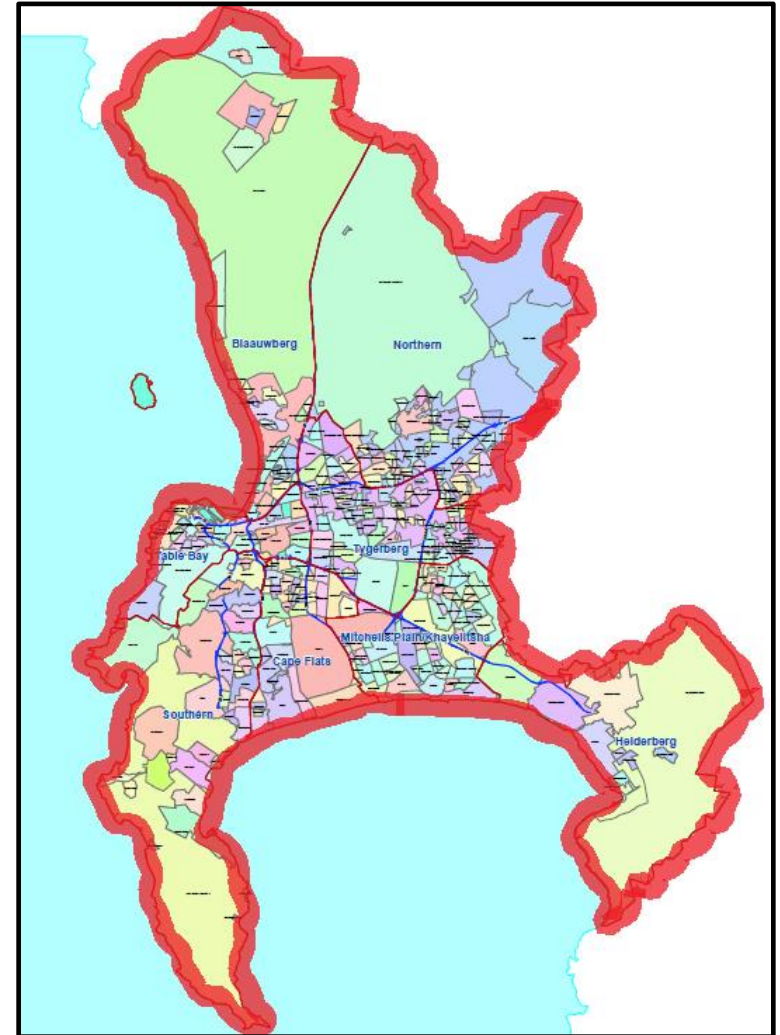
- **By- law itself 12 chapters (71 pages)**
- **Schedule 1 – DSDF**
- **Schedule 2 – LSDF**
- **Schedule 3 – DMS (previous CTZS) - pgs 73 – 165 (92 pages)**
- **Provincial Notices – designate areas to overlay zones.**
- **Overlay maps on City website.**
- **Designed as a one stop shop.**

Chapter 1 - Definitions

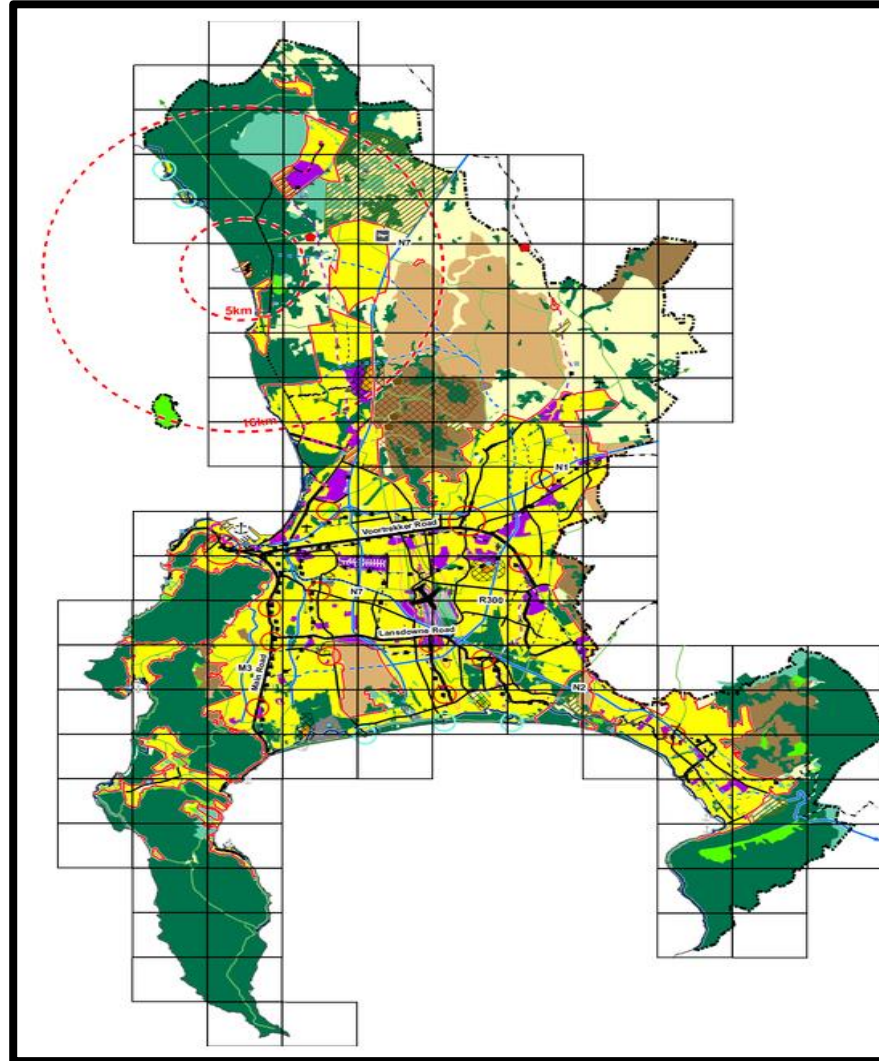
- **Some definitions have changed in order to be consistent with SPLUMA.**
- **Some of the definitions which were in the zoning scheme are now in the By law.**
- **Note the definition of “zoning” – includes the base zoning and the overlay zoning.**

Chapter 2 - Applicability of By-law

- Applies to all land within the area of jurisdiction of the City
- Applies to State land including National parks and protected areas
- Applies to PRASA and Transnet land.
- MPBL overrides other By-laws



Chapter 3 – Spatial Planning (sections 3 – 23)



Types of spatial development frameworks

National

NATIONAL SPATIAL DEVELOPMENT FRAMEWORK

REGIONAL SPATIAL DEVELOPMENT FRAMEWORK

Provincial

PROVINCIAL SPATIAL DEVELOPMENT FRAMEWORK

PROVINCIAL REGIONAL SPATIAL DEVELOPMENT
FRAMEWORK

City SDFs

MUNICIPAL SPATIAL DEVELOPMENT
FRAMEWORK

DISTRICT SPATIAL
DEVELOPMENT FRAMEWORK

LOCAL SPATIAL
DEVELOPMENT FRAMEWORK



Ch 3 – Spatial Development Frameworks

Cape Town Spatial Development Framework

- Deemed to be the MSDF for the purpose of the By-Laws 3(2)
- Section 9(1) - MPT may not deviate from MSDF unless **site specific circumstances** exist

CTZS = MSDF



Ch 3 – Spatial Development Frameworks

Spatial Development Frameworks (section 3)

- Types of SDFs – section 3(1)
- CTSDF deemed to be MSDF – section 3(2)
- Purpose of SDFs – section 3(3)

Process for drafting MSDF (section 4)

- Process for drafting the MSDF
- City must adopt a process
- Council must consider a written report
- Note: Registered planner must sign the report*

Process for amending MSDF (section 5)

- Section 34 of the MSA - general amendments to the MSDF
- CM may prescribe form and process for requests for ad hoc amendments

Ch 3 – Spatial Development Frameworks

Decision on adoption or amendment of MSDF (section 6)

- decision making powers of the City for the MSDF

Submission of MSDF to Provincial Minister (section 7)

- Note: MSDF must be submitted to provincial minister for comment*

Publication of adopted/amended MSDF (section 8)

- publication – must publish in PG and comply with MSA

Status of MSDF (section 9)

- Note s9(1) - May deviate only if site specific circumstances exist*
- Must have regard to the development application and any other relevant considerations when determining site specific circumstances.
- If inconsistent, applicant must describe the inconsistency in the application and in the advertisement
- Cross references to section 22 of SPLUMA
- See section 19 of LUPA – compliance, consistency and deviation

Ch 3 – Spatial Development Frameworks

Review of MSDF (section 10)

- Set out factors for consideration when MSDF is reviewed as part of IDP review process

Content of DSDF and LSDF

- Content set out

Process for drafting, amending, deciding on, publication of and withdrawal of DSDF and LSDF (sections 11 – 18)

- Similar to processes applicable to MSDF

Status

- No deviation unless circumstances justify the deviation.

Ch 3 – General provisions concerning SDFs

Record of and access to SDFs (section 19)

- Publication – MSDF in PG, DSDF and LSDF on website
- Obligation to keep a record of approved SDFs which will be available on website.

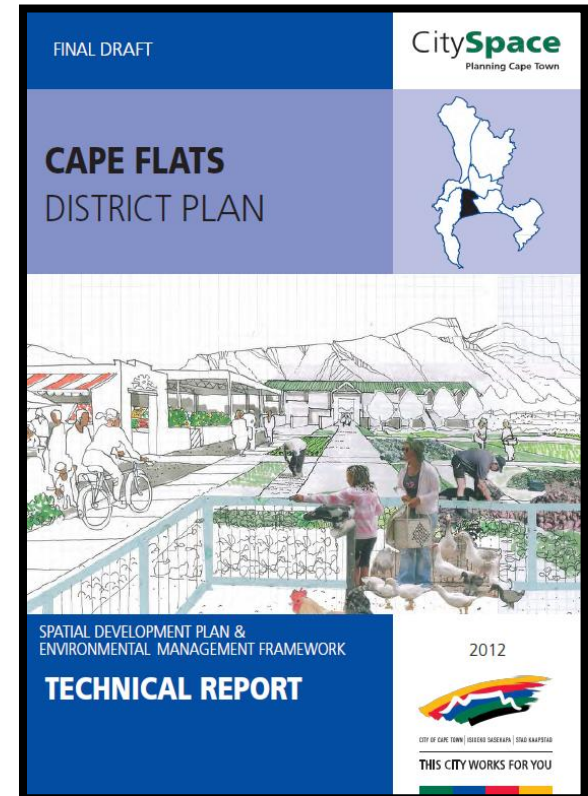
Saving structure plans (section 20)

- Schedules 1 and 2 of MPBL lists structure plans to be saved
- **LUPA** - apart from the PSDF, all structure plans lapse after **2 years** unless the City withdraws them earlier than this date
- **NB: If a structure plan is not listed in schedule 1 or 2 of the MPBL, it will lapse on 1 July 2017**
- **If it is not on the list, it does not exist!**

Ch 3 – General provisions concerning SDFs

- **SCHEDULE 1 - STRUCTURE PLANS DEEMED TO BE A DISTRICT SPATIAL DEVELOPMENT FRAMEWORK**

1. Blaauwberg District Plan: Technical Report
2. Cape Flats District Plan: Technical Report
3. Helderberg District Plan: Technical Report
4. Khayelitsha Mitchells Plain Greater Blue Downs Plan: Technical Report
5. Northern District Plan: Technical Report
6. Southern District Plan: Technical Report
7. Table Bay District Plan: Technical Report
8. Tygerberg District Plan: Technical Report



Ch 3 – General provisions concerning SDFs

- **SCHEDULE 2 - STRUCTURE PLANS DEEMED TO BE A LOCAL SPATIAL DEVELOPMENT FRAMEWORK**

1. Constantia Triangle Local Structure Plan
2. Development Framework for Elsieskraal River Valley
3. Management Plan for Victoria Avenue, Hout Bay: Oxford Street to Princess Street
4. Scarborough and Misty Cliffs Structure Plan
5. Simon's Town Structure Plan
6. Sunnyside Local Area Structure Plan
7. Urban Design Framework for Durbanville CBD

(Does not matter if 4(6) or 4 (10) plan).

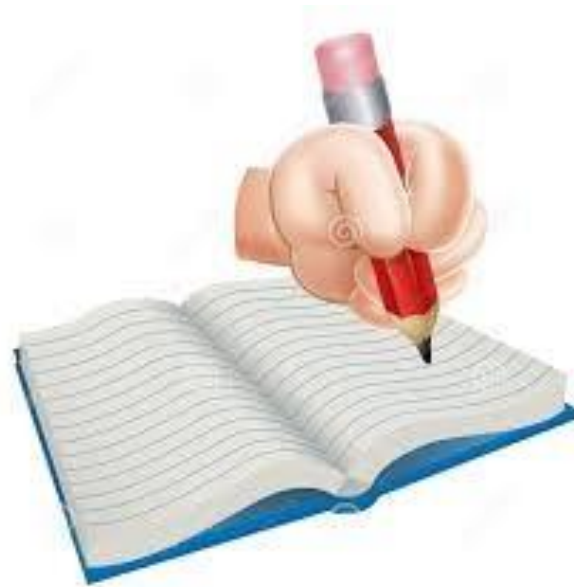
Ch 3 – General provisions concerning SDFs

Policies for decision making (section 21)

- City may adopt policy or guidelines to guide decision-making

Record of deviations from SDFs (section 22)

- Duty to record deviations from SDFs



Chapter 4 - Development Management (sections 24 – 38)



Ch 4 – Zoning Scheme (Part 1)

Zoning (section 24)

- Definition includes base zone and overlay zone
- All land has a zoning
- Not linked to cadastral boundaries
- Overlay zones are in DMS
- Overlay zones: Adopt or amend an overlay zoning by amendment of the By-law. Cross reference to process in DMS
- Must publish in the PG specified area which has overlay zoning, a reference to the map available on the City website.
- Designate areas by publishing in PG - **See notice**

Overlay Zones designation notice

PROVINCIAL GAZETTE OF PROVINCE OF THE WESTERN CAPE

CITY OF CAPE TOWN
OVERLAY ZONES DESIGNATION NOTICE

OVERLAY ZONES DESIGNATED IN TERMS OF SECTION 24(4) OF THE
MUNICIPAL PLANNING BY-LAW, 2015

DRAFT NOTICE

The City of Cape Town hereby, under section 24(4) of the City of Cape Town Municipal Planning By-Law, 2015, publishes the overlay zones designated in the schedule hereto.

SCHEDULE

1 Definition

In this schedule —

'development management scheme' means the development management scheme in Schedule 3 to the City of Cape Town Municipal Planning By-Law, 2015.

2 Designated overlay zones

In respect of each overlay zoning contemplated in the development management scheme, the appendix either —

- (a) refers to plans, which are available on the City's website, that depict which specified area or land units have the overlay zoning and are subject to the provisions of the development management scheme regulating the overlay zoning; or
- (b) states that no specified area or land unit has the overlay zoning.

3 Short title and commencement

This notice is called the City of Cape Town Overlay Zones Designation Notice, 2015 and comes into operation on a date fixed by the Executive Mayor of the City of Cape Town by notice in the *Provincial Gazette*.

APPENDIX

1 Incentive overlay zoning (ICO)

No area or land unit has this overlay zoning.

2 Density overlay zoning (DO)

The area depicted on plan DO/1 dated November 2012 is subject to the provisions of the development management scheme regulating the *Koeborn* Restriction Area overlay zoning.

3 Heritage protection overlay zoning (HPO)

(1) The areas listed in the following table entitled 'Southern District Heritage Protection Areas', as defined in the plans listed in the table, are designated as heritage protection areas and are subject to the provisions of the development management scheme regulating the Southern District Heritage Protection Areas overlay zoning.



OZ designation process



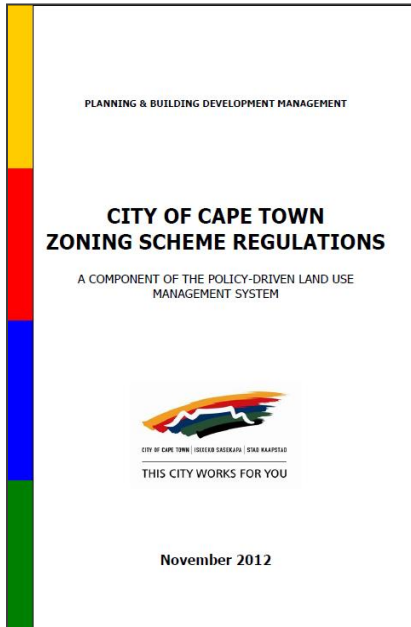
Ch 4 – Zoning Scheme (Part 1)

Zoning Scheme (section 25)

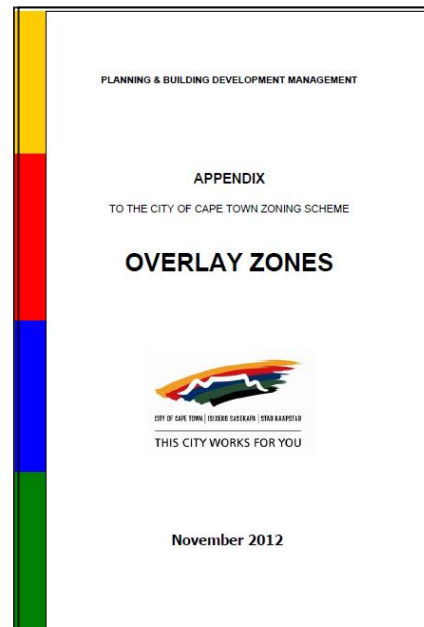
- The zoning scheme comprises:
 - (a) the development management scheme (DMS)**
 - (b) the zoning map; and**
 - (c) the zoning register.**
- The zoning scheme applies to all land in the geographic area of the City.

From CTZS to DMS

CTZS regulations



Overlay zones Appendix



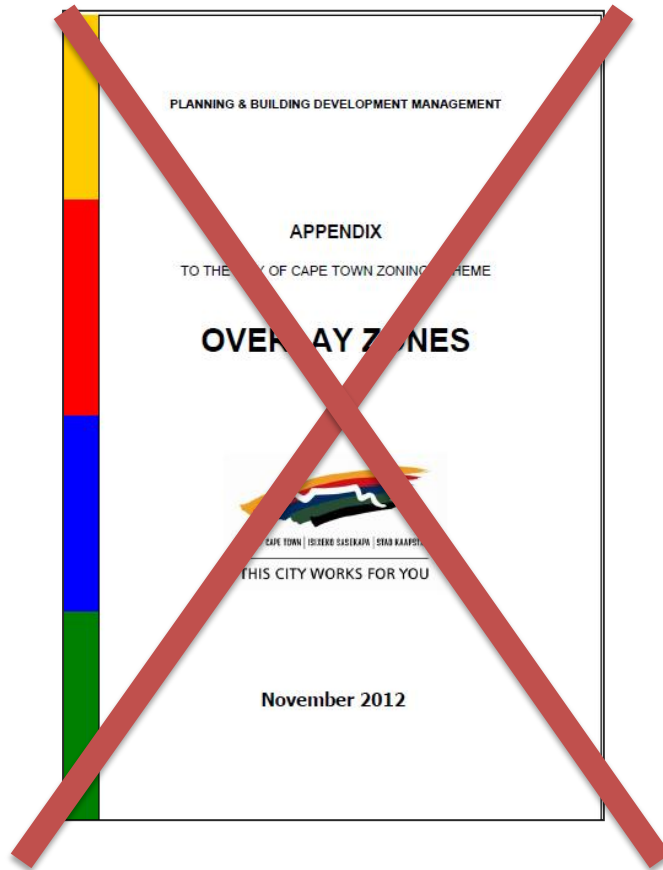
**DEVELOPMENT
MANAGEMENT
SCHEME
(DMS)**



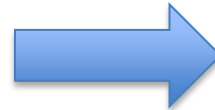
Schedule 3 in MPBL

Overlay zone appendix

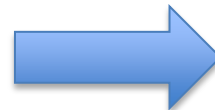
- **No longer exists**



Appendix has been split:



detailed provisions of the Overlay Zone appendix incorporated in body of the DMS



designated areas subject to overlay zones now published in a Provincial Gazette and the maps are referenced



maps which indicate extent of the overlay zones will be on City's website

Ch 4 – Development Management Scheme (Part 1)

DMS (section 26)

- Purpose of the DMS is set out
- Schedule 3 of By law attaches the DMS
- No substantive changes to document. Changes relate to terminology and re-ordering information. Main change is to overlay zones. Is also published as part of the participation process. Tables and maps dealt with differently.
- Summary of changes – Richard Walton.
- Transitional provisions in LUPA dealing with ZS (section 33(4)).

Review DMS (section 27)

- CM must at least every **5 years** review the DMS.
- Procedure to review the DMS is in section 27(2), (3) and (4).
- City must send a DMS to Province for comment prior to adopting any amendment to the DMS.
- Report provided by registered planner

Ch 4 – Zoning map (Part 1)

Zoning Map (section 28)

- Depicts zoning and overlay zoning of every land unit.
- Must be updated within a reasonable time.
- May indicate by means of a symbol that a decision taken about a use right.
- May be kept in electronic format.

Adoption, amendment and substitution of the map (section 29)

- Zoning map is the map in operation at commencement of By law.
- Lawful zoning recorded on map remains in force until it lapses, is amended or substituted.
- May substitute the map. Must publish in the PG.

Procedures for correcting errors (section 30)

- Owner may apply for correction of error in zoning map. Must prove error.
- S30(3) criteria for when application must be advertised.

Status of zoning map (section 31)

- City's record of zoning. Presumed to be correct unless proved otherwise.
- Exemption from liability.

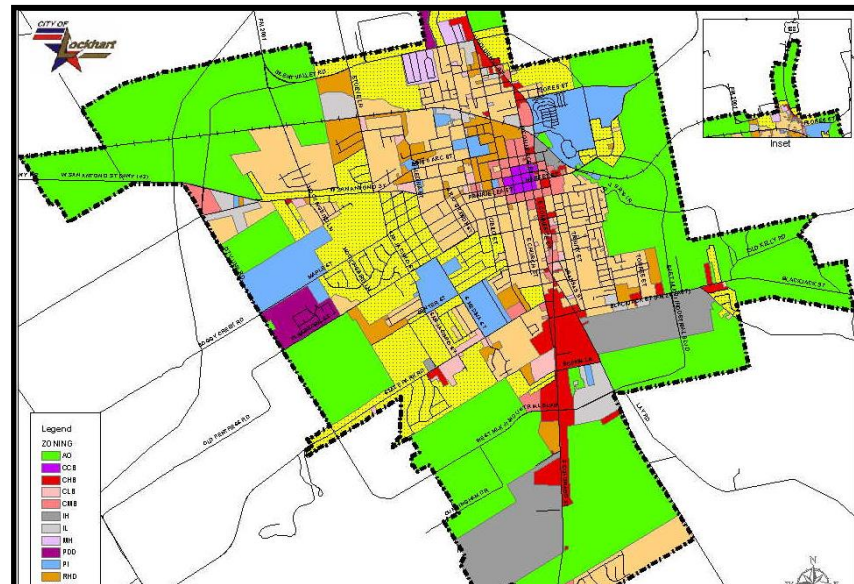
Ch 4 – Zoning register (Part 1)

Zoning register (section 32)

- Must record all decisions taken into By-law relating to rezoning, departure, consent or other permission and non conforming uses.
- May be kept in electronic format

Access to zoning map and register (section 33)

- Public has access to zoning register. May have an extract on payment of a fee. Extract must be in writing and signed by AO.



Ch 4 – Use right and determination of zoning (Part 2)

Use right (section 35)

- Use rights vest in land, not in a person.
- No person may use or develop land unless the use or development is permitted in the zoning scheme or in an approval granted or deemed to have been granted in this By-Law.
- No person may contravene or fail to comply with a condition of approval imposed or deemed to have been imposed in this By-Law.
- Conditions of approval bind successors in title.

Determination of zoning (section 36)

- The City may determine a zoning for land which does not have a zoning.
- When the City determines a zoning, it must have regard to certain factors.
- For Protected Areas, the zoning is the zoning which would be most compatible with the objects of that legislation.
- Must follow a fair process before determining a zoning.

Ch 4 – Non conforming use (Part 2)

Non conforming uses (section 37)

- Definition: non- conforming use means the use of land or a building or part thereof for a purpose and in a manner which does not comply with the zoning scheme
- Dealt with in detail under section 37

Chapter 5: Applications – General Requirements (sections 39 -43)

SPLUMA

Parties to a land development application, timeframes, investigation and engineering services.

LUPA

Minimum criteria for rezoning, departures and consent uses.



Applications – overview

Overview

- Applications dealt with in various chapters of the By law.
- Chapter 5 – general requirements for all applications.
- Chapter 6 – special provisions for certain applications eg rezoning, departure, consent, restrictive conditions, consolidations and subdivisions.
- Chapter 6 - also deals with OAs, engineering services, emergency and urgent housing.
- Chapter 7 – procedures for all applications
 - Making an application
 - Notice and comment (advertising)
 - Intervener
 - Process and criteria for deciding application
 - Decision and withdrawal of approval in certain circumstances
 - Extension and validity of approval
 - Appeals
 - Notification
 - Integrated decisions.

Ch 5 - General requirements

Applications (section 39)

- An applicant who requires approval in terms of this By-Law for the use and development of land must apply to the City in terms of section 42.
- An approval granted or deemed to have been granted in terms of this By-law does not release anyone from their duty to obtain other authorisations or oblige anyone to use the approval

Persons who may make applications to this By-law (section 40)

- Application may only be submitted by:
 - An owner
 - The City or land which it does not own; (rezonings and RORs);
 - An organ of state for housing purposes;
 - A service provider responsible for the provision of infrastructure, utilities or other related services;
 - An agent applies on behalf of the owner.

Continuation by new owner (section 41)

- If land is transferred during the course of an application, the new owner may continue as successor in title to the previous owner.

Ch 5 - General requirements

Types of applications (section 42)

- a) rezoning of land, including rezoning to subdivisional area overlay zoning;
- b) permanent departure;
- c) temporary departure;
- d) subdivision of land;
- e) implementation of a subdivision approval in phases;
- f) consolidation of land;
- g) amendment, suspension or deletion of a restrictive condition;
- h) consent or approval in terms of, or the relaxation of, a restrictive condition in a title deed where the restriction relates to use, subdivision, development rules or design criteria;
- i) consent, approval or any other permission or requirement in terms of the development management scheme;
- j) amendment, deletion or addition of conditions in respect of an existing approval granted or deemed to be granted in terms of this By-Law;
- k) extension of the period of validity of an approval;
- l) amendment or cancellation of an approved plan of subdivision or general plan;
- m) permission required in terms of the conditions of approval of an application;
- n) determination of a zoning, a non-conforming use right or any other matter which the City may determine in terms of this By-Law;
- o) correction of a zoning map;
- p) certification of an owners' association constitution or an amendment;
- q) alteration or amendment of a street name or number;
- r) determination of an administrative penalty as contemplated in section 129(1);
- s) to exempt a subdivision from the need for approval in terms of this By-Law as contemplated in section 67(3);
- t) any other application provided for in this By-Law;
- u) any other application which the City Manager may prescribe in terms of this By-Law

Chapter 6 – Special provisions for applications (sections 44 – 69)

Parts 1 – 8 deal with:

- Rezoning
- Departures
- Consent uses Lapsing
- ROR
- Consolidation
- Subdivision
- Owners associations
- Engineering services
- Exemptions of certain subdivisions and consolidations from need for approval
- Emergency housing

Special provisions are in addition to the general provisions.

Ch 6: Special provisions - Rezoning, departure & consent (Part 1)

Rezoning (section 44)

- City may rezone land on its own initiative – to give effect to approved policies
- Must rezone to subdivisional area prior to subdividing if change of land use.- LUPA
- Applications for rezoning to SA area and for approval of subdivision may be considered simultaneously.
- Update zoning map

Departure (section 45)

- Temporary departure for 5 years
- May not be extended.
- May not have two temporary departures on the erf at same time
- May not be granted if need to construct a building for that use.
- May withdraw the approval if conditions of approval not complied with. (need to follow a process)- see section 127.

Ch 6: Special provisions - Rezoning, departure & consent (Part 1)

Consent applications (section 46)

- Procedure in the by-law. Use rights in the DMS.
May be granted permanently or for a fixed period of time.
- See item 7 in DMS – conditions applicable to consent use.



Ch 6: Special provisions – restrictive conditions (Part 2)

Removal, suspension or amendment of restrictive conditions (section 48)

new power for the City!

- City now responsible for processing and deciding on ROR applications.
- By-law sets procedure for removal of restrictions including publication in P.G and notification of Registrar of Deeds
- Section 48 sets additional requirements for submission of applications.
- LUPA sets additional minimum requirements for advertising which must also be adhered to in addition to the advertising requirements in the By-law. See section 48(3).

Ch 6: Special provisions – restrictive conditions (Part 2)

- Criteria for decision making set in section 99 of the By law but must also have regard to the criteria set in LUPA and SPLUMA.

S 39 of **LUPA**: Criteria for consideration includes financial value of the rights, personal benefits, social benefit, whether removal will completely remove all rights or just some of the rights*.

SPLUMA: Removal must be effected in accordance with s 25 of the Constitution and requirements of this Act, with due regard to the respective rights of those affected and the public interest, in the prescribed manner.

- City has the power to uplift restrictions as well on own initiative.

Ch 6: Special provisions – consolidation (Part 3)

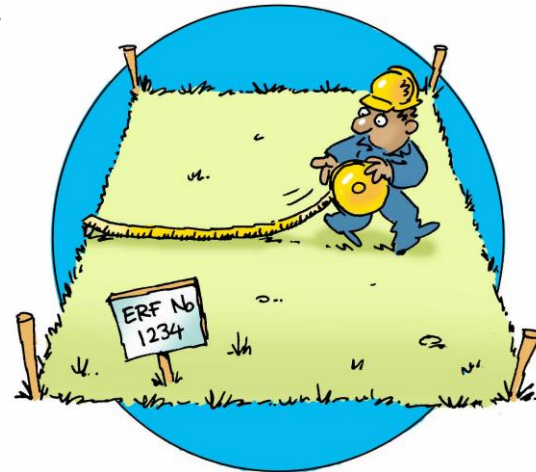
Consolidation (section 50)

- **new power for the City!**
- A person may not construct a building or structure that straddles the boundaries of two or more contiguous land units without the City's approval of the consolidation of the land units.
- Additional criteria for decision making in section 99.
- No building plan may be approved until consolidation has been registered or conveyancer provides written proof that the consolidation has been lodged with ROD.
- **Note:** any consolidation diagram approved by SG before 1 July considered exempted from the provisions of the MPBL.

Ch 6: Special provisions – subdivision (Part 4)

Approval of subdivision (section 52)

- Must obtain approval of the City to subdivide land unless exempted.
- Additional information (in addition to general requirements – section 52).
- May apply to develop in phases – link to conditions and clearance.
- If a phased subdivision, must include details of phasing of the subdivision
- Must require the owner to submit a separate general plan to the SG for each phases.
- If City approves a subdivision, it must impose conditions including conditions relating to the provision of engineering services.
- Savings clause – land laid out as a township TO.



Ch 6: Special provisions – subdivision (Part 4)

Approval of GP or diagram (section 53)

- If the City approves a subdivision and has endorsed a plan of subdivision, the applicant must submit GP or diagram to SG for approval including proof of the decision to approve, the endorsed plan of subdivision and the conditions of approval.
- Information that must be submitted to S.G
- If approve a phased subdivision, must submit GP for each phase.

Transfer of land unit arising from subdivision (section 54)

No transfer of land unit unless transfer certificate issued in terms of s 137 –

- SG approval
- Engineering services required by conditions of approval
- Conditions of approval met
- Where OA – certification of constitution, OA to be established on first transfer, CP must be transferred to OA on first transfer– offence not to transfer on registration of first land unit.
- See also clause 137

Ch 6: Special provisions – subdivision (Part 4)

Confirmation of subdivision (section 55)

- 5 years after effective date of decision to comply with conditions relating to transfer and to register the transfer of 1 land unit.
- On confirmation, confirmed part of subdivision can never lapse.
- Zonings drop onto land on confirmation of subdivision.
- Zonings never lapse.
- Amend the zoning map and zoning register.
- No building or structure may be erected on land forming part of approved subdivision unless subdivision confirmed or City approves construction prior to confirmation

Ch 6: Special provisions -Special provisions: Land for public places and ownership (Part 4)

Land for public places and other uses (section 57)

- Note definition of public places includes open spaces and roads – LUPA requirement.
- Application for subdivision may require land for public places, community facilities and engineering services.
- Extent will be determined in accordance with normal need or by means of a policy
- Parks and public open spaces must be provided within land area concerned, or with consent, elsewhere
- Where no provision of parks or public open space, may be required to pay monetary contribution.

Ownership (section 58)

- Land designated as public place* vests in City on confirmation
- Land which vests must be transferred / registered in name of City within 6 months.
- May impose a condition requiring transfer of land rather than vesting.
- Not liable for compensation requirement for land arises out of normal need.
- Offence not to transfer.

Ch 6: Special provisions – servitudes & amendment or cancellation of plan of subdivision (Part 4)

Servitudes (section 59)

- Transplanted regulations relating to internal servitudes. ie the owner of any land unit arising from a subdivision must allow services to be conveyed across or installed on the land unit.

Amendment or cancellation of plan of subdivision (section 60)

- City may approve an application for the amendment, cancellation or partial cancellation of an approved plan of subdivision, diagram or GP of –
 - (a) a subdivision which has not been confirmed; or
 - (b) a confirmed subdivision where land units not registered.
- Prior to approving an application in respect of a confirmed subdivision, must close public place. (Closure to be done ito Property By-Law).
- If application is approved,
 - (a) applicant must submit the amended or cancelled plan to the SG
 - (b) Any closed public place must be given a deemed zoning.
 - (c) Amend zoning map and register

Ch 6: Special provisions – Owners' association (Part 5)

Establishment and operation of an owners' association – section 61

- City may require applicant to establish owners association when approving subdivision.
- Must be able to show that potential owners of land units are likely to have the financial resources to maintain the private open space, private roads and internal engineering services and amenities.
- Comes into existence on transfer of 1st unit arising from subdivision or part thereof, is a juristic person has as its members all the owners of land units .
- Members jointly liable.
- Developer must call meeting within 60 days of transfer of 60% of land units or within 2 years of transfer of 1st land unit whichever is earlier. Offence.
- Notify City that meeting has taken place and provide minutes.

Ch 6: Special provisions – Owners' association (Part 5)

Constitution of an owners' association (section 62)

- **Must** set out the minimum content for an OA.eg
 - Control, administration and management of POS, Private Streets, and other services and amenities arising from the subdivision and buildings on land under the Assns control.
 - Assns' ownership of private open space, private streets and internal engineering services.
 - Obligation to enforce certain conditions of subdivision approval
 - Further development which must form part of the assn and procedures for incorporating that development
 - One yearly meeting
 - No transfer of land unless consent of OA is obtained.
 - arrangements for transfer of land if OA ceases to exit.
- **May** provide for-
 - Guidelines for buildings and landscaping but no guideline may introduce more restrictive development rules than in the DMS

Ch 6: Special provisions – Owners' association (Part 5)

- Financial penalties for members of Assn who don't comply
- City must certify the Constitution of the OA – MPT function
- Certified version is deemed to be the Constitution and comes into force upon transfer of 1st land unit.
- Amendment – only amendments concerning a matter in subsection 1(a) come to City.
- Constitution lodged with City which the City has certified, is presumed to contain the operative provisions.
- City is exempt from liability if OA is lost.
- OA must enforce the provisions of its constitution.
- Provisions relating to what happens if a OA ceases to function or fails to meet and obligation.

Ch 6: Special provisions – Owners' association (Part 5)

Owners' association which fails to meet an obligation or ceases to function – (section 63)

- If an OA fails to meet an obligation set in section – fails to recover expenditure etc and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.
- The City may recover expenditure in respect of action taken from the members.
- If OA ceases to function effectively or to carry out its obligations, the City may give the association a binding instruction to
 - (a) hold a meeting and to reconstitute itself; or
 - (b) dissolve itself
- Section 63 (5) sets out the factors that it will have regard to when deciding which option to follow.

Ch 6: Special provisions – Owners' association (Part 5)

- If the association is dissolved the members must jointly pay the costs of the transfer of property containing services to the City and private open space or the upgrading of internal engineering services to the standards of the City.
- Section 63(7)- if an association has ceased to function and its constitution does not provide for an owner who wishes to transfer a land unit, then need consent of 60% of the owners. This will be deemed to be the consent of the OA, unless the constitution provides for another procedures.

Ch 6: Special provisions – Engineering services (Part 6)

Definitions (section 64)

- Specific definitions for bulk, external , internal and link engineering services.
- Tried to link between DC policy and provisions in by-law.

Responsibility for engineering services (section 65)

- Sets out responsibility for engineering services,
- City responsible for provision of external engineering services and installation of bulk if installed when planned according to service master plans and capital budget.
- Applicant responsible for provision and installation of internal engineering services, installation of link service unless agreed to by City, installation of bulk services where o/s service master plans or capital budget.
- City may require the applicant, when installing a bulk or link engineering service to install in excess of capacity.



Ch 6: Special provisions – Engineering services (Part 6)

- Applicant may set off costs of installing external service against DCs
- If costs exceed DC, applicant pays.
- If City not the provider of the external service, applicant must satisfy city that arrangements have been made for provision of service.
- Must design to City's standards.
- May phase
- Exemptions.

Development charge (section 66)

- Must pay a DC in respect of external engineering services in accordance with policy adopted by City (DC policy)
- Amount subject to annual escalation in accordance with DC policy
- May grant an exemption or rebate from payment of DC in accordance with policy approved by Council or in accordance with applicable legislation.

Ch 6: Special provisions – Exemption of certain subdivisions and consolidations (Part 7)

Exemptions from subdivision (statutory) – section 67

- Implementation of court order
- Expropriation
- Amendment of common boundary between 2 or more land units if the resulting change in area of any of the land units is no more than 10%.
- Survey of closed street or public open spaces to consolidate with an abutting land unit.
- Construction or alteration of public street or public road.
- Transfer of land units to City or an organ of state for municipal or government purposes.
- Registration of servitude or lease area for engineering services or encroachment into road reserve.
- Individual ownership in state housing development.

Ch 6: Special provisions – Exemption of certain subdivisions and consolidations (Part 7)

- May exempt other subdivisions by notice in PG.
- Exemptions don't apply if rezoning or any other land use approval is required, where engineering services must be moved or provided, if the subdivision is required to create individual land units for new housing.



Exempted



Ch 6: Special provisions – Emergency housing (Part 8)

SPLUMA - exemptions

LUPA – Provincial exemptions

Emergency housing (section 68)

- temporary housing required for households whose homes are uninhabitable as a result of a disaster situation caused by rain, flood, wind, fire, earthquake, accident or other circumstance sufficient in nature and scale to result in widespread homelessness and where the damage or threat to homes cannot be rectified without the temporary relocation and households cannot be rehoused on site during the rectification.



Ch 6: Special provisions – Emergency housing (Part 8)

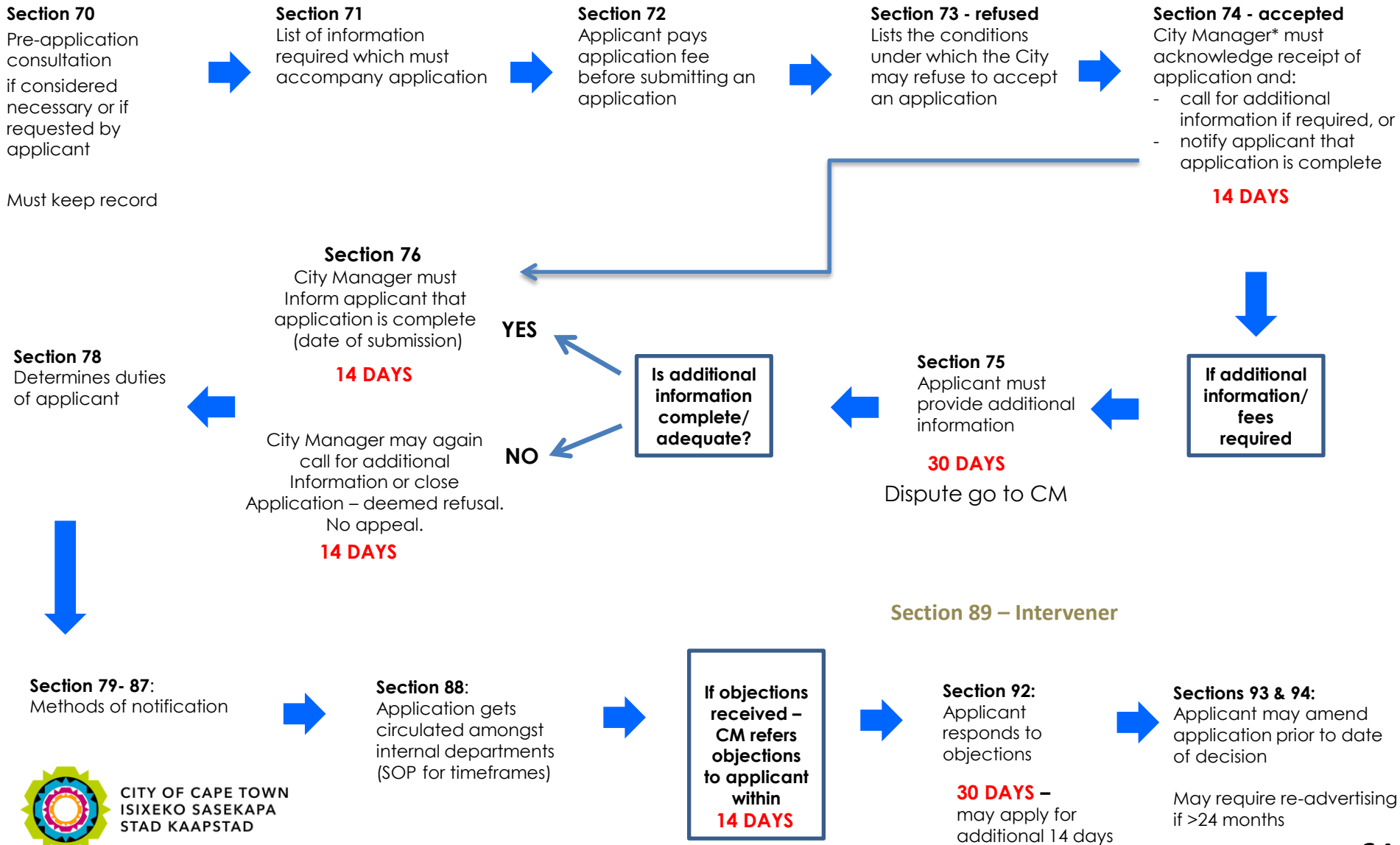
- Sets out a shortened process.
- Allows City to declare land to be an emergency housing site and to suspend the zoning applicable to the land for a period of up to 90 days to allow the land to be used for emergency housing.
- **Process**

City identifies a need for the establishment of emergency housing on land which is not zoned for that purpose.
- City may approve commencement of a process to declare land an emergency housing site.
- Can only do so if water and sanitation services available and owner has consented.
- Must advertise its intention to declare the site.
- Minimum content of notice prescribed.
- City must request authorisation from PM
- After considering comments, City may declare the land to be an emergency housing site and to suspend the zoning for a period of 90 days.
- Declaration must be published in PG. Once published, in force
- Not exempted from complying with other law
- May extend the declaration for another 90 days

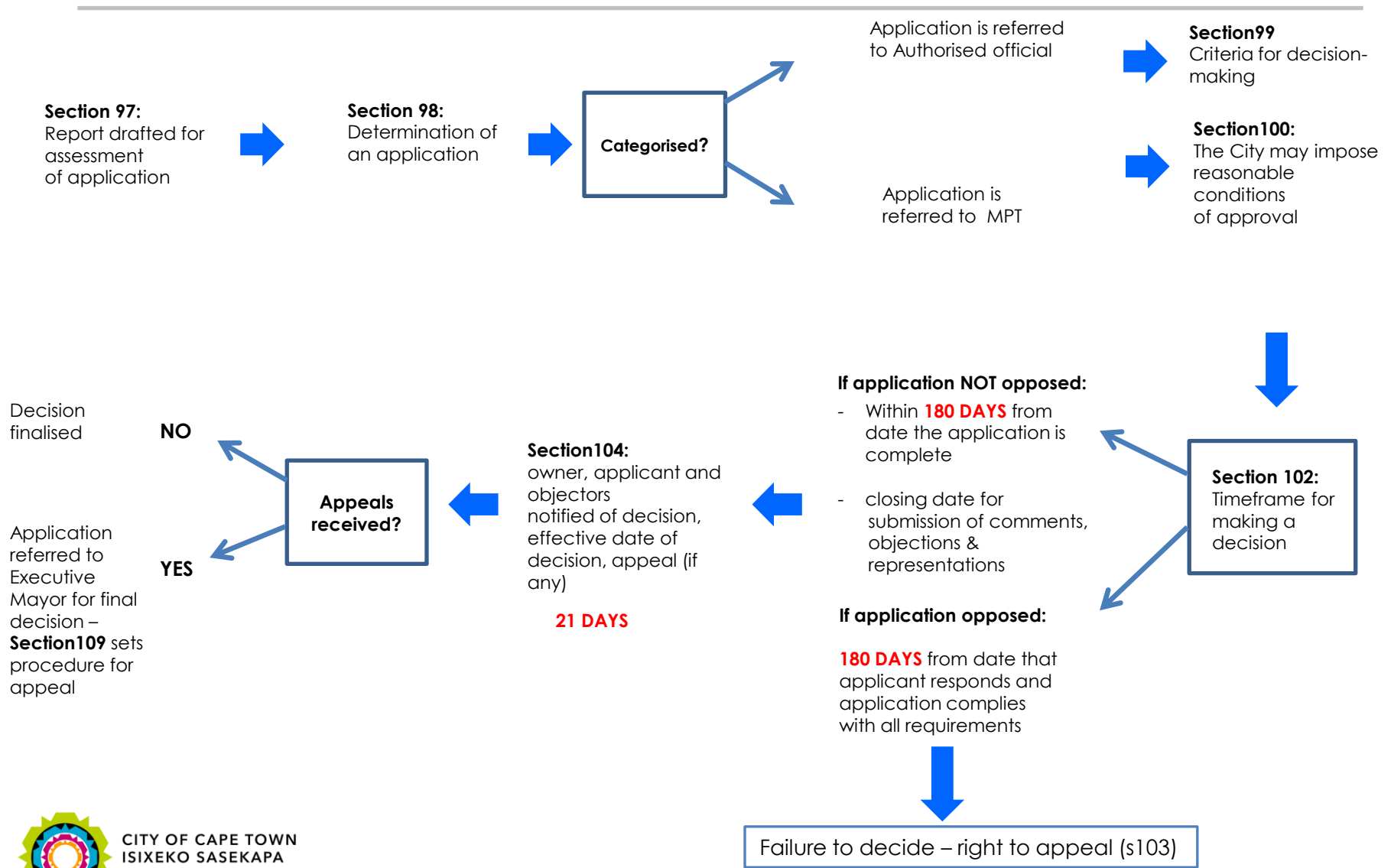
Ch 6: Special provisions – Urgent housing (Part 8)

- **Urgent housing (section 69)**
- May declare an application for the establishment of housing to be an urgent housing application.
- Requirements for declaration:
Application relates to government-subsidised housing **and**
The land is either-
 - Designated for government subsidised housing in the IDP, the MSDF, DSDF or LSDF; or
Subject to an established high demand for government subsidised housing and a low supply of housing opportunities.
- City may to the extent necessary may exempt the applicant from a procedural requirement or shorten a time period provided for in the By-law provided that the advertising still complies with applicable law.
- Authorisation from Provincial Minister.

Chapter 7: General procedures for all applications – Making an application



Ch 7: General procedures for all applications – Deciding an application



Ch 7: General procedures for all applications – Making an application (Part 1)

Pre-application consultation (section 70)

- Information required – long list – CM may add requirements via specification.
- The City may require an applicant to consult with an authorised official prior to submitting an application to determine the issues listed in (a)-(i).
- CM may prescribe requirements to determine whether an application requires pre-application consultation, the nature of the information required, the procedures followed and the time periods. (see document)
- Applicant may request a pre-application consultation.
- City must keep a record of the pre-application consultation.
- City Manager may waive requirement



Ch 7: General procedures for all applications – Making an application (Part 1)

- **Information required (section 71)**
- See list of information set out in subsections (1)-(5)
 - Subsection (1) – technical details
 - Subsection (2) – phasing of subdivision
 - Subsection (3) – servitude over land which does not belong to applicant – written agreement
- Subsection (4) – OA – indication of financial costs of maintenance of land and services belonging to OA.
- Subsection (5) – comply with information specifications set by CM
- Subsection (6) - CM may waive an information requirement in writing.

Ch 7: General procedures for all applications – Making an application (Part 1)

Application fee (section 72)

- Applicant must pay application fee before submitting an application. City may refund an application fee only if permitted by the City's Tariff, fees and charges book.

Refusal to accept application (section 73)

- City must refuse to accept an application if –
 - (a) Pre-application consultation is required but has not taken place
 - (b) the City has not received an application fee
 - (c) the application does not comply with section 71 or contains manifestly incorrect information.
 - (d) Functus officio.

May refuse to accept an application if the application is not accompanied by an application for any other approval to this By-law.

Ch 7: General procedures for all applications – Making an application (Part 1)

Acceptance of application and call for additional information (section 74)

If the City accepts the application, the CM must-

- (a) acknowledge receipt of the application by stamp or in writing;
- (b) within 14 days of receipt of application or further period agreed upon-
 - (i) call for additional information or fees; or
 - (ii) notify the applicant that the application is complete.

Additional information (section 75)

- Applicant must provide information within 30 days or such further period as agreed upon.
- If not provided, information inadequate or not compliant, or fees not paid, CM may within 14 days again call for information or notify applicant that application closed.
- If application is closed, application is deemed to be refused.
- Applicant must submit a new application and must pay a new application fee.
- If applicant disputes that additional info is necessary, can request CM to make a determination. Has 21 days from call for information to do so.

Ch 7: General procedures for all applications – Making an application (Part 1)

Complete application – (section 76)

An application is complete if the City has :

- received the application fee
 - all information necessary to assess the application
 - Information submitted is compliant with all information specifications.
-
- Must notify applicant that application is complete within 14 days of the receipt of any additional information which the CM has called for and if the application is complete and all information specs are met.
 - Record the date that the application is complete as this is the date of submission of the application.

Ch 7: General procedures for all applications – Making an application (Part 1)

Withdrawal of application – (Section 77)

Applicant may, at any time prior to a decision being taken, withdraw an application on written notice to the City.

If withdrawn, fee not refundable, new application must be made.

Duties of applicant (section 78)

An applicant must ensure that-

- No misrepresentation is made to the City
- The City is not misled
- All information is accurate,
- Applicant does not omit relevant information.

A person who contravenes subsections (1)(a) and (b) is guilty of an offence.

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2)

Notice of application (Section 79)

- Notice can be given in a number of ways and can be a combination of ways:
 - Media
 - serve a notice
 - serve a letter of no objection
 - on site notice.



Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2) - Media

- LUPA requires the City to advertise the following applications in the press:
 - **Rezoning**
 - **Subdivision >5 ha inside urban edge as defined in the MSDF**
 - **Subdivision >1 ha outside the urban edge as defined in the MSDF**
 - **closure of a public place**
 - **Application for removal, suspension or amendment of title deed restriction**
 - **Approval, amendment, review or repeal of a zoning scheme, or approval of a zoning map.**
 - **The regulation of exemptions**
 - **Other applications that will materially affect the public interest or interests of the community if approved**
- CM may prescribe any other type or category of application which requires publication in the media
- Must be published in accordance with 21 of the MSA in at least 2 official languages
- Content of notice – note content, very similar to current content. Will have a standard letter

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2) – Serving a notice

- Notice to a person – **LUPA** requires the following to be advertised by serving notice:
 - **determination of a zoning or deemed zoning**
 - **Rezoning of land**
 - **Subdivision or amendment of subdivision**
 - **Consolidation**
 - **Amendment or imposition of a condition**
 - **Removal suspension or amendment of a restrictive condition**
- Any other category that the CM prescribes.
- **How?**
 - Serve on a person whose rights or legitimate expectations are materially and adversely affected if the application is approved* - **see updated Notification Policy**
 - In accordance with section 111 of this By-law
- If the intends to rezone land which it does not own, it must give notice to the owner.
- Notice can be given in one official language. Must say that available in another language.

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2) – Reps & no objections

Notice to a representative (section 83)

- CM may prescribe a category of application which must be served on –
 - (a) a councillor for the area to which the application relates; or
 - (b) a named organisation which represents and interest to which the application relates and which is registered with the City for that purpose.

Notice of no objection (section 84)

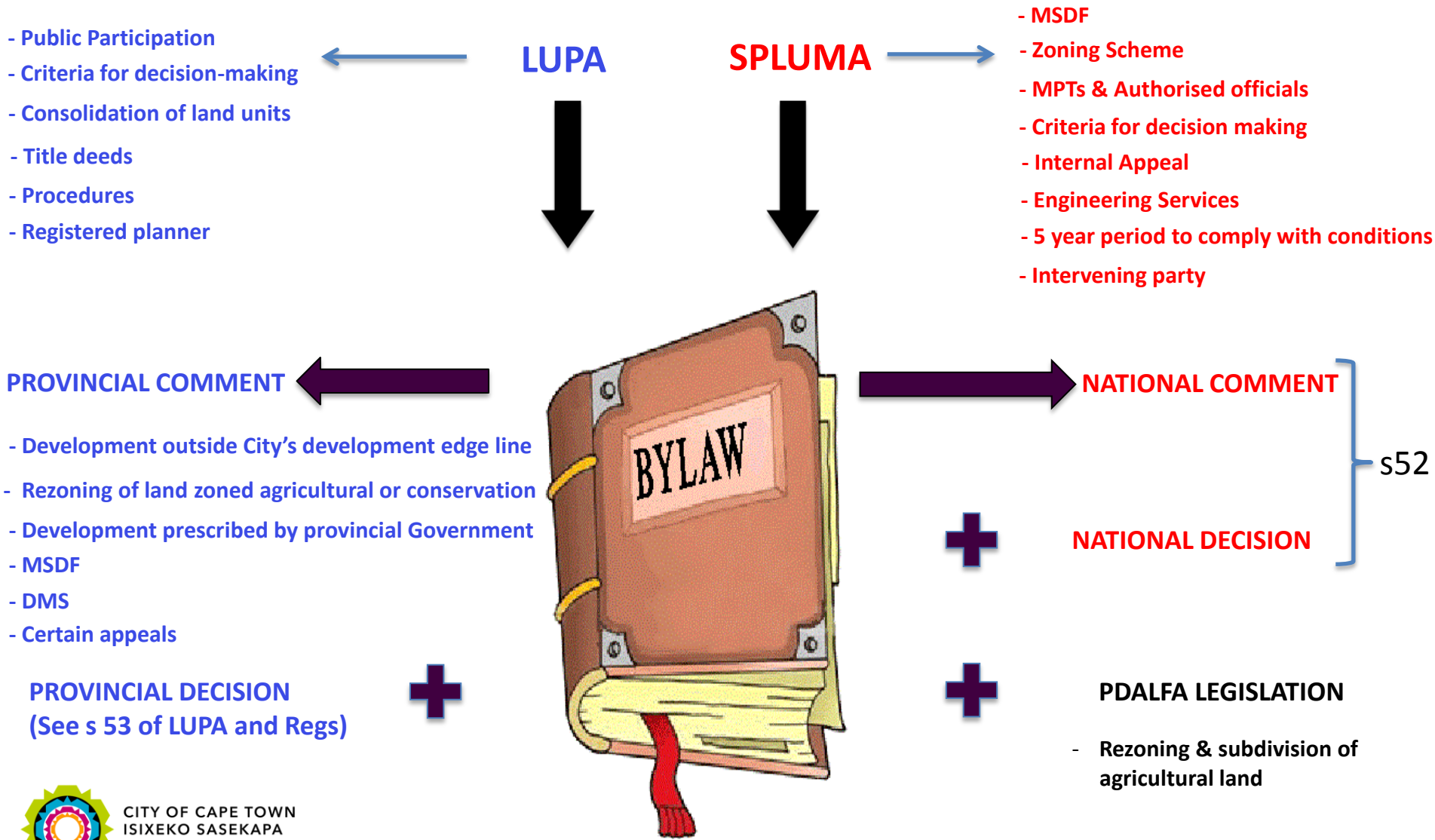
- No objection letter can be used for:
 - Departures
- -Consent uses
- -Extension of time period
- -Consent to or relaxation of a restrictive condition
- -Any other form of permission required to DMS.
- Minimum content of letter set out.
- Notice must be served personally unless CM authorises different form of service
- Must follow full advertising procedure if the information on the no objection notice is incomplete or an affected owner refuses to sign a notice of no objection or cannot be contacted to sign the notice.
- If notice of no objection signed, the date that this is furnished is regarded as the date of close of the period of public comment; and the provisions of this part do not apply.

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2) – S/Title

Deemed notice to owners in a s/t development (section 85)

- Notification to the BC is deemed to be notification to all owners.
- The Chairperson of the BD must ensure that all owners in the s/t development are notified.

Relationship of MPBL to SPLUMA and LUPA



Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2) - Province

Notice to Provincial government (section 86)

Must refer the following complete applications to Province for comment-

- (a) a development outside the urban edge as defined in the msdf
 - (b) a rezoning of land zoned for agricultural or conservation purposes
 - (c) a development prescribed by the CM
 - (d) a development prescribed by PG.
- May not decide upon the application until comment has been received or no comment received within **60 days** or such further period agreed by the CM. If no comment, Province deemed to have no comment.

Notice to organ of state other than Provincial government (section 87)

- Must comment within **60 days** of notification or receiving all information reasonably necessary to comment if application is incomplete and organ of state make a request for additional documentation within 14 days of notification.
- Fail to comment = no comment
- Give notice by email to HOD or DG.

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2) - Internal

Internal circulation (section 88)

- CM must forward an application simultaneously to every department of the City which may have a direct interest in the application
- Department must submit comment relevant to the functional area of the department within the time period set by CM* (SOP to determine time periods)
- If not relevant or not within time period, no comment



Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2)

- **SPLUMA requirement – in regulations and in Act**

Intervener (person who has not given notice) is allowed to join the process either before decision making or at appeal stage.

- A person who has not been invited to comment may petition the CM to be granted intervener status.
- May only submit petition if the application has not been decided and the petitioner has an interest in the application.
- If appeal is not decided, the petitioner needs a pecuniary or proprietary interest which is adversely affected by the decision.
- Petition is invalid if it is submitted –
 - (a) more than 7 days after the petitioner became aware of the application
 - (b) after the effective date of decision.
- If application not decided, must submit any objection, comment or representation and the reasons therefore that the decision maker must consider.
- If on appeal, must submit a written notice of appeal and grounds of appeal.

General procedure - intervener

Intervener (section 89)

- Must sign an affidavit stating that he or she is not colluding with any applicant, objectors or appellant and is willing to act in regard to the application or appeal as the City may direct.
- CM must provide a copy of the petition and information to existing parties in the proceedings for comment.
- CM may refuse a petition if it is late;
- Grant intervener status
- Refer the petition to MPT or authorised official to determine.
- Factors for consideration in subsection (7).
- Decision maker must notify the petitioner and existing parties of the outcome of the petition.
- No appeal against the determination to grant or refuse a petition.

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2) - objections

Objection to an application (section 90)

- Objection to an application must be in writing.
- Late objection not considered unless CM condones the late submission
- CM may condone if good cause shown and consideration of the late objection, comment or representation would not cause unreasonable delay or prejudice the public interest.
- Person who submits objection must provide certain details including the reason for their objection and the effect that the application will have on them or the area; any aspect of the application that is considered to be inconsistent with policy.
- May not ask for payment of money.
- **Petitions (section 91)**
- – formalised requirements – no longer in CTZS.

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2)

Response from applicant (section 92)

- CM must provide applicant with copies of all comments and the departmental requirements and a notice informing the applicant of their rights to this section within 14 days of closing date for comment.
- Applicant has 30 days or additional 14 days.
- Elect not to submit response or if fails to submit a response is regarded as having no response

Amendment of application before decision (section 93)

Applicant may amend their application after notice given.

If amendment is material, city may require additional notification and may require recirculation of the application.

Further notice (section 94)

- more than 24 months elapsed since first notification.
City may determine the manner of giving notice
- At any stage in the processing, City may require re-advertising.

Ch 7: General procedures for all applications – Notice and comment, advertising (Part 2)

Access to information (section 95)

- By lodging the application, applicants acknowledge that information is available to the public.
- By lodging an objection, representation or appeal, person acknowledges that information may be made available to the public.
- A file created by the city concerning the application, is available to the public during the participation process.
- After a decision has been taken, the decision and the conditions imposed are available to the public on payment of the prescribed fee.

Ch 7: General procedures for all applications – Deciding applications (Part 3)

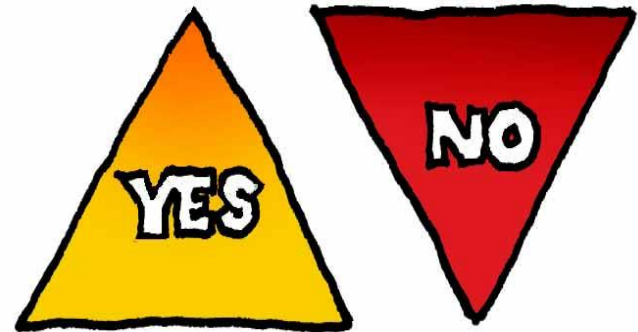
Power to conduct an inspection (section 96)

Assessment of the application (section 97)

- PBDM to provide written report containing an assessment of the application; a recommendation and copies of all relevant information to enable the decision maker to make an informed decision.
- Department to provide report within time frames set by CM.
- If not done applicant may ask CM to take steps to ensure the report is provided to the decision maker within 30 days of the CM deciding that the report must be provided.

Ch 7: General procedures for all applications – Deciding applications (Part 3)

- Where authorised official taking the decision, AO must be senior to or at same level as the drafter of the report.
- **registered planner** to **provide** the report in certain instances –
 - MSDF,
 - approval or amendment of DMS,
 - rezoning of land, subdivision of land into > 20 land units,
 - ROR if change of land use required,
 - amendment or deletion or additional conditions in respect of an existing use
 - or phasing, amendment or cancellation of a plan of subdivision.
- **Note: the above is a LUPA requirement**



Ch 7: General procedures for all applications – Deciding applications (Part 3)

Determination of an application (section 98)

– what decision making powers does an authorised official have:

May approve the application-

- (i) In whole or in part ;
- (ii) With an amendment provided that the amendment does not materially change the nature of the application;
- (iii) Subject to conditions as set out in section 100;
- (iv) Limit the approval to one or more uses included within the zoning or description of the consent use;
- (v) Refuse the application;
- (vi) Make an appropriate determination regarding all matters necessary or incidental to the performance of its functions ito the By law and other applicable law.

Criteria for deciding application

SPLUMA

- Development principles – 5 principles and then the subprinciples*
- Make a decision which is consistent with norms and standards, measures designed to protect and promote sustainable use of agricultural land, national and provincial government policies and the MSDF.
- Take into account the public interest;
- The constitutional transformation imperatives and related duties of the state;
- The facts and circumstances relevant to the application;
- The respective rights and obligations of those affected;
- The state and impact of engineering services, social infrastructure and open space requirements;
- Any other factors that may be prescribed
- When considering an application affecting the environment, a MPT must ensure compliance with environment legislation.
- Derogation of value not a factor.

Decision making criteria

LUPA

- Land use planning principles (section 58 and 59)
- Criteria for assessment (section 49) – must have regard to
 - applicable SDFS
 - applicable structure plans
 - the desirability of the proposed land use
 - guidelines that may be issued by the Provincial Minister regarding the desirability of the proposed use.
- title deed decisions set out in section 39(5). Criteria for consideration includes
 - financial value of the rights
 - personal benefits
 - social benefit
 - whether removal will completely remove all rights or just some of the rights*.



Decision making criteria

Criteria for deciding application (Section 99) - Two step process;

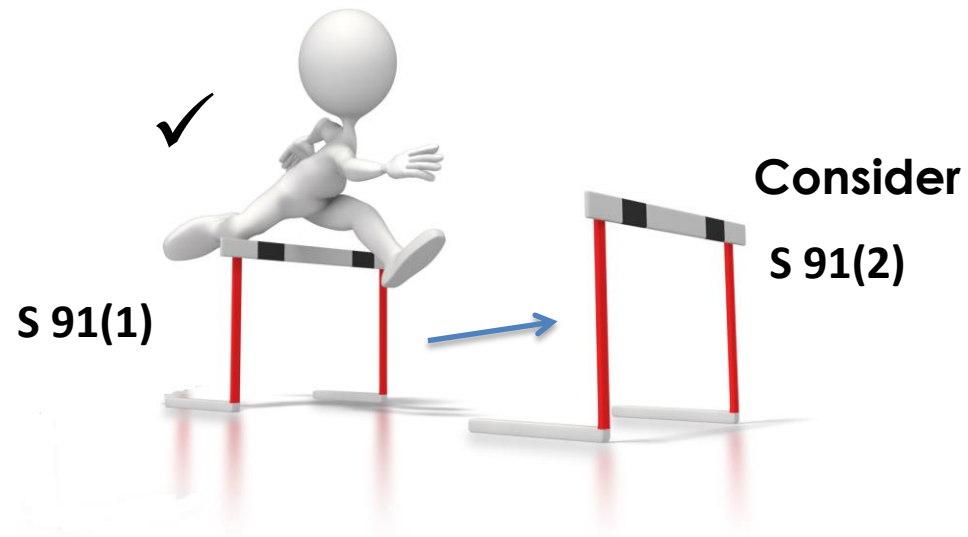
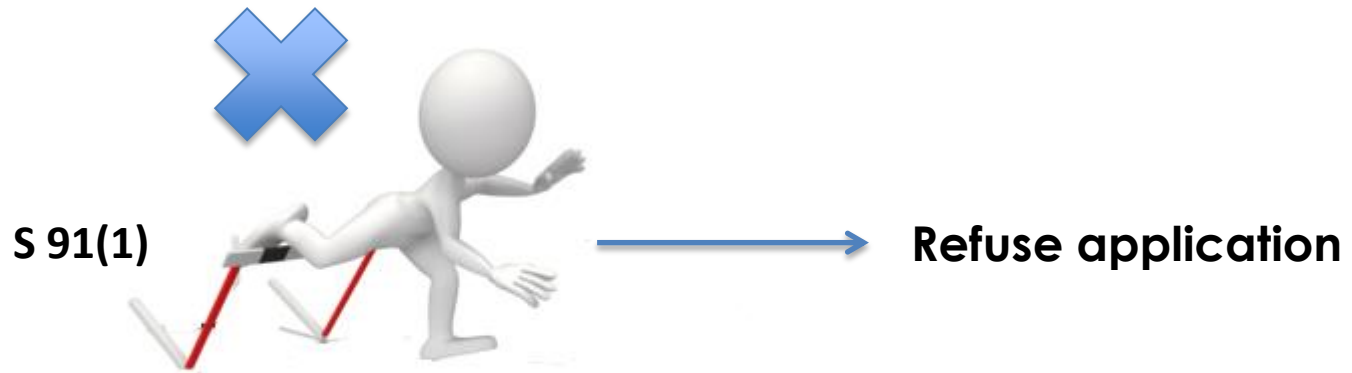
Application must be refused if decision maker is satisfied that it fails to comply with the following minimum requirements –

- The application must comply with the requirements of this By law
- The proposed land use must comply with or be consistent with the MSDF or if not, that a deviation from the MSDF is permissible.* (see SPUD guideline)
- The proposed land use must be desirable as contemplated in subsection (3) and
- In the case of a departure to alter the development rules, the approval does not have the effect of granting the development rules of the next zone.

Criteria for deciding an application.

- If application is not refused under subsection (1) , consider all relevant considerations including
- Applicable SDF
- Relevant criteria contemplated in the DMS
- Applicable policy
- Extent of **desirability**
- Impact on existing rights.
- Consolidation – additional criteria
- *Criteria in other laws (reference to SPLUMA and LUPA). Also for title deeds*
- Desirability =
 - **economic impact**
 - **social impact**
 - **scale of capital investment**
 - **impact on external engineering services**
 - **impact on safety, health and wellbeing of surrounding communities**
 - **impact on biophysical environment**
 - **traffic impacts, parking, access and other transport related considerations**
 - **whether the imposition of conditions can mitigate an adverse impact of the proposed land use.**

Criteria – 2 step process



BY-LAW	LUPA	SPLUMA
Section 99(1)		
<p>Must refuse application if decision maker satisfied that it fails to comply with the following minimum threshold requirements-</p>		
(a) The application must comply with the requirements of the By law		
(b) The proposed land use must comply with or be consistent with the MSDF, or a deviation is possible.		Be consistent with the MSDF
(c) The proposed land use must be desirable as contemplated in subsection (3)	Desirability of propose land use and guidelines issued.	

BY-LAW	LUPA	SPLUMA
Section 99(3)		
Economic impact		
Social impact		
Scale of capital investment		
Compatibility with surrounding uses		
Impact on external engineering services		state and impact of engineering services*
Impact on safety, health and wellbeing of the surrounding community		
Impact on heritage		
Impact on biophysical environment		When considering an application affecting the environment, must ensure compliance with environmental legislation
Traffic impacts, parking, access and other transport related considerations and		
Whether imposition of conditions can mitigate the adverse impact of the proposed land use.		
In the case of a departure, - don't move to the rules of the next subzone within a zone		

BY-LAW	LUPA	SPLUMA
Section 99(2)		
If not refused under subsection (1), decision maker must consider all relevant considerations including, where relevant the following:		
Any applicable SDF	Applicable SDFs	
Criteria in the DMS		
Any applicable policy approved by the City	Applicable structure plans	
The extent of the desirability of the proposed land use		
Impact on existing rights (not trade)		Rights and obligations of those affected.
Other considerations prescribed in national or provincial legislation	Have regard to the principles referred to in Chap IV.	Be guided by the development principles
		Be consistent with norms and standards and national and provincial policies
		State and impact of engineering services, social infrastructure and open space requirements, factors prescribed including time frames.
		Constitutional transformational imperatives (mostly covered in principles)
		Facts and circumstances relevant - covered in all of the above
		The public interest

BY-LAW	LUPA	SPLUMA
Title deeds		
	Have regard to:	In the absence of written consent, removal, amendment or suspension must be effected -
	The financial or other value of the rights into the restrictive condition enjoyed by the person or entity, irrespective of whether these rights are personal or vest in the person as the owner of the dominant tenement.	a) in accordance with section 25 of the Constitution and this Act
	The personal benefits which accrue to the holder of the rights into the restrictive title deed condition	b) with due regard to the respective rights of all those affected, and to the public interest, and
	The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended.	c) in the prescribed manner if such removal, amendment or suspension will deprive any person of property as contemplated in section 25 of the Constitution
	The social benefit of the restrictive condition remaining in place in its existing form	
	Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.	

BY-LAW	LUPA	SPLUMA
Consolidation		
(a) the scale and design of the development;		
(b) the impact of the building massing;		
(c) the impact on surrounding properties; and		

Ch 7: General procedures for all applications - Conditions of approval (Part 3)

- **LUPA** contains numerous provisions relating to conditions.
- Have not repeated many of them.
- Prefer to rely on general clause- see s 100(1)
- City may when granting an approval or making a determination, impose reasonable conditions which may arise for the proposed use of land.
- Additional conditions link to implementation issues. Not a closed list.
 - Eg:
 - provision of land required for public places or payment of money
 - Cession of land or payment of money/ registration or endorsement
 - Payment of money proportional contribution – calculated it norms and stds or approved policy.
 - Provision of land for other spheres of government
 - Engineering services and DCs
 - Phasing
 - OA
 - Public expenditure
 - Objective criterion
 - Payment of administrative penalty
- Cross references to conditions in DMS

Ch 7: General procedures for all applications - Conditions of approval (Part 3)

Further conditions and amendment of conditions (section 101)

- City may amend or remove a condition on application or on its own initiative after notice to the owner.

Timeframes for making decision (section 102)

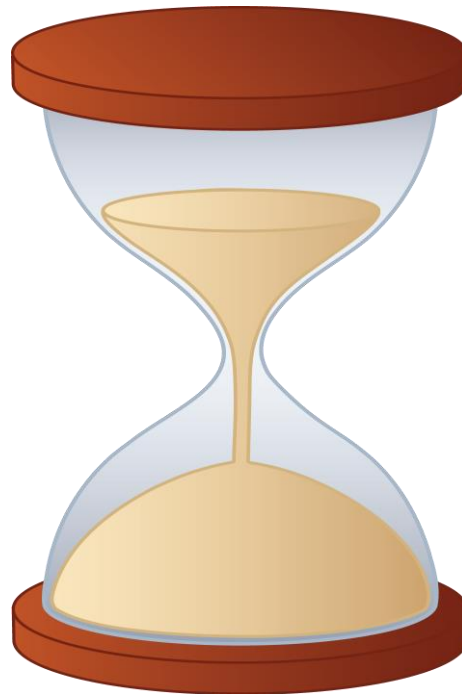
180 days from :

date application is considered complete where no advertising is done, **or**

- the latest closing date for submission of comments or the date that the applicant responds to comments **or**
- the closing date for comments if applicant does not respond.
- Can extend the time periods-
 - With the applicant's consent
 - Without the applicant's consent where exceptional circumstances exist or application is particularly complex;
- If City is in recess
- If CM is putting the application on the agenda.

Ch 7: General procedures for all applications - Failure to decide in time (Part 3)

- If the decision maker fails to decide on an application within the time period, the applicant may appeal
- Appeal authority must decide on application



Ch 7: General procedures for all applications – Decision (Part 4)

Requirement for writing and notification of decision (section 104)

- Decision to this By-Law is only valid if it is in writing.
- Must notify in writing within 21 days of decision –
- The decision
- Where the decision may be inspected
- The right of appeal and right to request reasons and
- The effective date of the decision.
- Notify owner/applicant
- Any person who comments, objects or intervenes
- A person in respect of whom enforcement action is taken.

Ch 7: General procedures for all applications – Decision (Part 4)

Effective date of decision (section 105)

- Operation of the approval of an application is suspended until the effective date of the decision .
- Effective date is the date that the City gives notice that no appeal has been timeously lodged and the decision is accordingly effective; or
- Subject to subsection (3), if an appeal is timeously lodged, the date that the appeal is decided by the appeal authority.
- Appeal against a condition of approval – City may determine that the operation of the approval is not suspended.
- If decision challenged on review, City may suspend the operation of the decision pending the final determination of the review.
- **Errors and omissions (section 106)**
- may correct error in wording provided no material change and no change in decision
- may condone minor errors in procedure provided it does not have a material adverse impact on or unreasonably prejudice any party.

Ch 7: General procedures for all applications – Extension of validity (Part 5)

- **Extension of validity of approval (section 107)**
- **SPLUMA – 5 years only**
- May apply for extension.
- No longer than 5 years.
- City may not grant the extension if -
 - the application is submitted after the validity period has expired.
 - circumstances which prevailed at the time have materially changed
 - legislative or policy requirements have materially changed
 - new conditions are necessary.
- Extension may not exceed 5 years from the date that the original approval lapses (no extension for TD).
- May only be granted once.
- If extension application is not decided on by the date of lapsing, the use rights may not be exercised until the City extends the validity period.

Lapsing clauses

General lapsing (Section 38)

- Unless otherwise specified an approval granted or deemed to have been granted lapses two years after the effective date of the decision. (DMS permissions)
- **Special lapsing clauses**
 - Rezoning – lapses after 5 years if land not used in accordance with approval or where building required, if construction has not commenced.
 - Rezoning to subdivisational area – must submit subdivision application within 5 years.
 - Subdivision or phased portion lapses after 5 years if not confirmed.
- **consolidation**
 - Registrar must register approved consolidation within **5 years** after effective date or at the same date the other approval lapses.

Lapsing clauses

When does lapsing take place?

- land is not used in accordance with the approval.(Note approval includes conditions of approval)
- where an improvement of land is required, lawful commencement of construction has not occurred. Therefore need to comply with conditions, get building plans approved and commence construction
- Commencement of construction (defined) – means to have begun a continuous programme of physical , on –site construction in accordance with building plans approved to the NBR and which has gone beyond site clearing, excavation or digging trenches in preparation for foundations.
- Note temporary departures are granted for 5 years. Once the 5 years are up, there is no more departure.

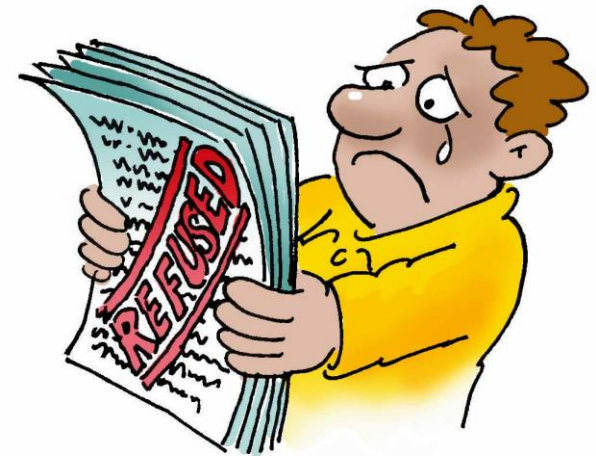
Lapsing clauses

- City must request the owner in writing prior to lapsing period to submit proof that the land is being used in accordance with the approval;
- The owner must notify the City in writing within the lapsing period or extended lapsing period that the land is being used.
- If a rezoning lapses, the zoning applicable to the land as reflected on the zoning map prior to the granting of the approval applies.

LAPSING

Ch 7: General procedures for all applications – Appeal (Part 6)

- **Appeal (section 108)**
- Appeal authority is the Executive Mayor
- Appeal available to the following people.
 - applicants,
 - the owner,
 - the CM,
 - parties who have submitted comment or objection,
 - intervener,
 - owner or other person –
 - where an approval has been withdrawn,
 - has been issued a directive,
 - administrative penalty imposed.



Ch 7: General procedures for all applications – Appeal (Part 6)

- **Powers of the appeal authority**

May receive relevant information and consider the matter afresh.
The appeal authority must decide –

- (a) whether the appeal has been lodged in time
 - (b) decide using the criteria in section 99.
- May dismiss appeal and confirm the decision appealed against
- Uphold part or all of the appeal and –
 - (i) vary the decision appealed against;
 - (ii) set aside the decision and make a new decision: or
 - (iii) set aside the decision and remit the decision back to the decision maker, with or without directions to any person or body to take appropriate steps

Ch 7: General procedures for all applications – Appeal (Part 6)

Procedure for appeal (section 109)

- Appeal is lodged with the City Manager
- If the appeal is by the CM, must lodge appeal with appeal authority.
- CM must within 14 days give notice to applicant/objectors.
- Must comment within 21 days
- May request Province to comment within 60 days
- Must request Provincial comment, if appeal concerns an application referred to in LUPA.
- Late opposition or comment will only be considered if the late submission is condoned on good cause shown.
- May not decide an application unless comment period has elapsed.
- Department must draft a report to decision maker.

Ch 7: General procedures for all applications – Appeal (Part 6)

- Must submit appeal to decision maker within 150 days of lodging of the appeal.
- Decision maker must decide within 90 days after the CM has lodged the appeal.
- Appeal authority may extend this period without agreement of parties in exceptional circumstances related to the nature and complexity of the application; (b) if the City is in recess.
- Decision suspended until appeal period runs out (see effective date)
- City may decide decision is not suspended.
- City must notify parties and PM if necessary of the decision within 30 days of a decision.

Ch 7: General procedures for all applications – Prescribed requirements & notification (Part 7)

- **Method and date of notification (section 111)**
- Notification can be given **in writing** –
 - by hand to that person personally;
 - Left at that person's place of residence or business in SA with a person apparently over the age of 16 years;
 - Unknown address – serve on agent or representative in SA
 - If they are unknown, when it is posted in a conspicuous place on the property or premises to which it relates
 - By email
 - By fax
 - By some other form of electronic communication contemplated in the ECT Act.
- CM must prescribe email and fax or ECT or person must consent, otherwise email and fax are in addition to the other forms of service.
-

Ch 7: General procedures for all applications – Prescribed requirements & notification (Part 7)

Notice may be given **orally**, but City must record in writing the content of the notification and the date upon which it was given and give service of this record in the manner contemplated in (1)(b).

Where a person is authorised to represent the owner, notice to the representative is regarded as notice to the owner.

Serving of notice – may refer to owner, occupiers – not necessary to name the person.

Date of notification

If notification provided orally – the date of the oral communication

By hand, is the date of delivery or collection

By registered post – 4th day after the date stamped upon the receipt for registration

Email, fax other EC, date that email or fax is sent provided that they have consented to being notified in that manner.

Ch 7: General procedures for all applications – Integrated decisions (Part 8)

Notice of integrated procedures (section 113)

SPLUMA and **LUPA** both have requirements for integrated applications.

- City may determine that –
 - (a) a public notice procedure carried out in terms of another law in respect of an application constitutes notice for an application made to this by-law; or
 - (b) the application made in terms of this By-law may be published in accordance with the requirements of a notice for a related application made to another law and which is regulated by an agreement between the City and the other organ of state.
- City may enter into a written agreement with other organs of state to avoid duplication in the submission of information or the execution of a process for cases where a proposed development requires an application to the City and other organs of state.

Chapter 8: Decision-makers (sections 114 – 122)

- **MPT or authorised officials** – in respect of categories of applications determined by the Municipal Council
- MPT consists of 12 officials and 9 outside members (1 chair and 1 deputy chair).
- MPT has been appointed.
- Council has designated authorised officials to take decisions. ED must still further authorise them to take decisions* (authorisation document to be provided)
- MPT decides on certain categorised applications
- AO decides on certain applications.



Categorisation of applications

CATEGORY 1: APPLICATIONS DECIDED BY MPT	
1.1	Restrictive title deed condition amendment, suspension or deletion
1.2	Determination of an administrative penalty
1.3	Any other application provided for or prescribed in the by-law
1.4	Applications where delegated official elects not to exercise power
1.5	Certification or amendment of owners' association constitution
1.6	Rezoning
1.7	Subdivision
1.8	Land consolidation
1.9	Consent, approval or other permission in the Development Management Scheme
1.10	Consent or approval in, or relaxation of, a restrictive title deed condition where restriction relates to use, subdivision, development rules or design criteria
1.11	Permanent departure
1.12	Temporary departure
1.13	Amendment, deletion or addition of conditions in respect of an existing approval
CATEGORY 2: APPLICATIONS DECIDED BY AUTHORISED OFFICIAL	
2.1	All applications in category 1.6 to 1.13 above, where there are no public objections and where consistent with policy
2.2	Subdivision phasing
2.3	Exemption of subdivision from approval in the by-law
2.4	Extension of period of validity of previous approval
2.5	Permission / approval required in conditions of approval of an application
2.6	Correction of zoning map error
2.7	Determination of zoning, non-conforming use right or any other matter City may determine in the by-law
2.8	Approval, alteration or amendment of a street name or number where a correction is required
2.9	Amendment or cancellation of approved plan of subdivision or general plan

Ch 8: Decision-makers

- **Advisory panel**

- Mayor may ask the Council to establish an advisory panel to consider and recommend to the appeal authority (Mayor) on appeal.
- Advisory panel may be officials or councillors
- May request any person to make oral submissions.
- Must use the decision making criteria in By-law.

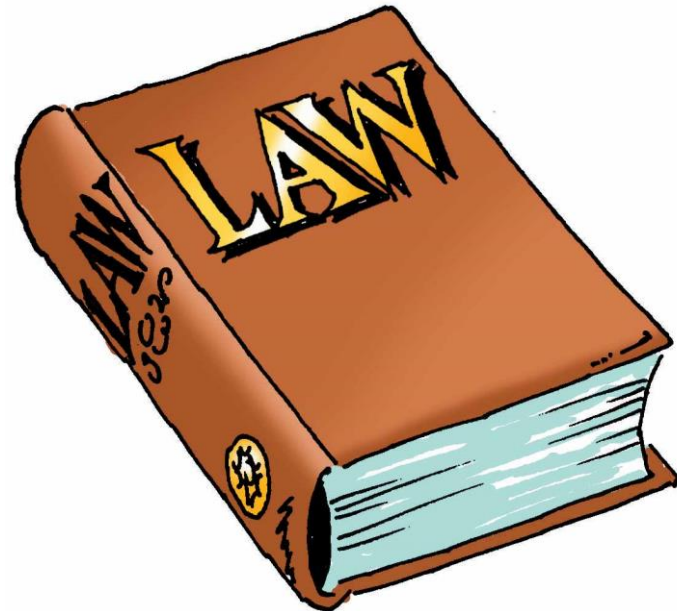
- **Technical adviser**

- Mayor may appoint a technical adviser to advise or assist.

Chapter 9: Enforcement (sections 123 – 135)

Extended definition of “owner”.

- Complaint – person who is affected by an alleged contravention of this by-law may in writing or in a manner determined by policy request CM to investigate.
- City Manager must investigate.
- Must inform the complainant of the outcome of the investigation – 30 days – steps to be taken.



Chapter 9: Enforcement - Civil

- **Split into civil enforcement and criminal enforcement.**
- **Civil enforcement**
- **Compliance notice** – multipurpose
- **Withdrawal of approval** – failure to comply with conditions of approval
- **Directive** – provide information, demolish or restore a building, rehabilitate land, act in accordance with By-law.
- **Administrative penalty** –MPT may determine amount. 10 – 100% of value of building work, 10- 100% of value of area that is used unlawfully. Factors for determining amount are set out.
- **Rectification** – may apply but must pay admin penalty before application is considered.
- **Enforcement litigation** – formalises right to apply to high court for orders.
- **Prohibition on transfer or land unit.** – must get a transfer clearance for any property which is flagged on the rates system,

Ch 9: Enforcement - Civil

- **Compliance notice** –state what the unlawful conduct is.
- Content of the notice is set out:

Indicate which provision of the By law or condition of approval is contravened

- If going criminal, - state unlawful conduct constitutes offence.
Instruct them to cease and comply immediately or within time period.
- Can also advise of the right to apply for rectification and may state that the City intends to take measures in 2(g)
- No appeal against decision to issue or not to issue a compliance notice.

Ch 9 Enforcement – withdrawal of approval

- If a person does not comply with an approval for a temporary departure or an approval granted for a limited period of time (consent) – serve a pre notice
- Setting out information in section 126(a)-(c) of the compliance notice; and
- Inviting the owner or other person to make written representations on the notice and give reasons why the approval should not be withdrawn.
- City must consider representations.
- Can decide to withdraw or not.
- If decide to withdraw the approval
City must notify the owner or other person
- Approval is withdrawn from the effective date of the decision.
- Once withdrawal is effective
- Notify owner of withdrawal and instruct owner or other person to cease the activity and to take any other step which the City considers necessary to comply with this By law immediately or within a time determined.
- Update zoning register and map.

Ch 9 Enforcement – directive

- If a person is in contravention of the By law, may serve a pre-directive
- Pre-directive gives owner/ person the opportunity to state why the City should not direct the person to
Submit documentation
- Demolish a building or rehabilitate the land to what it was before
- Address any other impact of the contravention.
- After considering representations and if satisfied that the By-law is being contravened, the City can issue the directive as set out or one that is less onerous.
- Contents of directive are set out
- Owner or other person must comply with a directive from the effective date.

Ch 9 Enforcement – administrative penalty

- New concept
- Administrative penalty is different to a fine imposed by the magistrates court.
- Can only be imposed by the MPT as there must be a separation between the administration and the person who imposes the penalty.
- A person who has contravened the By-Law and who wishes to rectify the contravention (ie submit an application), may apply for the determination of an administrative penalty if the City has not issued a demolition directive.
- Must submit the application
- If they do not submit, the CM may submit an application
- If CM does so, person concerned must be given an opportunity to make written representations.
- Department to provide a report to the MPT.
- MPT must determine amount of the penalty.
- Guidelines set out in section 129(7) and (8)
- Owner or person must be notified of the amount.
- City may apply to the High Court for an order confirming the order of the MPT.

Ch 9 Enforcement – rectification of a contravention

- A person who is in contravention may apply for the necessary approval.
- Must pay the administrative penalty before the City may consider the land use application (can submit but can't decide).
- If application for an administrative penalty has been submitted but not determined or not paid, in exceptional circumstances, the City, when granting an approval or making a determination, must impose appropriate conditions to ensure payment of any administrative penalty.
- Payment of the administrative penalty does not limit the City's power to institute criminal prosecution.

Ch 9 Enforcement – Enforcement litigation

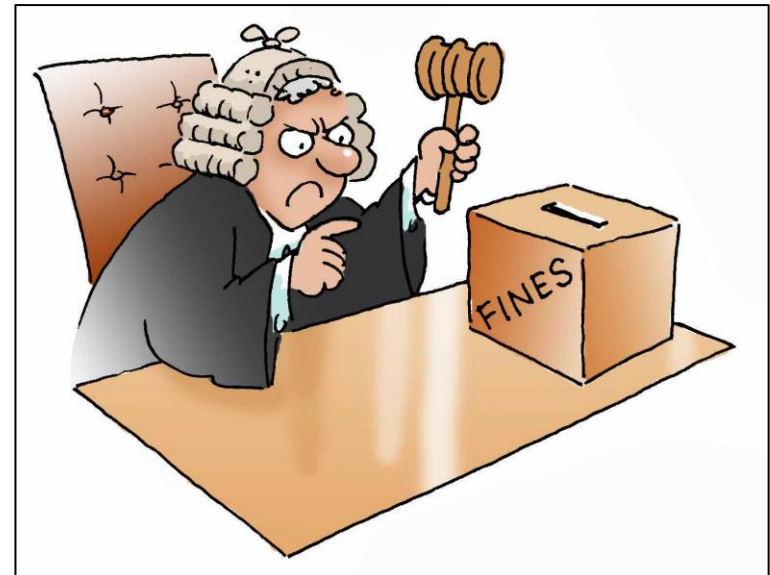
- Makes it clear that the City can apply to the High Court for interdict or demolition notwithstanding the other remedies available.

Urgent interdicts

- Often have to serve notice informing people to stop or face an interdict – This section allows the city to serve a notice by telephone, by email or some other form of electronic communication.
- May apply to the High Court on an urgent basis for relief.

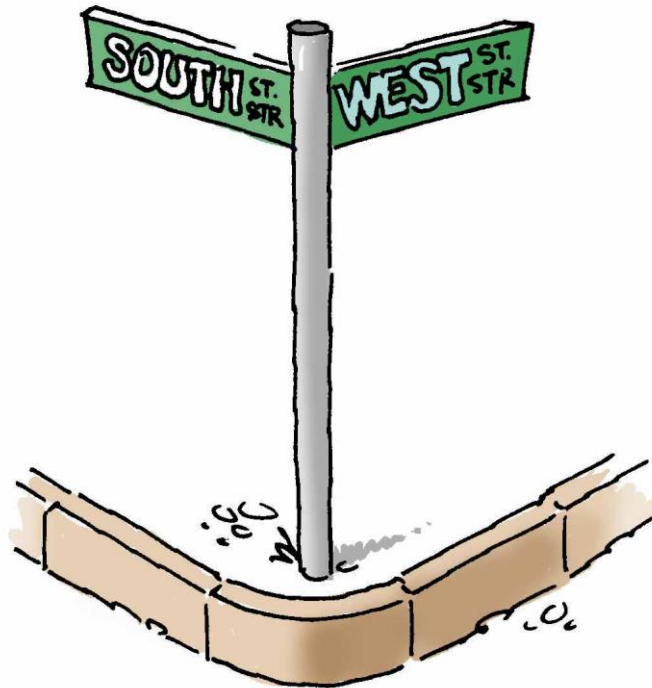
Chapter 9: Enforcement – Criminal

- SPLUMA has a number of provisions relating to criminal enforcement. (carried into By-Law)
- Section 133 of By law sets out the offences.
- Creates offences for both the operator and the owner.
- Offence to contravene a decision taken or a condition imposed, the provisions of the DMS, use land in contravention of DMS, fail to comply with a compliance notice or a directive.
- Requires a warrant to be obtained in cases where owner of a private dwelling refuses access.
- By-law reflects widened the powers
- of the inspectorate.



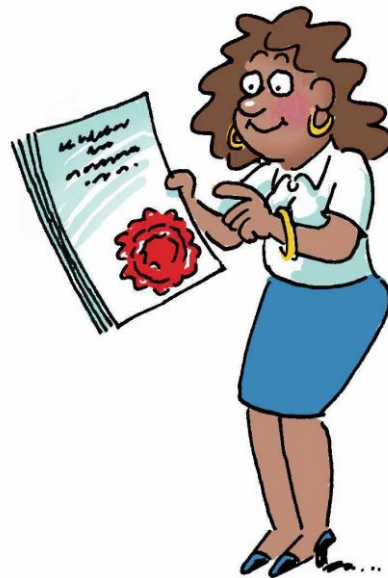
Chapter 10: Naming and numbering of streets (section 136)

- Deals with the power to name streets which arise from subdivision applications.
- Prohibition on using a street name that has not been approved by the City.
- Puts in place requirement to have street numbering in place as well.



Chapter 11: Transfer certificate

- First registration of properties arising out of an approved subdivision require a transfer certificate.
- Must show that conditions of approval met as set out in section 54.
- Any other property flagged on the system, - contravention penalty, admin penalty and directive, must show complied with requirements.
- City manager must issue certificate.
- Exempted from liability if we clear and there are outstanding requirements.



Chapter 12: General administrative provisions

- City may adopt policies, procedures and standards for effective administration of By Law,
- City Manager may prescribe certain matters – administrative issues

Chap 12 Delegations – section 139

- **3 forms of delegation**

- **1. Authorised official to take decision on land use applications.**

Council has authorised certain officials to take decisions. ED must give further written authority.* Will be provided by 1 July 2015

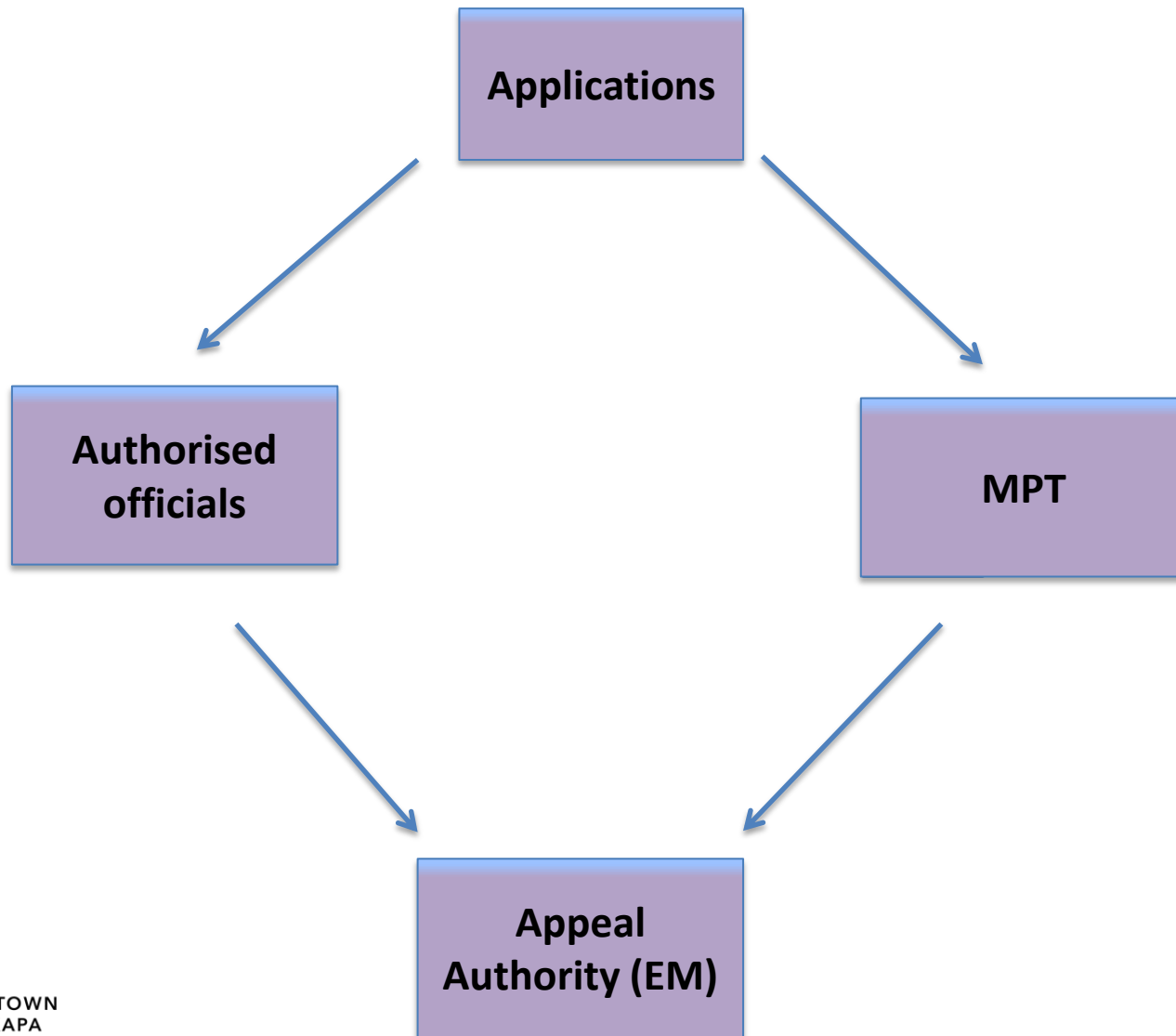
- **2. General delegations to ED**

Reference to the City in the By-Law. Council **has** delegated these powers to the ED. He will sub-delegate.* Will be provided by 1 July 2015.

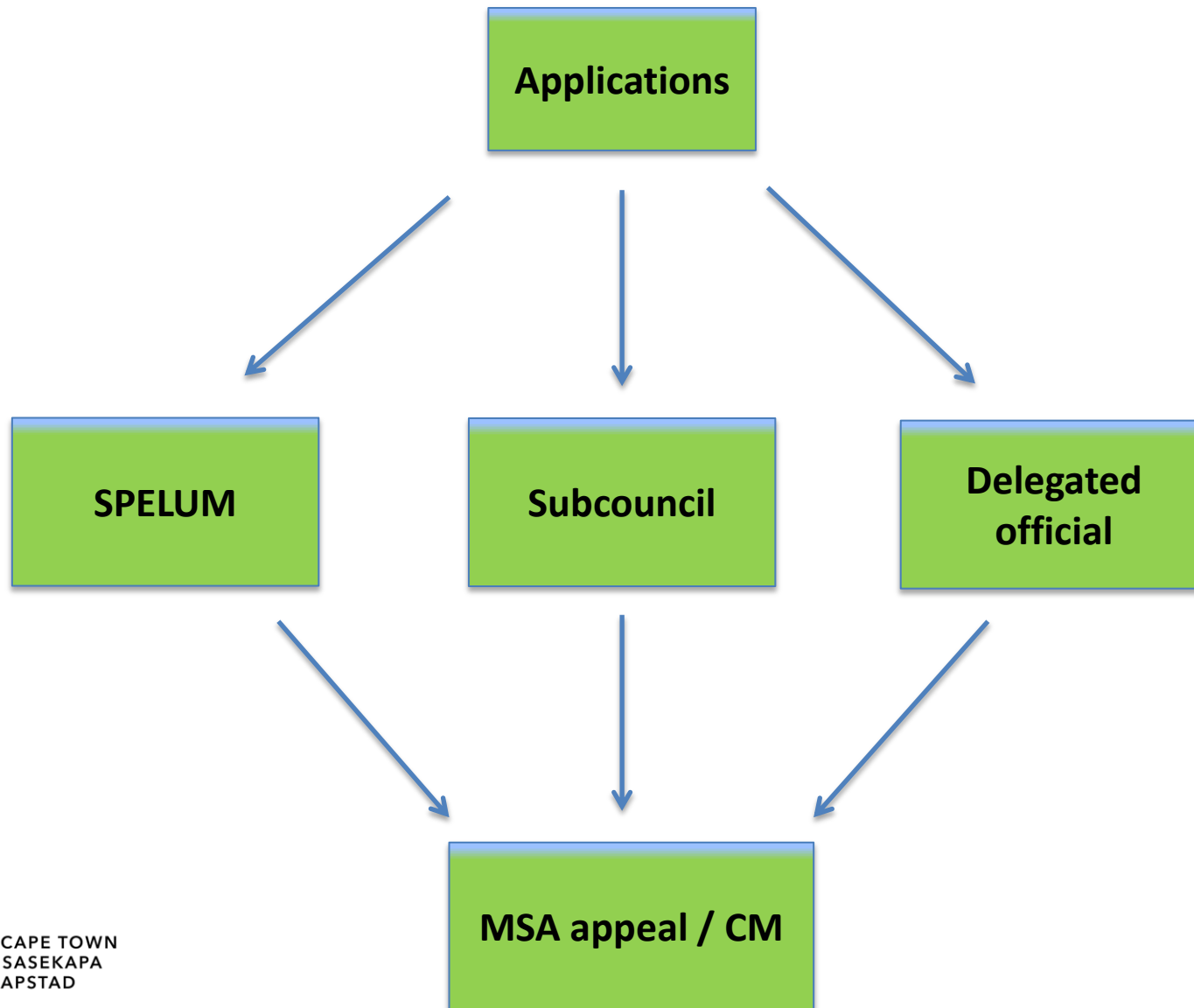
- **3. City Manager's delegations.**

These are drafted. Will be provided by 1 July 2015.*

Day 1- New applications



Day 1 - Applications in system



Transitional provisions

- **Savings and transitional provisions – section 142**
 - **Approvals granted under LUPO or other laws**

Remain in force subject to the conditions under which granted and are valid for period granted under LUPO.
Deemed to be an approval to the By-law
Deeming has no impact on conditions and validity period.
 - **Applications submitted to LUPO and currently being processed.**

Must be finalised under LUPO as if LUPA and the By-law not in force and previous zoning scheme not repealed.
 - **Contraventions** remain contraventions where conduct constitutes a contravention of this By-Law.

Transitional provisions

- **CTZS (subsections 4-7)**

“ When an approval is acted on, a land unit is regarded as been allocated a corresponding zoning in the DMS as determined by the City if-

(a) a rezoning application or substitution scheme was approved but not acted on , before the commencement of this By-Law, or

(b) a rezoning application or substitution scheme is approved after the commencement of this By-Law in accordance with the provisions of the previous zoning scheme.

- A building plan application that was formally submitted and accepted –
 - (a) before 1 March 2013 and which is still being processed; or
 - (b) on or after 1 March 2013 with the purpose to act on an approval in terms of a previous planning law,
- Must be assessed in accordance with that approval, providing that the building plan application is approved by **31 August 2017**.
- See also subsections (6) and (7).

Transitional provisions

- **Title deed reference to Administrator or Townships Board**
- Any reference to an approval by the Administrator or Townships Board in a restrictive conditions (in the City's area of jurisdiction, excluding a condition where Province acquires private law rights, is regarded as a reference to the approval by the City.
- **Transitional clauses RORA – draft LUPA regulations**

All applications lodged with Province ito of RORA before LUPA comes into force and which are not finalised are dealt with by Province. * Province to confirm that this is the final draft of the regulations.

Finally

- Application forms will be available on City's Planning Portal - <http://www.capetown.gov.za/en/Planningportal/Pages/Legislation.aspx>
- Any questions to Head office – lums@capetown.gov.za
- Jaco.vanderWesthuizen@capetown.gov.za
- Fiona.Ogle@capetown.gov.za
- Rossouw.Smit@capetown.gov.za
- Richard.Walton@capetown.gov.za
- Schalk.DeJager@capetown.gov.za



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Conclusion

Let us work together for a better city

Thank You

Making progress possible. Together.