WCPDF
WESTERN CAPE PROPERTY DEVELOPMENT FORUM

23 September 2024

Alderman Eddie Andrews
Deputy Mayor & Mayoral Committee Member for Spatial Planning and Environment
City of Cape Town

Dear Alderman Andrews

**AMENDMENTS TO THE CITY OF CAPE TOWN MUNICIPAL BY-LAW: WCPDF COMMENT**

As the Western Cape Property Development Forum (WCPDF), representing the full production line of property development and construction in the Western Cape, we respect and support the City of Cape Town's intent to reset the rules of engagement around Municipal Planning, and thank the City for taking this initiative.

We are aware that various professional bodies will be submitting their own comments directly to the City on the MPBL and, to this end, we support in specific the comments being submitted by the South African Association of Consulting Professional Planners.

It is therefore not our intention, as the WCPDF, to try to do the same, but to note the "common ground" comments identified by our members overall, with the overarching questions being: does the proposed amendment facilitate or further hinder the production line of property in Cape Town? Does it enable, as laid out in the Constitution, for the City of Cape Town to facilitate economic development, or does it lead to a greater compliance and regulatory focus?

We also note that the following comments are divided into two sections in this correspondence: our first reflecting the "common ground" we mention above around various sections of the Amendment, but a second reflecting on the concerns raised by various Cape Town stakeholders during the recent Public Meetings held.

## 1. WCPDF COMMENTS ON THE AMENDMENTS

As an industry organisation, we broadly welcome the proposed new Incentive Overlay Zones to be piloted in five Development Focus Areas, and the intention to assign additional and enhanced development rights to overcome the chronic shortage of affordable housing in Cape Town.

Likewise, we welcome that title deeds have been simplified in terms of the planning application, that there has been a reduction on on-site parking requirements, and some streamlining in dealing with administrative penalties.

We do however note that it has been stated on record by the City that the intention of the amendment is not to rewrite the bylaw but to address the anomalies that currently exist, and that there is a process underway for a substantive redrafting of the bylaw in 2025/26.

Our understanding therefore of the amendment is that its objective was to lean towards administrative corrections to correct the "grey areas", but then it appears to attempt go much further. It now instead appears to incorporate a number of major changes that will impact development further and, indeed, additional red tape that will result in no more than – at best – business as usual, with production timelines quite possibly stagnating even further.

**For example: the MPBL cannot be used to supersede national legislation at a municipal level, and great care must be taken when rewriting Common Law, as the MPBL appears to do.** For example:

- **The amendment, for instance, splices together National Building Regulations and Land Use Management into one document.** In the past they were generally separately by various addendums, while it is clear that – after the 2023 Constitutional Court ruling confirming that local government has an obligation to manage National Building Regulations – Cape Town has taken the opportunity to amalgamate the National Building Regulations with a land use management by-law. However, this splicing together gives local government a second, third and fourth bite of the pie to use building plan regulations – or the building plan application process – to retrospectively address land use management issues.

  This is a major concern for our industry; we already see the ongoing abuse that exists around Site Development Plans, resulting in the need to undertake architectural, engineering and landscaping designs up to a level of detail akin to building plan application detail, and then only to call for additional land use related information during the National Building Regulation applications for building plan approval. It is our view that unless very specific information requirements are defined for land use applications and building plan applications as separate administrative actions, the proposed draft will allow for a continuation and worsening of the current practice being experienced.

- There is overwhelming concern among our members with **Chapter 8A: Rectification (122A-122K),** and we question whether the City of Cape Town is actually empowered to add these clauses legally into this amendment in terms of the Constitution, or whether these will lead further to frivolous and vexatious claims to stop an approval already granted. Unilateral "rectification" of conditions, without the approval and acceptance of the holder of a statutory approval, will fail the basic test of fair administrative justice. It is anticipated that legal challenges to the chapter are obvious and could cause frivolous and wasteful expenditure on the part of the City in defending such actions. We urge the City to rethink its intent and drafting of this section.

- Another common concern lies with **Part 6: Impoundment (135A-135G)** wherein the right will now exist for the City of Cape Town itself to go onto construction sites and remove equipment under the auspices that a crime might be committed in future. That will not stand up in court for even one day; if the City of Cape Town has not obtained the necessary interdict against a land owner or contractor, the unilateral attachment of goods is akin to the City being judge and jury. Once again, the intent and drafting opens the City to litigation, which if defended, will again cause frivolous and wasteful expenditure. The City should also give due consideration to the impact that such unilateral action may cause if erroneously implemented by the City.

- Further, there are a number of references to **"discretion",** but which fail to clearly define by whose discretion. Likewise, under **Part 2: Notice and comment**, Notice to a person, now states: *Notice to a person must be served under section 111, if – (a) their rights or legitimate expectations would be materially and adversely affected if the application were approved: … .*" What would a right or legitimate expectation be? And which rights – Constitutional, land use, labour or privacy? It appears indeterminate and undefined.

Further areas of concern around the Bylaw Amendments are:

- **The amendment does not encourage, support, empower or enable much-needed investment-friendly decision-making discretion to officials.** Indeed, overall, it now appears

more onerous not only for developers but for officials in terms of tick-boxing. Nor does the amendment support the progression of self-certification which would allow the professionals in our industry to aid the City towards greater efficiency. We reiterate our often stated concern that the "precautionary" approach by officials in general will not change, based on the proposed amendments.

- **There are also aspects that should be unpacked in the Bylaw such as Student Accommodation, associated services requirements and parking ratios.** At the very least, a definition and use description for Student Accommodation should be included in the By-Law.

In conclusion to our specific comments around the Amendments: property development is the art of running multiple parallel workstreams concurrently. What we believe this Amendment continues to do is to turn the process of property development into a linear, gated system and which will exacerbate delays in processing applications.

We reiterate the need to separate land use applications from Site Development Applications and building plan applications.

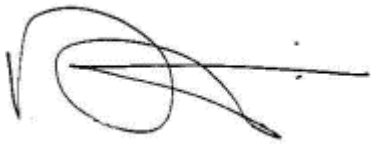
## 2. WCPDF CONCERNS AROUND THE RECENT PUBLIC MEETINGS ON THE AMENDMENTS

With members of the WCPDF Management Committee having now attended a number of the recent Public Meetings, we cannot but hear the echoes of what we ourselves have expressed for a number of years: what is the overarching vision for Cape Town? Does it exist and, most importantly, how is it effectively being translated and communicated into a palpable vision for all Capetonians to understand, envisage, embrace and ultimately buy into?

The voices expressed during the recent public meetings came from many different communities and economic groupings across Cape Town: as the WCPDF, we would urge the City to develop both a better understanding as to why these concerns were raised, and how they need to be appropriately and considerately addressed, if – for example – initiatives such as the MPBL Amendment is to have any chance of seeing the light of day. And, indeed, if the City is to continue to enjoy the support of its stakeholders. True and enduring inclusion here is key.

We once again thank the City of Cape Town for the opportunity to submit our comments. As the WCPDF, we remain fully committed to supporting and seeing our metropole grow from strength to strength into what could become the leading city on the African continent. In this we are reminded of the words of the proverb; "If you want to walk fast, walk alone. But if you want to walk far, walk together."

With sincere regards



**DEON VAN ZYL**
Chairperson: Western Cape Property Development Forum (WCPDF)