CITY OF CAPE TOWN
DRAFT MUNICIPAL PLANNING AMENDMENT BY-LAW, 2026

EXPLANATORY MEMORANDUM

Public Participation Process

OVERVIEW

1. The City intends to amend the Municipal Planning By-law, 2015 (**the By-law**). The City's draft Municipal Planning Amendment By-law, 2026 (**draft Amendment By-law**) contains the proposed amendments. The public is invited to comment on them.

2. This memorandum:

   2.1. accompanies the draft Amendment By-law to assist the public in understanding the City's intention behind the main amendments;

   2.2. explains the amendments in plain language, not legalese;

   2.3. is not legal advice and is not part of the draft Amendment By-law.

3. The draft Amendment By-law broadly seeks to do three things:

   3.1. to make the grant of building plan approvals transparent, by requiring public notice of every building plan approval and by giving surrounding neighbours access to the approved building plan and the reasons for it;

   3.2. to rework Chapter 8A of the By-law, which deals with the rectification of approvals and building plan approvals, into a consent-based process supported by a new third-party complaint mechanism; and

   3.3. to correct errors in, and clarify, certain provisions of the By-law and the development management scheme (**the DMS**), including the provisions that preserve approvals granted under the previous planning laws.

4. The DMS is Schedule 3 to the By-law. It is part of the City's zoning scheme and provides the use rights and development rules for different zonings. '**An approval**' refers to a planning approval under the By-law, while '**a building plan approval**' is granted under the National Building Regulations and Building Standards Act 103 of 1977 (**the Building Act**).

5. The rest of this memorandum describes the proposed new provisions in the By-law, the proposed changes to existing sections of the By-law, and the proposed amendments to the DMS.

PROPOSED NEW PROVISIONS IN THE BY-LAW

6. Notice of building plan approval: section 95A.

   6.1. At present, the public is not notified when the City approves a building plan. A neighbour might learn of an approval only when building starts. Section 95A changes that.

   6.2. The City must publish a notice of every building plan approval on its website and may require a site notice.

   6.3. The notice need not describe the content of the building plan. It must identify the land unit, state that a building plan approval was granted, and explain how to request access to the approved plan and the reasons (section 95B) and how to submit a third-party complaint (Chapter 8A).

   6.4. Seven days after the website notice, all persons are deemed reasonably to have been expected to have become aware of the approval. A person who might be affected by a building plan approval has a responsibility to keep a lookout for these notices.

6.5. Section 95A applies to building plan approvals granted after the 2026 amendment commences.

7. Access to an approved building plan and the reasons: section 95B.

7.1. A ‘surrounding owner’ — the owner of a land unit adjoining the subject land unit, meeting it at a corner, or directly opposite it across a road, or of a sectional title section on such a land unit — may, within 44 days of approval, inspect the approved building plan and the reasons at the City’s offices or request electronic copies, on payment of the prescribed fee.

7.2. The City must provide electronic copies within 7 days and must first, as far as reasonably possible, redact personal information.

7.3. Any other person, or a surrounding owner after the 44 days, may inspect (but not copy) an approved building plan and the reasons at the City’s offices.

7.4. A person who receives information under this section must treat it as confidential and may use it only for a lawful purpose, such as obtaining legal or professional advice, exercising a remedy under the By-law, or use in legal proceedings to which they are a party. Misusing the information is an offence.

7.5. Section 95B strikes a balance between transparency for neighbours and the privacy, security and property rights of the holders of approved building plans.

8. Third-party complaint: section 122GA.

8.1. Chapter 8A empowers the City to rectify (revoke or amend) an approval or building plan approval affected by certain errors. Section 122GA creates a new remedy for third parties: a written complaint that places information before the City regarding an alleged ‘rectifiable error’ (explained below) in the process leading to approval.

8.2. Who may complain: a party to an appeal in the case of an approval; or a surrounding owner, in the case of a building plan approval.

8.3. The complaint must be submitted within 44 days of the approval and must explain why the complainant is eligible, what their interest is, and the material facts relied on.

8.4. A third-party complaint is an information-bearing report. It does not oblige the City to take any step beyond initial consideration, does not suspend the approval, and gives the complainant no right to a particular outcome. The City must consider the complaint within 30 days and decide whether to initiate rectification proceedings.

8.5. Third-party complaints are available only for approvals and building plan approvals granted after the 2026 amendment commences.

9. Consent-based rectification proceedings: section 122GB.

9.1. Under the proposed amendments, the City may revoke or amend an approval or building plan approval under Chapter 8A only on the beneficiary’s application or with the beneficiary’s written consent.

9.2. If the City initiates proceedings on its own initiative (including pursuant to a third-party complaint), it must give the beneficiary the reasons for the

proposed revocation or amendment and invite the beneficiary's consent and comment. If the beneficiary does not consent, the proceedings terminate. The City may then instead apply to a court, take enforcement action, or take any other lawful step.

9.3. Persons whose rights or legitimate expectations would be materially and adversely affected by a proposed revocation or amendment of an approval must be invited to comment, and the beneficiary may respond. The City must decide as soon as reasonably possible, and within 90 days after the comment period closes, and must notify everyone concerned.

10. Suspension powers: sections 122GC and 122GD.

10.1. Section 122GC allows the City, during consent-based rectification proceedings and after hearing the beneficiary, to suspend the approval or building plan approval to protect the public interest or public safety or to ensure the rectification is effective. The suspension may last at most 90 days, plus any further period agreed with the beneficiary. Without the beneficiary's application or consent, the City cannot suspend an approval; it must instead approach a court.

10.2. Section 122GD allows the City, when revoking or amending with the beneficiary's consent, to suspend the operation of the revocation or amendment for a defined period on reasonable conditions — for example, to give the beneficiary time to submit the applications needed to make the development lawful.

11. Transitional provisions for Chapter 8A: section 122N.

11.1. The amended Chapter 8A applies to every approval and building plan approval, whenever granted. But the third-party complaint remedy is available only where the approval is granted after the 2026 amendment commences.

11.2. Requests and rectification proceedings already underway under the 2025 version of Chapter 8A continue under the 2025 rules.

11.3. After the 2026 amendment commences, the City may not initiate non-consensual revocation or amendment proceedings under Chapter 8A, except where the 2025 rules continue to apply.

11.4. The 2026 amendment does not create an offence for conduct that was not an offence when it occurred.

PROPOSED SUBSTANTIVE CHANGES TO EXISTING SECTIONS IN THE BY-LAW

12. Section 1 inserts new definitions of '2026 By-law commencement date', 'building plan approval' (moved from Chapter 8A so that it applies throughout the By-law), 'parties to an appeal' and 'surrounding owner'.

13. Section 108(7)(b) clarifies the appeal authority's powers. Whether or not an appeal is upheld or dismissed, in whole or in part, the appeal authority may: vary the decision appealed against, including by imposing a more onerous penalty, condition or requirement; set the decision aside and make any new decision that the decision-maker could lawfully make; or set the decision aside and remit the matter to the decision-maker, with or without directions. These amendments apply retrospectively (to pending applications).

14. Section 109(10) requires the City to give written notice of an appeal decision and the reasons within 14 days (contemplated in section 104(2)), instead of a separate 30-day period.

15. Section 122A defines 'rectifiable error'. Chapter 8A may now be used only to correct a rectifiable error: a defect in the process leading to the approval, namely that the decision-maker lacked authority or proper delegation; that a mandatory procedure or requirement was not complied with; that a person entitled to be heard was denied a reasonable opportunity to make representations; or that the decision-maker relied on objectively incorrect information or a prohibited consideration, or failed to consider a mandatory consideration — and, in each case, the defect could have affected the outcome. Definitions of 'third-party complaint' and 'trigger date' are also inserted.

16. Section 122B restates the purposes of Chapter 8A: to enable the City to correct its own administrative errors through specialist procedures, with the beneficiary's consent; to displace, only to the extent the Chapter permits, the common law rule that a decision-maker cannot revisit its own final decision; to respect legal certainty and good-faith reliance on approvals; and to leave the role of the courts unaffected. A new subsection confirms that Chapter 8A is not an appeal.

17. Sections 122C and 122D narrow the grounds for revoking or amending an approval to the correction of a rectifiable error. An amended approval stands as the final approval.

18. Section 122E provides that the City may amend a building plan approval only in accordance with the Building Act and, to the extent consistent with that Act, Chapter 8A.

19. Sections 122F and 122G are deleted. They are replaced by the third-party complaint and consent-based rectification procedures in sections 122GA and 122GB, described above.

20. Section 136(3) regulates naming of a street. The redundant reference to numbering is removed.

21. Section 142 deals with the preservation of approvals granted under the previous planning laws. The background is the following:

    21.1. The By-law and the Land Use Planning Act, 2014 (**LUPA**) both commenced in Cape Town on 1 July 2015. On that date, LUPA repealed the previous planning law, the Land Use Planning Ordinance, 1985 (**LUPO**), and Cape Town's previous zoning schemes.

    21.2. Section 142(1) currently preserves an approval granted under the repealed laws, and deems it to be a By-law approval, only if it was in existence immediately before 1 July 2015. Section 142(2), however, requires applications pending on 1 July 2015 to be finalised under the old law.

    21.3. The unintended result is that approvals granted under LUPO after 1 July 2015 are not covered by section 142(1): they are not deemed to be By-law approvals, are not protected by the 'remains in force' provision, and are not subject to the By-law's enforcement provisions.

22. The proposed amendment of section 142 fixes this.

    22.1. The new section 142(1) defines an '**old order approval**' to include both an approval in existence immediately before 1 July 2015 and an approval granted after that date under section 142(2).

22.2. The new section 142(1A) provides that an old order approval remains in force; is, where applicable, deemed to have been issued, granted or to have occurred in accordance with the By-law; is subject to the conditions under which it was issued; and, subject to the By-law's lapsing provisions, is valid for the validity period for which it was granted, if it was temporary, or permanently, if it was not.

22.3. The validity provision clarifies the phrase 'is valid for the period for which it was granted under the repealed law' in the existing section 142(1): only temporary approvals were granted for a validity period; permanent approvals were not.

22.4. The new section 142(1B) makes these amendments retroactive, as provided for in section 142(10)(b). This is necessary since the amendment is to correct the legal effect on old order approvals, which were all granted in the past.

PROPOSED AMENDMENTS TO THE DMS

23. Item 1 deletes the definition of 'risk management and prevention plan', which is no longer used.

24. Item 22(d), Table 2 corrects an obvious error: the maximum height to the top of building for land units of 200 m² or less reads '90 m' and is corrected to '9,0 m'. The correction is deemed to have come into operation on 1 October 2025.

25. Item 41(e) and Table 5 deal with building lines in General Residential Subzonings GR2 to GR6:

25.1. The provisos explaining the symbol 'H' and the rule that the greater of two alternative building lines applies are restructured into separate subparagraphs, without changing their meaning.

25.2. A definition of '**rear boundary**' is inserted: the common boundary furthest from, and usually opposite, the street boundary.

25.3. In Table 5, the common boundary building line cells for points up to 25,0 m above existing ground level are combined so that GR2 to GR6 are regulated jointly. The amended text clarifies how the 0,0 m building line near a street boundary is measured; provides that the 4,5 m or 0,6H rule applies to a rear boundary regardless of its distance from the street boundary; and confirms that this incentive development rule is not an alternative building line.

25.4. These amendments apply retrospectively – ie to pending applications, not past approvals.

26. Table 8, under 'Street building line and common building line', amends the height bands 'over 30 m and up to 38,0 m' and 'over 38,0 m' to 'over 30 m and up to 45,0 m' and 'over 45,0 m'.

COMMENCEMENT

27. The Amendment By-law will take effect on a date proclaimed by the Executive Mayor and published in the Provincial Gazette.