

- (a) adoption or an amendment of the municipal spatial development framework;
- (b) approval or amendment of the development management scheme;
- (c) rezoning of land;
- (d) subdivision of land into more than 20 land units;
- (e) determination of a zoning;
- (f) approval of an overlay zone through the amendment of this By-Law;
- (g) removal, suspension or amendment of a restrictive condition, if a change of land use is involved;
- (h) amendment, deletion or additional conditions in respect of an existing use right; or
- (i) phasing, amendment or cancellation of a plan of subdivision or a part thereof.

98 Determination of application

The City may in respect of an application –

- (a) conduct any necessary investigation including the power to conduct an inspection as contemplated in section 96;
- (b) 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 set out in section 100; and
 - (iv) limit the approval to one or more of the uses included within the zoning or description of the consent use in case of an approval of a rezoning application or a consent use;
- (c) refuse the application;
- (d) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-Law and other applicable law.

99 Criteria for deciding application

(1) An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements –

- (a) the application must comply with the requirements of this By-Law;
- (b) the proposed land use must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible;
- (c) the proposed land use must be desirable as contemplated in subsection (3); and
- (d) in the case of an application for a departure to alter the development rules relating to permitted floor space or height, approval of the application would not have the effect of granting the property the development rules of the next subzone within a zone.

(2) If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision maker must consider all relevant considerations including, where relevant, the following –

- (a) any applicable spatial development framework;
- (b) relevant criteria contemplated in the development management scheme;
- (c) any applicable policy or strategy approved by the City to guide decision making, which includes the Social Development Strategy and the Economic Growth Strategy;
[Para. (c) substituted by s. 7 of City of Cape Town: Municipal Planning Amendment By-Law, 2017]
- (d) the extent of desirability of the proposed land use as contemplated in subsection (3);
- (e) impact on existing rights (other than the right to be protected against trade competition);
- (f) in an application for the consolidation of land unit –
 - (i) the scale and design of the development;
 - (ii) the impact of the building massing;
 - (iii) the impact on surrounding properties; and

- (g) other considerations prescribed in relevant national or provincial legislation, which includes the development principles as contained in section 7 of the Spatial Planning and Land Use Management Act, 2013 (Act no. 16 of 2013).

[Para. (g) substituted by s. 8 of City of Cape Town: Municipal Planning Amendment By-Law, 2017]

(3) The following considerations are relevant to the assessment under subsection (1)(c) of whether, and under subsection (2)(d) of the extent to which, the proposed land use would be desirable –

- (a) socio-economic impact;
- (b) ...
- (c) ...
- (d) compatibility with surrounding uses;
- (e) impact on the external engineering services;
- (f) impact on safety, health and wellbeing of the surrounding community;
- (g) impact on heritage;
- (h) impact on the biophysical environment;
- (i) traffic impacts, parking, access and other transport related considerations; and
- (j) whether the imposition of conditions can mitigate an adverse impact of the proposed land use.

[Sub-s. (3) substituted by s. 20 of City of Cape Town: Municipal Planning Amendment By-Law, 2016]

(4) An application in respect of an existing use or construction work which has commenced in contravention of this By-Law must be dealt with in terms of section 130.

(5) No decision required to be made in terms of this By-Law may be delayed pending the creation of a policy to guide decision-making on the matter.

100 Conditions of approval

- (1) The City, when granting an approval or making a determination in terms of this By-Law, may impose reasonable conditions which arise from the proposed use of land.
- (2) The conditions may include but are not limited to conditions relating to –
 - (a) the provision of land needed for public places or the payment of money in lieu of the provision of land;
 - (b) the cession of land or the payment of money;
 - (c) the provision and installation of engineering services and indicate –
 - (i) whether the applicant is required to provide or install engineering services as contemplated in section 65, or pay a development charge, or partly provide or install the engineering services and partly pay a development charge;
 - (ii) if relevant, the development charge payable and the date that it is payable;
 - (iii) if a phasing plan for the development is approved, that the installation of engineering services and the payment of development charges may take place separately for each phase;
 - (iv) if the City will take over responsibility for the engineering services, whether the applicant is required to maintain the engineering services for a specified period of time or provide a maintenance guarantee;
 - (v) a requirement to provide proof that an organ of state or state owned enterprise responsible for the provision of a service, is able to provide that service before the transfer of the first land unit;
 - (d) the provision of land needed by, and other requirements of, other organs of state;
 - (e) the endorsement in terms of section 31 of the Deeds Registries Act in respect of public places where ownership vests in the City;
 - (f) the registration of public places in the name of the City;
 - (g) the transfer of ownership to the municipality of land needed for other public purposes or community facilities;
 - (h) the implementation of a subdivision in phases;
 - (i) the establishment of an owners' association by the applicant in respect of a subdivision as contemplated in section 61;