

LAND USE CONTROL – AN OVERVIEW

Reasons for land use control measures

Following on previous discussions in this memorandum as well as worrying public statements of officials in positions of authority, is the consideration of the reasons for imposing land use control measures and reasons for departing from such rules.

❖ Legislation

Looking at South African legislation, from the constitution down to the by-laws of local authorities, the message is clear – there is an obligation to the sustainable development of our country. To achieve this, land use management is prescribed as essential for stewards of cities, towns and villages to shape the future of their communities.

Section 156(1) of the Constitution of the Republic of South Africa confers on municipalities the executive authority and the right to administer municipal planning. The resulting sets of planning laws adopted by all tiers of government gave birth to planning instruments that are used to shape economies and influence social and political life in cities and towns as well as in rural areas.

Against the backdrop of a series of Constitutional Court judgments, SPLUMA put municipalities at the epicentre of land use planning and land use management.

Section 25 of SPLUMA determines the purpose of a land use scheme as follows:

“A land use scheme must give effect to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates in order to promote—

(a) economic growth;

(b) social inclusion;

(c) efficient land development; and

(d) minimal impact on public health, the environment and natural resources.”

Section 28 of SPLUMA empowers municipalities to amend their land use schemes, thereby creating flexibility.

Looking at the Western Cape Land Use Planning Act, Act 3 of 2014 [LUPA], we find the following reasons for having land use schemes in S.23:

“Purpose of zoning schemes

23. The purpose of a zoning scheme is to at least—

(a) make provision for orderly development and the welfare of the community; and

(b) determine use rights and development parameters, with due consideration of the principles referred to in Chapter VI.”

The Knysna Spatial Planning and Land Use Management By-law of 2021 [SPLUMB], does not provide any reasons for or purpose of managing land use – it is merely designed as a tool to fulfil the municipality’s obligations derived from national and provincial levels.

The Knysna Zoning Scheme By-law of 2020 expands on LUPA and defines the purpose of the by-law vividly, thereby ensuring alignment with the empowering legislation:

“Purpose of Zoning Scheme

3. The purpose of the zoning scheme is to:

- (a) give effect to the municipal spatial development framework;
- (b) make provision for orderly development and the welfare of the community; and
- (c) determine use rights and development parameters, with due consideration of the principles referred to in the Land Use Planning Act (Act 3 of 2014).”

Similar to SPLUMA, but more detailed, LUPA defines the land use planning principles of spatial justice; spatial sustainability; efficiency; good administration; and spatial resilience.

Reasons for departing from land use scheme conditions

Surely the common occurrence of departures from the standard development parameters of zoning schemes makes one question the rationale of land use controls – why do we have all these development restrictions if deviations are allowed so frequently?

The first clue to the answer comes from S.28 of SPLUMA which empowers municipalities to amend their land use schemes to create flexibility.

Simplified, a zoning scheme can be described a set of norms and standards that supports a chosen vision of the urban and rural form and fabric, its networks and socio-economic well-being as derived from the Spatial Development Frameworks from all tiers. In more practical terms, a zoning scheme should be seen as a generalised set of rules applicable to all land parcels, regardless of individual circumstances, ie. all similarly zoned properties are typically subject the same development restrictions.

However, if a zoning scheme is rigidly enforced as a generalised set of rules, the obvious weakness is its inability to accommodate diversity. Since this will create an untenable situation, the legislator at the highest level foresaw the need for flexibility, hence the S.28 empowerment of SPLUMA.

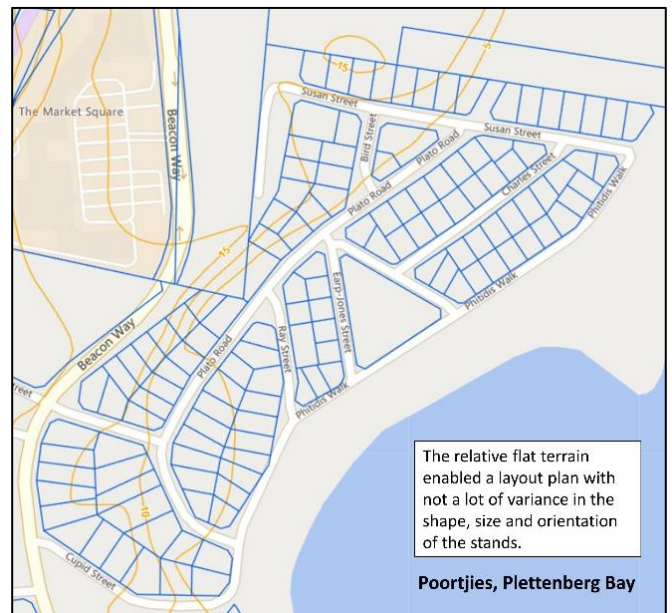
❖ Diversity and flexibility

Practical examples of why land use management systems have to be flexible, are often found in towns with complex physical geographical features such as the coastal towns of the Eden District.

If, for instance, Plettenberg Bay was built on a flat uniform plain where all geographical features were identical, it could be argued that a standard set of development parameters for all similarly zoned erven might be practical and fair. But this is a theoretical situation which rarely exists on Mother Earth.

Knowing that Plettenberg Bay is characterised by very complex geographical constraints that are unevenly distributed, the wisdom of using a standard set of development parameters for all erven in each use zone can certainly be questioned.

The accompanying graphical comparison demonstrates how the topography has influenced the design of two of the suburbs found in the town. In spite of the radical differences between the shape, size and orientation of stands in these two neighbourhoods, a uniform set of development parameters applies for all similarly zoned erven.

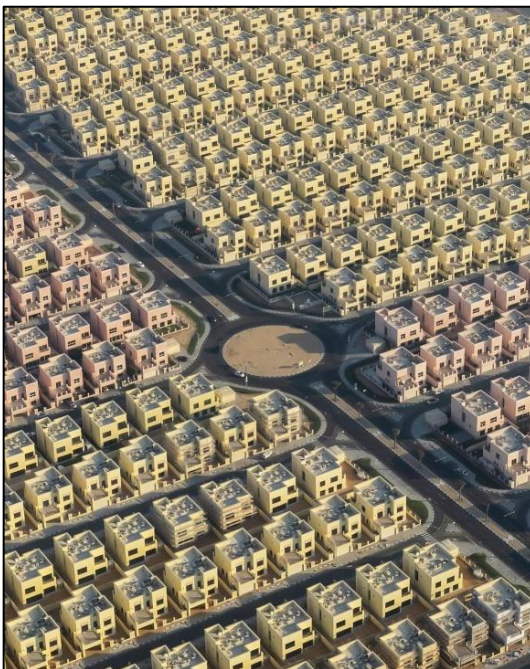
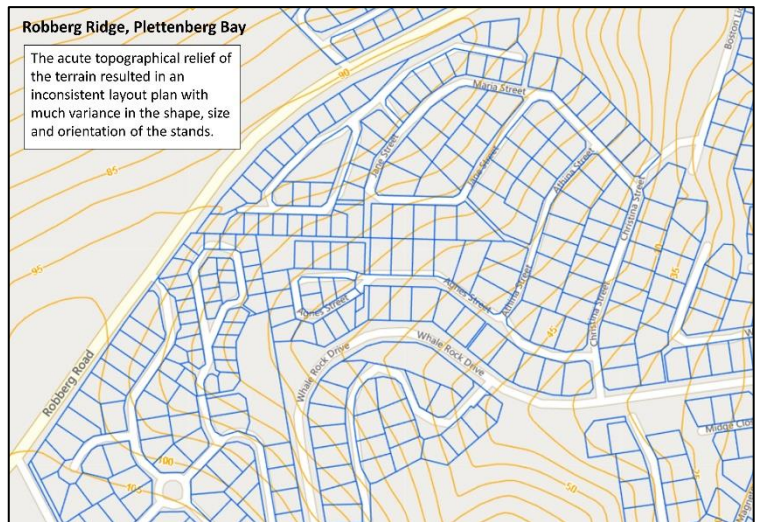


Although these uniform parameters clearly cannot accommodate the multiplicities found in the town, there are good reasons for this widely accepted practise. Probably the most important reason is the unsuitability and impracticability of developing and administering a unique set of parameters on an erf-to-erf basis.

As a consequence of the said practise of applying uniform rules, it is quite obvious that development parameters will always be contested throughout the town but, much more frequently in precincts affected by severe slopes than in neighbourhoods on relatively flat terrain.

If, on the other hand, town planners ignore the S.28 empowerment of SPLUMA and persist in applying standard land use parameters stubbornly and without any flexibility, our towns and cities might be forced to look akin to the Dubai suburb depicted in the photograph below.¹

Clearly this would be a very unfortunate outcome of town planning and related processes.



Some of the public comments posted in response to this photograph:

“Lacking in individual architecture!!!!”

“I am not impressed. One home design just duplicated. ... How boring.”

“Architecture or people storage! Think the architect has run out of creativity/originality and been watching too much Blade runner.”

“- Hi bro, Where do you live?
- I currently live in the yellow house”

“You can’t miss it’ would be the biggest lie ever”

“Not Architecture.... more like Boxitecture.”

“they need to stop trying to make everyone the same. we are not all the same and that’s what makes us amazing”

“It looks like a concrete jungle, not a neighborhood. No trees and shrubs = no birds or insects. How sad.”

“Feeling pity for the people who live in that concrete jungle”

Quo Vadis?

Town Planning is a science, and an art. Everyday town planning can thus not be reduced to a set of formulas and uniform rules to be applied by each and every one. Most town planners understand this and skilfully deal with it. The problem, however, is that the public and many elected decisionmakers do not always have the benefits of the required training and experience. This frequently results in conflict, a resistance to change, rigidity and ultimately, stagnation.

¹ Posted on Facebook on 26 July 2022 <https://www.facebook.com/wildfreepage/photos/a.1128853927247189/2663989400400293/>

A typical example is the relaxation of building lines: Many a time, decisionmakers are hesitant to relax building lines purely based on principle. This is not the correct approach because the use of building line restrictions is not a method of robbing landowners from developable land. It is merely a tool that is used to gradually shape attractive and practical urban landscapes, and at the same time, ensure that space is reserved for the reasons of health, safety, services and urban design.

Another example is the resistance to densification by residents of low-density neighbourhoods and the willingness of decisionmakers to succumb to public pressure by rejecting such proposals. This practise cannot be condoned as it screams against our legal obligation to build more compact and efficient towns and cities.

Furthermore, the process of inviting the comments of neighbours is not a democratic poll to see how popular development proposals are. No, it is simply a procedure to ensure that neighbours' interests are duly considered.

On the positive side, experience tells that while landowners mostly seek efficiency, ie. the best use of their properties, most South African municipal town planners are generally using zoning schemes correctly to ensure a harmonious achievement of predetermined development visions. The willingness of town planners to deviate from hard and fast rules – flexibility – is a sign of them acknowledging diversity and keeping pace with modern trends, new perspectives and modern ideological approaches to urban development and land use management.

In the end, it is the responsibility of town planners, especially those who are public officials, to educate broad society and the elected decisionmakers to ensure that their roles as stewards of their territories do not become influenced by the dangerous mix of political power and clumsy reasoning.