



REPORT TO: EXECUTIVE MAYOR

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**1. ITEM NUMBER 01SUB 04/06/2020**

**2. SUBJECT: DECLARATION OF A LAND DEVELOPMENT APPLICATION FOR THE REZONING AND CONSOLIDATION OF ERF 35148 AND ERVEN 35163 TO 35170 MILNERTON FOR THE ESTABLISHMENT OF GOVERNMENT-SUBSIDISED HOUSING, TO BE AN URGENT APPLICATION IN TERMS OF SECTION 69 OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL).**

**3. DELEGATED AUTHORITY**

In terms of Part 1 (Executive Mayor): Delegation 10(5) of the Council's System of Delegations, as amended by Council vide resolution C 26/03/20, which reads as follows:

- (5) After considering the recommendation of the relevant Sub-Council, to declare an application for the establishment of housing, to be an urgent application in terms of section 69 (1) of the Municipal Planning By-Law, 2015.

This report is FOR DECISION BY

**Committee name** : Executive Mayor

**4. DISCUSSION**

**BACKGROUND:**

On 12 May 2020, the Western Cape Provincial Department of Human Settlement (DoHS) made a formal request (attached as Annexure A) to the Blaauwberg District Office, for the City to declare the Killarney Gardens Housing Project to be an urgent housing application.

The purpose of the declaration is to expedite land development applications, aimed at de-densifying the Dunoon informal settlement. This is done in response to the Covid-19 pandemic as well as to facilitate the re-opening of the blocked railway line which prevents the City from railing waste to Vissershoeek Waste Plant.

The proposed declaration of an application to be an urgent housing application is provided for in Section 69 of the City of Cape Town Municipal Planning By-law, 2015, as indicated in the extract below:

**“ 69 Urgent Housing**

- (1) Subject to subsection (2), the City may declare an application for the establishment of housing to be an urgent housing application.
- (2) The City may declare an application to be an urgent housing application only if –
  - (a) the application relates to government-subsidised housing; and
  - (b) the land concerned is either –
    - (i) designated for government subsidised housing in terms of the integrated development plan, the municipal spatial development framework, a district spatial development framework or a local spatial development framework; or
    - (ii) subject to an established high demand for government subsidised housing and a low supply of housing opportunities.
- (3) The City may to the extent necessary exempt the applicant from a procedural requirement or shorten a time period provided for in this By-Law, provided that the procedure must still comply with the provisions of applicable legislation dealing with advertising.
- (4) To the extent necessary, the City must obtain authorisation from the Provincial Minister in terms of section 60(1) of the Land Use Planning Act to deviate from the provisions of that Act in the processing of an urgent housing application.”

**KILLARNEY GARDENS HUMAN SETTLEMENT PROJECT:**

The proposed housing project is divided into two phases i.e.:

Phase 1: comprising of Erf 35148 and Erven 35163 to 35170 Milnerton, measuring approximately 34360m<sup>2</sup>.

Phase 2: Comprising of Erf 38638 Milnerton, measuring approximately 130000m<sup>2</sup>.

The entire development site is shown in Annexure B.

For the purpose of this report, only Phase 1, is considered for the proposed declaration to become an urgent housing application. Reference to the “property” henceforth will mean Erf 35148 and Erven 35163 to 35170 Milnerton.

**LOCATION OF THE PROPOSED HOUSING (PHASE 1):**

The property (Erf 35148 and Erven 35163 to 35170 Milnerton), measuring 34360m<sup>2</sup>, is located south-west of the existing Doornbach informal settlement and to the west of the Dunoon area. The property resulted from the subdivision of the historic Remainder of the farm 215, Milnerton, which led to the development of the Racing Park Industrial area. The property in question is located south west of the Racing Park industrial area.

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## **RACING PARK DEVELOPMENT OWNERS ASSOCIATION AND RELATED RISKS**

One of the conditions for the erstwhile subdivision was the requirement for the establishment of a body corporate, which is referred to as the Racing Park Development Association. The association was constituted as a body corporate in terms of the conditions of approval of a subdivision application for the Remainder of the farm 215, Milnerton. Membership of the association is mandated by a title deed conditions for the site, thus, the property owner is bound by the provisions of the approved constitution of the Racing Park Development Owners Association.

Provisions of the constitution of the association (attached hereto), which have major implications for the proposed development for the proposed requires that there should be a consent from the association whenever the properties are sold or transferred and whenever buildings are constructed or altered.

On 19 May 2020, Slabbert Venter Yanoutsos Inc. who are the attorneys representing the Racing Park Development Association, wrote (attached hereto) to the current and previous land owner indicating that they intend to embark on a legal process to challenge the transfer of the said properties from Cape Killarney Property Investments to the Housing Development Agency. Such a challenge would present obstacles to the urgency of the proposed development as consent of the Racing Park Development Owners Association is required in order to construct any buildings on the property.

In light of the outlined challenges, negotiations with the Racing Park Development Owners Association are necessary to give effect to the proposed development.

### **OWNERSHIP OF PROPERTY:**

The property is currently registered in the name of the Housing Development Agency, reserved for the Western Cape Department of Human Settlement for housing purposes. According to the Western Cape Department of Human Settlement, the property, if developed will remain in the ownership and maintenance of the DoHS.

### **EXISTING ZONING OF PROPERTY:**

The property is currently zoned "General Industrial 1", which permits the following uses as primary rights:

"Primary uses are industry, restaurant, service station, motor repair garage, funeral parlour, scrap yard, authority use, utility service, crematorium, rooftop base telecommunication station, freestanding base telecommunication station, transport use,

multiple parking garage, agricultural industry, private road, open space, filming, veterinary practice and additional use rights as listed in paragraph”

The current zoning of the property does not permit the proposed use, hence an application to rezone the property.

**DETAILS OF PROPOSED LAND USE:**

The land development application seeks to rezone the erven from General Industrial 1 to Mixed Use 1, in order to develop subsidised housing accommodation. According to the proposed application, the property will accommodate approximately 1500 medium density residential walk-up blocks of flats, with the possibility of an industrial hive on the land adjacent to the existing industrial properties. Beneficiaries that qualify for a subsidised unit will be accommodated temporarily in the proposed project and later relocated once they have been allocated a subsidised unit.

**EXEMPTION OF PROCEDURAL REQUIREMENTS:**

The proposed declaration relates to the exemption of procedural requirement and the shortening of the time period as provided for in the MBPL and the Land Use Planning Act. The following table outlines the deviations requested by the DoHS 'and the recommended outcomes.

| MPBL /LUPA/POLICY REQUIREMENT | DEVIATION/EXEMPTION/REQUEST BY APPLICANT                                 | RECOMMENDATION BY DEPARTMENT                                                                                                                                                                 |
|-------------------------------|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| N/A                           | 7 days' circulation to internal city departments from date of submission | 14 Days internal circulation from the date of submission is achievable. The urgency of the comments have been raised with the commenting departments during the pre-submission consultation. |
| 30 days (SOP)                 | 14 days for internal departments to provide their comments               |                                                                                                                                                                                              |
| 30 days (SOP)                 | 10-day period for public comments                                        | 10 -day period for public comments is deemed sufficient for the property owners association.                                                                                                 |

|                                                                                                                             |                                                                                       |                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 111 (3) of the MPBL requires that persons to be notified by email must have consented to the method of notification | Exemption to serve notice by email to the Racing Park Development Owners Association. | Exemption of Section 111 (3) to serve notice by email the Racing Park Development Owners Association. The request does not evade advertising, but uses an alternative method of notification. |
| LUPA (section 43) and MPBL (section 81) requires advertising in the media for rezoning                                      | Exemption from advertising in the media.                                              | Due to the broad impact of the project, advertising in the media is recommended with the reduced commenting period of 10 days.                                                                |
| 90 Days                                                                                                                     | Decision Maker report completed within two weeks 14 days of receiving comments        | Decision Maker report to be completed within 10 days of receiving comments                                                                                                                    |
|                                                                                                                             | Decision maker to decide on the application 2 weeks from the date of the report       | This is only achievable for delegated approvals. Should objections be received, the timing of the Municipal Planning Tribunal and /or the Appeal Authority cannot be expedited as requested.  |

Financial Implications

None  Opex  Capex

Capex: New Projects

Capex: Existing projects requiring additional funding

Capex: Existing projects with no additional funding requirements

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Policy and Strategy  Yes  No

Legislative Vetting  Yes  No

Legal Compliance

Staff Implications  Yes  No

Risk Implications  Yes  No

## 5. RECOMMENDATIONS

That, the Executive Mayor: City of Cape Town declare the application for rezoning and consolidation (Case number 70503552) on Erf 35148 and Erven 35163 to 35170 Milnerton to be an urgent housing application in terms of Section 69(1) and exempt certain procedural steps and shortening of timelines in terms of Section 69(3) of the Municipal Planning By-law of 2015 (MPBL), as follows:


1. Internal departmental circulation to be completed 14 days after submission of the application, with a 7-day commenting period.
2. Media advertising commenting period to be reduced to 10 days
3. The commenting period for the Racing Park Development Owners Association to be limited to 10 days.
4. Exemption from Section 111 (3) to serve notice by email to the Racing Park Development Owners Association.
5. The report for decision making to be completed within 10 days after receipt of comments from circulation and advertising.
6. The City negotiates with the Racing Park Development Owners Association with the view to resolve the current dispute.

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### ANNEXURES

|                     |   |                                                                                      |
|---------------------|---|--------------------------------------------------------------------------------------|
| <i>Annexure "A"</i> | - | <i>Request for declaration in terms of Section 69 of the MPBL</i>                    |
| <i>Annexure "B"</i> | - | <i>Proposed Killarney Gardens Human Settlements Project</i>                          |
| <i>Annexure "C"</i> | - | <i>Phase 1 detailed locality plan</i>                                                |
| <i>Annexure "D"</i> | - | <i>Constitution of the Racing Park Development Owners Association</i>                |
| <i>Annexure "E"</i> | - | <i>Correspondence from attorneys representing the Racing Park Development Owners</i> |
| <i>Annexure "F"</i> | - | <i>Sub-Council Recommendation.</i>                                                   |

**FOR FURTHER DETAILS CONTACT**

|                      |                                                                                   |                |            |
|----------------------|-----------------------------------------------------------------------------------|----------------|------------|
| NAME                 | Ngwanamogano Dube                                                                 | CONTACT NUMBER | 0824453237 |
| E-MAIL ADDRESS       | Ngwanamogano.Dube@capetown.gov.za                                                 |                |            |
| DIRECTORATE          | Spatial Planning and Environment                                                  | FILE REF NO    |            |
| SIGNATURE : DIRECTOR |  |                |            |

**EXECUTIVE DIRECTOR**

|             |                                                                      |
|-------------|----------------------------------------------------------------------|
| Osman Asmal | Digitally signed by Osman Asmal<br>Date: 2020.06.03 17:28:59 +02'00' |
|-------------|----------------------------------------------------------------------|

Further negotiations will be led by ED: SPE and MayCo member SPE with the stakeholders in Racing Park  
COMMENTS: Development Association to address the concerns.

**LEGAL COMPLIANCE**

- REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.
- NON-COMPLIANT

NAME

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COMMENT:

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**CITY MANAGER**

- RECOMMENDED IN TERMS OF PART 1: SECTION 10(5) AS AMENDED BY COUNCIL, RESOLUTION C 05/03/20
  
- NOT RECOMMENDED IN TERMS OF PART 1: SECTION 10(5) AS AMENDED BY COUNCIL, RESOLUTION C 05/03/20

COMMENT:

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**EXECUTIVE MAYOR**

- APPROVED IN TERMS OF PART 1: SECTION 10(5) AS AMENDED BY COUNCIL, RESOLUTION C 05/03/20
  
- NOT APPROVED IN TERMS OF PART 1: SECTION 10(5) AS AMENDED BY COUNCIL, RESOLUTION C 05/03/20

COMMENT:

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## **Joan-Mari Holt**

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**Subject:**

DECLARATION OF LAND AND DEVELOPMENT APPLICATION FOR THE REZONING  
AND CONSOLIDATION OF ERF 35148 MILNERTON

The following note is made regarding the legal compliance of the report:

Due to the communicated urgency of the report, our office is not in a position to make a determination on legal compliance.

**Joan-Mari Holt**

Legal Advisor

Office of the City Manager

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**CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD**

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