



DEVELOPMENT MANAGEMENT SCHEME COMPLIANCE ADVISORY: 2 OF 2021

INTERPRETATION OF EXTERNAL WINDOW

1. PURPOSE OF ADVISORY

The purpose of this advisory is to indicate the departmental way forward in the interpretation of “external window” in terms of the Development Management Scheme (DMS), as a result of the following recent High Court judgement: **“CAMPS BAY & CLIFTON RATEPAYERS ASSOCIATION AND OTHERS V AL KHALIFA FAMILY TRUST AND ANOTHER CASE NO 11265/19: WESTERN CAPE HIGH COURT”**.

This advisory follows on Departmental Staff Circular 11 of 2021 on the same matter.

2. INTERPRETATION OF EXTERNAL WINDOW

2.1. BACKGROUND

The above-mentioned court ruling contains a new interpretation of “external window”, which affects the interpretation of Item 22(e) of the DMS.

2.1.1. Item 22(e) of the DMS reads as follow:

“(e) Window and door placement

Any portion of a building which contains an external window or door facing onto a common boundary shall:

(i) be set back a distance of at least 1,5 m away from such boundary; and

(ii) the portion of building to be set back from the boundary shall include the door or window, together with such additional length of wall as is required to make up a total minimum length of 3 m.”.

2.1.2. An extract of the interpretation of “external window” as per the court ruling is provided below:

"The ordinary meaning of 'window' is an opening in a wall to admit light or air and to allow occupants to see out. Although the opening usually incorporates fixed or moving glass panels, this is not an essential feature of a window. In the context of item 22 (e), the obvious purpose is to limit the intrusion into neighbour's privacy. In my view, therefore, the boundary walls of the balconies contain "external windows" facing onto the common boundary."

2.2. CITY INTERPRETATION OF EXTERNAL WINDOW MOVING FORWARD

2.2.1. For a dwelling house, a second dwelling or third dwelling (or any other permitted building) in Single Residential Zoning 1: Conventional Housing (SR1) and a dwelling house and second dwelling in General Residential subzonings (GR2, GR3, GR4, GR5 & GR6), the following scenarios **will be subject to** compliance with Item 22(e) of the DMS:

2.2.1.1. Any framed opening in an external wall of a structure, inclusive of a balcony, facing onto a common boundary, containing fixed or movable glass or any other permeable material which allows clear visibility;

2.2.1.2. Any framed opening in an external wall of a structure, inclusive of a balcony, facing onto a common boundary, not containing fixed or movable glass or any other permeable material (therefore an 'empty' opening);

2.2.1.3. Any opening in an external wall adjacent to a trafficable area facing onto a common boundary;

2.2.2. For a dwelling house, a second dwelling or third dwelling (or any other permitted building) in Single Residential Zoning 1: Conventional Housing (SR1) and a dwelling house and second dwelling in General Residential subzonings (GR2, GR3, GR4, GR5 & GR6), the following scenarios **are not subject to** compliance with Item 22(e) of the DMS:

2.2.2.1. Any framed opening in an external wall of a structure facing onto a common boundary solely provided as an architectural feature and to which any area adjacent is not trafficable;

2.2.2.2. Openings in boundary walls, when the boundary wall is intended as per the definition of a 'boundary wall' in the DMS.

INTERPRETATION OF EXTERNAL WINDOW

- 2.2.3. Any other interpretation of an “external window” for the purposes of determining a setback line will also be subject to this directive.



PLEASE NOTE

Always consult the City of Cape Town Municipal Planning By-law, 2015 (as amended), before any land use application is submitted to the Department.