

M Recategorisation and the definition of “objections”

- M1 Section 15(2) of the Stellenbosch Land Use Planning By-Law of 2015 (LUPB) sets out the different types (categories) of applications starting with 15(2)(a) rezoning for which LU/13953 is applying.
- M2 In terms of sections 68 and 69 of the Stellenbosch Municipality Land Use By-Law (LUPB) and section 35 of SPLUMA, a LUPB section 15 application may be decided by either an authorised employee or by the Municipal Planning Tribunal. Section 69 of the LUPB also specifies that land use applications must be decided according to a categorisation system approved by Council.
- M3 Determining whether a particular application is heard by the MPT or handled administratively is of course very important, because the MPT is an independent body while administrative officials are employees.
- M4 At its meeting of 26 July 2017, Council approved an amendment to the existing 2015 categorisation; this is shown in Appendix L. The full 2017 categorisation appears in Appendix K. In brief, the categories are

Category 1 applications

In terms of Table 1 of the 2017-07-26 Council resolution, Category 1 applications must be adjudicated by the MPT, **but only if objections are lodged**, where “objections” now presumably refers to the new 2017 definition. Where no such objections are received, the matter is handled administratively and not by the MPT.

Category 1 applications include

- **rezoning** in terms of section 15(2)(a) of the LUPB,
- **permanent and temporary departures** as per s15(2)(b) and s15(2)(c),
- **subdivision** as per s15(2)(d),
- **consolidation** as per s15(2)(e), and
- **changes in restrictive conditions** as per s15(2)(f).

Category 2 applications

As per Table 1 in Appendix K, Category 2 applications are delegated automatically for administrative decisionmaking by a planning official. These include

- any **amendment, deletion or imposition of conditions** in terms of an existing approval as per s15(2)(h),
- any **amendment** or cancellation of an approved **subdivision plan** as per s15(2)(k), and
- a **determination of zoning** as per s15(2)(m).

- M5 The Stellenbosch categorisation scheme shown in Appendix K is remarkable because it sets up **objections** as a criterion: if no objections are received to a particular application, the matter is not passed to the MPT; if there are objections, the matter goes to the MPT. Therefore, the definition of what constitutes an “objection” and the possibility of lodging one become a central issue.
- M6 If a particular application is never made public, then objections are per definitions impossible. This is why section 241(5)(b) of the Integrated Zoning Scheme By-Law is quite problematic.
- M7 **2015 definition of “substantive objections”**

The original categorisation scheme approved by Council on 2015-05-27 used and defined “substantive objections”; Item 8.6(h) of that Council Meeting’s minutes below is quite complicated (see also Appendix L):

2015 Council resolution:

(h) that the following definition be used for “substantive objection”:

Substantive objections are defined by one or more of the following:

- (i) likelihood of direct loss of property, land use rights or significant property value of the objector(s) directly affected by the application in question;
- (ii) evidence that the proposed land development activity is in conflict with all or most of the guidelines, principles, prerequisites, and standards contained in the IDP, applicable SDF, relevant by-laws and related approved policies;
- (iii) evidence is presented which demonstrates that the proposed land development activity or alteration has a potential for significant adverse impacts on one or more of the following descriptors of the environment:
 - ecological functioning;
 - permanent nuisance and/or disturbance with effects on health and well-being of surrounding residents, occupants or property owners;
 - post construction traffic patterns;
 - areas of historic and/or archaeological significance;
 - scenic and/or recreation values; (6) post construction infrastructure services provision.

M8 The resolution passed by Council on 2017-06-27 as shown in Appendix K below abrogated subitems (g) and the above subitem (h) of the 2015-05-27 resolution, so that “substantive objections” were no longer defined. In its stead, the 2017-06-27 resolution replaced these subitems (g) and (h) of 2015 with Table 1 shown in Appendix K. Below that table, the Council resolution of 2017-06-27 implicitly redefined “objections” in ambiguous and vague language:

2017 Council resolution:

“OBJECTIONS” above refer only to submissions indicating objection to the proposed development / activity and not comment submitted with proposed conditions and mitigation measures.

which seems to mean that only such IAP submissions which explicitly reject a development proposal **as a whole** are now deemed to be “objections”, and that all other submissions are invalid.

M9 Is this disqualification of IAP submissions intentional? This interpretation is supported by two facts: Firstly, the last paragraph on Page 513 of the Agenda of the 2017-07-26 Council Meeting refers to “repeated objections” as motivating the proposed changes in the categorisation scheme. We quote from the Council Item 7.3.3 of 2017-7-26:

In view of the nature of applications in the municipal area **and the repeated objections by members of the public**, the administration proposes that Council amend the existing categorisation . . .

Secondly, there is no difference in the categories between 2015 and 2017, so that the new 2017 resolution seems unnecessary unless the intention was to change the definition of “objections”.