



# TOWARDS A NEW LAND USE MANAGEMENT SYSTEM FOR THE NELSON MANDELA METROPOLITAN MUNICIPALITY

COMPONENT 1 : ANALYSIS & POLICY DIRECTIVES

PHASES 1, 2 & 3 OUTCOMES REPORT

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# Executive Summary

## 1.0 INTRODUCTION

### 1.1 INTRODUCTION

Drafting of a New Land Use Management System (LUMS) for the Nelson Mandela Metropolitan Municipality, which should include as a minimum requirement a single zoning scheme for the Metro's area of jurisdiction, has been identified as a priority project in the Metro's 2003/4 Integrated Development Plan (IDP).

### 1.2 PROBLEM STATEMENT

With the amalgamation of the Rural Areas, Uitenhage, Despatch and Port Elizabeth, in 2000, the Nelson Mandela Metropolitan Municipality inherited twelve (12) different sets of zoning schemes. These zoning schemes are currently administered and implemented by the Municipality and in some cases delegation vests with the Department of Housing, Local Government and Traditional Affairs. These zoning schemes, some dating back to 1961, were prepared and promulgated in terms of various sets of legislation, i.e. the Land Use Planning Ordinance and the regulations promulgated in terms of the Black Communities Development Act.

In many respects, these existing zoning schemes are inappropriate and outdated and therefore do not respond to current and identified future land development and conservation needs.

The White Paper on Spatial Planning and Land Use Management clearly summarises shortfalls relating to land use planning and management in general:

- **Disparate Land Use Management Systems in Former "Race Zones"**
- **Old and outdated Land Use Management**
- **Time delays**
- **Control versus Facilitation**
- **Enforcement**

### 1.3 PROJECT OBJECTIVE

**To formulate and implement a comprehensive Land Use Management System for the Nelson Mandela Metropolitan Municipality, which would include as a minimum requirement a single set of zoning scheme regulations, which would include a single uniform map and register system.**

- Every Municipality should have an indicative Plan showing desired patterns of land use, directions of growth, urban edges, special development areas and conservation worthy areas as well as a Scheme recording the land use and development rights and restrictions applicable to each erf in the Municipality.
- Complementary and additional to the Spatial Development Framework, the Municipality must have a Land Use Management System and that system must include at least a scheme recording the rights and restrictions applicable to erven within the Municipal area.

A core component of a Land Use Management System would further include mechanisms and strategies to provide and create linkages between the Land Use Management System and the Spatial Development Framework. Clear policies with respect to LUMS/SDF linkages are essential building blocks towards the management of land within the Metro.

## 1.4 METHODOLOGY AND REPORT STRUCTURE

Based on the problem statement and project objectives as outlined, unique nature and scale of preparing, finalising and implementation of a Land Use Management System for the Nelson Mandela Metro, an incremental or phased approach has been adopted by Council. The project methodology comprises 2 components and 5 phases:

### → **Component 1 : Analysis and Policy Directives**

- *Phase 1 : Project Initiation*
- *Phase 2 : Analysis*
- *Phase 3 : Policy Framework*

### → **Component 2 : Land Use Management System components, including an Integrated Zoning Scheme**

- *Phase 4 : Draft Integrated Zoning Scheme and Land Use Management System components*
- *Phase 5 : Statuary Approval*

This report represents the outcome of **Component 1 : Analysis and Policy Directives** which represents Phases 1, 2 and 3.

## 2.0 LEGISLATIVE AND POLICY DIRECTIVES (NATIONAL/PROVINCIAL)

The legislative and policy environment with respect to Land Use Management has significantly changed over the last ten years. Specific reference is made to the new Constitution and new Local Government legislation. With respect to Planning, Land Use Management and Land Management, a number of directives and initiatives are in place that informs the drafting of New Land Use Management Systems within the Local Government sphere. Specific reference is made to the Development Facilitation Act, the Green Paper and the subsequent White Paper on Spatial Planning and Land Use Management.

### 2.1 WHITE PAPER ON SPATIAL PLANNING AND LAND USE MANAGEMENT (JULY 2001)

The White Paper forms a substantial base and guideline policy for drafting Land Use Management Systems, not only at Local Authority level but also with respect to the national norm and direction.

The White Paper outlines:

- Principles**
- Land Use Regulators**
- IDP-Based Local Spatial Planning**
- A Uniform Set of Procedures for Land Development Approvals**
- National Spatial Planning Frameworks**

An important component of the White Paper is the refinement and further introduction of principles and norms for land use management.

The overall aim of the principles and norms is to achieve planning outcomes that:

- *Restructure spatial inefficient settlements*
- *Promote the sustainable use of the land resources in the country*
- *Channel resources to areas of greatest need and development potential*

- *Take into account the fiscal institution and administrative capacity of role players, the needs of communities and their environment*
- *Stimulate economic development opportunities in rural and urban areas*
- *Support and equitable protection of rights to and in land*
- *Promote accountable spatial planning, land use management and land development decision making by organs of state*
- *Promote co-operative Governance and wider information sharing in plan making and implementation*
- *Promote maximum openness and transparency in decision making*

The Constitution, Development Facilitation Act, Municipal Systems Act, White Paper on Planning and Development and proposed Land Use Management Bill provide the basis for formulating and drafting a New Land Use Management System for the Metro. The normative approach, with specific reference to the DFA, White Paper and Land Use Management Bill is noted and the content of the principles and norms should inform and strongly guide Land Use Management work to be done in the Metro.

The Pro-active initiative to start with the drafting of an Integrated Zoning Scheme and Land Use Management components within the guidelines of the White Paper and the Land Use Management Bill, is done in anticipation of this new planning realm.

### **3.0 NMMM LAND USE MANAGEMENT SYSTEM STATUS QUO**

#### **3.1 INTRODUCTION**

Zoning schemes and some land use management components within the Metro are mainly geographically based and inherited from the pre-1994 era. Twelve zoning schemes are currently implemented and utilised by the Metro in different areas and geographical locations. Each of these schemes are characterised by significantly different sets of land use categories, zones, development parameters, definitions, zoning schemes formats and relevance with respect to the areas that they serve.

#### **3.2 COMPARATIVE ZONE ANALYSIS**

Proper understanding and analysis of the existing scheme regulations within the Metro necessitates a comparative analysis of the various scheme regulations, with specific reference to and emphasis on the various use zones, primary uses and consent uses. Permissible uses within each scheme area and their subsequent primary uses and consent uses/secondary uses are reflected in table format. Refer to the attached Annexure B.

The table group the various zonings into broad development categories. This provides an easy reference framework for future work to be done on amalgamating the various schemes. The land use categories are:

- *Agriculture and Rural*
- *Low-Density Residential (Single)*
- *Medium and High-Density Residential*
- *Informal Residential*
- *Business / Commercial*
- *Industrial*
- *Community and Municipal Services*
- *Open Space, Resort and Nature*
- *Transport*
- *Other & Undetermined*

#### **3.3 INSTITUTIONAL STATUS QUO**

Difficulties with respect to the institutional capacity and ultimately the implementation of the existing Land Use Management System in the Metro are the result of:

- Amalgamation of four different administrations within a vast geographical area
- Diverse Land Use Management requirements and urban structure
- Different systems and system formats with respect to zoning administration
- Lack of personnel and capacity
- Absence of definite and new generation guiding land use management legislation
- Strong urban and rural components

These influencing factors together with the lack of capacity and understaffing within the various sectors relating to land use management, are further affecting implementation.

### 3.4 SUMMARY AND RECOMMENDATIONS

It is recommended that the approach towards drafting an integrated scheme for the Metro should be based on new policy and legislative directives (Post-1994). However, the existing schemes and Land Use Management System provide valuable background and base material for the amalgamation and amendment of these schemes. The positive components and aspects within the existing scheme should be used to prepare a new and holistic integrated zoning scheme for the Metro. It would not be wise and practical to disregard existing schemes and commence with a “*from scratch*” scheme regulation drafting process.

## 4.0 TOWARDS A NEW LUMS FOR THE NMMM

### 4.1 INTRODUCTION

In addition to the National Legislative and Policy Directives and NMMM LUMS status quo, a number of alternatives and options should be explored as part of the new Land Use Management System draft in process.

### 4.2 LAND USE MANAGEMENT SYSTEM APPROACH AND ALTERNATIVES

Based on the notion of developmental local government and the new paradigm shift towards a flexible approach to zoning, which should be management and development orientated rather than control orientated, a number of approaches and options should be considered. These alternatives with respect to Land Use Management, and in particular drafting a New Integrated Zoning Scheme, should be carefully evaluated and considered for implementation.

#### → The role of zoning in relation to other planning tools

Zoning is widely used as a town planning tool in South Africa and other countries. In South Africa, zoning has particular significance because it is the means for allocating development rights to land. Zoning issues have therefore become important to property developers, financial institutions, home owners, environmentalist and local Councillors. However, it is important to recognise that zoning is just one of a number of tools that can be used and should be used to manage development.

#### → Zoning Perspectives

Whatever system of development control is used, there are a number of issues that normally emerge and the way these are addressed often depends on the particular perspective. These issues can broadly be divided into three categories:

- Regulatory *versus* Discretionary Control
- Public Action *versus* Private Interest
- Certainty *versus* Flexibility

#### → Alternative Zoning Approaches

A wide range of alternative zoning techniques have been implemented worldwide. However, for the purpose of this report and as a basis for a New Land Use Management System in the Metro, a broad overview of some of these techniques are presented.

- Incentive Zoning
- Planned Unit Development (PUD)
- Overlay Zones or Special Districts
- Performance Zoning

**The importance of these techniques are the underlying principle of flexibility and development facilitation. These techniques should not necessarily be implemented as free standing inclusions in the scheme, but should rather be moulded to find a unique method of assisting and stimulating economic growth in the Metro.**

### 4.3 SCALE AND DETAIL

Based on the objectives for a New Land Use Management System, the status quo analysis and policy directives, a number of recommendations can now be made with respect to scale and inclusiveness of a New Integrated Zoning Scheme.

#### → Minimum requirements

- A set of land use zones to accommodate existing and possible future development scenarios.
- Primary land uses permissible on each of the land use zones with the possibility of secondary uses or consent uses within each zone.
- A standard set of definitions for all primary uses, secondary uses and consent uses. Definitions should further be included for matters that need to be further explained.
- Development parameters with respect to densities, coverage, height, floor area ratio and parking.
- Directives with respect to scheme implementation, procedure, delegation and other matters incidental to the Integrated Zoning Scheme and part of the Land Use Management System.

#### → Incidental Matters for inclusion

- A general overview of zoning, the decision making framework, components of the scheme and responsibilities of owners, council and the public.
- Provisions with respect to alternative zoning approaches (i.e. special zones, overlay zones, mixed use areas, etc), integration of zoning scheme with the Integrated Development Plan and Spatial Development Framework.
- Matters relating to procedures, including application procedures, basis for consideration, evaluation for applications, resolutions, enforcement and advertisement.
- Zoning administration
- New scheme implementation and transitional arrangements

#### → Scheme Regulation Format

**The Integrated Zoning Scheme for the Metro would most probably represent a combination of the inclusive and exclusive options. However, the inclusive zoning scheme format tends to be more practical with ease of cross-referencing. Again the drafting process will strongly guide and dictate the end product.**

**It is recommended that the main motive with respect to document format should be to minimise number of pages and improve reference abilities. The use of tables and matrixes should be encourage and cross referencing should be minimised.**

### 4.4 LUMS OBJECTIVES AND POLICY DIRECTIVES

The objectives for a New Land Use Management System for the NMMM should be based on the National directives with specific reference to the White Paper and the Land Use Management Bill. Other legislative guidelines, but not limited to, include the Development Facilitation Act, the Municipal Systems Act and ultimately the Constitution. However, objectives with respect to the Nelson Mandela Metropolitan Municipality and its unique situation should be formulated using these National policy and legislative directives as a guideline.

Drafting and implementation of a New Land Use Management System for the Nelson Mandela Metropolitan Municipality should be based on the following objectives and policy directives:

- **To facilitate and guide development in a pro-active manner**
- **To integrate the existing fragmented Land Use Management System**  
**To promote public participation, capacitation and the protection of public and private interest**
- **To ensure and promote the protection of the natural and built environment**
- **To provide for delegation and decentralisation of power**
- **To promote the principles of efficiency, integration and sustainability**  
**To draft a user friendly, simplified and implementable Land Use Management System**
- **To formulate measures for implementation, enforcement and management**

## **5.0 RECOMMENDATIONS**

The recommendations made deal with the recommended approach on the way forward and a proposed project programme for drafting the Land Use Management System. It is noted that this document is a working document and recommendations and proposals should be confirmed and supported by the relevant roleplayers, including Council.

The scale of the project and various practicalities necessitate that final implementation of a New Land Use Management System might take considerable time to complete and implement. Therefore, interim measures should be investigated to deal with matters of urgency. It might be necessary to make small and minor amendments to existing schemes prior to finalisation and drafting of an integrated scheme for the Metro.

It is strongly recommended that the Metro adopt an incremental approach based on prioritisation when embarking on a LUMS drafting process.

It is recommended that the following components of the Land Use Management System be prioritised for drafting and implementation :

- **Revision and integration of existing twelve zoning schemes**
- **Revision of zoning maps in line with revised zoning schemes**
- **Establishment of a registry and recording system**
- **Transition arrangements and institutional implementation strategies**
- **Drafting of prioritised land use management components**

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## 1.0 INTRODUCTION

### 1.1 Introduction

Drafting of a New Land Use Management System (LUMS) for the Nelson Mandela Metropolitan Municipality, which should include as a minimum requirement a single zoning scheme for the Metro's area of jurisdiction, has been identified as a priority project in the Metro's 2003/4 Integrated Development Plan (IDP). Subsequently, the Mayoral Committee resolved on 4 December 2003, that Urban Dynamics proceed with the project as outlined in the document *"Towards a Land Use Management System for the Nelson Mandela Metropolitan Municipality : Project Proposal for Discussion Purposes (Third Draft : December 2003)"*.

This report is therefore a direct response to the initiation of the New LUMS project for the NMMM.

Based on this initiative and various input from relevant internal stakeholders, the broad terms of reference pertaining to the drafting of a New Land Use Management System for the Nelson Mandela Metropolitan Municipality are as follows:

- **Drafting of a Land Use Management System for the Metro, which includes as a minimum requirement a Single Zoning Scheme for the Metro's area of jurisdiction.**
- **The preparation of a Single Zoning Scheme would include the amalgamation of the existing twelve (12) different sets of zoning regulations currently applicable in the Metro.**
- **Alignment of the New Zoning Scheme with a proposed Land Use Management Bill.**
- **Identification of Land Use Management aspects to be compiled in addition to a Single Zoning Scheme for the Metro.**
- **Management of all administrative and secretarial functions relevant to the project (this process to be overseen by a project task team).**
- **Facilitation of a formal approval of the Integrated Zoning Scheme in terms of the relevant legislation.**

The long term project objective is to draft a single zoning scheme for the Nelson Mandela Metropolitan Municipality and implement a comprehensive Land Use Management System.

## 1.2 Problem Statement

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With the amalgamation of the Rural Areas, Uitenhage, Despatch and Port Elizabeth, in 2000, the Nelson Mandela Metropolitan Municipality inherited twelve (12) different sets of zoning schemes. These zoning schemes are currently administered and implemented by the Municipality and in some cases delegation vests with the Department of Housing, Local Government and Traditional Affairs. These zoning schemes, some dating back to 1961, were prepared and promulgated in terms of various sets of legislation, i.e. the Land Use Planning Ordinance and the regulations promulgated in terms of the Black Communities Development Act.

In many respects, these existing zoning schemes are inappropriate and outdated and therefore do not respond to current and identified future land development and conservation needs.

As a result, the existing schemes are often either not aligned with, supportive of or applicable to the various legislative requirements, strategic policies, Integrated Development Plan, Spatial Development Framework and Structure Plans administered in the Greater Nelson Mandela Metropolitan area.

Consequently, the number of applications for land use change (rezonings, consent uses and departures) have increased, resulting in administrative inefficiencies and ineffective resource utilisation. In addition to this, private sector initiatives and investments are also being hampered as a result of old, outdated and administratively cumbersome regulations.

There is therefore an urgent need to address the range of problems associated with the management and implementation of this old and outdated Land Use Management System.

The amalgamation of the four (4) Local Councils into a single administrative entity has further compounded this situation. It is clear that ongoing management of twelve different and often inappropriate zoning schemes within a single city structure is neither desirable nor sustainable. Restructuring and formation of the Nelson Mandela Metropolitan Municipality also necessitate the integration alignment of the different zoning schemes, and the need for uniformity with regard to matters of common interest. Specific reference is made to Land Use Management and Land Use Facilitation.

In addition to problems experienced with the existing zoning schemes in the former administrative areas, various land use management components are implemented within different systems and geographical areas within the Metro. These components refer to specific policies, work methods, institutional arrangements and recording systems dealing with Land Use Management aspects. In some cases, different policies and application procedures apply in different geographical areas within the Metro.

Further to and enhancing the need to revise the current Land Use Management System, including a single set of zoning regulations, is the promulgation of new generation legislation with specific reference to the Municipal Systems Act, Development Facilitation Act, the Constitution and the White Paper on Spatial Planning and Land Use Management. These legislative requirements have placed further pressure on the need to review these divergent schemes in an integrated and holistic manner. It further places the responsibility on Local Authorities to prepare, adopt and implement a new Land Use Management System Developmental Local Government as the objective.

The diversity and complexity with respect to Land Use Management in the NMMM is not unique. The scenario prevails throughout South Africa with similar or generic problems and shortfalls. The White Paper on Spatial Planning and Land Use Management clearly summarises these problems and shortfalls relating to land use planning and management in general:

- **Disparate Land Use Management Systems in Former “Race Zones”**

The NMMM is responsible for the administration of a range of different regulatory systems for managing land use. This means that different procedures have to be followed by applicants, officials and decision makers. Furthermore, different standards have to be met and different opportunities are available to members of the public, developers and residents affected by proposed developments. It also greatly increases the administrative burden and contributes to lengthy time periods for applications to be processed. As an example, different regulations and procedures will apply if the same application is submitted in the Metro’s rural area, CBD area or in the townships.

- **Old and outdated Land Use Management**

Most of the scheme regulations, land use management policies and procedures currently implemented in the Metro are 15 years and older. By implication, this means that these scheme regulations are outdated and not considerate of newly prepared policy plans i.e. Integrated Development Plan and Spatial Development Framework. These outdated regulations further complicate demand for new approaches to land use management and land utilisation.

- **Time delays**

Complexity of existing schemes and the fact that a large number of different regulations are implemented within one administrative area, i.e. NMMM, result in lengthy approval procedures and in some geographical areas lack of delegated authority on behalf of the Metro to approve applications within its own area of jurisdiction (areas promulgated in terms of the former Black Communities Development Act).

- **Control versus Facilitation**

The paradigm shift in Local Government towards developmental Local Government and development facilitation rather than development control, further highlights the need to relook at the current scheme regulations and Land Use Management Systems implemented by the Municipality. The existing zoning schemes are mostly regarded as instruments of control, designed to restrict land development rather than to promote, support and facilitate development. The design and implementation of a new comprehensive Land Use Management System should change the emphasis from control to development management and facilitation.

## ▪ Enforcement

Although existing scheme regulations and planning legislation make provision for enforcement of illegal and non-conforming uses, these are not implemented consistently. A New Land Use Management System should place emphasis on implementation, facilitation and management, which includes enforcement of land use.

Shortfalls with respect to the existing Land Use Management System, and with specific reference to the existing zoning schemes in the Nelson Mandela Metropolitan Municipality, are further highlighted and addressed in paragraph 3 of this report.

## 1.3 Project Objective

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Based on the problem statement as outlined in paragraph 1.2, the terms of reference for this project and subsequently the project objectives have been formulated. Ultimately, the project objective would be :

**To formulate and implement a comprehensive Land Use Management System for the Nelson Mandela Metropolitan Municipality, which would include as a minimum requirement a single set of zoning scheme regulations, which would include a single uniform map and register system.**

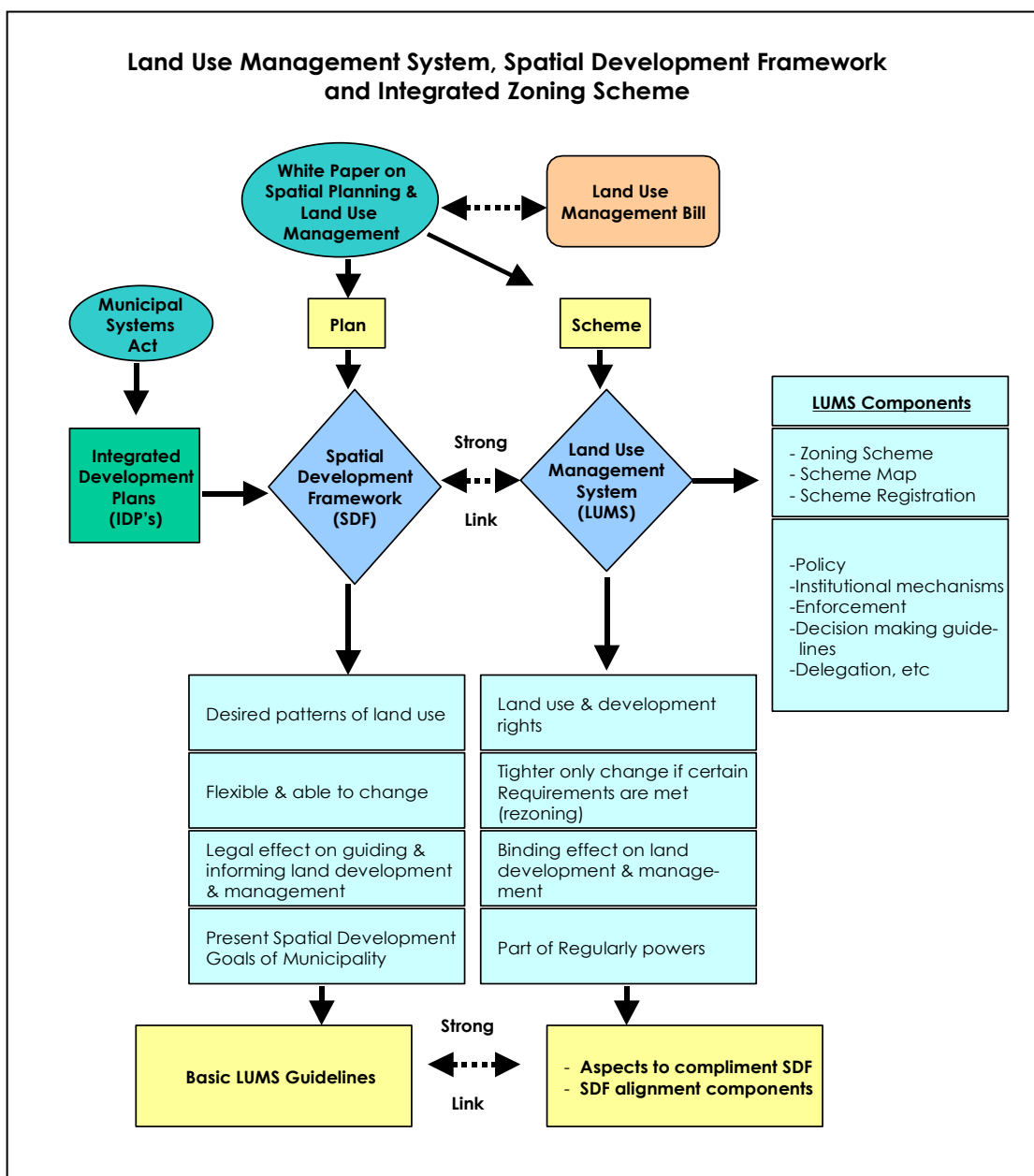
Achieving this objective and addressing the problem statement, needs a holistic and incremental approach to the challenges at hand. It is evident from the previous paragraphs that the unique nature of this project requires an approach that will ultimately achieve the project objectives. The project methodology and project process are outlined in paragraph 1.4.

Importantly, the project objectives and problem statement should be put in perspective with respect to National policy regarding Land Use Management as a broad principle. It is further important to conceptualise and define the principles associated with this project and in particular the NMMM's Land Use Management System and Spatial Development Framework. Philosophy and guidance with respect to spatial planning and land use management have been guided by the Green Paper on Planning and Development and subsequently the White Paper on Spatial Planning and Land Use Management since 1998. The White Paper on Spatial Planning and Land Use Management (The White Paper) is the result of considerable work within the ministry of Land Affairs, taking into account both the comments submitted on the Green Paper on planning and development as well as intervening new legislation, notably the Municipal Systems Act.

**1.3.1 Land Use Management System (LUMS) and Spatial Development Framework (SDF)**

Based on previous paragraphs it is noted and of importance that the Land Use Management System and its relationship and interaction with the Spatial Development Framework, be put into perspective. The terminology adopted for the purpose of this project, should be consistent with National Guidelines, in particular the White Paper on Spatial Planning and Land Use Management.

The diagram graphically present the relationship and interaction between the Spatial Development Framework, Land Use Management System and its components.



Noting that the main aim of the White Paper is to replace the Development Facilitation Act and put in place a comprehensive and uniform system of planning and Land Use Management in South Africa, the following guidelines and objectives from the White Paper are used as directives to the New Land Use Management System project for the Metro:

- Every Municipality should have an indicative Plan showing desired patterns of land use, directions of growth, urban edges, special development areas and conservation worthy areas as well as a Scheme recording the land use and development rights and restrictions applicable to each erf in the Municipality.

The Plan should be flexible and able to change to reflect changing priorities of the Municipality, whereas the Scheme should be tighter and only amended where required for a particular development and where certain other requirements are met, with the most important of these requirements being conformity with the Plan. The Plan should thus influence the contents of the scheme as and when required, rather than act as the director of rights and controls itself.

- There must be a strong link between both the Plan and the Scheme and the Municipality's budget and capital expenditure framework. On the one hand the budget will report the Municipality's income and expenditure and on the other the capital expenditure framework will indicate planned spending on infrastructure and services.
- Taking into account the above, the White Paper goes further by laying down underlying principles that is built on the terminology in Section 26 of the Municipal Systems Act. The term Spatial Development Framework is used for the indicative Plan and Land Use Management System (LUMS) for the Scheme. The former has the legal effect of guiding and informing land development and management and the latter has a binding effect on land development and management.
- Every Municipality has to compile a Spatial Development Framework for the area of the Municipality. The Spatial Development Framework has as its main components policy for land use and development, guidelines for Land Use Management, Capital Expenditure Framework and a Strategic Environmental Assessment. The Spatial Development Framework guides and informs all decisions of the Municipality relating to use, development and planning of land. The Spatial Development Framework must further guide and inform directions of growth, major movement routes, special development areas, conservation of both built and natural environment, areas in which particular types of land use should be encouraged and discouraged and areas in which the intensity of land development could be either increased or reduced. The primary purpose of the Spatial Development Framework is therefore to represent the spatial development goals of a Local Authority.

- Complementary and additional to the Spatial Development Framework, the Municipality must have a Land Use Management System and that system must include at least a scheme recording the rights and restrictions applicable to erven within the Municipal area. Any land development that exceeds these rights and restrictions will require the consent of the relevant Municipality. The rights and restrictions must relate at least to land use, floor area ratio and building height. The Scheme shall consist of a map and a set of regulations. The scheme is a key part of the Municipality's regulatory powers and must therefore be formalised as a by-law of the Municipality.
  
- The Scheme is an instrument that can either be a very complex and detailed document accommodating a wide range of different land uses and relative strong institutional capacity of the Metropolitan Municipality or a much simpler document suited to the needs and capacity of smaller and Local and District Municipalities in rural areas.
  
- The way in which the Spatial Development Framework and the Scheme relate to individual land development or land use applications will depend on whether or not the proposed change is consistent with the Spatial Development Framework and, where the Spatial Development Framework is silent, on the applicable National Principles and norms.

**It is clear from the White Paper input that the two components, namely the Spatial Development Framework and the Land Use Management System have distinctive roles to play within the Local Government development sphere. It is further noted that the Scheme or Scheme Regulations is regarded as a minimum requirement of the Land Use Management System. The Land Use Management System will therefore have as one of its components an Integrated Zoning Scheme.**

### **5.1.1            *Land Use Management System and The Integrated Zoning Scheme (IZS)***

Refer to paragraph 1.3.1 and flow diagram outlining the interaction between the various components, i.e. SDF, LUMS and Integrated Zoning Scheme (IZS)

#### **→ Integrated Zoning Scheme**

The preparation of an Integrated Zoning Scheme would comprise the amendment of existing zoning regulations by compiling new definitions, zoning categories, primary uses, development parameters, land use categories etc.

An Integrated Zoning Scheme project would therefore have as a final result a single and combined set of zoning regulations. The zoning scheme would include a zoning map, a register of departures from the zoning scheme as well as regulations itself. The Integrated Zoning Scheme process would include the amalgamation of the existing 12 schemes applicable to the Metro and at the same time update and adapt the scheme to fit in with the current needs of the Metro's population and National Policy Directives.

#### → **Land Use Management System (LUMS)**

The formulation and implementation of a comprehensive Land Use Management System for the Metro would include and have as one of its components an Integrated Zoning Scheme. A LUMS therefore goes further by including a wide range of management tools. This can include, but not be limited to, building plan approval systems, zoning conditions, enforcement, by-laws, etc. The primary objective of a Land Use Management System is to transform the planning system within the Nelson Mandela Metro and to make it simple, equitable and consistent. The current planning system is complex and often unfair and inconsistent.

A core component of a Land Use Management System would further include mechanisms and strategies to provide and create linkages between the Land Use Management System and the Spatial Development Framework. Clear policies with respect to LUMS/SDF linkages are essential building blocks towards the management of land within the Metro.

The Land Use Management System will eventually refine all existing planning tools so that they work together as an integrated system. The system is more than just a zoning scheme and should focus on a number of inter-related components. Components can include, in addition to a Integrated Zoning Scheme, general principles with respect to wide range of land development and management aspects, streamlining procedures, decision making guidelines, delegation systems, institutional mechanisms, enforcement, etc.

**It is evident that a comprehensive Land Use Management System as contemplated in the White Paper, can and should include the full spectrum of land management mechanisms. This system should function with the Spatial Development Framework to create a conducive environment for positive development. The Metro will implement a comprehensive Land Use Management System as the ultimate and final objective. However, the revision and integration of the zoning scheme should be prioritised as the first step in implementing a New Land Use Management System. The process should therefore be incremental and phased.**



## 5.2 Methodology and Report Structure

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Based on the problem statement and project objectives as outlined, unique nature and scale of preparing, finalising and implementation of a Land Use Management System for the Nelson Mandela Metro, an incremental or phased approach has been adopted by Council. The project methodology comprises 2 components and 5 phases:

→ **Component 1 : Analysis and Policy Directives**

- Phase 1 : Project Initiation
- Phase 2 : Analysis
- Phase 3 : Policy Framework

→ **Component 2 : Land Use Management System components, including an Integrated Zoning Scheme**

- Phase 4 : Draft Integrated Zoning Scheme and Land Use Management System components
- Phase 5 : Statuary Approval

This approach will ensure a more comprehensive and structured project approach that would clearly define the objectives, milestones and possible challenges.

This report represents the outcome of **Component 1 : Analysis and Policy Directives** which represents Phases 1, 2 and 3.

The following tables outlines the tasks and sub-tasks for each of the project phases. These tables represent the methodological approach and not necessarily deliverables as contained in this report.

### 1.4.1 Methodology

#### □ Phase 1 : Project Initiation

- Finalise detailed project programme, time frames and milestones for Phases 1, 2 & 3
- Finalise Working Group participation, structure and composition
- Capacitation and awareness programme for Officials and internal structures

Phase 1 : Project Initiation			
Tasks		Sub-Tasks	
1	Finalise Terms of Reference	1.1	Appoint service provider (UD)
		1.2	Compile detailed project programme, timeframes & milestones for Phases 1,2 & 3
2	Establish Institutional Structure	2.1	Finalize WG composition & roles & responsibilities
		2.2	Identify other role players to partake in Phase 1, 2 & 3
3	Capacity Building & Awareness (Internal)	3.1	Capacitation of Metro Officials & structures on project purpose & outcomes
		3.2	Capacity building & awareness workshop (Officials & internal structure)

#### □ Phase 2 : Analysis

- Detailed report on status quo with respect to Land Use Management and base map within the Nelson Mandela Metropolitan area
- Internal stakeholder awareness and participation process
- Technical feedback from relevant role players on lessons learnt, proposals and current shortfalls
- Detailed analysis report documenting outcome of tasks and sub-tasks

Phase 2 : Analysis			
Tasks		Sub-Tasks	
4	Land Use Management Analysis	4.1	Compile database on existing Land Use Management Tools, i.e. policies, guidelines & regulations
		4.2	Report on status of existing Land Use Management Schemes (Map scheme areas)
		4.3	Report on existing Land Use Management Institutional Structure
		4.4	Report on existing scheme regulations with respect to content & key features, i.e. zoning categories, development parameters, etc
5	Base-Map Analysis	5.1	Analysis of existing zoning map with respect to availability and coverage
		5.2	Identify areas not part of existing & approved zoning schemes
		5.3	Confirmation of existence of scheme registers & accuracy
		5.4	Report on possible implications to rectify base map shortfalls
6	Public Communication & Input	6.1	Agree on public and stakeholder input (scale & purpose)
		6.2	Conduct public awareness & stakeholder participation process to sensitize the purpose of the new LUMS
7	Technical Feedback	7.1	Obtain structured feedback from various sections (NMMM Internal) involved with Land Use Management System & Zoning Scheme implementation on proposals & current shortfalls
		7.2	Feedback on case studies & experiences, i.e. other similar processes Nationally
		7.3	Report on initial recommendations & areas of key intervention with respect to the new Land Use Management System
8	Analysis Report	8.1	Detailed report on outcome of Phase 2

### □ **Phase 3 : Project Policy Directives**

- Broad Integrated Zoning Scheme guidelines and minimum Land Use Management System requirements
- Detailed project programme for Phases 4 and 5, including timeframes

Phase 3 : Project Policy Directives			
Tasks		Sub-Tasks	
9	Land Use Management System Policy Framework	9.1	Draft overall Land Use Management System objectives & expected outcomes
		9.2	Conclude on IZS complexity & detail, including broad content guidelines with respect to zonings, primary/secondary uses, etc
		9.3	Conclude on minimum Land Use Management System requirements with respect to policies & guidelines additional to a Integrated Zoning Scheme
		9.4	Recommendations on scheme implementation & transition phase
10	Land Use Management System Project Programme (Phases 4 & 5)	10.1	Detailed project programme for Phase 4 & 5 including tasks, timeframes, cost implications & participatory structure
		10.2	Obtain approval & support for proposed project programme

#### 1.4.2 **Structures and Participation**

It should be clear that this report, reflecting the outcome of the First Component : Analysis and Policy Directives should act as an informant and working document for preparation of an Integrated Zoning Scheme and relevant Land Use Management components. Participation and stakeholder involvement up to this stage has been limited to internal role players and Councillors. A broad and comprehensive public involvement and stakeholder participation process will be formulated as part of the Second Component which would actually deal with drafting of the Integrated Land Use Management System and formulating relevant Land Use Management System components. The following participatory structures and methods with respect to stakeholder involvement (internal) have been established as part of the first project component:

#### □ **LUMS Working Group**

Council appointed a LUMS Working Group with its core function being a link between the Standing Committee and the Land Use Management System drafting process. The Working Group would therefore ensure an ongoing and continuous stream of feedback between Council and technical work done with respect to the Land Use Management System.

The Working Group comprise of the following members:

- Cllr. B. Ngoqo
- Cllr. M. Madaka
- Cllr. A. Smit
- Cllr. A. Gibbon
- Mr. M. Langson (Business Unit Manager : Housing and Land)
- Me. D. McCarthy (Housing and Land Business Unit)
- Mr. B. Binedell (Housing and Land Business Unit)
- Me. A. Büchner (Economic Development Unit)

### ❑ **Internal Town Planning Division**

Interaction with the internal Town Planning Division during Phases 1, 2 & 3 provided valuable input with specific reference to the problem statement, project objectives, shortfalls, alternative approaches and expected outcomes.

Further participation included an Internal Stakeholder Workshop aimed at capacitation and feedback. All Councillors, the Municipal Manager, Business Unit Managers, Office Managers, Silo Managers and Assistant Managers have been invited to attend this workshop. Additionally, notices were placed on the municipal notice boards, libraries and the local press informing the public of Council's initiative to draft a New Land Use Management System for the Metro.

### **1.4.3 Report Structure**

This report, representing the First Component of the New Land Use Management System Project, comprise 5 sections, i.e :

#### ❑ **Section 1 : Introduction**

Introduction provides a short background on Land Use Management and the subsequent terms of reference with respect to a New Land Use Management System. The problem statement and status quo within the Nelson Mandela Metropolitan Municipality as well as broad project objectives, guided by the White Paper, are represented. Project methodology and structures of participation with respect to Phases 1, 2 & 3 are further presented.

#### ❑ **Section 2 : Legislative and Policy Directives**

Section 2 of this report outlines the legislative and policy directives which are relevant to Land Use Management within the Metro. Specific reference is made to the historical background of planning and land use management, the Constitution and DFA, the White Paper on Planning and Land Use Management and others.

#### ❑ **Section 3 : Nelson Mandela Metropolitan Municipality Land Use Management System Status Quo**

The status quo with respect to the existing Land Use Management System in the Metro is outlined with specific reference to procedure, existing schemes, institutional structures and possible recommendations.

❑ **Section 4 : Towards a New Land Use Management System for the Metro**

Section 4 specifically deals with recommendations based on the analysis, placing emphasis on the role and importance of zoning, alternatives and trends and broad legal assessments.

❑ **Section 5 : Conclusion and Way Forward**

Directives, processes and objectives with respect to drafting of an Integrated Zoning Scheme and Land Use Management System components for the Metro are outlined. This section fulfils the mandate to outline the way forward with respect to actual drafting of a New Land Use Management System.

## **2.0 LEGISLATIVE AND POLICY DIRECTIVES (NATIONAL/PROVINCIAL)**

### **2.1 Introduction**

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The legislative and policy environment with respect to Land Use Management has significantly changed over the last ten years. Specific reference is made to the new Constitution and new Local Government legislation. With respect to Planning, Land Use Management and Land Management, a number of directives and initiatives are in place that informs the drafting of New Land Use Management Systems within the Local Government sphere. Specific reference is made to the Development Facilitation Act, the Green Paper and the subsequent White Paper on Spatial Planning and Land Use Management. A brief overview of the relevant legislative policies and directives is provided to form a basis for future work to be done within the Metro (New Land Use Management System). The overview with respect to these legislative guidelines is not intended to be comprehensive but rather a guiding mechanism.

### **2.2 Historical Background**

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The planning system which exists in South Africa today in the form of norms, policies, institutions and practices has been shaped by many different Governments. Each Government responded to the problem, which is defined as the most significant, at the time. Since all South African Governments before 1994 were elected by a minority, the definition of problems and planning systems created to address them, primarily reflected minority interest. Each system has had traumatic impact on urban and rural settlement patterns.

Apartheid planning was characterised by blue print or master planning as the dominant planning approach. This approach has as its focus the manipulation of the physical environment to implement the plan (an inherently inflexible, static physical representation of a desired future); in this case one of orderly, racially separate and unequal development. Planning, Land Use Management, Zoning and associated disciplines were therefore directly associated and “responsible” for the manipulated and apartheid base of our cities and urban structures. Generally, zoning in South Africa was focused mostly on control and not development, which severely restricted and affected the form of our cities. A substantial amount of discretion was also placed in administrative hands.

A host of legislative and policy directives were used to implement the apartheid ideology and shape the land use structures as we know them today. The most significant are the Native (urban areas) Act of 1923, the Native Trust and Land Act of 1936, the Housing Act of 1920, the Physical Planning Act of 1967, the Environmental Protection Act of 1989 and the Urban Transport Act 1977. Pre-1994, the planning system in South Africa was characteristic of fragmentation which was reflected in the South African context as the “*betterment planning approach*”.

The implications of the pre-1994 planning ideology in South Africa resulted in urban areas of human settlements primarily characterised by racial, socio-economic and land use segregation.

The phenomenon of displaced urbanisation lead to the rise of large dormitory towns and other settlements, lacking any functional autonomy and designed to serve as holding areas for people who have been removed from areas designated for white occupation. The physical consequences of these processes are settlement patterns in both urban and rural areas that are often widely distorted. Spatial environments are inconvenient and dysfunctional for the majority of citizens as they generate enormous amounts of movement with great cost in terms of time, money, energy and pollution.

However, since the 1994 elections, democracy has been placed on the forefront of legislative development in South Africa.

New planning structures have been created under the new dispensation, and these emphasised development orientated planning that is pro-active and normative in character. The Development Facilitation Act (Act 67 of 1994) was directed at establishing the concept of efficient and integrated planning in the interest of all inhabitants. As far as planning legislation is concerned, this has implications for Zoning and Land Use Zoning as a Land Use Management tool.

### 2.3 Constitution

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Fundamental to planning, settlement and management of the post-1994 South Africa, is the new Constitution.

The Constitution has a bearing on the planning system in that new constitutional requirements such as co-operative Governance, procedural and participatory rights to ensure accountability for decision making, the promotion of social and economic rights, and the protection of the environment create imperatives that profoundly affect planning. The Constitution provides the legal framework in terms of which the National and Provincial spheres can exercise law-making powers. Municipal planning and the function of regulating land development and managing land, which can be interpreted as urban and rural development and which are included in Part A of Schedule 4, are both areas of concurrent legislative components. This means that either National or Provincial laws can deal with Municipal Planning and Land Development Management.

With respect to Land Use Management, the following with respect to the Constitution should be highlighted:

- Numerous clauses in the Constitution apply directly to planning while other apply indirectly. The most prominent clause is the property clause, which guarantees the right to acquire, hold and dispose of rights in property. Like any other fundamental right, a right in property is subject to limitation.
- Closely associated with the issue of zoning is the right to an environment, which is not detrimental to one's health or well-being. This has a direct bearing on the location of use and the protection of the community at large.
- Section 33 enshrines the right to administrative justice in the Bill of Rights. This introduces the concept of "accountable Governance" into the planning process.

- The equality clause guarantees that land use control can not be conducted in a discriminatory manner. Using zoning as an instrument of a discriminatory political ideology is therefore impossible.
- The values underpinning the constitution are derived from various provisions in the Bill of Rights, the pre-amble and the Constitutional Principles. These values include democracy, constitutionalism, freedom, equality, transparency, accountability, checks and balances, and responsiveness and openness. Within the context of the Constitution, a more managed and participatory system is being introduced which, through raising the level of required public participation, allows for negotiated settlement that more fully reflects the interest of a community. This public participation can do much to foster community organisations and build community identity, and can do much to reinforce the democratic process.

Based on this broad perspective with respect to the Constitution, it is noted that the Constitution provides the fundamental values that need to be taken in account within the context of land use management and land use change. It further provides the background against which desirability of proposals can be measured. Lastly, it is noted that the input with respect to the Constitution as reflected in this report should be used as a guideline only.

## **2.4 Development Facilitation Act (Act 67 of 1995)**

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The DFA was first to provide the basis for coherent framework for land development according to a set of binding principles, to speed up the approval of development projects and to provide for the overall of the existing planning framework. Section 3 of the Act sets out the general principles relating to land development. It introduces the concept of efficient and integrated land development in the interest of all inhabitants.

The law introduces substantive principles (norms) that must guide land development and decision making and advocates a normative approach. The concept of land development objectives is created. These relate to the approval of plans, set the objectives and targets for development, and informs spatial and development imperatives in the area. Part of the system is the creation of an integrated approach to planning in the form of Integrated Development Plans or IDP's. In order for zoning to continue and exist as a planning tool, the approach to zoning needs to shift from being control orientated to more of a Land Use Management approach. The Act creates a framework within which land use planning can be unified and the defragmented legacy of the past be addressed.

The DFA introduced a form of planning which was substantially different from that which have prevailed in the past. The proposed system has a number of characteristics:

- It firmly establishes spatial planning as a public sector activity. It requires public agencies to give strong direction to changing forms in the area of jurisdiction.
- It is normatively based, that is, it is based on principles and policies, not on standardised rules and regulations. This requires much greater use of local judgement and local creativity.
- It creates the imperative in Local Government for politicians to drive the process of policy setting.



- It requires the production of plans to translate national principles into contextually specific proposals. The production of these plans must be based on public wide participation and on political buy-in.
- It views land development management (change in the use of land) as something which must take place within the context of politically developed policies and plans. It introduces the separation of decision making regarding policies and plans, which must be undertaken by elected representatives, and decision making about land development applications which must be taken by technical experts informed by the plans.
- It requires rapid decision making, particularly in relation to projects affecting historically disadvantaged communities and provides sweeping powers to override historical legal imperatives to this.

The most noted and key features of the DFA are the guiding principles or general principles for land development. These principles reject low density, segregated, fragmented and non-functional development and rather embrace compact, integrated and mixed used settlements. All decisions taken by all spheres of Government that involve the use and development of land have to take into account these principles. The principles do attempt to impose a broad policy direction on the many decisions taken in terms of many different laws. The White Paper on Spatial Planning and Land Use Management, subsequent to work done by the Development and Planning Commission, proposes that the principles be streamlined to make them more easily understood by decision makers and that the implementation be carefully monitored at a National level.

□ **The DFA principles are :**

- *Promote development in formal and informal, existing and new settlements.*
- *Discourage the illegal occupation of Land.*
- *Efficient and Integrated Land Development by:*
  - *Promoting the integration of the social, economic, institutional and physical aspects of land development;*
  - *Promoting integrated land development in rural and urban areas in support of each other;*
  - *Promoting the availability of residential and employment opportunities in close proximity to or integrated with each other;*
  - *Optimising the use of existing resources inducing such resources relating to agriculture, land, minerals, bulk infrastructure, roads, transportation and social facilities;*
  - *Promoting a diverse combination of land uses, also at the level of individual erven or subdivision of land;*
  - *Discouraging the phenomenon of “urban sprawl” in urban areas and contribute to the development of more compact towns and cities;*
  - *Contributing to the correction of the historically distorted spatial patterns of settlement in the Republic and to the optimum use of existing infrastructure in excess of current needs; and*
  - *Encouraging environmentally sustainable land development practices and processes*

- *Public Participation*
- *Capacity building*
- *Facilitation developer interaction with government*
- *Clear laws, procedures and administrative practise*
- *Sustainable land development which:*
  - *Promote land development that is within the fiscal, institutional and administrative means of te Republic;*
  - *Promote the establishment of viable communities;*
  - *Promote sustained protection of the environment*
  - *Meet the basic needs of all citizens in an affordable way; and*
  - *Ensure the safe utilisation of land by taking into consideration factors such as geological formations and hazardous undermined areas.*
- *Speedy land development*
- *No one land use is more important than any others*
- *Security of tenure*
- *Co-ordination of land development*
- *Promotion of open markets and competition.*

## **2.5 Municipal Systems Act (Act 32 of 2000)**

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The Municipal Systems Act requires, as part of a Municipal Council's rights and duties, that the Local Authority has a duty to promote and undertake development in the Municipality. This is in line with Section 152 of the Constitution, which defines the objectives of Local Government as being:

- *To provide democratic an accountable government for communities*
- *To ensure the provision of services to communities in a sustainable manner*
- *To promote social and economic development*
- *To promote a safe and healthy environment and to encourage the involvement of communities and community organisations in matters of Local Government*

With respect to Land Use Management and Planning, the Act further stipulates that:

- A Municipal Council should prepare a Integrated Development Plan which is a single, inclusive and strategic plan for the development of the Municipality
- The Integrated Development Plan should include, but not be limited to a Spatial Development Framework which must include the provision of basic guidelines for a Land Use Management System for the Municipality.

Section 4(2)(g) charges the Municipality with the duty to undertake development in the Municipality and in terms of Section 4(2)(i), to promote a safe and healthy environment in the Municipality.

Development in terms of the Act means:

*“sustainable development, and includes integrated social, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community. Development should be aimed at:*

- *Improving the quality of life of inhabitants with specific reference to the poor and other disadvantaged sections of the community*
- *Ensure that development serves present and future generations.”*

## **2.6 White Paper on Spatial Planning and Land Use Management (July 2001)**

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As indicated in previous paragraphs of this report, the White Paper forms a substantial base and guideline policy for drafting Land Use Management Systems, not only at Local Authority level but also with respect to the national norm and direction. The White Paper draws on work of the Commission on Planning and Development, the Green Paper on Development and Planning and the concept of the Municipal Integrated Development Plan as provided for in the Municipal Systems Act. The White Paper is the forerunner for the proposed Land Use Management Bill which would pave the way for a New Planning System in South Africa and repeal the Development Facilitation Act.

The essential elements of the new system of planning and development proposed in the White Paper are:

### **❑ Principles**

The basis of the system will be principles and norms aimed at achieving sustainability, equality, efficiency, fairness and good governance in spatial planning and land use management. The decisions of planning authorities, whether related to the formulation of plans such as IDP's or the consideration of land development applications such as rezonings, must all be consistent with these principles and norms.

### **❑ Land Use Regulators**

The White Paper proposes a category of authorities able to take the different types of decisions falling into the realm of spatial planning and land use management (Land Use Regulators). The most prevalent Land Use Regulators will be municipalities. Each province will have a provincial land use tribunal and appeal tribunal that will be Land Use Regulators in specified situations. Nationally, the Minister will be a land use regulator of last resort, only acting in cases where there has been neglect or flouting of the national principles and norms.

### ❑ **IDP-Based Local Spatial Planning**

The Municipal Systems Act requires that part of each municipality's IDP must be a Spatial Development Framework. The White Paper spells out the minimum elements that must be included in a Spatial Development Framework. It also proposes that the Spatial Development Framework operate as an indicative plan, whereas the detailed administration of land development and land use changes is dealt with by a land use management scheme, which will actually record the land use and development permissions accruing to a piece of land. The inclusion of the Spatial Development Framework, with a direct legal link to the land use management scheme, is an essential step towards integrated and co-ordinated planning for sustainable and equitable growth and development.

### ❑ **A Uniform Set of Procedures for Land Development Approvals**

Where a proposed development is not permissible in terms of the prevailing land use management scheme, then permission is required from the appropriate land use regulator. The White Paper proposes one set of such procedures for the whole country, thereby eliminating the current situation where different procedures apply in different provinces. This will facilitate national capacity building within land use regulators as well as performance management of the system. The White Paper also proposes the alignment of the procedures for land development approval with those presently required in terms of the Environment Conservation Act for Environmental Impact Assessments ('EIA').

### ❑ **National Spatial Planning Frameworks**

In order to achieve more integrated and co-ordinated spending of public funds it is proposed that the Minister, in consultation with cabinet, is able to prescribe national spatial planning frameworks around particular programmes or regions. This will not be a national plan as such but will rather be a policy framework for sustainable and equitable spatial planning around national priorities.

A further important component of the White Paper is the refinement and further introduction of principles and norms for land use management. The principles and norms collectively form a vision for land use and planning in the country. They constitute a single point of reference and an overarching coherent set of policy guidelines to direct and steer land development, planning and decision making in all spheres of Government, including other public agencies involved in land use so that outcomes thereof are consistent with the national objectives. The principles and norms are to promote the normative base spatial planning, land use management and land development system first introduced by the DFA.

The objective of the principles and norms is to influence directly the outcomes of planning decisions, whether they relate to spatial development frameworks or decisions on land use change or development applications. The overall aim of the principles and norms is to achieve planning outcomes that:

- *Restructure spatial inefficient settlements*
- *Promote the sustainable use of the land resources in the country*
- *Channel resources to areas of greatest need and development potential*
- *Take into account the fiscal institution and administrative capacity of role players, the needs of communities and their environment*
- *Stimulate economic development opportunities in rural and urban areas*
- *Support and equitable protection of rights to and in land*
- *Promote accountable spatial planning, land use management and land development decision making by organs of state*
- *Promote co-operative Governance and wider information sharing in plan making and implementation*
- *Promote maximum openness and transparency in decision making*

The normative approach proposed in the White Paper is presented in the form of these principles and norms. The purpose of a normative approach is to ensure wise land use. Wise land use is inspired mainly by the responsibility society and the state has to preserve natural assets for present and future generations in a sustainable and economic way. Wise land use is based on the consideration that by rational planning of all land uses in an integrated manner, it is possible to link social and economic development within environmental protection and enhancement, making the most efficient trade-offs, and minimizing conflicts. Such an integrated approach is based on relating sectoral and different spheres of Government's planning and management activities to the capabilities and limitations of landscapes to support various land uses.

These principles and norms will apply to all spheres of Government involved in spatial planning, land use management and land development and guide the preparation of IDP's and especially Spatial Development Frameworks.

The principles as contemplated in the White Paper play a critical role in setting the base and point of departure for drafting a Land Use Management System for the Metro. It is anticipated that these principles and norms will form part of the proposed Land Use Management Bill and drafting of a Land Use Management System for the Metro should therefore adopt and except these principles and norms. The White Paper proposes the following principles.

#### **❑ The Principles of Sustainability**

*The principle of sustainability requires the sustainable management and use of the resources making up the natural and build environment.*

The spatial planning, land use management and land development norms based on this principle are:

- Land may only be used or developed in accordance with law
- The primary interest in making decisions affecting land development and land use is that of national, provincial or local interest as recorded in approved policy
- Land development and planning processes must integrate disaster prevention, management or mitigation measures
- Land use planning and development should protect existing natural, environmental and cultural resources
- Land which is currently in agricultural use shall only be reallocated to other uses where real need exists and prime agricultural land should remain in production.

#### □ **The Principle of Equality**

*The principle of equality requires that everyone affected by spatial planning, land use management and land development actions or decisions must enjoy equal protection and benefits, and no unfair discrimination should be allowed.*

The spatial planning, land use management and land development norms based on this principle are:

- Public involvement in land use planning and development processes must be inclusive of all persons and groups with an interest in the matter being decided
- Land use regulators and planning authorities must ensure that benefits and opportunities flowing from land development are received by previously disadvantaged communities and areas
- The appropriateness of land use must be determined on the basis of its impact on society as a whole rather than only the applicant or immediate neighbours.

#### □ **The Principle of Efficiency**

*The principle of efficiency requires that the desired result of land use must be produced with the minimum expenditure of resources.*

The spatial planning, land use management and land development norms based on this principle are:

- Land use planning and development should promote the development of compact human settlements, combating low intensity urban sprawl
- The areas in which people live and work should be close to each other, and
- Plans of contiguous municipalities and regions should relate positively to each other

## ❑ **The Principle of Integration**

*The principle of integration requires that the separate and diverse elements involved in development planning and land use should be combined and co-ordinated into a more complete or harmonious whole.*

The spatial planning, land use management and land development norms based on this principle are:

- Land use planning and development decisions should take account of and relate to the sectoral policies of other spheres and Departments of Government
- Land use and development should promote efficient, functional and integrated settlements
- Land use and development should be determined by the availability of appropriate services and infrastructure, including transportation infrastructure
- Land use and development should promote mixed use development

## ❑ **The Principle of Fair and Good Governance**

*The principle of fair and good governance requires that spatial planning, land use management and land development must be democratic, legitimate and participatory.*

The spatial planning, land use management and land development norms based on this principle are:

- Affected parties have a right to access information pertinent to land use and development plans that are being considered by land use regulators
- Capacities of affected communities should be enhanced to enable them to comprehend and participate meaningfully in development and planning processes affecting them
- Decisions must be made in the public domain, with written reasons available to any interested party on spatial planning, land use management and land development matters must be publicised
- Land use and development decisions must be taken within statutorily specified time frames, and accessible participatory structures should be created to allow interested and affected parties to express their concerns or support for any land use or land development decision at sufficiently early stage in the decision-making process

The White Paper further outlines roles of Local Government:

- Local Government will be responsible for the preparation of Spatial Development Frameworks as an integral part of the Municipality's IDP
- Local Government will be responsible for decision making on land use management and land development issues
- Local Government will be responsible for consultation with respect to land use management and decisions
- Local Government will be responsible for enforcement of land use decisions through ongoing revision of land use development controls

## 2.7 Land Use Management Bill (2003)

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The Land Use Management Bill is the direct result of the White Paper on Spatial Planning and Land Use Management (as outlined in the previous paragraph). The New Land Use Management System for the Metro, including a integrated zoning scheme, will be promulgated and prepared in terms of the Land Use Management Bill. This will be done in anticipation of approval of the Bill, based on the White Paper principles and basic structures. Content of the Bill is substantially similar to the White Paper proposals and for the purpose of this report will therefore not be repeated. However, significant to the Land Use Management System, the following extracts from the Bill are included:

### *Adoption*

22. (1) *A municipality must, within five years from the commencement of this Act or such other period as the Minister may approve, adopt a land use scheme for the whole of its area.*
- (2) *A land use scheme may include -*
- (a) a single scheme for the whole of its area;*
  - (b) different sub-schemes covering the whole of its area; or*
  - (c) different land use of sub-schemes for different portions of the same piece of land*

### *Contents*

23. (1) *A land use scheme must give effect to the integrated development plan and the spatial development framework for the municipality.*
- (2) *A land use scheme may -*
- (a) determine a single or multiple land use purpose for a piece of land;*
  - (b) determine a land use purpose for each piece or all pieces of land falling within a specified area or identified in another manner;*
  - (c) determine different land use purposes for portions of the same piece of land;*
  - (d) impose conditions applicable to each land use purpose including –*
    - (i) densities and intensities of use;*
    - (ii) the type, extent and scale of buildings and structures that may be erected, including maximum coverage, height and floor area ratio and other building restrictions;*
    - (iii) the layout of buildings and structures; and*
    - (iv) parking ratios;*
  - (e) provide for the temporary use of a piece of land to the permitted use;*
  - (f) contain provisions aimed at enforcing the scheme; or*
  - (g) include any other matter prescribed in terms of Section 79 or by provincial legislation.*



- (3) *A land use scheme must take into account the purpose for which a piece of land was lawfully used immediately before this Act took effect.*
- (4) *A land use scheme must be consistent and co-ordinated with other schemes applicable to adjoining municipalities.*
- (5) (a) *The Premier may be noticed in the Province Gazette determine minimum standards with which land use schemes in the province must comply.*  
 (b) *Different standards may be determined in terms of paragraph (a) for different categories of –*
  - (i) *areas; or*
  - (ii) *land use purposes.*

In addition to Chapter 4 of the Bill (addressing land use schemes, adoption and content) further issues relating to the Directive Principles, Spatial Development Frameworks, Land Use Regulations, Monitoring and Inter-Governmental support are further addressed in the Bill. Areas of particular interest with respect to a New Land Use Management System include enforcement, compensation, undue delays and appeal procedures.

## **2.8 Other Policy Directives**

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Notwithstanding the legislative and policy directives as outlined in this section, a number of other Acts, Ordinances and Policies have a direct or indirect impact on a New Land Use Management System. It is noted that the legislative guidelines outlined in this section reflects the new vision for planning and development in South Africa. It is noted that existing legislation applicable to the Nelson Mandela Metropolitan Municipality is the Land Use Planning Ordinance (Ord 15 of 1985) and the regulations promulgated in terms of the erstwhile Black Communities Development Act. The existing scheme regulations within the Metro's area of jurisdiction have been promulgated in terms of either one of these pieces of legislation.

It is anticipated that the Ordinance and possibly the regulations promulgated in terms of the erstwhile Black Communities Development Act will be repealed once the Land Use Management Bill is promulgated. However, the date for enactment cannot be confirmed and in the absence of the new Land Use Management Bill, the existing planning legislation applicable to the Metro would stay in place and should be enforced. This, by implication, means that integration of the zoning scheme should be done in terms of the legislation currently applicable and available, i.e Land Use Planning Ordinance and Black Communities Development Act. Ultimately, the new Land Use Management System should function under the proposed New Land Use Management Bill. In order to accommodate anticipated legislation as well as the paradigm shift in legislative frameworks, the process and content of the Land Use Management System should adhere to the new and proposed Land Use Management Bill.

## 2.9 Summary and Recommendations

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The Constitution, Development Facilitation Act, Municipal Systems Act, White Paper on Planning and Development and proposed Land Use Management Bill provide the basis for formulating and drafting a New Land Use Management System for the Metro. The normative approach, with specific reference to the DFA, White Paper and Land Use Management Bill is noted and the content of the principles and norms should inform and strongly guide Land Use Management work to be done in the Metro. The end objective of these informative legislative guidelines is the final implementation and approval of a Land Use Management Act. This will be the end result of the White Paper on Planning and Development and will ultimately repeal the Development Facilitation Act, the Land Use Planning Ordinance and the regulations promulgated in terms of the erstwhile Black Communities Development Act. Primarily, promulgation of the Land Use Management Act will ultimately change the face of planning within the Metro and the country.

The Pro-active initiative to start with the drafting of an Integrated Zoning Scheme and Land Use Management components within the guidelines of the White Paper and the Land Use Management Bill, is done in anticipation of this new planning realm.

## **3.0 NMMM LAND USE MANAGEMENT SYSTEM STATUS QUO**

### **3.1 Introduction**

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The concept of an overarching Land Use Management System in the South African planning context is fairly new. Existing systems with respect to Land Use Management in the Nelson Mandela Metropolitan Municipality are fragmented and in some cases unco-ordinated. Specific reference is made to functioning of the zoning scheme regulations, map and register and other land use management components, i.e policy, guidelines and methods of implementation. Noting that the drafting of an integrated zoning scheme for the Metro will form the basis and core component of a New Land Use Management System, this section of the report will concentrate on the status quo with respect to scheme regulations and land use management in the Nelson Mandela Metro.

Zoning schemes and some land use management components within the Metro are mainly geographically based and inherited from the pre-1994 era. Twelve zoning schemes are currently implemented and utilised by the Metro in different areas and geographical locations. Each of these schemes are characterised by significantly different sets of land use categories, zones, development parameters, definitions, zoning schemes formats and relevance with respect to the areas that they serve. Complexity is further exacerbated by the fact that some of these schemes are promulgated in terms of the former Black Communities Development Act and others are promulgated in terms of the Land Use Planning Ordinance. This has implications with respect to delegation and decisions on land use change matters.

### **3.2 Existing Scheme Regulations**

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The status quo with respect to scheme regulations, registers and maps are summarised in the following table. The table should be read in conjunction with the attached map, indicating geographically where these schemes are applicable.

**Table 1 : Zoning Scheme Comparison**

Scheme	Legislation	Date	Scheme area	Scheme map comment	Scheme register comment
Port Elizabeth	Land Use Planning Ordinance	1993	Formal Port Elizabeth Municipal area including Summerstrand, Walmer, CBD, Kabega and Gelvandale	The scheme map for Port Elizabeth is fairly well updated and maintained in electronic format. Data is captured on a central GIS system available in electronic format.	The Scheme register is fairly well updated in electronic format. Notwithstanding backlogs with respect to data capture, the system is fairly well maintained.
IKKM (Ibhayi, Kwamaxaki, Kwadwesi & Motherwell)	Provincial Notice 733 of 1989 (Black Communities Development Act)	1990	Residential areas of Ibhayi, Kwadwesi, Kwamaqaki and Motherwell		
Uitenhage	Land Use Planning Ordinance	1961	Former Uitenhage Municipal area including Uitenhage CBD, Kwalanga, Van Riebeeck Hoogte and some rural areas	Though a digital zoning map for the Uitenhage and Kwanobuhle schemes exist, the maps have not been updated for the last 3 years. Capturing of use changes on the GIS system should be verified.	Records of land use changes are kept but not necessarily to the zoning map. The scheme register for Uitenhage and Kwanobuhle is not linked to the Port Elizabeth register system.
Kwanobuhle	Provincial Notice 733 of 1989 (Black Communities Development Act)	2000	Kwanobuhle residential area.		
Despatch	Land Use Planning Ordinance	2002	Former Despatch Municipal area, including Despatch CBD and surrounding residential component	The Scheme maps for Despatch and Khayamnandi are available in digital format but are not updated on a regular basis and in GIS format. Maps should therefore be updated in digital format.	The registers are not updated, though records are available. Linkage between GIS digital map updating and records do not exist.
Khayamnandi	Provincial Notice 733 of 1989 (Black Communities Development Act)	1998	Khayamnandi		
Lovemore Park	Land Use Planning Ordinance	Unknown	Lovemore Park south of Mount Pleasant and Seaview Road	Digital base map available but zoning map not in GIS format.	Records are kept of land use changes but a formal register updating process not in place.
Area A	Land Use Planning Ordinance	1978	West of Lovemore Heights and north of Seaview Road, predominantly rural with small holdings.	Digital base map available but zoning map not in GIS format.	Records are kept of land use changes but a formal register updating process not in place.
Section 8 (LUPO)	Land Use Planning Ordinance	1988	Rural area in (former District Council's area of jurisdiction), excluding urban areas of Uitenhage, Despatch and Port Elizabeth.	Base map available in GIS format with no zoning map available.	Record is kept of land use changes but do not form part of the Port Elizabeth registry system.

## ❑ Legislation

The Town Planning Scheme Regulations applicable in the Nelson Mandela Metropolitan Municipality area are promulgated in terms of two sets of legislation, i.e. the Land Use Planning Ordinance, Ordinance 15 of 1985, and Provincial Notice 733 of 1989 (erstwhile Black Communities Development Act, Act 4 of 1984). The following schemes have been promulgated in terms of PN 733 of 1989:

- Ibhayi
- Kwamaxaki
- Kwadwesi
- Motherwell
- Kwanobuhle
- Khayamnandi

The following schemes have been promulgated in terms of the Land Use Planning Ordinance:

- Port Elizabeth
- Uitenhage
- Despatch
- Lovemore Park
- Area A
- Section 8 rural area

## ❑ Delegation of authority

The scheme regulations promulgated in terms of PN 733 of 1989 reflects former township areas promulgated as development areas in terms of the Black Communities Development Act, Act 4 of 1984. These areas are generally referred to as the former township areas, which included its own town planning schemes and land use management systems and procedures. Although the legislation dates back to the pre-1994 area, these regulations and especially PN 733 of 1989 is still in place and has a detrimental and wide reaching effect on the way land use management is managed and implemented in these areas. Specific reference is made to Council's delegated authority to take final decisions on matters relating to land management and change. All applications for rezoning, subdivision and consent uses have to be referred to the MEC for Housing, Local Government and Traditional Affairs (Bisho) for a final decision. Although Council has the status of a Metro, final approval on land use matters within these areas do not vest within the Metro. As outlined in Chapter 2 of this report, it is anticipated that finalisation and enactment of the Land Use Management Bill would eliminate this problem and repeal the underlying legislation. In affect, it is therefore anticipated that once the Land Use Management Bill is enacted, delegation with respect to Land Use Management in these areas (Ibhayi, Kwamaxaki, Kwadwesi, Motherwell, Kwanobuhle and Khayamnandi) would be the responsibility of the Metro (full delegation).

The town planning schemes of Port Elizabeth, Uitenhage, Despatch, Lovemore Park, Area A and the rural areas as been promulgated in terms of the Land Use Planning Ordinance, Ordinance 15 of 1985. Unlike the PN 733 of 1989 regulations, regulations promulgated under the Land Use Planning Ordinance makes provision for the Metro to take final decisions on land use applications within these areas.

#### **❑ Date of Implementation**

The format and content of most of the scheme regulations within the NMMM area date back to the post Land Use Planning Ordinance (1985) and PN 733 of 1989 era (excluding the Uitenhage, Lovemore Park and Area A schemes). Some of the existing regulations currently in place date back as far as 1961 (Uitenhage) and 1978 (Area A).

It is further noted that most of the schemes within the Metro are based on the standard format adopted in the Section 8 Land Use Planning Ordinance Scheme and the standard scheme promulgated in terms of PN 733 of 1989.

#### **❑ Scheme Area**

The scheme areas of various town planning schemes in the Metro are depicted on the attached plan. The scheme boundaries are mainly based on former Municipal boundaries and promulgated “Black Development Areas” boundaries.

#### **❑ Scheme Map and Register**

The scheme map and scheme register are critical components of the town planning scheme. The scheme maps reflects graphically the land use rights and zonings of various cadastral units within the Municipal area. The scheme register, on the other hand is a database and register of land use right changes and amendments to the scheme map and regulations.

The amalgamation of the various administrations to form the NMMM posed a number of challenges with respect to the integration of the various scheme maps and scheme registers. The problem is further exacerbated by the fact that the former four administrations managed and implemented different scheme maps and registers for the various regulations within the areas of jurisdiction. Although a lot of work has been done to integrate the various maps and registers under a centrally located system, a number of challenges still prevail. These are:

- scheme maps and registers are not centralised and standardised within the Metro
- different systems are in operation in the former Port Elizabeth, Uitenhage, Despatch and rural areas
- capacity and staff shortages exacerbates the problem with specific reference to data upkeep and data capture
- diverse zoning schemes makes amalgamation of scheme maps and registers difficult and in some cases impossible

## ❑ Scheme Regulation Format

The format of the scheme regulations currently applicable in the Metro have general similarities, especially with respect to content in terms of type and nature of information provided. For example, the scheme regulations include the following basic categories, i.e.:

- Definitions of terminology and uses
- Land use zones including primary uses and consent uses permitted under each zone
- Scheme map colour notation
- Planning parameters, including density controls, height restrictions, building lines and other building parameters
- Provision for special purpose zones and procedures with respect to consent uses
- Miscellaneous, general information and special provisions

The way in which this information is disseminated differs from scheme to scheme. Of equal importance is the way in which the zoning scheme documents present the information contained within it. The zoning schemes within the NMMM all have a particular style and format of presentation, which makes it difficult to utilise the documents and retrieve information in a consistent manner.

There are essentially two basic types of approach which have been adopted regarding the form and layout of zoning schemes documents in general. These are the “*inclusive document format*” and “*exclusive document format*”.

- **“Inclusive Document Format”**

The “*inclusive document format*” presents the various zones and outline development parameters with respect to coverage, height, floor space, building lines and other controls within each of the development zones. General provisions of the scheme, such as special uses, procedural matters etc, are then contained within separate paragraphs or chapters in the document.

With the exception of the Port Elizabeth zoning schemes, all other schemes within the NMMM fall within the “*inclusive document format*” category.

- **“Exclusive Document Format”**

The general provisions of the scheme with respect to development control and building parameters are contained under separate headings such as density, coverage, height etc. The land use zone section only contain a description of the primary and secondary uses permitted within each use zone. The Port Elizabeth scheme is an “*exclusive document*”.

### 3.3 Comparative Zone Analysis

Proper understanding and analysis of the existing scheme regulations within the Metro necessitates a comparative analysis of the various scheme regulations, with specific reference to and emphasis on the various use zones, primary uses and consent uses. Permissible uses within each scheme area and their subsequent primary uses and consent uses/secondary uses are reflected in table format. Refer to the attached Annexure B.

The table group the various zonings into broad development categories. Within each of these broad categories, the relevant planning schemes, the comparable zone and subsequent primary and consent uses are reflected. This provides an easy reference framework for future work to be done on amalgamating the various schemes. The land use categories are:

- *Agriculture and Rural*
- *Low-Density Residential (Single)*
- *Medium and High-Density Residential*
- *Informal Residential*
- *Business / Commercial*
- *Industrial*
- *Community and Municipal Services*
- *Open Space, Resort and Nature*
- *Transport*
- *Other & Undetermined*

With respect to the comparative zone analysis of the various schemes within the Metro, a number of key observations are made.

#### **Agriculture and Rural**

A number of zoning schemes do not have agriculture as a land use zone, as their urban context do not necessitate any provisions for a agricultural / rural. These zoning schemes include Port Elizabeth, IKKM, Uitenhage, Kwanobuhle and Khayamnandi. Although provision is made for a rural residential component or small holdings in the Lovemore Park and Area A schemes, this aspect is lacking in other schemes in the Metro. Provision should be made for agricultural holdings or small holdings which is a response to the particular needs of small farming and rural properties generally found on the urban edge. The purpose would be to promote agricultural rural activities within the urban edge.

#### **Low-Density Residential (Single)**

All the schemes make provision for free standing residential uses. However, it is noted that a number of schemes, as primary uses, also include medium density uses such as town houses. Specific reference is made to the IKKM, Kwanobuhle and Khayamnandi Schemes. This concept allows for a higher density residential development on single residential sites. Higher density residential development as consent uses are generally permitted in the former PN 733 areas which is based on the character of the former “townships” with the general perception that higher density should be permitted within single residential areas. As a general point of departure, most of the schemes allow for institutional and community facilities and additional dwelling units within this zone.



### ❑ **Medium and High Density Residential**

The medium and high density residential land use category include all residential developments other than single residential houses. The format of the various schemes differs substantially with respect to the medium and high density residential component. A number of schemes have a simplistic approach with specific reference to Port Elizabeth, IKKM, Kwanobuhle, Khayamnandi and Area A.

Generally in this group, medium and high density residential development is characterised under one or two zones. Other schemes like Despatch, Section 8 and Uitenhage have three to five different zones accommodating medium to high income areas. Generally, it is noted that medium density and high density residential development should be clearly defined and characterised within the scheme. Principles that should guide this process is the inclusion of low and medium density residential within high density areas but the principle should not apply for high density development within medium and low density areas.

### ❑ **Informal Residential**

Introduction of the informal residential zone is a new addition to zoning scheme formats. The Port Elizabeth, Kwanobuhle, Despatch and Khayamnandi schemes include the zone with the primary use mainly being shelters or residential units. The purpose of this zone would be to make provision for structures and houses not being built according to the National Building Regulations. Options to include or amalgamate the informal residential category with the low density residential category should be explored.

### ❑ **Business / Commercial**

This land use category comprise all forms of business and commercial use and includes retail and office uses. The approach towards the business/commercial category is generally threefold:

- One use zone to accommodate all commercial/business uses, i.e. IKKM, Kwanobuhle, Khayamnandi, Lovemore Park and Area A schemes.
- Two use zones which accommodates retail development and office development, respectively. Generally the Port Elizabeth and Despatch schemes adopted this format.
- To have three or more zones to cover a multitude of commercial development possibilities and options. The Section 8 scheme are based on this principle with five different business zones.

The business/commercial land use category comprise three important elements to define the type of development to be permitted within the zone. These are the level of commercial sophistication, types of use and intensity of use. The level of flexibility within the new scheme will determine the complexity of the business/commercial land use zone.

## **Industrial**

This land use category incorporates all forms of industrial use and activity and generally includes light industrial, general industrial and noxious industrial. In some cases mining is separated as a free-standing zone. The inclusion of the industrial category in the schemes are generally guided by the characteristics of the area which is served by the relevant scheme.

The Port Elizabeth scheme makes provision for three industrial zones whereby the Lovemore Park and Area A schemes do not include industrial as a land use option. Like with the business land use category, the complexity and detail of the industrial zonings will depend on the flexibility of the new scheme.

## **Community and Municipal Services**

Community and municipal services are generally included in all scheme regulations. Traditionally, institutional uses such as places of instruction, places of worship, community facilities and local authority uses have been allocated separate use zones. A number of these primary uses can also be implemented as consent uses under other zones such as business and residential.

It should therefore be debated whether the community and municipal services uses warrants an elaborate set of zonings with primary and consent uses. The general idea would be to minimize the community and municipal service zones.

## **Open Space, Resort and Nature**

The inclusion of public open space are included as zones in most of the schemes. A number of schemes also include the Resort Zone with specific reference to Despatch and the Section 8 scheme.

## **Transport**

The transportation zoning or land use category includes uses such as streets, parking, public roads, railways, harbours and airports.

## **Other and Undetermined**

All schemes within the Metro include an undermined zoning with certain primary uses in some cases. The inclusion of a special purpose zone provide flexibility and options to formulate land use development parameters which cannot be accommodated within other zones in the same scheme.

It is clear from the comparative zone analysis tables and brief outline of the individual categories that the system is extremely fragmented. Drafting an integrated zoning scheme for the Metro should carefully consider amalgamating the various zoning schemes and incorporating comparable zones to eliminate duplication and introduce simplicity. The new scheme should further accommodate existing uses and use zones, but at the same time make provision for new generation land uses such as urban agriculture, initiation villages, red light districts, etc.

### **3.4 Institutional Status Quo**

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An underlying component and the support base of any Land Use Management System is the institutional structure within which it operates. The effectiveness and capacity of the institutional structure further enhances and determines the success of Land Use Management in general.

Difficulties with respect to the institutional capacity and ultimately the implementation of the existing Land Use Management System in the Metro are the result of:

- Amalgamation of four different administrations within a vast geographical area
- Diverse Land Use Management requirements and urban structure
- Different systems and system formats with respect to zoning administration
- Lack of personnel and capacity
- Absence of definite and new generation guiding land use management legislation
- Strong urban and rural components

These influencing factors together with the lack of capacity and understaffing within the various sectors relating to land use management, are further affecting implementation. The Organogram reflecting the staff structure of the Spatial Planning Component within the Housing and Land Business Unit, is currently under review.

### **3.5 Summary and Recommendations**

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The status quo with respect to existing scheme regulations within the Metro clearly emphasizes the relevant shortfalls and challenges. The diversity of the existing systems and the amalgamation of four different administrations are clearly emphasised.

It is recommended that the approach towards drafting an integrated scheme for the Metro should be based on new policy and legislative directives (Post-1994). However, the existing schemes and Land Use Management System provide valuable background and base material for the amalgamation and amendment of these schemes. The positive components and aspects within the existing scheme should be used to prepare a new and holistic integrated zoning scheme for the Metro. It would not be wise and practical to disregard existing schemes and commence with a “*from scratch*” scheme regulation drafting process.

## 4.0 TOWARDS A NEW LUMS FOR THE NMMM

### 4.1 Introduction

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Chapters 2 and 3 of this report dealt with the legislative and policy directives on a National and Provincial level and the Land Use Management System status quo in the Metro, respectively. Analysis of the legislative and policy directives provides clear guidance and the normative approach with respect to Land Use Management in South Africa, especially the roles of Local Government and what is expected from the Metro with respect to Land Use Management. Critical to the legislative and policy directives are the content and guidance provided by the White Paper on Spatial Planning and Land Use Management and subsequently the Land Use Management Bill.

Based on the status quo analysis of the existing Land Use Management System in the Metro, the need for a new and integrated approach with respect to Land Use Management, especially zoning scheme regulation application, is emphasised. The system is fragmented, outdated and not pro-active with respect to developmental Local Government.

In drafting an Integrated Zoning Scheme, and ultimately a New Land Use Management System for the Metro, it is important and essential to adopt a pro-active approach by aligning with National Policy directives. The emphasis should therefore not only be on integration of the twelve different zoning schemes, but the project scope should be wide enough to include a comprehensive and holistic Land Use Management System for the Metro.

In addition to the National Legislative and Policy Directives and NMMM LUMS status quo, a number of alternatives and options should be explored as part of the new Land Use Management System draft in process.

### 4.2 Need for a New Land Use Management System

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#### ❑ Defining Land Use Management System and Integrated Zoning Scheme

The spatial planning concepts (Spatial Development Framework, Land Use Management System and zoning schemes) are clearly defined and put in perspective by the White Paper on Spatial Planning and Land Use Management. Chapter 2 of this report provides clear guidelines to this end.

Spatial Development Framework is defined as an indicative plan showing desired patterns of land use, directions of growth, urban edges, spatial development areas and conservation worthy areas. On the other hand, the Scheme is defined as a mechanism for recording the land use and development rights and restrictions applicable to each erf in the Municipal area and should only be amended where required for a particular development.

The White Paper goes further:

*“The underlined principle is to build on the terminology in Section 26 of the Municipal Systems Act. We will use the term Spatial Development Framework for the indicative plan and Land Use Management System (LUMS) for the scheme. The former has the legal effect of guiding and informing land development and management and the latter has the binding effect on land development and management”.*

It is therefore clear that reference to a Land Use Management System includes a integrated scheme for the Nelson Mandela Metropolitan Municipality. However, the paradigm shift in spatial planning and land use control necessitates a wider approach to Land Use Management than just an Integrated Zoning Scheme. This approach should include components relating to institutional, administration and policy aspects.

Inclusion of these Land Use Management System components in addition to an Integrated Zoning Scheme would build on and contribute towards a holistic system of land use management.

**Clear linkages should be established between the Land Use Management System and the Spatial Development Framework and IDP components.**

#### ❑ Land Use Management System Directives

Basic and overarching directives guiding the formulation of a new Land Use Management System are the paradigm shift in legislative and policy approach towards Land Use Management in general in South Africa, shortfalls and problems within the Nelson Mandela Metropolitan Municipality and the defined role of Government, including Integrated Development Planning and Spatial Development Frameworks.

##### ▪ Paradigm Shift

Policy directives represent a definite shift away from the traditional model of zoning and Land Use Management being directed primary at land use control, towards a more flexible approach to zoning that is both management and development orientated. The Chapter 1 principles in the DFA and guiding principles as outlined in the White Paper pave the way for this developmental approach towards Land Use Management.

##### ▪ Shortfalls within the NMMM

Analysis of the existing Land Use Management System and zoning scheme regulations content within the Metro clearly indicates the need for change and improvement. Generally, old outdated scheme regulations, fragmented policy implementation, segregated zoning scheme implementation, lack of capacity and lack of delegated authority in certain geographic areas are contributing factors.

- **Role of Local Government**

Developmental role of Local Government necessitates a pro-active and dynamic approach towards Land Use Management and development. Further, the Land Use Management System should give effect to the Metro's Integrated Development Plan and work hand-in-hand with the implementation of the Metro's Spatial Development Framework and related policies.

- **White Paper**

With respect to Land Use Management, the White Paper further clarify two rationals. The first is the widely felt resistance to the idea of uncontrolled land development and the second is the commonly expressed wish by particular sectors in society to promote various types of desirable land development. The resistance to uncontrolled development is motivated by a number of concerns, the precise mix of which is determined by the particular social, economic and political context of different times and places.

Essentially however, these concerns include the following:

- **Environmental Concerns :**

Uncontrolled development of land can have adverse effects on natural habitats, cultural landscapes and air and water quality.

- **Health and Safety Concerns :**

Uncontrolled development can lead to overcrowding and unsafe building construction. Certain land uses can also be detrimental to the health and safety of neighbours.

- **Social control :**

The control of land uses and building types has long been a means of exerting social control, particularly through the exclusion of certain types of persons, households or economic activities from certain areas through the application of particular development controls limiting, for instance, plot sizes, plot coverage and home industries.

- **Efficiency and provision of infrastructure and traffic management :**

Increasingly it has become clear that where the granting of development permissions is not coupled with the provision of adequate infrastructure and traffic management, the consequences can be severe. Where infrastructure is involved, generally at high financial costs, without taking into account likely and relevant land use and settlement patters, the opportunity cost to society is very high.

– **Determination of property values for purposes of rating :**

The market value of land is the basis on which property valuation is determined and the extent and nature of the development permitted on the land is a key factor to rating and income.

– **Aesthetic concerns :**

The control and management of land development enables Government to prescribe certain design parameters for buildings.

The wish to promote desirable development is also driven by a number of different concerns:

- The land development needs of the market seldom match precisely the social and political needs of Government : Government may well want to promote a type of land development in the area that the market neglects. It then has to take certain steps to facilitate development that will provide incentives.
- Investment promotions : changing the applicable land use management instruments is often seen as a pre-requisite attracting certain types of investment to certain areas. This can take the form of both relaxing controls in those areas and increasing controls in other areas which may be more favoured by the Market. These strategies are likely to be linked to Local Economic Development Initiatives.

### **4.3 Land Use Management System Approach and Alternatives**

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The Land Use Management System objectives for the NMMM should provide guidance with respect to a New Land Use Management System and Integrated Zoning Scheme. Based on the notion of developmental local government and the new paradigm shift towards a flexible approach to zoning, which should be management and development orientated rather than control orientated, a number of approaches and options should be considered. These alternatives with respect to Land Use Management, and in particular drafting a New Integrated Zoning Scheme, should be carefully evaluated and considered for implementation.

Given the unique nature and function of Land Use Management within the urban structure and Municipal Management sphere, various approaches and perspectives should be explored. For the purpose of this report, a number of perspectives to Land Use Management, the role of zoning and alternative zoning techniques, proposed scale and detail of a New Integrated Zoning Scheme and format of the New Land Use Management System are outlined. These proposals should be used as a base line for drafting the New Land Use Management System.

### 4.3.1 Zoning : Role, Perspectives and Alternatives

#### → The role of zoning in relation to other planning tools

Zoning is widely used as a town planning tool in South Africa and other countries. In South Africa, zoning has particular significance because it is the means for allocating development rights to land. Zoning issues have therefore become important to property developers, financial institutions, home owners, environmentalist and local Councillors. However, it is important to recognise that zoning is just one of a number of tools that can be used and should be used to manage development. There are a range of other tools, some statutory and some non-statutory, that can be combined to achieve the developmental goals of the Nelson Mandela Metropolitan Municipality. These include:

- Integrated Development Plans with various sector plans and programmes
- Strategic Plans such as Structure Plans and Spatial Development Frameworks
- Municipal Financial Plans that determine Capital Programmes and Budgets
- Title Deed Conditions
- Building Plan and Site Development Plan requirements and criteria
- Architectural design guidelines
- Articles of Association for Property Owners Associations
- Environmental Impact Assessments, Environmental Contracts and Management Plans
- Environmental Authorisation and Exemptions
- Subdivisions Plans
- Conditions of Rezoning and Subdivision Approval
- Service Delivery Standards
- Policies and Guidelines adopted by the Municipality (Formal and Informal)

It must be understood that zoning alone cannot address the developmental needs and challenges within the Metro. It is capable of achieving certain things, but must be used in association with other tools. One of the main problems with development management in the past is that zoning has not been reflecting changing circumstances and has not responded to the forward planning initiatives of many towns and cities. Given the high level of growth and change, the way zoning and statutory and non-statutory measures deal with development, is crucial.

#### → Zoning Perspectives

Whatever system of development control is used, there are a number of issues that normally emerge and the way these are addressed often depends on the particular perspective. These issues can broadly be divided into three categories:

- Regulatory *versus* Discretionary Control
- Public Action *versus* Private Interest
- Certainty *versus* Flexibility

In order to develop an appropriate system of development management for the Metro, it is necessary to reach some consensus about these perspectives.



- Regulatory versus Discretionary Control

Two distinctive approaches towards development control has emerged, the one being discretionary and the other regulatory. Discretionary systems, like that of Britain, are based on the tradition of case law and that it is impossible to predict in advance the circumstances that may relate to a particular development or site. There is no absolute relationship between the town plan and the development control decision. Plans are indicative of policy but are not definitive and development control can exist in the absence of formal forward planning plans. Discretionary systems are more flexible but create problems with respect to the relationship between development control decisions and policy contained in a forward plan, i.e. Spatial Development Framework. They imply high levels of trust in the decision maker and there is often a lack of certainty in such systems.

Regulatory systems are common in countries that have developed a system of administrative law that clearly defines rights and privileges. In such systems planning control has to be clear in defining the rights of individuals, including land owners and the limits to those rights. Most European countries, excluding England, have planning control systems of this type (including Sweden). It is necessary to prepare a complete statement of what is permissible in advance and any development proposal is just in terms of these regulations. The decision about a planning application takes on less significance because in principle it is merely a confirmation that the proposed development conforms to the regulations. By contrast, the forward plan and associated regulations become very significant because they contain all the criteria against which future development applications will be judged. For this system there is a far greater certainty of knowing in advance if a proposal will be acceptable. Regulatory systems are therefore based on the desire for certainty and the need to define rights within measurable limits. The regulatory system is further highly dependable on capacity and expertise within the controlling Authority or Local Government. On the other hand, discretionary systems may contain explicit criteria but maintain flexibility by the use of open ended broad planning principles. The fixed regulations may provide rigidity that is not desirable, while the open ended system may leave the decision maker and applicant in the dark, but allows for more flexibility. As a consequence, the discretionary system tends to rely more heavily on political decision making, while the regulatory system can be more administrative.

**In the case of the Nelson Mandela Metropolitan Municipality, a balance between these two systems should be achieved. However, based on the high demand for change and the ever changing urban structure, the system should lean towards the discretionary approach.**

- Public Action *versus* Private Interest

Any system dealing with the control of development and development related issues raises basic questions about land ownership and the role of Government. The issue concerning the role of Government is between an impartial authority acting for the greater good and an authority becoming involved in development processes to achieve its own objectives. Manifestation of this is the emergence of the negotiated agreements, in which a developer provides benefits to meet other policy objectives of the public authority. These agreements are widely used in both Britain and France, but can create concerns that undue leverage may be exerted on developers, which may inhibit development.

This practice turns the controlling authority from an impartial adjudicator into a partner of the development process. Within the South African context there is recognition that Government has an active role in developing the country and the concern with negotiated agreements as more to do with undue influence in the approval process, and inhibiting development because this type of levy amounts to another form of taxation.

**Within the Land Use Management context in the Metro, it is anticipated that the Metro will play a leading role with respect to development facilitation and management. The concept of Public Private Partners with respect to development should be encouraged and strengthened.**

- Certainty *versus* Flexibility

In general, Government seeks to ensure that its policies and plans are implemented as individual development decisions are taken, developers look for certainty to guide their decisions and lessen the risk and the general public seeks to protect their collective and individual interest. This certainty can be maintained when development proposals conform to expectations and existing regulations. But a problem arises when the proposal is unexpected and does not conform. It is then that the system of development control is challenged and inflexible regulations may become threatened. The need to respond to unforeseen circumstances creates the tendency to look for flexibility in taking decisions. The demand for particular types of development, design detail and time frames can not always be predicted, since there are many variables associated with development. This uncertainty requires some room for movement on the part of the Local Authority, which implies some discretion. Once discretion is involved the level of certainty diminishes with respect to future developments.

**Again, the advantages of a flexible system are evident. However, certainty is important to stimulate and properly manage economic development and growth.**

## → Alternative Zoning Approaches

As outlined in previous paragraphs, important shifts are occurring in approaches to land use control systems. On the one hand, there is a shift away from the rigid application of a conventional, exclusionary zoning system which results in a strict separation of land uses, towards a more flexible approach of land use control. There is also a greater acceptance of the principle of mixed land use. This growing recognition that the predetermined regulations under the existing zoning models cannot cope with the problems of a dynamic city or maximise the opportunities presented by new economic initiatives, has generated interest in new flexible techniques.

Existing methods of obtaining desired zoning include applications for departure, rezoning and special consents. In addition to these standardised methods, some schemes have adopted the “*Special Purposes Zone*” which provides for a level of discretion and flexibility with respect to developments that do not fit into the existing zoning tables. Granting of these special use applications includes the opportunity for the Municipality to lay down conditions that will assist in regulating the development.

A wide range of alternative zoning techniques have been implemented worldwide. However, for the purpose of this report and as a basis for a New Land Use Management System in the Metro, a broad overview of some of these techniques are presented.

### - Incentive Zoning

Incentive zoning or zoning bonuses allow developers to secure an increase in development parameters in exchange for providing a public benefit of some kind. This can result in immediate gains such as upgrading of surrounding infrastructure, providing social facilities, etc. but can complicate the formulation of long term planning policy if the increase in zoning allowances is substantial and not properly monitored. Incentive zoning take the form of a trade between the developer and the Municipality. The developer is given a bonus, usually in the form of permission to build to a bulk that is somewhat larger than usually allowed, in return for providing certain attributes that might be needed in the community. In this way the developer is offered higher economic returns on his land in return for benefits through the community.

The process in applying incentive zoning would be the normal rezoning procedure. Importantly, upper and lower limits of development parameters should be established and implemented as part of an incentive zoning process. The benefits to the community is obvious, however the system should be carefully monitored to prevent a scenario where rich and privileged developers “buy” zoning and development rights. The incentive zoning approach is indirectly being applied in the Metro with respect to conditions for infrastructure upgrading, transportation development levies and other conditions that indirectly benefit communities. However, the approach can be implemented with more advantages to development.

- Planned Unit Development (PUD)

Planned unit development is a device or method, which allows development to be planned as a unit, thus permitting variations in development parameters and controls relating to density, land use, open space and other design elements. It can therefore allow for a wide range of uses without the form of development being pre-determined as per the preset zonings within the scheme. The existing Resort Zone 1 and Resort Zone 2 zonings within the Section 8 Scheme Regulations are typical examples of where planned unit development have been introduced. The specific zoning allows for a site development plan and negotiation between Council and the developer to determine development rights. Planned unit development provides a high level of flexibility in site design to enable buildings and land uses to be mixed and adopted to the various circumstances. In essence, the planned unit development techniques substitute the existing zonings for major development with a set of special rules negotiated between the Municipality and the developer. The technique is applicable primary to large developments. Planned unit development areas can be predetermined. Examples can include mixed use zones, free development zones, multi-purpose zones, etc.

- Overlay Zones or Special Districts

An overlay zone is a mapped zone that imposes a set of requirements in addition to those already contained in the zoning scheme. In an area where an overlay zone is established, property is placed simultaneously in the two zones and the land may be developed under the conditions and requirements of both zones. Some common uses for overlay zones relate to special development areas or nodes, development corridors, industrial areas, protection of the natural environment, etc. It can therefore be used to protect the particular use and character of an area and to create a specific form of urban fabric. Overlay zones are generally limited in flexibility and at the same time exercise a high level of control and management by the Local Authority. Through their limited flexibility, they add an opportunity to implement site specific public policies, especially with regard to environmental protection, architectural standards and historic building protection.

- Performance Zoning

Although the performance zoning concept differs substantially from the way zoning schemes are implemented in South Africa, it is important to outline the principles of the performance zoning concept. Performance zoning is widely used in the United States and has certain advantages. Performance zoning is used in place of conventional use classifications in zoning and is a land use regulation system that permits or prohibits land uses based on their performance according to preset criteria.

Performance zoning grew out of the performance standards first developed for industrial development. Rather than listing permitted industrial uses in various zoning districts, industries were allowed to locate in certain districts if they measured up to quantifiable criteria. While traditional systems focus on the control of land use, performance controls focus on the control of externalities, which a particular use gives rise to. The general idea is that as long as the performance standard is met, the developer is free to choose his methods of compliance and in some cases land use. Criteria for control are defined and quantified and any proposed development will have to meet the set criteria. In the case of new development the land owner will have to show how the proposed land uses meet the criteria, in order to be granted permission for development. Therefore, a comprehensive and well equipped inspection and implementation system is required on behalf of the local authority.

**The importance of these techniques are the underlying principle of flexibility and development facilitation. These techniques should not necessarily be implemented as free standing inclusions in the scheme, but should rather be moulded to find a unique method of assisting and stimulating economic growth in the Metro. Implementation of these alternative zoning techniques should further be linked to Spatial Development Framework detail, institutional capacity of the Planning Department, available resources and level of delegation.**

#### 4.3.2 Scale and Detail

Based on the analysis of the existing scheme regulations within the Metro, it is evident that various approaches have been adopted in preparing these schemes. Some of the schemes contain as much as thirty individual zonings where others as little as three individual zonings. The scale and format of a New Zoning Scheme largely depends on the level of flexibility and role that the zoning scheme will play within the Land Use Management System environment.

Based on the objectives for a New Land Use Management System, the status quo analysis and policy directives, a number of recommendations can now be made with respect to scale and inclusiveness of a New Integrated Zoning Scheme.

##### → **Minimum requirements**

In order to give effect with the legislative and policy directives it is recommended that New Integrated Zoning Scheme for the Metro include at least, but not limited to, the following components:

- A set of land use zones to accommodate existing and possible future development scenarios.

- Primary land uses permissible on each of the land use zones with the possibility of secondary uses or consent uses within each zone.
- A standard set of definitions for all primary uses, secondary uses and consent uses. Definitions should further be included for matters that need to be further explained.
- Development parameters with respect to densities, coverage, height, floor area ratio and parking.
- Directives with respect to scheme implementation, procedure, delegation and other matters incidental to the Integrated Zoning Scheme and part of the Land Use Management System.

These components propose minimum requirements for inclusion in the New Land Use Management System (including a Integrated Zoning Scheme) for the Metro. It should be noted that these requirements are a guideline and should be refined as part of the revision process or phases 4 and 5 of the LUMS Project. However, it is noted that flexibility and ease of use of the Land Use Management System should be prioritised. A user friendly tool that is accessible to the public and day-to-day users is essential.

#### → Other Issues

In achieving the principle of flexibility, it is important to take informed decisions on inclusions and exclusions to the New Integrated Zoning Scheme. Existing scheme regulations in the Metro differs substantially with respect to a number of zones.

**The general consensus that this scheme regulations should be streamlined and development friendly, adds to the principle of minimizing use zones with greater flexibility within each zone. This opens the opportunity and possibility of providing for primary, secondary and consent uses within a smaller number of use zones. In addition to less use zones, alternatively zoning techniques with specific reference to overlay zones, special use areas, etc, should be introduced. However, it is important that current uses and possible future uses be accommodated.**

The inclusion or exclusion of general policy guidelines and mechanisms in the scheme is a further issue to be debated and clarified. The one option would be to include as little policy issues in the zoning scheme as possible. This allows for greater flexibility with respect to amendment, adoption and change of policies outside the procedure of implementing and amending a scheme regulation. Exclusion of certain policies from the scheme might make it difficult to implement, especially if certain policies do not have proper political backing and support. Generally, it is recommended that policies which are geographically bound within certain areas of the Municipality, should not be included in the scheme. Specific reference is made to issues of densification, subdivision, advertising, etc.

A number of these policy issues need regular updating and amendment to keep track of urban growth and the dynamics within the city. Policies included in the scheme would be more rigid and it would be more difficult to change these policies on a regular basis.

### → **Incidental Matters**

In addition to the land use zones, primary uses, secondary uses, consent uses, definitions and development parameters, a number of additional issues should be included in the scheme. The integrated scheme should be user friendly and provide information relevant to its implementation. Other matters for inclusion in the scheme can include, but not be limited, to the following:

- A general overview of zoning, the decision making framework, components of the scheme and responsibilities of owners, council and the public.
- Provisions with respect to alternative zoning approaches (i.e. special zones, overlay zones, mixed use areas, etc), integration of zoning scheme with the Integrated Development Plan and Spatial Development Framework.
- Matters relating to procedures, including application procedures, basis for consideration, evaluation for applications, resolutions, enforcement and advertisement.
- Zoning administration
- New scheme implementation and transitional arrangements

It is important to note that during the Integrated Zoning Scheme drafting process, decisions should be taken on incidental matters for inclusion or exclusion in the new scheme. The incremental drafting process will dictate to a large extent which of these components, with specific reference to policies, should be included in the scheme or be part of the broader Land Use Management System.

### → **Scheme Regulation Format**

The format of the scheme regulations should be based on whether the New Scheme Regulations Document would be “*inclusive or exclusive*”. Most of the scheme regulations within the Metro’s area of jurisdiction are inclusive documents with the exception of the Port Elizabeth scheme. Inclusive scheme documents present development parameters under the heading of each specific land use zone. Exclusive scheme documents present development parameters under separate headings such as coverage, floor area, building lines, etc.

**The Integrated Zoning Scheme for the Metro would most probably represent a combination of the inclusive and exclusive options. However, the inclusive zoning scheme format tends to be more practical with ease of cross-referencing. Again the drafting process will strongly guide and dictate the end product.**

Additional to the document format (inclusive *versus* exclusive) there are a number of other elements that need to be considered regarding the most appropriate form of layout and presentation. Firstly, the information within the document may be presented in a number of different ways with respect to development parameters, use zones and permitted uses. These can be presented in written text format, tables, matrixes, schedules or through a cross referencing system.

**It is recommended that the main motive with respect to document format should be to minimise number of pages and improve reference abilities. The use of tables and matrixes should be encourage and cross referencing should be minimised.**

#### **4.4 LUMS Objectives and Policy Directives**

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The objectives for a New Land Use Management System for the NMMM should be based on the National directives with specific reference to the White Paper and the Land Use Management Bill. Other legislative guidelines, but not limited to, include the Development Facilitation Act, the Municipal Systems Act and ultimately the Constitution. However, objectives with respect to the Nelson Mandela Metropolitan Municipality and its unique situation should be formulated using these National policy and legislative directives as a guideline. It is further noted that significant work has been done as part of the formulating of the comprehensive Urban Plan for Port Elizabeth on the matter of land use management. Objectives identified through this process are taken into consideration.

Drafting and implementation of a New Land Use Management System for the Nelson Mandela Metropolitan Municipality should be based on the following objectives and policy directives:

**→ To facilitate and guide development in a pro-active manner**

- Strong linkages between the Land Use Management System, the Spatial Development Framework and the Integrated Development Plan should be established
- The Land Use Management System should adopt a flexible approach to zoning which is management and development orientated rather than control orientated
- Policy matters with respect to land use management should as far as possible not be included in the Scheme Regulations. These policy matters, as a general rule, should be part of the Land Use Management System but not part of the Integrated Zoning Scheme. Inclusion or exclusion of certain policies should be decided as part of the LUMS drafting process.



→ **To integrate the existing fragmented Land Use Management System**

- The basis of integration of the existing Land Use Management System should be the compilation of one set of zoning scheme regulations for the Metro's area of jurisdiction
- Integration of the Land Use Management System would include administrative and institutional integration into one holistic and coherent system and procedure

→ **To promote public participation, capacitation and the protection of public and private interest**

- Implement streamlined, transparent and simple procedures for applications of land use change
- Engage in public private partnerships
- Introduce mechanisms to make public involvement within specific areas and neighbourhoods pro-active and efficient
- Promote capacity building within communities
- Include normative principles in the Land Use Management System to reflect values and beliefs of communities and the inhabitants of the city
- Create close links between applicants, decision makers and policy plans
- Increase the role of community organisations in decision making in uncontested applications

→ **To ensure and promote the protection of the natural and built environment**

- Include measures and policies with respect to protection of the natural and built environment

→ **To provide for delegation and decentralisation of power**

- Promote decentralisation and delegation of power to officials in areas where certain policy decisions have been accepted by Council
- Link delegation of powers to alternative zoning techniques and SDF strategies
- Use the mechanism of delegation to speed up land use management processes and streamlining of procedures

→ **To promote the principles of efficiency, integration and sustainability**

- Make provision for zonings that will address the principles of efficiency, integration and sustainability, i.e. mixed use zones, densification and compact settlements
- The Land Use Management System should include policies and components addressing the principles of efficiency integration and sustainability

→ **To draft a user friendly, simplified and implementable Land Use Management System**

- Categorise land uses and zonings to create a standardised set of regulations that shall apply to all areas
- Reduce the number of zonings with clear and simple definitions for all uses and definable terms
- Implement alternative zoning approaches and mechanisms to attract and stimulate development opportunities
- The Zoning Scheme format should lean towards the inclusive format with development parameters presented in table and matrix format
- Compile a unified and single zoning map, zoning register and GIS base

→ **To formulate measures for implementation, enforcement and management**

- The Land Use Management System should include policies and mechanisms with respect to implementation and enforcement
- Community involvement and public participation should assist in matters with respect to implementation enforcement and management
- Streamlining and reducing the number of zones and complicated application procedures and mechanisms should reduce the need for enforcement
- The Land Use Management System and the Integrated Zoning Scheme should have clear guidelines and procedures with respect to the protection of existing rights and transitional arrangements for implementation of the new scheme. The concept of non-conforming uses should be clearly addressed.
- The Land Use Management System should include matters relating to delegation of authority and powers and functions of the Metro. Powers and functions of Provincial and National Departments and their effect on Land Use Management and implementation of the zoning scheme should be accommodated.

## 4.5 Conclusion

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This section of the report analyses a number of directives with specific reference to the White Paper input, role perspective and alternatives with respect to zoning and various alternative zoning approaches. The scale, detail and matters to be included in the new zoning scheme are further addressed. The core informant for drafting a New Land Use Management System is the Land Use Management System Objectives and policy directives as presented in paragraph 4.4. These objectives should form the basis for follow-up work in “*Component 2 : Land Use Management System components, including an Integrated Zoning Scheme*” (refer to paragraph 1.4).

The follow-up process of drafting the Land Use Management System would incorporate and analyse these in more details. Substantiating the basis for this document (Outcomes Report for Phases 1, 2 and 3), the foundation has been presented to build on and draft a management system that would address the relevant issues at hand in support of the concepts and notions of Developmental Local Government, Land Use Facilitation and Management, Flexibility and Simplicity.

## 5.0 RECOMMENDATIONS

This Outcomes Report provide a strong base and point of departure for proceeding with the Land Use Management System project. Given the unique nature, priority and urgency of drafting a new system for the Metro, the project should now proceed to the next phase which entails actual revising and drafting of a New Land Use Management System, to include an Integrated Zoning Scheme for the Metro. The project would basically entail revising the existing scheme regulations, updating the existing scheme maps and register and formulate certain policy measures and aspects for inclusion in the New Land Use Management Scheme for the Metro.

It is again noted that one of the project objectives is to restructure and change the way Land Use Management is dealt with within the Metro. Inevitably, this process will be time consuming and will need a lot of commitment and resources on behalf of all roleplayers. Similar processes have been initiated in various other Metro's in South Africa and these processes prove to be substantial and time consuming.

The recommendations made deal with the recommended approach on the way forward and a proposed project programme for drafting the Land Use Management System. It is noted that this document is a working document and recommendations and proposals should be confirmed and supported by the relevant roleplayers, including Council.

### □ Approach and Way Forward

The recommended approach or strategy for taking the Land Use Management System drafting process forward are based on previous experience and directives from the Phases 1, 2 and 3 Outcomes Report. Implementation of the project programme should be based on these strategies with emphasis on issues of prioritisation and incrementalism.

#### ▪ Need for a New Land Use Management System

Work done to date clearly outlines and reiterates the need to proceed as a matter of urgency with a New Land Use Management System for the Metro. This notion has further been supported by the Integrated Development Plan for the Metro and subsequent initiatives. Given the developmental mandate and national policy directives, the Metro has an obligation to proceed with drafting a revised and new generation Land Use Management System for its area of jurisdiction.

Capacity and expertise within the Municipality should be identified to drive and proceed with the project. It is inevitable that external capacity will be needed to assist the Municipality from a technical and capacitation point of view.

▪ **Interim Measures**

Drafting of an Integrated Zoning Scheme and holistic New Land Use Management System for the Metro have been a priority for some time. The scale of the project and various practicalities necessitate that final implementation of a New Land Use Management System might take considerable time to complete and implement. Therefore, interim measures should be investigated to deal with matters of urgency. It might be necessary to make small and minor amendments to existing schemes prior to finalisation and drafting of an integrated scheme for the Metro.

▪ **Incremental Approach and Prioritisation**

It is strongly recommended that the Metro adopt an incremental approach based on prioritisation when embarking on a LUMS drafting process. A project of this nature will always pose certain unknowns and challenges. It is therefore recommended that the project be embarked on and approached incrementally with highest priority issues being dealt with first. The attached project programme indicates a possible route for implementation.

It is recommended that the following components of the Land Use Management System be prioritised for drafting and implementation :

- Revision and integration of existing twelve zoning schemes
- Revision of zoning maps in line with revised zoning schemes
- Establishment of a registry and recording system
- Transition arrangements and institutional implementation strategies
- Drafting of prioritised land use management components

□ **Project Programme**





## Annexure 2 : Comparative Zone Analysis Table

### Land Use Category : Agriculture and Rural

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
Port Elizabeth	None		
IKKM	None		
Uitenhage	None		
Kwanobuhle	None		
Despatch	Agricultural Zone	-Agriculture	-Additional Dwelling Units -Farm Stall -Intensive Feed Farming -Riding School -Nursery -Service Trade -Tourist Facilities
Khayamnandi	None		
Lovemore Park	Rural Residential	-Dwelling House -Residential Outbuildings -Structures Housing Animals	-Places of Public Worship -Places of Institution -Institutional Buildings -Riding Schools -Restaurants
Area A	Agricultural	-Agricultural Buildings -Parks -Nature Reserves	-Pet Kennels -Golf and Putting Courses -Recreational Grounds -Riding Schools -Restaurants
	Rural Residential	-Dwelling House -Outbuildings -Structures Housing Animals	-Places of Public Worship -Places of Instruction -Institutional Buildings -Riding School -Restaurants
Section 8 (LUPO)	Agricultural 1	-Agriculture	-Additional Dwelling Units -Farm Stall -Intensive Feed Farming -Riding School -Nursery -Service Trade Tourism Facility
	Agricultural 2	-Agricultural Industry	-Tourist Facilities -Farm Stall

## Land Use Category : Low-Density Residential (Single)

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Residential 1	-Dwelling Houses	-Places of Public Worship -Places of Assembly -Places of Instruction -Institutions -Special Uses -Guest Houses
<b>IKKM</b>	Residential 1	- Residential Units - Town Houses	-General Residential Buildings -Hotels -Places of Instruction -Places of Worship -Community Facilities -Shebeens -Shelters
<b>Uitenhage</b>	Single Residential	-Dwelling Houses	-Places of Public Worship -Social Halls -Places of Instruction -Special Buildings
<b>Kwanobuhle</b>	Residential 1	-Residential Units -Town Houses	-General Residential Buildings -Hotels -Places of Instruction -Places of Worship -Community Facilities -Taverns -Businesses -Service Trades
<b>Despatch</b>	Residential 1	-Dwelling Houses	-Guest House -Additional Dwelling Units
<b>Khayamnandi</b>	Residential 1	-Residential Units -Town Houses	-General Residential Buildings -Hotels -Places of Instruction -Places of Worship -Community Facilities -Taverns -Shelters -Additional Dwelling Unit
<b>Lovemore Park</b>	None		
<b>Area A</b>	Single Residential	-Dwelling Houses -Outbuildings	-Places of Public Worship -Places of Instruction
<b>Section 8 (LUPO)</b>	Residential 1	-Dwelling House	-Additional Dwelling Units



## Land Use Category : Medium and High Density Residential

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Residential 2	-Dwelling Units	-Places of Public Worship -Place of Assembly -Places of Instruction -Institutions -Special Uses -Guest Houses
	Residential 3	-Dwelling Units -Residential Buildings -Guest Houses	-Licensed Hotels -Medical Uses -Places of Amusement -Places of Public Worship -Places of Assembly -Places of Instruction -Institutions -Special Uses -Parking
<b>IKKM</b>	Residential 2	-General Residential Buildings -Residential Units -Town Houses	-Hotels -Places of Instruction -Places of Worship -Community Facilities -Shebeens -Businesses -Service Trades
<b>Uitenhage</b>	General Residential (Sub-Zone 1)	-Flats -Places of Instruction -Dwelling Houses	-Places of Public Worship -Social Halls -Institutional Buildings -Residential Buildings -Group Housing -Licensed Hotels (no off-sales) -Professional Partnerships -Special Buildings
	General Residential (Sub-Zone 2)	-Flats -Places of Instruction -Dwelling Houses -Business Premises	-Places of Public Worship -Social Halls -Institutional Buildings -Residential Buildings -Group Housing -Licensed Hotels (no off-sales) -Special Buildings
	Group Housing	-Group Housing Schemes	
<b>Kwanobuhle</b>	Residential 2	-General Residential Buildings -Residential Units -Town Houses	-Hotels -Places of Instruction -Places of Worship -Community Facilities -Taverns -Businesses -Service Trades
<b>Despatch</b>	Residential 2	-Group House	-Dwelling House -Retirement Village -Guest House
	Residential 3	-Town House	-Dwelling House -Group House -Retirement Village -Guest House
	Residential 4	-Flats	-Dwelling House -Group House -Town House -Public Housing -Professional Usage
	Residential 5	-Residential Building	-Group House -Town House -Flats -Public Housing -Professional Usage -Place of Assembly

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Khayamnandi</b>	Residential 3	-Shelter -Residential Units	-Community Facilities -Places of Instruction -Places of Worship -Taverns -Service Trades -Businesses
<b>Lovemore Park</b>	None		
<b>Area A</b>	Cluster Housing	-Clustered Dwelling Houses -Outbuildings -Structures Housing Animals	-Places of Assembly -Places of Instruction -Institutional Buildings -Residential Buildings -Riding Schools
	Group Housing	-Grouped Dwelling Houses -Outbuildings	-To be Determined
<b>Section 8 (LUPO)</b>	Residential 2	-Group House	-Dwelling House -Retirement Village
	Residential 3	-Town House	-Dwelling House -Group House -Retirement Village
	Residential 4	-Flats	-Dwelling House -Group House -Town House -Public Housing -Professional Usage
	Residential 5	-Residential Building	-Group House -Town House -Flats -Public Housing -Professional Usage -Place of Assembly

## Land Use Category : Informal Residential

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Residential 4	-Dwelling Units	All uses except Noxious Uses
<b>IKKM</b>	None		
<b>Uitenhage</b>	None		
<b>Kwanobuhle</b>	Residential 3	-Shelters -Residential Units	-Community Facilities -Places of Instruction -Places of Worship -Taverns -Service Trades -Businesses
<b>Despatch</b>	Residential 6	-Shelters -Dwelling House	None
<b>Khayamandi</b>	Residential 3	-Shelters -Residential Units	-Community Facilities -Places of Instruction -Places of Worship -Taverns -Service Trades -Businesses
<b>Lovemore Park</b>	None		
<b>Area A</b>	None		
<b>Section 8 (LUPO)</b>	Informal Residential	-Shelters -Dwelling House	

## Land Use Category : Business / Commercial

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Business 1	-Shops -Business Purposes -Places of Worship -Places of Assembly -Places of Instruction -Dwelling Units -Residential Buildings -Public Garages -Warehousing -Funeral Parlours -Parking -Licensed Hotels -Guest Houses	All uses except Noxious Uses
	Business 2	-Shops -Business Purposes -Dwelling Units -Parking	All uses except Industries and Noxious Uses
	Business 3	-Offices -Medical Uses -Dwelling Units -Residential Buildings	Restaurants for on-site consumption of food
<b>IKKM</b>	Business	-Businesses -General Residential Buildings -Hotels	-Places of Instruction -Places of Worship -Community Facilities -Shebeens -Service Stations -Service Trades -Sex Shops
<b>Uitenhage</b>	Business	-Business Premises -Shops -Licensed Hotels -Flats above the ground floor -Social Halls & Places of Amusement -Dry Cleanettes & Laundrettes	-Public Garages -Open-Air Car Marts -Places of Instruction -Residential Buildings above the ground floor -Warehouses -Special Buildings -Putting Courses -Drive-in Restaurants
	Suburban Business	-Shops -Business Premises -Dry Cleanettes & Laundrettes -Dwelling Houses -Flats	-Open-Air Car Marts -Places of Amusement -Social Halls -Places of Instructions -Special Buildings -Warehouses -Putting Courses -Drive-in Restaurants
<b>Kwanobuhle</b>	Business	-Businesses -General Residential Buildings -Hotels	-Places of Instruction -Places of Worship -Community Facilities -Taverns -Service Stations -Service Trades -Funeral Parlour
<b>Despatch</b>	Business 1	-Business Premises	-Town House -Flats -Residential Building -Place of Assembly -Place of Entertainment -Place of Instruction -Institution -Bottle store -Supermarket -Service Trade -Offices

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Despatch</b>	Business 2	-Shop	-Town House -Flats -Drive-in Restaurant -Residential Building -Place of Assembly -Offices -Supermarket -Restaurant
	Business 3	-Service Station	-Public Garage
<b>Khayamandi</b>	Business	-Businesses -General Residential Buildings -Hotels	-Places of Instruction -Places of Worship -Community Facilities -Taverns -Service Stations -Service Trades
<b>Lovemore Park</b>	Business	-Shop attached to Dwelling House -Business Premises -Flats above ground floor -Place of Assembly	-Drive-in Restaurant -Putting Course -Places of Instruction -Public Garage
<b>Area A</b>	Business	-Shop attached to Dwelling House -Business Premises -Flats above ground floor -Place of Assembly -Licensed Hotel	-Drive-in Restaurant -Putting Courses -Places of Instruction -Public Garages
<b>Section 8 (LUPO)</b>	Business 1	-Business Premises	-Town House -Flats -Residential Building -Place of Assembly -Place of Entertainment -Place of Instruction -Institution -Bottle store -Supermarket -Service Trade
	Business 2	-Shop	-Town House -Flats -Residential Building -Place of Assembly -Offices -Supermarket
	Business 3	-Offices	-Town House -Flats -Residential Building -Place of Assembly -Place of Entertainment -Supermarket
	Business 4	-Warehouse	-Place of Assembly -Place of Entertainment -Place of Instruction -Transport Usage -Supermarket
	Business 5	-Service Station	-Public Garage

## Land Use Category : Industrial

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Industrial 1		
	Industrial 2	-Funeral Parlours -Industries -Business Purposes -Public Garages -Parking -Warehousing -Shops -Workshops -Builders Yard -Noxious Uses	All uses except Noxious Uses not complying with Regulation 3.15.2
	Industrial 3	-Noxious Uses	-Industries -Workshops -Special Uses
<b>IKKM</b>	Industrial	-Industries -Service Stations -Service Trades	-Businesses -Noxious Trades -Sex Shops
<b>Uitenhage</b>	Industrial	-Industrial Buildings -Public Garages -Warehouses	-Business Premises -Shops -Scrap Yards -Noxious Industrial Building -Special Buildings
	Special Industrial		-Industrial Buildings (excluding noxious industrial buildings) -Warehouses -Public Garages -Business Premises -Shops -Scrap Yards -Special Buildings
<b>Kwanobuhle</b>	Industrial	-Industries -Service Stations -Service Trades	-Businesses -Noxious Trades
<b>Despatch</b>	Industrial 1	-Industrial	-Warehouse -Public Garage -Transport Usage -Scrap Yard
	Industrial 2	-Noxious Trade	-Industry -Warehouse -Public Garage -Scrap Yard
	Industrial 3	-Mining	None
<b>Khayamnandi</b>	Industrial	-Industries -Service Stations -Service Trades	-Businesses -Noxious Trades
<b>Lovemore Park</b>	None		
<b>Area A</b>	None		
<b>Section 8 (LUPO)</b>	Industrial 1	-Industrial	-Warehouse -Public Garage -Transport Usage -Scrap Yard
	Industrial 2	-Noxious Trade	-Industry -Warehouse -Public Garage -Scrap Yard
	Industrial 3	-Mining	None

## Land Use Category : Community and Municipal Services

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Community 1	-Institutions -Places of Public Worship -Places of Assembly -Places of Instruction	-Dwelling Units -Funeral Parlours -Special Uses
	Community 2	-Places of Instruction -Places of Public Worship	-Institutions -Places of Assembly -Dwelling Units -Special Uses
	Community 3	-Public Authority Purposes	-Special Uses
<b>IKKM</b>	Institutional 1	-Places of Instruction	None
	Institutional 2	-Places of Worship	None
	Institutional 3	-Community Facilities	None
	Services	-Public Services	None
<b>Uitenhage</b>	None		
<b>Kwanobuhle</b>	Institutional 1	-Places of Instruction	None
	Institutional 2	-Places of Worship	None
	Institutional 3	-Community Facilities	None
	Services	-Public Services	None
<b>Despatch</b>	Institutional 1	-Places of Instruction	-Place of Assembly
	Institutional 2	-Places of Worship	-Parsonage -Place of Assembly
	Institutional 3	-Institution	-Place of Assembly
<b>Khayamnandi</b>	Institutional 1	-Places of Instruction	None
	Institutional 2	-Places of Worship	None
	Institutional 3	-Community Facilities	None
	Authority	-Authority Usage	None
<b>Lovemore Park</b>	None		
<b>Area A</b>	Public Assembly	Places of Assembly	To be Determined
<b>Section 8 (LUPO)</b>	Institutional 1	-Places of Instruction	-Place of Assembly
	Institutional 2	-House of Worship	-Parsonage -Place of Assembly
	Institutional 3	-Institution	-Place of Assembly
	Authority	-Authority Usage	None

## Land Use Category : Open Space, Resort and Nature

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Public Open Space	-Public Open Space	-Shops -Business Purposes -Special Uses
	Private Open Space	-Public Open Space	-Special Uses
<b>IKKM</b>	Open Space 1	-Open Space	-Nature Areas
	Open Space 2	-Sportsgrounds	-Recreation Facilities -Cemeteries -Resorts -Nurseries -Agriculture
<b>Uitenhage</b>	None		
<b>Kwanobuhle</b>	Open Space 1	-Open Space	-Nature Areas
	Open Space 2	-Sportsgrounds	-Recreation Facilities -Cemeteries -Resorts -Nurseries -Agriculture
<b>Despatch</b>	Resort 1	-Holiday Accommodation Site -Resort Shop -Tourists	-Caravan Park -Camping Facilities
	Resort 2	-Holiday Housing	-Caravan Park -Motel -Licensed Hotel -Camping Site -Resort Shop -Tourists Facilities
	Open Space 1	-Public Open Space	None
	Open Space 2	-Private Open Space	None
	Open Space 3	-Nature Reserve	None
<b>Khayamnandi</b>	Open Space 1	-Open Space	-Nature Areas
	Open Space 2	-Sportsgrounds	-Recreation Facilities -Cemeteries -Resorts -Nurseries -Agriculture
<b>Lovemore Park</b>	None		
<b>Area A</b>	Special Environment	-Dwelling House -Outbuildings -Natures Reserves -Parks -Recreation Grounds -A Forestation or Forest Purposes	-Structures Housing Animals -Places of Assembly -Places of Instruction -Institutional Buildings -Riding Schools
<b>Section 8 (LUPO)</b>	Resort 1	-Holiday Accommodation Site	-Resort Shop -Tourists Facilities
	Resort 2	-Holiday Housing	-Motel -Licensed Hotel -Resort Shop -Tourists Facilities
	Open Space 1	-Public Open Space	None
	Open Space 2	-Private Open Space	None
	Open Space 3	-Nature Reserve	None



## Land Use Category : Transport

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Transportation 1	-Streets -Public Transportation	-Shops -Business Purposes -Special Uses
	Transportation 2	-Railways -Harbour -Airport	-Shops -Business Purposes -Special Uses
	Transportation 3	-Parking	-Special Uses
<b>IKKM</b>	Street	-Streets	None
	Parking	-Parking	None
	Transport Uses	-Transport Uses	-All uses except Noxious Trends
<b>Uitenhage</b>	None		
<b>Kwanobuhle</b>	Street	-Streets	None
	Parking	-Parking	None
<b>Despatch</b>	Transportation 1	-Transport Uses	None
	Transportation 2	-Public Road	None
	Transportation 3	-Public Parking	None
<b>Khayamnandi</b>	Transportation 1	-Streets	None
	Transportation 2	-Parking	None
<b>Lovemore Park</b>	None		
<b>Area A</b>	None		
<b>Section 8 (LUPO)</b>	Transportation 1	-Transport Uses	None
	Transportation 2	-Public Road	None
	Transportation 3	-Public Parking	None

## Land Use Category : Other and Undetermined

Town Planning Scheme	Comparable Zone	Primary Use	Consent Use
<b>Port Elizabeth</b>	Special Purposes	Uses as specified in the applicable zoning scheme	Uses as specified in the applicable zoning scheme
	Undetermined	-Dwelling Houses -Agricultural Purposes	
<b>IKKM</b>	Special Purposes	Special Purposes	None
	Undetermined	None	None
<b>Uitenhage</b>	Undetermined		Any use subject to the approval of His Honour the Administrator
<b>Kwanobuhle</b>	Special Purposes	Special Purposes	None
	Undetermined	None	None
<b>Despatch</b>	Special	Special Usage	-Conservation Usage
	Undetermined	None	None
<b>Khayamnandi</b>	Special	Special Purposes	None
	Undetermined	None	None
<b>Lovemore Park</b>	Undetermined	-Dwelling House -Residential Outbuildings -Agricultural Buildings -Structures Housing Animals	-Pet Kennels -Golf and Putting Courses -Recreational Grounds -Riding Schools -Restaurants
<b>Area A</b>	Undetermined	Existing Uses Only	
<b>Section 8 (LUPO)</b>	Special	Special Usage	None
	Undetermined	None	None

# NMMM: ZONING SCHEME AREAS

