

**Kensington Residents and Rate Payers Association (KRRA)  
submission to the City of Johannesburg regarding the 2017 Land  
Use Scheme Draft.**

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## Introduction

This document serves as the Kensington's Residents and Rate Payers Association (KRRA) submission to the City of Johannesburg regarding the 2017 Land Use Scheme Draft (LUS)

The KRRA engaged in an extensive consultation process that included:

(a) participation in the CoJ's regional consultative meeting for Region F on 7 September, 2017; (b) convening a special meeting of residents to discuss their concerns about the LUS; and (c) soliciting feedback from residents via social media (KRRA website, face book, WhatsApp and social media platforms of other groups in the area). This submission collates all the feedback received.

The outline of the submission is as follows: issues of general concern about the community context, the likely impact of the LUC and recommendations are outlined first. This is followed by comments from residents who attended the formal consultation of the CoJ on 7 September 2017; and finally specific comments are made on different sections and specific clauses in the document. Where no comments are made, this should not be read to mean acceptance of the provisions. In view of the technical nature of some of the specific provisions, we do not have the knowledge to comment nor the financial resources to contract a specialist such as a town planner and or urban planner to advise us. The CoJ should make available such expertise to residents if meaningful and genuine consultation is to take place.

Participation in this consultation process does not mean that the KRRA agrees with the direction taken by the City. Moreover, the KRRA regrets that besides consultation, residents will have little or no remedy if the above provisions are adopted. The KRRA reserves the right to engage in different processes should it consider it necessary.

## Issues of general concern, impact and overall recommendations

Kensington is one of the oldest but also largest suburbs in Joburg. Its 4 790 households represent a very diverse community with a population of 19 197 (StatsSA 2011). The area has moved significantly from its white middle-class origins to being a multi-racial and multi-class neighbourhood. It now has 60% Black residents (African, coloured and Indian) and diverse income groups: a third may be classified as low and middle income respectively, 11% being upper middle income and 15% are high income earners (StatsSA 2011 Census). This income mix has significant benefits in promoting social cohesion and economic viability. It sits well with the CoJ's vision and mission to overcome the apartheid spatial, racial and income divides towards creating a more inclusive City. In 2011, unemployment was low around 5% and the area provides considerable revenue to the CoJ through rates and taxes and is a significant customer base for retail businesses in the Eastgate and Bedford view areas.

Kennington's status as a heritage neighbourhood (formally declared a heritage area in 2012) is an asset with significant potential for tourism that remains untapped. However, Kensington has ageing infrastructure, problems of increasing crime, the proliferation of illegal businesses including liquor outlets, illegal dumping of waste, poor health and environmental management, the proliferation of illegal building operations, rental of backyard rooms and

shockingly poor enforcement of the CoJ's numerous bylaws. The area is under pressure from urban decline from its surrounding neighbourhoods (Malvern, Bez Valley, Troyville). These worrying factors and changing dynamics are snowballing and are leading to the depreciation of property values and turn potential buyers and investors away.

These social, economic, infrastructural and service delivery concerns were uppermost in the minds of residents who provided feedback on the proposed new LUS Draft of 2017. There was no opposition to the good intentions of the new LUS to promote sustainable, equitable urban management of the CoJ and to reducing poverty and inequality. The residents are currently hard at work to defend property values, improve the quality of the lived environment (cleaning is done by Clean Village an NPO established by residents), promote safety (patrol of public spaces PPS) and protection of the **residential character** of the area through the monitoring of bylaw infringements.

With due regard to the above, the residents of Kensington represented by the KRRA, are of the view that specific provisions of the LUS Draft of 2017 should be either abolished entirely or substantially reviewed. Instead of promoting sound and equitable urban management, these provisions as they stand, could lead to the further degeneration of the area. The lack of municipal capacity to implement current bylaws and the new LUC poses a grave threat to Kensington and similar areas that are under-going significant changes.

We wish to echo a statement made by one of the residents at the KRRA consultation on 20 September 2017:

*"Introducing new bylaws when the old ones are not being enforced or lowering standards under the claim of simplifying them because the city is unwilling to invest in enforcing its own bylaws, are unacceptable to the residents of the area".*

**Our recommendation is that the:**

- provision for spaza or house shops (clause 19) in residential areas be removed from the LUS;
- home enterprises, professions and/or occupation (clause 20) be reviewed with due regard to the KRRA's comments below; and that
- subsidiary buildings (clause 21) be similarly reviewed.

Feedback from residents: 7 September 2017

The following issues were raised by residents at the formal consultative meeting convened by the COJ on 7 September 2017 at Eureka House, in Springfield :

- Lack of enforcement of the current by-laws (2016) of the CoJ. Failure to enforce them has resulted in owners and residents disregarding laws as there are no consequences. Moreover, those that do want to follow the rules face significant bureaucracy, costs and delays.
- Consequently, residents are left with no recourse or remedies to address their concerns about the proliferation of illegal businesses, in particular spaza shops, back

rooms for rental and sometimes the blatant disregard of building regulations – especially concerning heritage issues.

- In light of the previous points it is KRRA's view that the scheme should clarify in each point and/or in general, what the objection process is going forward; how it will function; and what is being done in order to insure objections are dealt with swiftly and fairly.
- Owners and residents are of the view that the new Land Use Scheme (LUS) will make no difference to the situation in Kensington. Instead, it could lead to a proliferation of illegal businesses/actions due to the gap between policy intention and the actual reality on the ground.
- Furthermore, it could have the unintended effect of encouraging the proliferation of spaza shops especially in diverse residential areas (in terms of race and income) that are already undergoing significant change. Kensington is therefore at greater risk of urban degeneration because of its location and surrounding areas that have already experienced significant urban decay (e.g. Malvern, Troyville, Bezuidenhout Valley).
- Residents fear that this situation will impact on their quality of life, reduce property values with no hope of reversal of the situation.
- The KRRA is concerned about how the general objective of densification that underpins the scheme will be implemented, and how the increased demands for services will be accommodated e.g. infrastructure (water, sewage, electricity, refusal), congestion of traffic, and the availability of schools and health services among others).
- The point was made that if the CoJ envisaged the densification provisions of the new LUS 2017 to increase "revenue generation" without commensurate service provision and enforcement capacity, it will have the opposite effect of eroding the rates and tax base of communities like Kensington due to the flight of rate paying residents from the area.
- Concerns were raised about the transparency of the LUS consultation process: two different versions – one dated 2017, one named "Draft 2" dated June 2017 was circulated for comment. There are significant differences between the two documents. This raises concerns about implementation and on how serious the City is about genuine consultation with residents.
- Numerous provisions in the LUS are open to different interpretations, are vague and many terms are not clearly defined. This could open the door to discretionary action by City officials; the reinterpretation of rules and procedures leading to confusion implementation and enforcement failures. One example is the repeated use of the phrase "to the satisfaction of the Council".
- The new scheme should thus be accompanied by specific and concrete guarantees from the City to increase enforcement of the rules, shorten the turnaround times of responses to complaints and objections, and a speedy resolution thereof. Otherwise, the scheme is nothing more than empty words.

## Comments

### **Section 1: Land Development Rights**

## **II. Definitions**

- **“Bed and breakfast”** – 10 suites/rooms in addition to accommodation is a resident is too many as this means that there will be a minimum of 22 people accommodated at a B&B. the definition does not say anything about the size of the erf. This should be reviewed.
- **“Boarding house”** – seems to be different to a B&B. the number of rooms and people to be accommodated should be spelt out as this too could lead to overcrowding. The erf size is not indicated. This should be reviewed.
- **“Commune”** – similar comments to the above as this will depend on the number of rooms to be shared and the facilities to support 8 people in one house. This should be reviewed.
- The LUS does not define "resident/"tenants"

## **III. Use of land and Buildings**

### **Clause 14: General Conditions Applicable to All Erven**

6. What are the guiding principles underlying the term 'satisfaction'? Are they structural considerations, or aesthetic considerations? or both?
7. What recourse is there when the owner is absent, or ownership is unclear (as in the case of a hijacked property)?
10. What about main buildings that are damaged, and consequently are only partly inhabitable? (e.g. 76 Mars Street, where part of the house is fire damaged, therefore leaving the building de facto 'partly erected')
- 13.f. See comments on (clause 19) below
  - g. This is unclear. Is the 'occupier' in this instance the spaza shop owner or the resident?
  - h. What is the definition of 'unsightly' in this context?

### **Clause 19: Spaza / House Shop**

The question was asked as to whether consent by the CoJ now replaces the previous provision that the owner/resident had to apply for the rezoning of the property in order to run a business. Because consent may be easier to obtain, it could lead to a proliferation of spaza shops e.g. you can end up with 10 spaza shops in the same street or a block? On the other hand, consent can be withdrawn, which is positive. Consent can only be given to the owner or permanent resident for a specific business on the premises. While Council consent could reduce red tape associated with an application for rezoning, consent could open the door to the proliferation of spaza shops and might even legalise pre-existing illegal businesses. The KRRA suggests that the consent of the owner should be a requirement for running a business on a premises.

The economic effect on property values of allowing spaza shops in residential areas should be carefully considered.

*Specific comments on clause 19.*

- 1.a. - Consent from residents should be more stringent than the two adjacent homes as the owner of the spaza shop may own the adjacent houses? Should it not be that the owners/residents on a street/block should give consent? What about putting up a notice on the property indicating the intention of the person to open a spaza shop and calling on residents to submit their objections or give their approval? If notification is only published in the Government Gazette and or a local newspaper, it is unlikely to be read by many people. More accessible forms of notification are needed so that residents can be alert at all times.
  - It is unclear on what grounds the council will decide what is or is not a valid observation. This vague formulation allows for wide discretionary action on the part of Council officials.
  - The mechanism by which residents will be allowed to object to the establishment of a spaza shop and how this clause will be enforced should be stated in the document.
- 1.b. "Owner/occupant" is too generalised, and dilutes responsibility. Either the owner should be the principal, or the consent of the owner must be obtained (see point above).
- 1.c. Under what conditions could the council grant permission for more spaza shops to be established? This is a worrying statement.
- 1.d. The density of spaza shops should be limited and specific areas identified.
- 1.e. Is this part of the 36 square metres? What are the conditions governing the placement of such containers? What about aesthetic considerations? The provisions for containers should be a separate point and it should be clearly spelt out including the limitations.
- 1.h. This needs more detail, see clause (20), particularly 20.5 to 20.10.
1. j. Although the sale and consumption of liquor in spaza shops is prohibited, this does not mean it will not be possible to apply for a shebeen (see residential 1 page 32).
- 1.k. There is concern about the unchecked discretionary powers of the council.

No provision is made for the regulation of signage for spaza shops as is the case in clause 20.7 pertaining to home enterprises.

*Clause 20: Home Enterprises, Profession and/or Occupation*

As noted above, many of the conditions set out in (20) should be applied to (19) as well, particularly as regards the potential environmental, social and aesthetic impact.

3. See comment on 19.1(b) above. How is a "permanent occupant" defined? e.g., is a signatory to a long-term lease a "permanent occupant", even though s/he may only have been pursuing that occupation for a week? What are the limits of authority/responsibility? Property owners must be made accountable, and tenants should seek permission to run a home enterprise from owners, who in turn, have to get Council approval.
4. There should be stated limitations on the number of people, particularly if the business cannot exceed 36 square metres. See comment on clause 20.5 below.

5. How does this square with 20.4 above? The infrastructure is already old and overused. What is the trade-off between infrastructure norms and basic service provision on the one hand and the objective of densification?
7. Presumably these by-laws indicate the maximum dimensions of such signage. If not, this should be stipulated here. Furthermore, provisions regarding “unsightliness” should also be included here.
8. This should be extended to include the congregation of members of the public/pedestrians. As noted in clause 19 above, these limitations - including this proposed amendment - should also apply to spaza shops.
9. What are the principles governing “aesthetic appearance”?
10. Again, are there clearer guidelines governing the notion of what is “unsightly”?
11. See comment on clause 19(e) above. The possibility of containers and other non-permanent structures being used for home enterprises professions and/or occupations requires more detail. There is great potential for the proliferation of informality, with the attendant problems of “unsightliness”, health and safety risks and the like. Should the Council be the sole arbiter here? This should be extended to neighbours for approval.

Issues not addressed include the following:

- Business hours are not stipulated
- The "re-purposing" of empty or abandoned buildings or unused spaces are not provided for in the LUS scheme.
- The LUS should spell out how enforcement will be done; what remedies residents have where the LUS provisions are not enforced either through objections, complaints and the like.
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Clause 21: Subsidiary dwelling unit

A rough calculation of the number of people who may be accommodated in a subsidiary dwelling shows that at the upper limit, between 15 and 20 people could live in the subsidiary dwelling. (160 square meters less roughly 25 square meters for ablutions and kitchen amounts to 135 square meters divided by 9 square meters per person, which is the norm suggested, it will mean that there will be at minimum, 15 people in a subsidiary building. The larger the number of household members, up to 20 people could be accommodated (based on a calculation of 27 square meters for a household of 4 as 6 square meters is allowed for additional members).

If this is correct, then there is grave concern about overcrowding and the proliferation of rooms for rent. This has all sorts of consequences like the dumping of waste and pressure on infrastructure and services because up to 20 people could technically now occupy a house equipped for refuse removal for 4 people.

In the proposed LUS subsidiary buildings are limited to two units per erf, but clarification is required of the situation where there are large stands of up to 1500 square metres in some parts of Kensington.

The KRRA requests that clause 21 be reviewed and that there be limitations on subsidiary dwellings and the number of residents that could be accommodated in 99% residential areas such as Kensington. Only 1% of Kensington has commercial rights (StatsSA 2011 Census data).

As stated above this densification potentially increases pressure on an already overused infrastructure. Will future rates and service charges consider this? If not, residents will be subsidising the services and infrastructure use of home and commercial businesses in the area.

The question was asked repeatedly if Council has the capacity to enforce the new rules and regulations, especially because this capacity is currently under-resourced and ineffective. For example, how many building inspectors are needed to enforce these regulations; can the Council afford the cost of demolition of buildings where there is non-compliance with Building Regulations?

Again, a clear mechanism for objection should be considered. This includes a provision for considering approval by neighbours.

*Specific comments on clause 21*

1. Is there no restriction on the size of the erf? Is there no provision for the minimum land around each unit? What about aesthetic considerations in relation to the main dwelling unit and/or the urban character? What about heritage issues? See the provision in (22.2) below regarding "sufficient area on site" - surely, this should be extended to considerations of erecting subsidiary units of any kind.
- 1.b Again, what about the spatial relationship of the unit(s) to the main dwelling house?
- 1.d This seems to be inviting "lean-to" type structures, or structures that ignore the existing architecture of the property. More detail is required here in relation to the structure, appearance and location of such subsidiary units.
- 1.e.(ii) Limitations on the actual number of people need to be indicated here. A household of how many people? Maximum 3?
- 1.e.(v) Again, restrictions on the number of people as well as the number of spaces are called for here.
- 1.f. Should the Council be the only arbiter here? This has the potential to impact negatively on neighbourhoods, and permission of neighbours should be sought.
- 1.g This potentially further limits the space around the main dwelling unit. What are the limitations in this regard?
- 1.h. This presumably deals with ways of addressing the concerns above regarding space, but this needs more detailed provision.
- 1.j. See comment on 20(f) above.

*Questions:*

- What limitations are proposed for distance to boundary wall and double story constructions?
- Can a basement be used as a subsidiary dwelling?
- Is the consent of the neighbour not required?



Clause 22: Conditions for Child Care Centres On Residential Erven

3. What about the number of employees? What limitations apply?

Clause 23: Conditions relating to Religious Purposes

1. "Its" rather than "it's"

Clause 25: Consolidation and Subdivision of Erven

2.c. "As far as possible" is too vague a limitation, and is open for abuse. It should be spelled out that express permission is required from the Council to interfere in any way with the local vegetation such as trees and/or prominent natural features.

8. What approach will the City take regarding rooms and subsidiaries built against the boundary wall?

**Section 2: Management of Land Development Rights**

**VII. Land Development and Administration**

Clause 42: Contraventions /Illegal land uses

Besides the obvious enforcement issue, residents are concerned that infringements are legalised by the simple payment of a fine leaving buildings that should never have been built as they are.

Since the City generates income from fines on illegal buildings, there is no incentive to prevent infractions.

**Section 3: Promotion of Land Development**

**IX. General Land Development Mechanisms**

Clause 47: Heritage

Poses the obvious question of enforcement and who to direct objections and complaints to. The City does not have heritage enforcement office and residents do not know who to call in case of a problem.