

The NEW Heritage Protection Overlay Zone (HPOZ)

Since 1 March 2013 areas previously protected as Conservation/Special Areas under the old Zoning Schemes are now protected as Heritage Protection Overlays under the new integrated Cape Town Zoning Scheme.

Change has occurred

- With the implementation of the new integrated Cape Town Zoning Scheme the new HPOZs have come into place taking over from previous conservation areas and special areas.
- The immediate changes however are not extensive in the transition from conservation areas and special areas to Heritage Protection Overlays.
- The Heritage Resources Section (HRS) of the City's Environmental Resource Management Branch continues to manage heritage resources under LUPO but in terms of the HPOZ established through the new Cape Town Zoning Scheme.
- Remember the HPOZ must currently be read together with the Exemption 3 in the appendix.
- Administration should continue as before, other than for slighter stronger control over alterations externally visible alterations, change in use and excavations.
- We are bound to face some challenges as we cut our teeth on the new system – we shall try to address queries immediately.
- We shall also be keeping a list of additional amendments that may be required to the zoning scheme heritage component.
- Please forward any heritage HPOZ queries, or suggestions to heritage.references@capetown.gov.za.

Why this change

- It has been for a long time necessary for the City to integrate the many different zoning schemes inherited from the smaller municipalities when the metro was formed.
- With the development of this new integrated zoning scheme, the National Heritage Resources Act stipulates that certain heritage protections included in the Act must be carried through into the zoning scheme.
- The Heritage Protection Overlay Zone has been drawn up to conform to the requirements for the heritage components of zoning schemes required under the NHRA in terms of both Heritage Areas (Section 31) and the Register (Section 30).
- As these sections of the NHRA are more stringent than the protections under the previous conservation areas, a default exemption (Exemption 3) from requiring approval for certain activities (within previous conservation areas) has been published.

- This generally brings the HPOZ protections over previous conservation areas in line with their previous protections under the old zoning schemes. As such the “status quo” will in practise remain largely unchanged.
- This general default exemption level for pervious conservation areas will be reviewed for individual properties at the time of re-assessment of the grading and significances of these properties in the future.
- In terms of the new Cape Town Zoning Scheme, previous conservation areas are protected as the Heritage Protection Overlays. The names of these individual areas have not changed. For example the old Chapel Street Conservation Area is now the Chapel Street Heritage Overlay.

Previous Conservation (or equivalent) Areas now protected under the HPOZ

• Mowbray Station	HPO/1/1 21
• Mowbray – Rosebank	HPO/1/1 22
• Little Mowbray	HPO/1/1 23
• Upper Rondebosch	HPO/1/2 24
• Belmont Road, Rondebosch	HPO/1/2 25
• Silwood, Rondebosch	HPO/1/3 26
• St Michael's, Rondebosch	HPO/1/4 27
• Lower Rouwkoop Road, Rondebosch	HPO/1/4 28
• Westerford, Rondebosch	HPO/1/4 29
• Kelvin, Rondebosch	HPO/1/4 30
• Wynberg Village	HPO/1/5 31
• Muizenberg Village	HPO/1/6 32
• Atlantic / Beach Road, Muizenberg	HPO/1/6 33
• Royal / Beach Road, Muizenberg	HPO/1/6 34
• Muizenberg-St James-Kalk Bay	HPO/1/7 35
• Simon's Town Special Architectural Area	HPO/1/8 36
• Sea Point, St Bedes and Green Point	HPO/2/1 1, 2, 3
• Loader Street	HPO/2/2 4
• Central City	HPO/2/3 5
• Wandel Street	HPO/2/3 6
• Maynard Street	HPO/2/3 7
• Upper Table Valley	HPO/2/4 8
• Upper Table Valley (Vredehoek)	HPO/2/5 9
• Chapel Street	HPO/2/6 10
• Victoria Road	HPO/2/6 11
• Queens Road	HPO/2/6 12
• Chester / Coronation Street	HPO/2/6 13
• Roodebloem Road	HPO/2/6 14
• Albert Road	HPO/2/7 15
• Cavendish Square	HPO/2/7 16
• Regent Street	HPO/2/7 17
• Salt River	HPO/2/7 18
• Upper Observatory	HPO/2/8 19
• Lower Observatory	HPO/2/8 20
• Pinelands	HPO/2/9 21

It must be noted that Clifton-Bakoven are already deemed heritage areas in terms of the transitional arrangement of the NHRA, and are governed by their by-law.

They are also special Local Areas (Overlay Zones) in terms of the new CTZS.

What activities currently require City Heritage approval In terms of the HPOZ?

The protections in terms of the HPOZ read with Exemption 3 which has been applied to old conservation areas are currently similar to their previous protections. It should be noted that approvals required under the HPOZ for physical alterations are limited to external changes or other changes that could affect the way a place appears or is used. Approval for excavation below ground is also required. This may change at a later stage as delegations and lifting of the 60 years clause takes place and sites are individually assessed as to applicable exemptions in accordance with grading and significances.

Activity Requiring HPOZ Approval in an HPOZ area with Exemption 3	Example
Any addition of any new structure	<ul style="list-style-type: none"> • Construction of new buildings, walls, car ports, signage posts etc
Any external alteration to a place or structure	<ul style="list-style-type: none"> • Additions to buildings • Replacement of shop fronts • Change of roof type • Addition of roof lights • Extension of pavements etc
Any development that may influence its stability and future well-being	<ul style="list-style-type: none"> • Removal of internal walls that may make a structure unsafe etc
Changes to or removal of any external fittings or joinery which has been in situ for more than 60 years	<ul style="list-style-type: none"> • Replacement of old windows and doors etc
Any internal alteration that is visible from outside a building	<ul style="list-style-type: none"> • Building floor levels across windows in a building being converted to a parking garage
Painting of any natural finishes on the exterior of a structure	<ul style="list-style-type: none"> • Painting a sandstone building • Painting a teak shop front window
Subdivision or consolidation	<ul style="list-style-type: none"> • Subdivision or consolidation
Any change to the natural or existing topography of land	<ul style="list-style-type: none"> • Flattening or building up or changing levels of a landscape
Any removal or destruction of trees, mature plantings or hedges or changes to a historical landscape	<ul style="list-style-type: none"> • Cutting down a gum tree over 60 years old • Removal of an old avenue of oak trees etc
Addition of (or changes to) hard landscaping	<ul style="list-style-type: none"> • Removing grass for tarred surfacing to provide parking areas • Brick paving a laterite parking area, etc
Alteration to or removal of any landscape feature street furniture	<ul style="list-style-type: none"> • Removal of an early light standard • Removal of a fountain
Any below-ground excavation.	<ul style="list-style-type: none"> • Excavation for foundations • Excavation for services
Carrying out any works on or over or under a place	<ul style="list-style-type: none"> • Construction of an air bridge
Change of use	<ul style="list-style-type: none"> • Rezoning a residential house to provide for commercial usage

Other heritage protections still apply

- The protections in terms of the HPOZ read with Exemption 3 do not make any changes to the requirements or protections under the national Heritage Resources Act. For example, where
 - S27 (Provincial or National Heritage Sites)
 - S34 (Structures over 60 years old)
 - S35 (Archaeology and Palaeontology)
 - S36 (Burials)
 - S38 (Impact Assessment)are triggered the required notifications and applications will need to be made to the respective heritage resources authority, SAHRA and/or HWC.
- The **City HRS Commentary Form** MUST still be completed and submitted to the heritage resources authority as part of any application or S38 matter. HWC/SAHRA will consider these comments as part of their decision-making.
- LUPO/HPOZ evaluations by the City still remain independent to and may be more restrictive than other heritage authorisations made under the NHRA.

How is an application in terms of the HPOZ processed?

Applications are made in terms of the new Cape Town Zoning Scheme and should generally go through the same processes as before.

- Interested and affected parties must be notified of an application in terms of normal City policy – The policy has minimum advertising requirements, such as ‘site notice’, See [http://wcms.capetown.gov.za/eDocuments/LUM_Notification_Policy - Aug 2010 892010145253 .pdf](http://wcms.capetown.gov.za/eDocuments/LUM_Notification_Policy_-_Aug_2010_892010145253_.pdf)
- In considering an application the City must take into account the effect such activity may have on the significance of the heritage place or heritage area concerned.

What information may the HRS require in terms of the HPOZ?

The Heritage Resources Section may require from an applicant whatever information is necessary to enable an informed decision to be made regarding the application. This may, inter alia, include:

- details of the activities for which an application is made
- statements of significance / heritage statements / research
- a statement of conservation policy in respect of the work proposed to be carried out
- recording of the heritage place or parts of the heritage place to be affected by the actions
- photographs of the site, and its context including sites adjacent and opposite

What conditions may the City impose on an approval?

The City may attach conditions to an approval in terms of the HPOZ which could include inter alia:

- use of materials and finishes
- heritage management plans
- recycling or reuse of materials

- requirements for landscaping
- method statements
- guarantees
- timescales within which work approved must be in place or be completed

These conditions need to be appropriate and properly motivated and must be relevant to the application in hand.

Appeals

Appeals will continue to be dealt with according to existing processes or new general LUMS processes until such time as HWC delegations issues are finalized.

The Future

- The City is still looking towards establishing a single local point of approval for all heritage issues that do not involve Grade I or Grade II heritage places.
- This will require the City to apply to HWC for delegations to carry out all Grade III related functions.
- In the longer terms (3 to 4 years) it is hoped that all heritage resources will have been identified and protected through the HPOZ or as Provincial or National Heritage Sites providing for S34 to be lifted.

APPENDIX 1

CTZS Chapter 3 of Appendix

CHAPTER 3

HERITAGE PROTECTION OVERLAY ZONES

3.1 GENERAL PROVISIONS

- (a) Council shall apply the general provisions stipulated in this section to a heritage place or a heritage area protected as a Heritage Protection Overlay (HPO) zone where it considers these provisions to be appropriate.
- (b) Where the general provisions apply, and unless otherwise exempted, the following activities affecting a place or an area protected as a Heritage Protection Overlay zone require the approval of Council:
 - (i) Any alteration, including any action affecting the structure, appearance or physical properties of a heritage place, whether by way of structural or other works, by painting, plastering or other decoration or any other means;
 - (ii) Any development, including any physical intervention, excavation, or action other than those caused by natural forces, which may in any way result in a change to the appearance or physical nature of a heritage place, or influence its stability and future well-being, including –
 - (aa) construction, alteration, demolition, removal or change of use of a heritage place or a structure at a heritage place;
 - (bb) carrying out any works on or over or under a heritage place;
 - (cc) subdivision or consolidation of land comprising a heritage place, including the structures or airspace of a heritage place;
 - (dd) any change to the natural or existing condition or topography of land; and
 - (ee) any permanent removal or destruction of trees, or removal of vegetation or topsoil;
 - (iii) Addition of any new structure;
 - (iv) Partial demolition of a structure;
 - (v) Alteration to or removal of any historical landscape or any landscape feature, including boundary hedges and mature plantings; or addition or removal of or alteration to hard landscape surfaces, street furniture or signage;
 - (vi) Any below-ground excavation.
- (c) Council may exempt a specific activity or schedule of activities in a geographic area which has been protected as a Heritage Protection Overlay zone from the requirements of section 3.1(b).

3.2 SPECIFIC PROVISIONS

- (a) Council may apply specific provisions to a heritage place or heritage area protected as a Heritage Protection Overlay zone, which may be in addition or alternative to the general provisions in section 3.1, provided it relates to land use and development rules and are recorded in a heritage management plan approved by Council in terms of this zoning scheme.
- (b) Council must consult the owner or owners of the heritage place or area before introducing specific provisions in respect of the place or area protected as a Heritage Protection Overlay zone.

3.3 CONSIDERATION OF APPLICATIONS

- (a) In respect of an application for approval for an activity referred to in section 3.1 or 3.2 above, Council may require from an applicant whatever information it deems necessary to enable an informed decision to be made regarding the application, which may, inter alia, include:
 - (i) details of the activities for which an application is made;
 - (ii) a statement of significance or a heritage statement;
 - (iii) a statement of conservation policy in respect of the work proposed to be carried out;
 - (iv) an annotated recording of the heritage place or parts of the heritage place to be affected by the actions;
 - (v) heritage and historical research; and
 - (vi) photographs.
- (b) In considering an application referred to in section 3.1(b) above, Council must take into account the effect such activity may have on the significance of the heritage place or heritage area concerned.
- (c) In approving an application referred to in section 3.1(b) above, Council may impose any conditions it believes appropriate for the protection and enhancement of the heritage place or area, including inter alia conditions regarding:
 - (i) requirements for landscaping;
 - (ii) use of materials and finishes;
 - (iii) heritage management plans;
 - (iv) recycling or reuse of materials;
 - (v) method statements; and
 - (vi) timescales within which work approved must be in place or be completed.
- (d) Approval for an activity in a Heritage Protection Overlay zone as referred to in section 3.1(b) above does not exempt an applicant or owner from obtaining other required approvals.

APPENDIX 2

CTZS

Chapter 14

General Provisions of Overlay Zones

This chapter deals with procedures to prepare, adopt, replace, amend or recommend overlay zones and sets out the legal status of an overlay zone.

14.1 REQUIREMENTS AND PROCEDURES FOR OVERLAY ZONES

Requirements for preparing an overlay zone

14.1.1 Council may prepare any overlay zone as provided for in this zoning scheme.

14.1.2 An owner of land may prepare and submit to Council for its consideration an application for one or more of the overlay zones providing development directives as contained in Chapter 15 for such land.

14.1.3 Preparation of an overlay zone shall take into consideration the following requirements where applicable:

- (a) the principles contained in planning law;

- (b) the Council's planning vision and principles as set out in its Integrated Development Plan;
- (c) desired spatial form, including but not limited to the development of public and private land, infrastructure investment, utilisation of space, spatial reconstruction, location and nature of development, urban edge, scenic routes, areas of strategic intervention, mitigation of development impacts;
- (d) the principles as set out in an approved spatial development framework or a policy plan;
- (e) environmental and heritage protection and conservation; and
- (f) the principles of co-operative governance and the duties and objectives of local government as set out in the Municipal Systems Act and the National Constitution.

14.1.4 An overlay zone must not detract from Council's ability to serve the needs of the municipal area as a whole.

Adoption, replacement, amendment or recommending overlay zones

14.1.5 Council may adopt, replace, amend or recommend overlay zones that provide for development directives (as set out in Chapter 15) by following the rezoning procedures stipulated in planning law.

14.1.6 Council may recommend to the competent authority the adoption, replacement or amendment of overlay zones that provide for strategic incentives or specific management mechanisms (as set out in Chapters 16 and 17) by following the procedures for amending and replacing zoning schemes as stipulated in planning law.

14.1.7 Council may grant departures from the development rules or restrictions or provisions of any overlay zone by following the departure procedures stipulated in planning law.

Designation by Council of a Heritage Protection Overlay zone

14.1.8 Council may, after consultation with an owner or owners of land concerned and after consideration of representations received, designate by approval in terms of this zoning scheme and by notice in the Provincial Gazette any heritage place it considers in terms of its heritage strategy to be conservation-worthy as a Heritage Protection Overlay zone, and apply either the general provisions set out in section 3.1 or the specific provisions in section 3.2 of the Appendix document.

Identification and numbering

14.1.9 Council shall approve a distinctive name and number for each overlay zone when adopting such overlay zone.

14.1.10 Council may indicate the area of an overlay zone on the zoning map, and:

- (a) shall record the existence of an overlay zone adopted in terms of Chapters 16 and 17 in the relevant annexure at the back of this zoning scheme;
- (b) shall record the detailed provisions of each overlay zone adopted in terms of Chapters 16 and 17 in a separate appendix, with a reference to the relevant name and number of the overlay zone concerned, within 30 days after a final decision is made or the amendment is promulgated, whichever is the case.

14.2 STATUS OF OVERLAY ZONES

14.2.1 An overlay zone applies in addition to the base zone or base zones of the properties to which it relates, and may vary the development rules or use rights relating to a particular area or land unit, or may set new development rules or use rights.

14.2.2 The provisions of an overlay zone may be more restrictive or more permissive than the provisions applicable to the base zone of the property concerned, or may set specific development rules for a particular area or land unit.

14.2.3 If the provisions of an overlay zone are different to, or in conflict with, the provisions of a base zone, the more restrictive provisions shall apply, unless stated otherwise in the overlay zone concerned.

14.2.4 The provisions of an overlay zone do not in any way detract from any obligations in terms of national and provincial legislation.

14.2.5 The provisions of an overlay zone may apply to a land unit or land units, an area, or to the city as a whole, as may be stipulated in the adoption of such an overlay zone.

14.2.6 The provisions of more than one overlay zone may apply to a land unit or area.

APPENDIX 3

CTZS

Chapter 17

OVERLAY ZONES FOR SPECIFIC MANAGEMENT MECHANISMS

These overlay zones provide mechanisms for designating either city-wide or localised development management rules to deal with specific concerns, over and above the provisions of a base zone. These overlay zones should be applied to promote Council's planning principles, goals, objectives and strategies as may be identified in the approved Integrated Development Plan, Integrated Metropolitan Environmental Policy strategies, or spatial plans.

17.1 HERITAGE PROTECTION OVERLAY ZONE (HPO)

Purpose

The HPO makes provision for the protection of heritage places entered on the heritage register maintained by the provincial heritage resources authority, and for the protection of heritage areas as provided for in terms of the heritage legislation. It also provides a mechanism for the protection of heritage places the Council considers to be conservation-worthy in terms of its heritage strategies. The HPO enables the designation of such heritage places and heritage areas on the zoning map.

Designating a Heritage Protection Overlay zone

17.1.1 The following heritage places are deemed to be Heritage Protection Overlay zones and shall be subject to the provisions of this overlay zone:

- (a) any heritage place that has been entered into the register of heritage resources maintained by the provincial heritage resources authority in accordance with heritage legislation;
- (b) any heritage place that has been designated a heritage area in accordance with heritage legislation; and
- (c) any heritage place or resource as recorded in section 17.1.3.

17.1.2 Notwithstanding section 17.1.1 and subject to the provisions of section 14.1.8, Council may designate any heritage place that it considers to be conservation-worthy in

terms of its approved heritage strategy as a Heritage Protection Overlay zone, and such heritage place shall be subject to the provisions of this overlay zone.

17.1.3 Council shall record all Heritage Protection Overlay zones in Annexure F, which may include heritage places or categories of heritage resources mapped on a digital inventory in terms of the City's heritage strategies.

17.1.4 The provisions of section 14.1 and 14.2 shall apply.

Use of the property

17.1.5 The following land use restrictions apply to property in this zone:

- (a) **Primary uses** are as stipulated in the base zone.
- (b) **Additional use rights** are as stipulated in the base zone.
- (c) **Consent uses** are as stipulated in the base zone, or any use approved by Council as an incentive in terms of section 17.1.7.

Development rules

17.1.6 In addition to the development rules that apply to the base zone, the provisions of the relevant Heritage Protection Overlay zone (as adopted and recorded in terms of section 14.1) shall, where applicable, apply.

17.1.7 Council may approve any use as a consent use in this overlay zone, provided that:

- (a) such use is consistent with the uses determined to be appropriate in terms of a Council approved Heritage Management plan, in order to provide the owner with an incentive to preserve the heritage resource, and
- (b) Council may require cessation of the consent use right if the heritage place protected in terms of the Heritage Protection Overlay zone is not maintained and protected to the requirements stipulated in the Council approved Heritage Management plan for the property, or as agreed between Council and the owner, in which case the provisions of section 2.8.1 shall apply.

17.1.8 Any development rules in terms of an approved Heritage Protection Overlay zone that exceed, or are more restrictive than, the limitations of a base zone, shall be deemed to be approved departures from the provisions of the base zone.

APPENDIX 4

Approval Exemptions

Approval exemptions for sites protected through the general provisions of the Heritage Protection Overlay Zone

In terms of Section 3.1 (c) of the Cape Town Zoning Scheme: Overlay Appendix, the following exemptions (as reflected in the City's Heritage Inventory or Register) from obtaining Council's approval in terms of Section 3.1(b) apply to places or areas protected in terms of the General Provisions of the Heritage Protection Overlay Zone.

1. Transitional exemption:

Until such time as a site which is protected in terms of the HPOZ has been placed on the Register or on the City's Heritage Inventory and either a Specific Exemption or a nil exemption

status is assigned, Exemption 3 below is deemed applicable; provided that any requirements under the National Heritage Resources Act 25 of 1999 and any other applicable law are complied with.

2. Specific exemptions:

Exemption		Activities exempted from having to obtain Council's approval
Exemption 3	Exemption 1	<p>The following Landscaping activities are exempt:</p> <ul style="list-style-type: none"> • Day to day gardening and garden maintenance that <i>does not involve</i> the removal of mature trees or hedges, or change in topography of the landscape, or the erection, demolition or removal of walls, fences, structures or features. • Continuance of planting and farming activities which does not change the character or topography of a place. This <i>does not include</i> the erection of permanent or temporary structures.
	Exemption 2	<p>The following Minor Maintenance activities are exempt:</p> <ul style="list-style-type: none"> • Re-painting or re-decorating (including changes in paint colour but not including painting of natural stone, unpainted metal, face-brick, ceramic, or unpainted wood, or similar such unpainted surface); • Replacement of roof covering using identical material, treatment and form; • Minor maintenance that does not involve: changes in material, form, or type of finish, removal of original joinery, features or fittings, or such which have been part of the structure for over 60 years.
		<p>The following Internal Alterations activities are exempt:</p> <ul style="list-style-type: none"> • Internal construction, removal, alteration or demolition that is not visible from outside a structure. (This exemption does not include internal construction across window, door or other openings which may be seen from outside the structure, or alterations that compromise the structural integrity of a structure).
Exemption 4		<p>The following activities are exempt: All activities authorised for a place, site or area in terms of and in accordance with a Heritage Management Plan approved by the City.</p>

Notes:

- 1. Exemption 3 includes exemption 1 and 2, and Exemption 2 include exemption 1.**
- 2. The above exemptions do not apply to any other requirements under Planning law, the National Building Regulations or any other legislation.**

Clifton-Bakoven Bylaw

19337 16 October 1998

NATIONAL MONUMENTS ACT, 1969 (ACT No. 28 OF 1969) BY-LAWS PERTAINING TO THE CONSERVATION AREA KNOWN AS THE CLIFTON, GLEN BEACH AND BAKOVEN BUNGALOW AREA, CAPE TOWN

In terms of section 18 (1) of the National Monuments Act, 1969 (Act No. 28 of 1969), the National Monuments Council has, with the approval of the Minister of Arts, Culture, Science and Technology, made the by-laws contained in the Annexure.

ANNEXURE

1. Definitions

In these by-laws, unless the context indicates otherwise-

"the Act" means the National Monuments Act, 1969 (Act No. 28 of 1969);

"by-laws" means the original by-laws, as well as any additions thereto;

"the Conservation Area" means subdivisions of Erf 345, Clifton, as indicated on General Plan No. 4168/1992; subdivisions of Erf 2585, Camps Bay, as indicated on General Plan No. 5686/1993; and subdivisions of Erf 2666, Camps Bay, as indicated on General Plan No. 11091/1993, situated in the Municipality of Cape Town, Administrative District of the Cape, Western Cape Province, which have been designated as a Conservation Area in terms of section 5 (9) of the Act;

"the Council" means the National Monuments Council, as instituted by section 2 of the Act; and

"permit" means written authority given by the Council following approval of an application made in terms of section 17 of the Act.

2. The owners, lessees, occupiers or other users of the Conservation Area shall ensure-

- 2.1 that the existing open spaces are protected;
- 2.2 that no point on any structure erected or to be erected on any site in future projects beyond the maximum developable space;
- 2.3 that the appearance and height of any building erected in the conservation area and the density of any vegetation are in keeping with the general character of the area and have the approval of the Council;
- 2.4 that no erf in the said area is consolidated with any other erf in the said area; and
- 2.5 that the by-laws are applied in conjunction with the requirements of the amended zoning scheme of the Municipality of Cape Town, dated 3 April 1992 (No. P.N. 191/1992, section 111).

3. An owner shall ensure that any successor-in-title to the Conservation Area or portions thereof, or any lessee or holder of a servitude or other rights concerning any part or the whole of the Conservation Area-

- 3.1 is made aware of the status of the Conservation Area; and
- 3.2 acknowledges in the agreement under which such person acquires rights in the Conservation Area subsequent to the creation thereof, that he or she has been informed of the status of the Conservation Area.

4. An owner shall forthwith inform the Council in writing if he or she enters into an agreement to sell, let or otherwise encumber the Conservation Area or part thereof in any way.

5. Any deviation from the above by-laws shall be approved by the National Monuments Council.