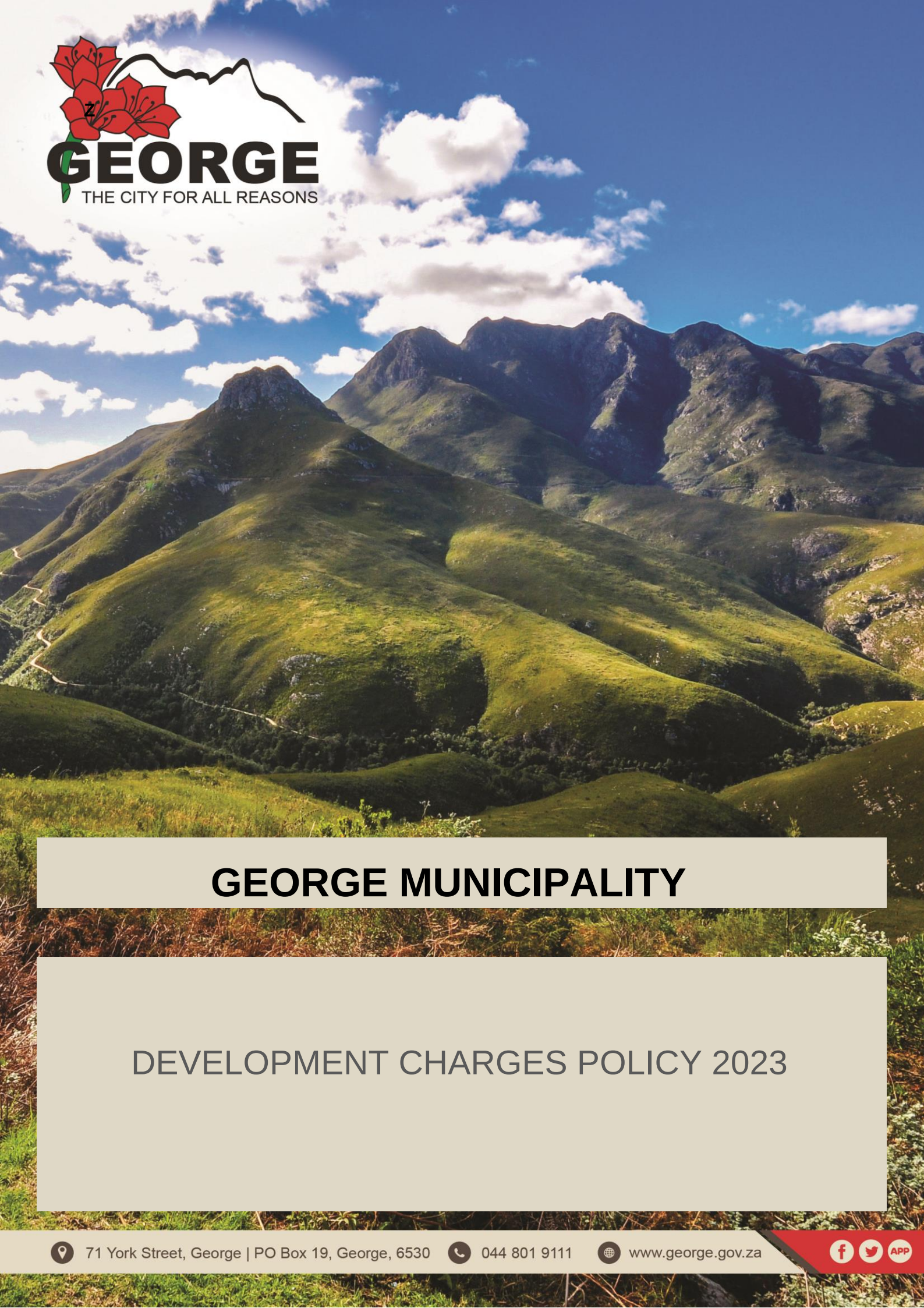


# GEORGE MUNICIPALITY

## DEVELOPMENT CHARGES POLICY 2023

71 York Street, George | PO Box 19, George, 6530 044 801 9111 www.george.gov.za

# I N D E X

## 1. DEFINITIONS

1.1 In this policy, unless the context indicates otherwise -

**'applicant'** means a person or entity contemplated in section 45(1) of the SPLUMA who submits a land development application;

**'bulk service'** means the capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure provision of municipal infrastructure services for the benefit of multiple users or the community as a whole, whether existing or to be provided for a development allowed in terms of the MSDF (for which the applicable and relevant Master Plan approved by the Municipality shall be used as a guide to identify such bulk service);

**'capacity'** means the extent of availability of a municipal infrastructure service, based on the capital infrastructure asset or combination of capital infrastructure assets installed for provision of such municipal infrastructure services;

**'capital infrastructure asset'** means land, property, building or any other immovable asset, including plant and equipment that accede thereto, which is required for provision of a municipal infrastructure service;

**'community facilities'** in relation to municipal public expenditure for municipal service infrastructure and amenities, means facilities including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls as referred to in section 40(4) of LUPA;

**'council'** means the municipal council for the Municipality;

**'developer'** means a person who successfully applied for land development and intends to implement the land development;

**'development charge'** means a charge levied by a Municipal Planning Tribunal in terms of section 40(7)(b) of, and contemplated in section 49 of SPLUMA, which must-

- contribute towards the cost of capital infrastructure assets required to meet increased demand for existing and planned external engineering services; or

- with the approval of the Minister, contribute towards capital infrastructure assets required to meet increased demand for other municipal engineering services not prescribed in terms of SPLUMA;

**'development charges guidelines'** in respect of engineering services, means guidelines which will inform decision-making within the Municipality regarding development charges for municipal service infrastructure;

**'Engineer'** means an engineer employed by the Municipality or any person appointed by the Municipality from time to time to perform the duties of the Engineer envisaged in terms of this Policy~~;~~

**'engineering services'** means a municipal engineering service as defined in section 1 of SPLUMA;

**'engineering services agreement'** or "**ESA"** means a written agreement concluded between the Municipality and a developer, recording their detailed and specific respective rights and obligations regarding the provision and installation of the external engineering services required for an approved land

development, and related arrangements, including but not limited to the payment of development charges;

**'external engineering service'** means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area concerned; provided that in circumstances where the characteristics of a specific area or the design of the relevant engineering service so requires, such services can be located within the boundaries of a land area;

**'impact zone'** in relation to an engineering service means a geographical area within which the capital infrastructure assets or system of capital infrastructure assets required to provide bulk services to an approved land development are located as determined in terms of the development charges guidelines for the municipal service concerned;

**'internal engineering service'** means an engineering service within the boundaries of a land area which is necessary for the use and development of the land area concerned, excluding identified bulk services, and which is to be owned and operated by the Municipality or service provider;

**'land development'** means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of the Zoning Scheme;

**'land development application'** means an application for approval of land development as contemplated in section 41 of the SPLUMA;

**'land use'** means the purpose for which land is or may be used lawfully in terms of the Zoning Scheme or of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes;

**'link engineering service'** means the capital infrastructure assets associated with that portion of an external engineering service which links an internal engineering service to the applicable bulk service, and which is not shared by multiple users or the community in general, subject to any change in the described status of the service subsequent to the installation thereof;

**'LUPA'** means the Western Cape Land Use Planning Act, 2014, Act. 3 of 2014 (PN 99/2014 of 7 April 2014);

**'MFPFA'** means the Municipal Fiscal Powers and Functions Act, 2007 (Act No 12 of 2007), as amended;

**'MSDF'** means the current George Municipal Spatial Development Framework adopted by the Municipality in terms of Chapter 5 of the Systems Act;

**'Municipality' means**
(a) the George Municipality (WCO44) established in terms of Provincial Notice 501/2000 of 22 September 2000 in terms of the Local Government: Municipal Structures Act, 117 of 1998, and

(b) includes all political structures or office bearers, the Municipal Planning Tribunal and municipal staff members to whom authority has been delegated to take decisions in terms of the Municipality's delegation system;

**'municipal infrastructure service'** means any of the following municipal services, namely potable water, sewerage, electricity distribution, municipal roads and appurtenant works and storm water management,

street and area lighting, solid waste disposal and public transport, including non-motorised transport and community facilities;

**'Municipal Planning Tribunal'** or "**MPT**" means a Municipal Planning Tribunal as defined in the SPUMA, and includes a municipal official authorised to determine land use and land development applications, in terms of section 35 of the SPLUMA;

**'Planning By-Law'** means the Land Use Planning By-Law for George Municipality promulgated in the Western Cape Provincial Gazette 8747 on 21 April 2023;

**'SPLUMA'** means the Spatial Planning and Land Use Planning Act, 16 of 2013;

**'Systems Act'** means the Local Government: Municipal Systems Act, 2000, Act 32 of 2000 ("**MSA**"), as amended;

**'the transition period'** means the period of 36 (thirty-six) months after the date of commencement of the Municipal Fiscal Powers and Functions Amendment Act, 2022; and

**'Zoning Scheme'** means the George Municipality: Integrated Zoning Scheme By-Law promulgated in the Western Cape Provincial Gazette P.N. 017/2017 on 01 September 2017, as amended.

1.2 Words and expressions defined in the MFPFA shall, when used in this policy, unless the context otherwise indicates, bear the meanings thereto assigned in terms of the MFPFA.

1.3 The development charges provided for in terms of this policy shall not constitute a tax, tariff or fee and this policy shall not affect the Municipality's tariff policy.

## 2. INTRODUCTION

2.1. The National Constitution enjoins local government not just to seek to provide services to all its inhabitants, but to be fundamentally developmental in orientation and to play a key role in promoting justifiable social and economic development. To this end it inter alia has to perform regulatory functions in respect of land use planning and development and ensuring lawful, reasonable and fair administrative government practices.

2.2. Socio-economic development is generally regarded as the passport to reduced poverty, reduced inequality and improved social well-being. New economic development generally also has a positive impact on the municipality's finances. It increases revenue from property rates and service charges by expanding the base of ratepayers. But development associated with economic growth has an impact on the demand for essential engineering services, which are also needed to support sustainable social and economic development. Without available infrastructure of adequate capacity, public and private sector investment in George will decline.

2.3. George is noted as part of the Coastal Growth and Development Corridor, which is supported as an area of strong interconnection between high-value rural resource production, ecological resource regions, popular tourist destinations, comfortable climatic zones and urban nodes. The George IDP envisions George as "A City for a Sustainable Future" supported by the mission to inter alia deliver affordable quality service, develop and grow George and ensure good governance. Working towards the MSDF vision to "Develop George as a resilient regional development anchor of excellence for prosperity, inclusive and smart growth" the spatial planning approach aims to

support efficient settlement form and includes policy directives aimed at focussing infrastructure to support efficient urban form. Engineering services infrastructure (water, sewerage, stormwater, roads, street lighting, solid waste and electricity) represent substantial assets for enabling individual and communal development opportunity of different kinds and has the potential to improve quality of life and resilience.

2.4. The creation and promotion of an enabling environment for business to grow and create jobs, is fundamental to a competitive and vibrant economy. The potential for large scale upliftment and development may be severely hampered by the lack of attention to necessary infrastructure. The council aims to create an economically enabling environment in which investment can grow and jobs can be created and concurrently therewith ensure that proper services are provided to all its citizens and developers can invest with the confidence that the infrastructure they require will be provided. The provision of infrastructure to accommodate new development and stimulate economic growth is key in this regard.

2.5. Additional engineering services infrastructure must be provided to create additional services capacity to cater for growing needs, and it comes at a high cost. The rationale for development charges needs to be understood in relation to how this particular funding mechanism fits within the municipal fiscal framework. Municipal service delivery is generally financed through a fiscal framework that is based on a clear assignment of fiscal powers and functions that empower municipalities to raise property rates and user charges on electricity distribution, water and sanitation services and solid waste collection.

2.5.1. These primary sources of revenue are supplemented by intergovernmental transfers that support the capital and operating costs of basic service delivery to poor households, as well as related national development priorities. Municipalities may use any operational surpluses generated from this revenue to finance capital investment programmes, again supplemented by intergovernmental transfers, as well as funds that have been borrowed to finance infrastructure investment programmes.

2.5.2. Development charges complement these sources of capital finance, by providing a direct charge to beneficiaries of existing and planned infrastructure installed to enable an intensification of land use. Development charges is a tool that supports sustainable municipal infrastructure financing and mitigates the negative impacts of underinvestment in infrastructure networks. Development charges are thus a source of capital finance, which enhance the efficiency and volume of municipal capital financing through -

- ensuring that the beneficiaries of infrastructure pay a fair share of the costs of installing it, relative to other residents;
- releasing resources that a municipality would otherwise have dedicated to meeting these needs to be spent on other development priorities; and
- providing an additional revenue stream to support municipal borrowing programmes, where applicable.

2.6. For both municipalities and developers to budget and plan efficiently, requires a robust legal basis on which development charges are levied, linked to long term spatial and infrastructure planning systems. Local government may only act within the powers lawfully conferred upon it.

2.7. After the country's first democratic elections, the Legislator was tasked to translate the electoral dream of a "Better Life For All" into legislation. It put the public sector at the heart of the challenge to reduce poverty. Legislation such as the SPLUMA and LUPA followed, both which empowers, qualifies and constrains municipal powers to levy development charges.

2.8. The Municipal Fiscal Powers and Functions Amendment Act 2022 (to be promulgated), provides for a uniform, consistent, transparent and equitable basis on which municipalities can calculate and levy development charges on developers. The Act requires that development charges are paid by both the public and private sectors, in order to ensure that a substantial portion of municipal bulk infrastructure investment can be financed on a 'user pays' principle, with the needs of poor households directly and transparently supported through public subsidies, including intergovernmental transfers.

2.9. A development charge is a once-off capital charge to recover the actual cost of external infrastructure required to accommodate the additional impact of new development on engineering services. A development charge calculation is triggered by land development application that will, if approved, intensify the municipal infrastructure demand, or where demand for a specific service exceeds the initial basis upon which development charges were calculated. The threshold is the level up to which a new land use is deemed to have the same infrastructure impact as the existing permissible use and is determined based on a technical assessment. The development charges payable by the developer shall be based on the details of the application and should the demand for the service at any time and for whatever reason exceed the demand for the service concerned on which the calculation of the development charges was based, the development charges shall be recalculated in accordance with the development charges guidelines and be payable before such additional use may be exercised or supply capacity required, be provided.

2.10. The development charges policy is an important tool to provide economic infrastructure and to ensure sustainable infrastructure investment in all the required engineering services. It provides the key details of the development charges for engineering services, covering water, roads, stormwater, sewerage, solid waste and electricity.

2.11. A motivation for development charges is that the incidence of the cost is more accurately and equitably assigned to those who directly benefit from the infrastructure, rather than being spread amongst all ratepayers. The key function of a system of development charges is to ensure that those who benefit from new infrastructure investment, or who cause off-site impacts, pay their fair share of the associated costs. A primary role of a system of development charges is to ensure the timely, sustainable financing of required urban infrastructure. The development charge is therefore charged for the additional infrastructure demand of the development on the external engineering services. Should a development cause no additional demand on the external engineering services, no development charge is charged. Thus, off-grid land developments will in respect of the engineering services concerned pay no development charges. Similarly, where no municipal infrastructure or service is available, and no down stream demand is created, no development charges will be charged until such time as the service becomes available or is impacted, if so determined in terms of the approval of a land development application or an ESA.

2.12. Development charges charged for one service may not be used to finance or subsidize development charges for another service.

## 3. REGULATORY FRAMEWORK

### 3.1. Source of empowerment

The municipality derives its power to levy development charges from legislation, not from policy. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation).

It is a well-established principle of South African law that powers given to a public body for one purpose cannot be used for ulterior purposes which are not contemplated at the time when the powers were confirmed.

The powers lawfully conferred upon the Municipality in relation to development charges have been qualified and constrained in terms of national, provincial as well as municipal legislation. It is therefore necessary to have regard to the legislation that informs the levying of development charges.

### 3.2. Relevant legislation

Attention is invited to the provisions of the following legislation.

- The National Constitution.
- Local Government: Municipal Systems Act, 32 of 2000 – ('MSA'), as amended.
- George Municipality: Zoning Scheme By-Law 2019 – ('Zoning Scheme').
- Municipal Fiscal Powers and Functions Act, 12 of 2007 – ('MFPFA').
- The Spatial Planning and Land Use Management Act, 16 of 2013 ('SPLUMA').
- The Land Use Planning Act, 3 of 2014 ('LUPA').
- Land Use Planning By-Law for George, 2023 ('the Land Use By-Law').
- George Integrated Zoning Scheme By-Law, 2017 ('GIZS').

Some of the relevant provisions of the abovementioned legislation together with background material are set out in appendix "A".

### 3.3 Interpretation

The higher Courts in recent times have repeatedly stated that when it comes to the interpretation of statutes, the fundamental rule is that the words in a statute must be given their *ordinary grammatical meaning*, unless to do so would result in an absurdity.

There are *three interrelated riders*: the provisions should be interpreted purposively; the provision must be property contextualised and statutes must be construed consistently with the Constitution so that where reasonably possible the provisions should be interpreted to preserve their constitutional validity. It is also well recognised that it is wrong to ignore the clear language of a

statute under the guise of adopting a purposive interpretation, as doing so would be straying into the domain of the legislature.

When attributing meaning to the words used in legislation, regard must be had to the context provided by reading the particular provisions in the light of the Act or by-law as a whole and the circumstances attendant upon its coming into existence. The '*inevitable point of departure is the language of the provision itself*', read in context and having regard to the purpose of the provision and the background to it landing on the statute books. It is therefore useful, when looking at the question of the legal requirements to be satisfied when imposing development charges in the context of present-day legislation, to have a historical perspective.

It is therefore important to take cognisance of the Legislative Background provided in Appendix "A" for a proper understanding of the Legislature's intention with development charges.

**3.4** This development charges policy will be reviewed and amended as may be required as a result of any amendments to the legislation having an effect on this policy.

## 4. OBJECTIVES

4.1. The objectives of this policy are to provide a sustainable and equitable framework for the financing of capital infrastructure assets and to ensure that:

4.1.1. The Municipality is able to provide capital infrastructure assets in a timely and sufficient manner to support land development;

4.1.2. Development charges complement other sources of capital finance available to the Municipality to finance a specific bulk service and are not utilised as a general revenue source or diverts existing municipal capital funding away from planned renewal and upgrading projects aimed at improving the level of service rendered to existing consumers;

4.1.3. Development charges are managed in a predictable, fair and transparent manner;

4.1.4. Development charges are an enabler to accelerate the provision of infrastructure required to unlock development; and

4.1.5 Unnecessary litigation in the administration of development charges is minimised.

## 5. KEY PRINCIPLES OF THE POLICY

5.1. Principles to be applied must be in accordance with the current legislation, as well as Chapter 3A of the MFPFA, and further expounded in this policy.

5.2 Development charges will be levied based on the increased demand for existing and planned external engineering services as a consequence of a land development application approval, which are reasonably expected to result from the effect thereof on the capacity of the engineering services, irrespective of the geographical location of the development. For example, the traffic generated by a development located along a provincial road, will ultimately end up on the municipal road network that links to the provincial roads. The same

applies to the additional stormwater run-off that ends up in downstream municipal networks and river courses, increase in demand and the bulk supply of water, and sewer and solid waste disposal. Factors are allowed in the calculations to reflect actual usage of infrastructure for these cases.

5.3. Four key principles underlie the system of development charges. These are:

5.3.1. ***Equity and Fairness***: Development charges should be reasonable, balanced and practical so as to be equitable to all stakeholders. The key function of a system of development charges is to ensure that those who benefit from new infrastructure investment, or who cause off-site impacts, pay their fair share of the associated costs.

This implies that:

5.3.1.1. The Municipality should recover from developers a contribution that is as close as possible to be full and actual costs of the capital infrastructure assets that are needed to mitigate the impacts of their land developments and to provide external engineering services to their developments;

5.3.1.2. Development charges are levied to recover the infrastructure costs incurred or to be incurred due to land development, and are thus not a form of taxation;

5.3.1.3. Costs which should be covered by development charges can be determined both in relation to the value of pre-installed capital infrastructure assets resulting from historical investments, and the provision of new capital infrastructure assets to meet new capacity requirements; and

5.3.1.4. Development charges are not an additional revenue source to be used to deal with historical backlogs in provision of services, such as backlogs that exist in some historically disadvantaged areas.

5.3.2. **Predictability:** Development charges should be a predictable, legally certain, and reliable source of revenue to the Municipality for providing external engineering services and should be clearly and transparently accounted for. In order to promote predictability in municipal finance systems the costs associated with municipal capital infrastructure assets provided expressly to benefit poor households should be established before subsidies are applied in a transparent manner to fund the liability.

5.3.3. **Spatial and Economic Neutrality:** The primary role of a system of development charges is to ensure the timely, sustainable financing of required capital infrastructure assets.

This implies that:

5.3.3.1. Development charges should be determined based on identifiable and measurable asset costs so as to avoid distortions in the economy and in patterns of spatial development;

5.3.3.2. Development charges should not be used as a spatial planning policy instrument;

5.3.3.3. Costs recovered should be dedicated only to the purpose for which they were raised; and

5.3.3.4. Development charges should be calculated where possible on a sectoral or geographic basis or engineering impact zone to more accurately approximate costs within a specific impact zone for purposes of which the impact zones shall be as set out in the development charges guidelines.

5.3.4. **Administrative ease and uniformity:** The determination, calculation and operation of development charges should be administratively transparent.

## 6. OBLIGATION TO IMPOSE A DEVELOPMENT CHARGE

### 6.1. Development Charges Apply

When the Municipality approves a land development application which will or may result in intensified land use with an increased demand for external municipal engineering services infrastructure, it may, by imposing a condition of approval in terms of section 66 of the Planning By-Law, levy a development charge proportional to the calculated municipal public expenditure that has or may be incurred to satisfy the increased demand according to the normal need arising from such approval.

### 6.2. Development Charges do not apply

Development charges do not apply to land development restricted to the exercise of current primary land use rights obtained or approved prior to the commencement of the Zoning Scheme.

It also does not apply to the following types of land use applications, as the impact of those land uses have an insignificant impact on engineering services infrastructure and those uses have a social and/or economic benefit to the Municipality and/or the community, with due regard to the specific services restrictions stated below:

6.2.1. Home / non-commercial early childhood development centres that serve the surrounding community as a registered community non-profit facility. This excludes facilities that charge a commercial rate (one 60A single phase connection per erf exempted)

6.2.2. Community based churches and places of religious worship (it must be clear that such development will not lead to a significant additional service usage that will have an increased demand on municipal services) (one 60A single phase connection per erf exempted), provided further that the facility may not be operated for financial gain.

6.2.3. House shops up to the lesser of 30% of the existing approved floor area of the buildings on the site or 40m$^2$ per erf (60A single phase exempted).

6.3. A development charge will be determined by the Municipality in terms of and on the basis of the applicable statutory provisions referred to in paragraph 3.2 above read with this policy and the development charges guidelines.

6.4. Unless otherwise provided for in the conditions of approval, a developer must pay to the Municipality the full amount of the applicable development charge due prior to the exercise of any rights to use, develop or improve the land arising from the approval of a land development application. Unless otherwise provided for in the conditions of approval, the applicable development charges shall be paid upon application for the approval of building plans or on transfer of any portion of the development area concerned, whichever shall be the earlier.

6.4.1. Should the Municipality authorise phased payments in terms of the conditions of approval of the land development application, the development charges applicable on the date of approval shall until the date of payment escalate in accordance with the provisions of section 66(5B)(a) of the Planning By-Law.

6.4.2. The Municipality may approve payment of a development charge into an attorney's trust account, in cases where this will enable the completion of infrastructure projects in lieu of development charges that are not yet completed at the time that clearance is sought and if such withholding of clearance is deemed to be unfair towards the developer. An example of this is where the Municipality has requested the upgrade or installation of a service in-lieu of development charges, of which the upgrade was not an original condition of approval, or which is not specifically triggered by the development, but of which the immediate upgrade will be of benefit to the Municipality and/or the greater public. The conditions for the utilisation of the funds in this trust account shall be stipulated in a letter of undertaking issued by the attorney concerned and as agreed to in writing by the Municipality. The attorney who holds the funds in trust must upon receipt of the payment from the developer, notify the Municipality accordingly in writing. The interest earned on the amount held in trust shall accrue for the benefit of the Municipality for the specific service to be installed.

6.4.3 The arrangements set out in paragraph 6.4.2 must be included in an engineering services agreement unless all particulars are stated in full in the land use conditions imposed by the Municipality.

6.5. When approving a land development application, the Municipality must stipulate at least the following matters relating to the development charge:

6.5.1. The total amount of the development charge as applicable at the time of approval, but subject to escalation/recalculation on the date of payment as may apply ;

6.5.2. The dates/development milestones on which the payment or payments must be made and the amount of such payments;

6.5.3. Whether the Municipality and the developer have agreed that the developer will install any bulk services, as contemplated in paragraph 9; and as per the Land Use By-law dealing with bulk services to be provided by the developer–

6.5.4. Where the developer is to install bulk services instead of the payment of some portion or all of a development charge as per the Land Use By-law dealing with bulk services to be provided by the developer–

6.5.4.1. The nature and extent of the bulk services to be installed by the developer;

6.5.4.2. The timing of commencement and completion of the bulk services to be installed by the developer;

6.5.4.3. The amount of the developer's fair and reasonable costs of installation, or the process for determining that amount, including the process, after installation, for making any adjustments to an amount specified as determined by the Municipality; and

6.5.4.4. The engineering and other standards to which the installed external engineering services must conform.

6.5.6 Whether any development charge exemptions or incentives may apply, and the conditions thereto applicable.

6.6. The Municipality and a developer must, where required, conclude an engineering services agreement to give detailed effect to the arrangements contemplated in this paragraph 6, provided that an engineering services agreement may not permit any intensification of land use beyond that which was approved in respect of the land development application concerned. The engineering services agreement must specify the upgrading and installation work to be carried out by the developer as contemplated in paragraph 6.4.2.

6.7 The development charges payable by the developer shall be based on the details of the application and should the demand for the service at any time and for whatever reason exceed the demand for the service concerned on which the calculation of the development charges was based, the development charges shall be recalculated in accordance with the development charges guidelines and be payable before such additional use may be exercised or supply capacity required, be provided.

## 7. CALCULATION OF DEVELOPMENT CHARGE

7.1. Subject to the provisions of this policy, a development charge shall be calculated with reference to the estimated increased demand placed on the external engineering services networks that results from the development in a specific engineering impact zone (as referred to in paragraph 1.1).

7.2. The capital cost of internal and link engineering services is for the account of the developer.

7.3. Subject to paragraph 6.3 above and for purposes of calculation of the bulk services component of a development charge, the Municipality must –

7.3.1. Determine a unit cost for each municipal infrastructure service, which unit cost, for the applicable engineering service area or engineering impact zone must include all land cost, professional fees, studies and approvals, materials, labour, plant and reasonable costs of construction, but must exclude the value of any debt incurred by the Municipality for purposes of funding existing capital infrastructure assets, to the extent that such debt has not been repaid by the Municipality;

7.3.2. Apply a formula, which formula will –

7.3.2.1. Be aimed at determining the demand of the proposed land use on municipal infrastructure services, taking into account current and planned capacity, relative to the demand of the land use occurring at the date of approval of the land development application; and

7.3.2.2. Calculate the amount payable by multiplying the unit cost referred to in paragraph 7.3.2.1, by the estimated proportion of the municipal infrastructure services, including current and planned capacity, that will be utilised by the proposed land development.

7.4. The basis upon which development charges unit costs for each municipal infrastructure service will be determined, as envisaged in paragraph 7.7, shall be consistent with Chapter 3A of the MFPFA.

The methodology for calculating unit costs can be summarised as follows, per service and for each impact zone thereof:

- Use an appropriate planning horizon in the future for that service (e.g. 20 years).
- Use town-planning scenarios and engineering master planning to determine what new services are required, such that at that point in the future, the joint capacity of existing and future services matches the number of consumption / demand units that will be in place, being the existing amount plus the future development amount.
- Estimate the costs of the existing and future infrastructure, as though it was all being constructed at the present day, i.e. replacement cost for existing infrastructure or present-day cost for future infrastructure.
- Establish the number of consumption / demand units that the total infrastructure will cater for i.e. existing consumption plus future consumption.
- From the above calculate the cost per unit consumption / demand factor.
- The DC for the development in question is then calculated by multiplying the nett additional consumption / demand needed for that development, by the cost per unit consumption / demand factor.

In this manner the new development is paying its fair share of the infrastructure that it uses in that impact zone, and not financing an existing shortfall nor financing a surplus being created.

7.5. The basis upon which development charges will be determined in terms of electricity will be as per NRS 069: Code of practice for the recovery of capital costs for distribution network assets, applied with the flexibility demanded by the factual matrix concerned.

7.6. The Municipality must adjust the unit cost for each municipal infrastructure service on an annual basis during the budget preparation process referred to in Section 21 of the Local Government: Municipal Finance Management Act 56 of 2003, taking into account the inflationary impact and must publish the adjusted unit costs within two months of approving the municipal budget. The Municipality will use the Contract Price Adjustment Factor as prescribed in the SAICE General Conditions of Contract for Construction Works (as amended) to determine the annual effect of inflation, or alternately base the unit cost on a zero based cost calculation: Provided that the

Consumer Price Index (CPI) (all items) as published by Statistics South Africa from time to time may instead be applied if it would be a more appropriate basis to account for the annual effect of inflation as provided for in terms of section 9B(2)(c)(ii) of the MFPFA.

7.7. Unless otherwise authorised by the Minister, the unit cost for each municipal infrastructure service should be re- calculated at least every five years to take into account the current and planned capacity for each municipal infrastructure service at the date of re-calculation, and any other relevant factors.

In the event of the Municipality discovering that a gross error has occurred in the determination of the development charges, or if there are justifiable reasons to review the charges, it may, by means of a council resolution, correct such error or review the charges.

7.8 The development charges shall be calculated on the basis that the Municipality will determine the point of connection of the service concerned in relation to the land area in question.

## 8. ADJUSTMENT FOR ACTUAL COSTS OR USAGE

8.1. Notwithstanding the provisions of paragraph 7.3, the Municipality may at its own instance or on request by a developer, increase or reduce the amount of the bulk services component of a development charge so as to reflect the actual cost of installation of the required bulk services, where:

8.1.1. exceptional circumstances, as motivated by the developer and if accepted by the council, justify such an increase or reduction; or

8.1.2. a particular land development significantly exceeds the size or impact thresholds set out in the applicable development charges unit cost tables.

8.1.3. the actual demand of a particular land development varies significantly from the demand provided for in terms of the approved development charges unit cost tables and of which the actual demand is motivated by a professional engineer and can be justified by means of recognised engineering guidelines and/or industry norms and standards.

8.1.4. Where a development is situated outside the urban edge (as described in the MSDF), and it is not connected to or uses the bulk infrastructure allowed for in the development charge calculation, because it is providing its own bulk services (e.g. water supply and waste water package plant) or its reduced demand is not already allowed for in the calculation, then that portion of the development charge must be adjusted by means of calculations by a professional engineer in terms of this section and as approved by the Municipality, and the developer must pay for their own bulk infrastructure to the approval of the Engineer and the Municipality.

8.2. Where the Municipality adjusts the amount of the bulk services component of a development charge on the basis of actual costs in terms of this section:

8.2.1. the developer is responsible for the costs of performing the calculation of such adjustment, which must be carried out by a registered professional engineer appointed by the

developer with appropriate experience and expertise having regard to the nature and extent of the proposed land use; and

8.2.2. the actual cost must include, where applicable and without limitation, land costs, professional fees, applicable studies and statutory approvals, materials, labour, plant and the reasonable costs of construction and any tax liabilities: provided that all such costs would otherwise have been borne by the Municipality, in the provision and installation of the bulk services concerned.

## 9. INSTALLATION OF EXTERNAL ENGINEERING SERVICES INSTEAD OF THE PAYMENT OF DEVELOPMENT CHARGES

9.1. The Municipality may agree with a developer that the developer installs all or part of the external engineering bulk services required for an approved land development instead of the payment of the applicable development charge(s).

9.2. Where a developer installs external engineering services to the technical standards required by the Municipality, as reflected in the applicable conditions of approval of the land development application or as agreed with the Municipality in writing, the developer may set off the fair and reasonable cost of such installation, as determined by the Municipality, against the applicable development charge.

9.3. Any capital infrastructure assets forming part of an external municipal bulk engineering service installed by a developer instead of payment of any part of a development charge shall, upon installation, become the property of the Municipality, as agreed, and-

9.3.1. the developer shall bear the responsibility of ensuring that ownership or other relevant rights to the affected capital infrastructure asset(s) is / are transferred to the Municipality, although the developer will remain responsible for defects until the Final Completion Certificate has been issued ("the Defects Liability Period"). A 10 years latent defects liability period will apply for civil engineering installations and a 5 years latent defects liability period for electrical and mechanical installations which will, however, not exempt the developer from the 12 (twelve) months defects liability period. The infrastructure concerned will only be taken over by the Municipality after a satisfactory practical completion inspection, and after the Municipality has agreed that the Practical Completion Certificate may be issued, and provided that the specific service / installation can be practically put to use;

9.3.2. the Municipality must include the applicable capital infrastructure asset gain in its next adjustments budget, in accordance with regulations relating to asset gains, made in terms of the Local Government: Municipal Finance Management Act 56 of 2003.

9.4. Once completed the Municipality may require that a developer installs external engineering services to accommodate a greater capacity than that which would be required for the proposed land use alone in accordance with any applicable and relevant master plan approved by the Municipality, in order to support planned future development in the vicinity of the approved land development. Where the total fair and reasonable cost of installation of such required external engineering services exceeds the development charge payable by the developer, the Municipality may reimburse the developer the amount in excess of the

development charge, in accordance with a written agreement, provided that such infrastructure has been provided for in accordance with an approved master planning programme for such service and which has been approved as a capital project in terms of the budget of the Municipality. This reimbursement is to be within an agreed payment schedule not exceeding three years from the date of installation, or as agreed, unless the developer waives their right to the applicable reimbursement.

9.5. If the developer elects to develop outside the Municipality's approved capital expenditure programme, he or she will have to fund the provision of services to enable such development. There is no obligation on the Municipality to provide services to land simply because an owner wants to develop his/her land and the Municipality is not obligated to re-imburse the developer for such expense. Section 152 of the Constitution emphasises the fact that the Municipality must structure its administration and budgeting and planning processes to give priority to the basic needs of the community.

9.6. When a developer installs external engineering services instead of payment of a development charge, he or she must adopt the most cost-effective and efficient approach to meet the Municipality's technical standards. The principles of procuring the most cost–effective and efficient services must be followed. Therefore, the installation of engineering services must be provided at costs based on a competitive procurement process allowing for multiple quotations, and evaluated by the developer's consultant with a recommendation for appointment. Such recommendation must be approved by the Municipality before the appointment of a contractor for this purpose.

9.7. Upon the developer having complied with all the terms and conditions of an engineering services agreement as referred to in paragraph 6.6 the Municipality shall value the total cost of the municipal services. In determining the value, the Municipality may at its discretion, appoint an impartial service provider to assist the Municipality with such determination. The total value as per the final payment certificate of the project will be used to determine the total cost of "Municipal Services". If the project has been completed in a previous financial year, the total completion value (as normally indicated on the final payment certificate) can be escalated to the year at which time the development charge payment is to be made. The escalation rate will be the same as the development charge annual escalation as approved by council. The outstanding amount of development charges payable as determined by the Municipality will be set off against the value of such "Municipal Services". The outstanding amount will be payable before a clearance certificate is issued by the Municipality, or before an occupation certificate is issued (where clearance certificate is not applicable)."

9.8 The Municipality is to be invited to attend all site meetings, and no escalation in the costs approved by the Municipality may be exceeded, or any variations issued, without the prior written approval of the Municipality.

## 10. NON-PROVISION BY THE MUNICIPALITY

10.1. Subject to the provisions of paragraph 10.2, if the Municipality has agreed to the installation of bulk engineering services and fails to do so within 12 (twelve) months from the completion date as stipulated in an engineering services agreement with the developer, the Municipality must reimburse the developer that portion of the development charge which is attributable to the failure, with interest charged at the rate provided for in terms of section 9H (1) of the MFPFA, calculated from the date of completion as stipulated in the Engineering Services Agreement.

10.2. Notwithstanding the provisions of paragraph 10.1, the Municipality and the developer may agree to:

10.2.1. an extension of the time period for the commencement of the installation of the required external engineering services by the Municipality: provided that such extended time period may not exceed twenty-four months and provided further that where the Municipality commences with the installation within such extended time period, it has no obligation to return the development charge paid by the developer, to the developer; or

10.2.2. an engineering services agreement, or such a revised agreement, in terms of which the developer agrees to install the required external engineering services in whole or in part and, where agreeing to install in part, the time period within which the Municipality will commence to install those external engineering services for which it remains responsible: provided that the extended time period for commencement of installation by the Municipality may not exceed twenty-four months and provided further that where the Municipality commences its portion of the installation within such extended time period, it has no obligation to return that portion of the development charge paid by the developer which pertains to the external engineering services installed by the Municipality, to the developer.

## 11. WITHOLDING CLEARANCES AND APPROVALS

11.1. The Municipality shall be entitled to withhold any consent, clearance, approval or certificate in respect of a land development in the event where development charges owed by the developer remain unpaid or the developer fails to install external engineering services in accordance with an engineering services agreement entered into with the Municipality.

11.2. The Municipality shall not be obliged to allow any internal or link services to be connected to the bulk services of the Municipality until all development charges have been paid by a developer or where, with reference to paragraph 10.2.2, bulk services are only available on a later date.

## 12. SUBSIDIES AND EXEMPTIONS

12.1. The Municipality may consider subsidising a land development or category of land developments through reducing the development charge payable in respect thereof, or permitting the payment of development charges over a specified period of time (DC payment incentive), if it meets any of the following criteria:

- The land development must be for purposes of providing low-income and subsidised housing (for example those who qualify for the Financial Linked Individual Subsidy Programme). For purposes hereof the Municipality may require proof to its satisfaction of the nature and extent of the development concerned as well as the location thereof.

- The beneficiaries of the land development must primarily be indigent persons (as defined in terms of the Municipality's policy on indigent persons), persons dependent

on state pensions or social grants for their livelihood, or persons temporarily without income.

- The land development must be for purposes of the activities and land uses referred to in paragraphs 6.2.1 and 6.2.2 above.

- The applicant for a subsidy or development charge payment incentive must be a registered non-profit or charitable community organisations undertaking social development projects that is beneficial to the community and where the applicant is able to demonstrate how the proposed development will have a social and/or economic benefit to the Municipality. The use of any land or buildings, or any part thereof, shall not be for the private financial benefit of any individual, including as a shareholder in a company or otherwise.

- If the bulk engineering services (including both network and treatment capacity) for the land development concerned have been budgeted to be funded through a fiscal transfer from another sphere of government, a subsidy may be granted to the extent of bulk engineering services funded by grant funding.

12.2. Examples of land uses that may potentially qualify for subsidies or development charge payment incentives, are the following:

- Breaking New Ground (BNG) housing projects implemented by the Municipality. These projects are approved by council prior to implementation and such approval should include grant funding or a council financial commitment regarding the provision of bulk services (including both network and treatment capacity) for these projects. It is thus not necessary for development charges if the provision of bulk services is to be funded by alternative funding sources.

- Public schools, hospitals, clinics and other public infrastructure projects developed and funded by government which provide a service especially and/or practically exclusively to the poorer communities. These projects will have a social and economic benefit to these communities, and the Municipality in its whole, and in so doing will alleviate some institutional and financial pressure on the Municipality in terms of providing social infrastructure and social development programmes.

12.3. Applications for subsidies or development charges payment incentives must be in writing and addressed to the applicable Director for evaluation, calculation of the applicable development charge as if it were payable, and submission of a recommendation to council for consideration.

12.4. If a subsidy is granted, the council must set out the reasons for its decision, must identify the alternative funding source (which may not increase the financial burden on existing tax payers) for the required bulk engineering services to the value of the subsidy, and must budget for and/or obtain funding from an alternative source to the value of the subsidy.

12.5. Before the Municipality grants an individual exemption, it must:

12.5.1. ensure that the revenue to be forgone as a result of any exemption approved by the council is reflected in the Municipality's budget (Finance);

12.5.2. must provide for budgetary provision for the realisation of the revenue forgone to be made, from another realistically available source of revenue (Finance);

12.5.3. ensure that the monetary value of the exemption, together with the amount of any other payment or payments received by the Municipality towards the capital costs of external engineering services for an approved land development, is at least equal to the development charge calculated in accordance with paragraph 12.5.1.

## 13. SPECIAL ARRANGEMENTS

13.1. Rural areas/farms: Development charges apply in rural/farm areas where the specific engineering bulk service is available. Development charges according to the applicable development charges guidelines will be levied for development on farms requiring approval of land use applications, e.g., a farm stall, function venue, tourist accommodation facilities, conference facilities or other commercial activities, with due regard to the provisions of paragraph 8.1 read with paragraph 8.2.

13.2. Gross Lettable Area ("**GLA**"): When at the time of the development charges calculation being done which for the avoidance of doubt would be on the land use application, the GLA figure is not known, it will be deemed to be 15% less than the permissible total bulk including the floor area ratio as indicated in the Zoning Scheme (i.e. based on 85% of the total permissible bulk). Should the actual service demand exceed 85% the Municipality retains the right to charge additional development charges proportional to the increase in demand/usage/trip generation.

13.3. Handling of properties with historical land use rights: If a property (especially business and industrial zoned property) has an existing zoning right, it does not necessarily mean that development charges have been paid on the full development potential of the property when such zoning was approved. A development charge credit can only be granted if a development charge for a specific development or building has been paid in the past, or if there are existing permanent, legal buildings (have building plan approval) on the site which service demand has already been absorbed into the bulk service networks. Otherwise there is no justification for granting such a credit, and any additional demand for service related to any intensification of the land use will require the payment of the applicable chargeable development charges. The onus to prove that development charges have been paid is on the developer/applicant. Development charges will be payable before building plan approval.

In respect of electrical services it is recorded that if availability charges are paid in respect of an erf, development charges shall be calculated on the basis that the erf has the right to a residential single phase electrical supply. [**check this wording with Danie Greeff**]

13.4. Temporary Departures: No development charges will be levied in respect of temporary departure approvals; provided that:

13.4.1 if, in the Municipality's opinion, any external engineering services upgrades are required to meet increased demand due to the impact of the temporary land use concerned, even if of a temporary nature, the developer must construct such upgrade at own cost; and

13.4.2 if an application for an extension of a temporary departure is granted, development charges will be levied and will be non-refundable.

## 14. SHORT TITLE

This policy shall be called the 'Development Charges Policy of the Municipality of George'.

**As approved at the MAYCO meeting which was held on 30 June 2023.**

Signed at **GEORGE** on the **30th day of June 2023.**

.....

**Municipal Manager**

**Appendix "A"**

## Legislative background and relevant statutory provisions

### Legislative background

**1.[1] The Townships Ordinance, 33 of 1934 – ('Townships Ordinance')**

Before 1 July 1986 (i.e., the commencement date of the Land Use Planning Ordinance, 15 of 1985), land use applications in the Province of the Cape of Good Hope were dealt with in terms of the Townships Ordinance, 33 of 1934.

It *inter alia* provided in section 35 *ter* that an enhancement levy was due to the local authority concerned by the owner of any land of which the *value* is or has increased in consequence of '*provisions*' being or having been '*prescribed*' (i.e., zoning rights granted). The intention clearly was that the levy would serve as the developer's contribution towards the cost of providing or upgrading municipal services infrastructure required to serve development undertaken, based on the approved enhanced rights.

**2. The Venter Commission**

Under the Townships Ordinance, however, the settling of the question of a basis on which engineering services should be provided by the township establisher and the local authority concerned, was one of the biggest single factors that retarded the township establishment process and the rapid and effective production of new residential sites.

On 26 June 1982 the State President therefore appointed a commission to inquire into and make recommendations *inter alia* regarding methods which may promote the provision of sufficient residential erven and reduce the cost thereof. The commission became known as the Venter Parliamentary Commission (the 'Venter Commission').

At that stage the regulation of costs of township establishment in the Cape Province was based on the recommendations of the 1970 Niemand Commission. These included the basic principle that the existing municipality rate payers should not be expected to carry the burden of services for the new township but that the arrangements between the township owner and the municipality should be such that the municipality did not make a profit out of the township owner or the purchaser of his erven either. In short, the basis for cost liability was supposed in all cases to be the principle of equal treatment, in accordance with which the inhabitants of the old town should not subsidise the new township and neither should the old derive benefit from the new township.

The Venter Commission published three reports, respectively dated 29 March 1983, 16 June 1983 and 30 November 1983. It assumed, for purposes of those reports, that the concept of '*internal services*' referred to the engineering services network that was internal to the township concerned, but that it did not include the higher order services situated within the area of the township concerned that were generally classified as '*external services*' and were able to serve adjacent areas as well. It recommended **[1]** that '*the township*

[1] Par 3.6 Venter Commission 2nd Report sub-paragraph 10.

*establisher should accept responsibility for the installation and financing of all engineering services that are internal to the township, and the local authority should accept responsibility for the installation and financing of external engineering services.*'.

**3. The Land Use Planning Ordinance, 15 of 1985 – ('LUPO')**

Many of the recommendations of the Venter Commission were adopted by the then Cape Province Provincial Government and served as points of departure for the drafting of the Land Use Planning Ordinance, 15 of 1985 ('LUPO').

Section 42(1) of (the now repealed) LUPO, empowered the competent authority to grant a land use application, subject to '*such conditions as he may think fit*'. Section 42(2) of LUPO is particularly noteworthy. It read as follows:

'*Such conditions may, having regard to-*

*(a) the community needs and **public expenditure which** in his or its opinion **may arise** from the authorisation, exemption, application or appeal concerned **and** the public expenditure **incurred in the past** which in his or its opinion facilitates the said authorisation, exemption, application or appeal, and*

*(b) the various **rates and levies** paid in the past or to be paid in the future by the owner of the land concerned, **include conditions** in relation to the cession of land or the **payment of money which is directly related to requirements** resulting from the said authorisation, exemption, application or appeal in respect of the provision of necessary services or amenities to the land concerned*.' [Emphasis added].

LUPO no longer catered for enhancement levies but introduced an arrangement in terms of which local authorities could require, as a condition of approval, a contribution towards specified public expenditure. The qualification was that such expenditure (incurred in the past or that may arise) should (a) in the opinion of the authority, facilitate the land use approval; and (b) had to be directly related to requirements *resulting* from such approval, *in respect of the provision of necessary services or amenities to the land concerned.*

The reason why local authorities were required to take into consideration '*the various rates and levies paid in the past or to be paid in the future by the owner of the land concerned*', relates to how *loans,* as mechanism to finance infrastructure investment programmes, fits within the municipal fiscal framework. When loans are taken up for this purpose, municipalities repay same *inter alia* by using income from those sources. In other words, even the owners of vacant land contribute towards the cost of existing infrastructure that was or new infrastructure that will be provided with borrowed funds. To disregard their previous and future contribution would therefore be in conflict with the requirement that municipality should not make a profit out of the developer.

**Conclusion**

Development charges are not a new revenue source or tax for municipalities, but a once-off infrastructure access charge imposed by a municipality on a development as a condition of approval of a land development that will result in intensification of land uses and an increase in the use of or need for municipal engineering infrastructure.

All the new order local government and planning legislation and language used therein, can easily induce an exaggerated sense of the extent of the substantive shift that it is brought about. Actually, the new order regime very much replicates that which previously subsisted in terms of the old order legislation and provides for the substantive continuity of the regulatory structure.

The new order legislation merely refined statutory arrangements relating to development charges whilst the underlying principles in respect thereof, remained the same. People working with the legislation shall appreciate the pattern today is not something essentially different to what it was yesterday and because different language is used in the legal framework one shouldn't allow that to confuse oneself into thinking of it as some sort of a legal revolution. The underlying principles still represent an equitable division of development costs between the local authority and the developer.

---

## Relevant statutory provisions

1. **The National Constitution – ('Constitution')**

The Constitution enjoins local government to seek to provide services to the citizens, to be fundamentally developmental in orientation, to *promote* justifiable social and economic development and, together with other organs of state, to contribute to the progressive realisation of the fundamental constitutional rights.

Municipalities derive their fiscal powers from section 229 of the National Constitution. Section 229(1)(a) empowers a municipality to impose rates on property and surcharges on fees for services provided by or on behalf of the Municipality.

It is necessary to distinguish between '*services charges*' and '*development charges*'.

- A service charge is ongoing contributions (usually levied monthly), required to recover the ongoing costs reasonably associated with rendering the service (e.g., refuse removal), including capital, operating, maintenance, administration and replacement costs, and interest charges.

- A development charge is a once-off capital charge to recover the actual cost of external infrastructure required to accommodate the additional impact of a new development on engineering services. Development charges fall in the section 229(b) category and is not a service fee.

2. **Local Government: Municipal Systems Act, 32 of 2000 as amended – ('MSA')**

The MSA essentially deals with the empowerment of local authorities to provide municipal services for the benefit of the local community and the funding thereof by charging service charges or fees for covering the costs thereof. This is achieved by applying tariffs that must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges. DCs are not intended to fund municipal services being rendered.

According to the MSA a '*municipal service*' means a service that a municipality is empowered to provide and which it provides or may provide to or for the benefit of the local community. Irrespective of whether such a service is provided (or to be provided) by the municipality through an internal mechanism or by engaging an external mechanism.

- Section 4 (1)I provides that the council of a municipality has the right to finance the affairs of the municipality by

  - charging fees for services; and

  - imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.

- Section 4(2) provides that the council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty *inter alia* to-

exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;

- strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner; and

- promote and undertake development in the municipality.

- According to section 11(3) a municipality exercises its legislative or executive authority *inter alia* by imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies.

- Section 74 of the MSA requires that a council of a Municipality must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of the MSA and any other applicable legislation. In terms of section 74(2) a tariff policy must *inter alia* reflect at least the following principles, namely that-

  - tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;

  - tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;

- the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.

 Section 75A of the MSA deals with the general power of municipalities to levy and recover fees, charges and tariffs. It provides that a municipality may-

- levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and

- recover collection charges and interest on any outstanding amount.

3. **Spatial Planning and Land Use Management Act, 16 of 2013 – ('SPLUMA')**

- Section 40(7)(b) empowers a municipal Planning Tribunal, in the approval of any land development application, to impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges.

- Section 49(4) provides that an applicant may, in agreement with the Municipality or service provider, install any external engineering service instead of payment of the applicable development charges, and the fair and reasonable cost of such external services may be set off against development charges payable.

- According to section 49(5), if external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 56 of 2003 pertaining to procurement and the appointment of contractors on behalf of the Municipality, does not apply.

- Section 40(7) of SPLUMA provides that a municipal planning tribunal may in the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges.

- Section 10(1)(a) of SPLUMA provides that provincial legislation regulating matters contained in Schedule 1 to SPLUMA may be promulgated. Section (y) and (y)(iv) of Schedule 1 provides for such provincial legislation to regulate the provision of engineering services and the imposition of development charges including the calculation of development charges.

- If external engineering services are installed by an applicant instead of payment of development charges, the provision of such services will be address in terms of a services agreement as provided for in terms of clause 82(4) of the Planning By-law.

  [NOTE: 'Applicant' to be read as a 'developer' as defined.]

4. **Western Cape: Land Use Planning Act, 3 of 2014 – ('LUPA')**

- Section 40(1) of LUPA empowers a municipality, when approving a land use application, to do so subject to conditions, which conditions the must be reasonable conditions and must arise from the approval of the proposed utilisation of land.

- In terms of section 40(2) such conditions may include, but are not limited to, conditions relating inter alia to the provision of engineering services and infrastructure; and the cession of land or the payment of money.

- Section 40(3) empowers a municipality to require in a condition relating to the provision of engineering services and infrastructure that a proportional contribution to municipal public expenditure be made according to the normal need therefor arising from the approval, as determined by the Municipality in accordance with norms and standards as may be prescribed. Section 40(12) provides that a municipality may, if appropriate, depart from contributions so determined.

- Section 40(4) provides that such municipal public expenditure includes, but is not limited to, municipal public expenditure for municipal service infrastructure and amenities relating to—

    - community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;

    - conservation purposes, energy conservation, climate change; or engineering services.

- Section 40(5) requires that, when determining the contribution contemplated in subsections (3) and (4), a municipality must have regard to at least—

    - the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;

    - the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;

    - the public expenditure on that infrastructure and those amenities that may arise from the approved land use;

    - money in respect of contributions contemplated in subsection (3) paid in the past by the owner of the land concerned; and

    - money in respect of contributions contemplated in subsection (3) to be paid in the future by the developer of the land concerned.

- Section 40(6) requires that, except for land needed for public places or internal engineering services, any additional land required by the Municipality arising from an approved subdivision must be acquired subject to applicable laws that provide for the acquisition or expropriation of land.

5. **Land Use Planning By-Law for George Municipality**

The relevant parts of section 66 and 83 of the Planning By-Law as amended are:

**CONDITIONS OF APPROVAL**

66. (1) The Municipality may approve an application subject to reasonable conditions that arise from the approval of the proposed utilisation of land.

(2) Conditions imposed in accordance with subsection (1) may include conditions relating to—
(a) the provision of engineering services and infrastructure;
(b) requirements relating to engineering services as contemplated in section 82;
(c) the cession of land or the payment of money;
….
(m) the provision of land needed for public places or the payment of money in lieu of the provision of land for that purpose;
….

(3) If the Municipality imposes a condition contemplated in subsection (2)(a) or (b), an engineering services agreement must be concluded between the Municipality and the owner of the land concerned before the construction of infrastructure commences on the land.

(4) Subject to subsection (5C), a condition relating to the payment of money contemplated in subsection (2)(c) may require only a proportional contribution to municipal public expenditure according to the normal need therefor arising from the approval, as determined by the Municipality in accordance with subsection (5A) and any other applicable provincial norms and standards.

(5) Municipal public expenditure contemplated in subsection (4) includes but is not limited to municipal public expenditure for municipal service infrastructure and amenities relating to—

(a) community facilities, including play equipment, street furniture, crèches, clinics, sports fields, indoor sports facilities or community halls;
(b) nature conservation;
(c) energy conservation;
(d) climate change; or
(e) engineering services.

(5A) When determining the contribution contemplated in subsections (4) and (5), the Municipality must have regard to provincial norms and standards as well as, at least —
(a) the municipal service infrastructure and amenities for the land concerned that are needed for the approved land use;
(b) the public expenditure on that infrastructure and those amenities incurred in the past and that facilitates the approved land use;
(c) the public expenditure on that infrastructure and those amenities that may arise from the approved land use;

(d) money in respect of contributions contemplated in section 66(4) paid in the past by the owner of the land concerned; and
(e) money in respect of contributions contemplated in section 66(4) to be paid in the future by the owner of the land concerned.

(5B) A condition for the payment of money contemplated in subsection (2)(c) must specify—
(a) the date by which the contribution must be paid and the means of payment; and
(b) that a contribution not paid before the end of the month in which it is determined, shall be increased in line with the consumer price index published by Statistics South Africa.

(5C) When imposing a condition relating to the payment of money contemplated in subsection (2)(c) the Municipality may, if appropriate, depart from subsections (4), and (5A).

(5D) The Municipal Manager must annually submit a report to the Council on the contributions determined in accordance with subsections 2(c), (4), (5), (5A), (5B) and (5C) which have been paid to the Municipality, together with a statement of the expenditure of the amount and the purposes of the expenditure.

**Development charges related to the erection of buildings and structures**

**83.** (1) The Municipality may determine development charges for municipal public expenditure as contemplated in section 66(5) for land development not linked to a land development application as contemplated in Section 15(2), for buildings and structures.

(2) The development charges as contemplated in (1) will be payable on the submission of building plans to the Municipality in accordance with the National Building Regulations and Building Standards Act, 1977.

(3) In determining the development charges contemplated in (1), the municipality must have due regard for the requirements of section 66(5A) (a) to (e).

(4) The payment of the development charges as contemplated in (2) must specify –

(a) the date by which the contribution must be paid and the means of payment; and

(b) that a contribution not paid before the end of the month in which it is determined, shall be increased in line with the consumer price index published by Statistics South Africa.

(5) The Municipal Manager must annually submit a report to the Council on the contributions determined in accordance with this section which have been paid to the Municipality, together with a statement of the expenditure of the amount and the purposes of the expenditure.

**Summary**

1.1 Section 66(1), (4) and (5) of the Planning By-Law contains the following basic principles governing development charges, namely that:

1.1.1 the charges must be reasonable;

1.1.2 they must arise from the approval of the proposed utilisation of the land in question;

1.1.3 they must comprise a contribution to municipal public expenditure on municipal service infrastructure and amenities;

1.1.4 the contribution must be based on the normal need for that infrastructure and those amenities arising from the approval; and

1.1.5 the contribution must be proportional to the utilisation by future occupiers of the land of that infrastructure and amenities relative to that of others in the Municipality utilising the infrastructure and amenities.

**NOTES:**

1. 'Owner of the land' to be read as a 'developer', as defined.

6. **(a) Municipal Fiscal Powers and Functions Act, 12 of 2007 – ('Fiscal Powers Act')**

This Act was adopted to regulate the exercise by municipalities of their power to impose surcharges on fees for services provided under section 229 (1) (a) of the Constitution; to provide for the authorisation of taxes, levies and duties that municipalities may impose under section 229 (1) (b) of the Constitution; and to provide for matters connected therewith. The date of its commencement is 7 September 2007.

This Act applies to municipal surcharges and municipal taxes referred to in section 229 of the Constitution, other than rates on property regulated in terms of the Local Government: Municipal Property Rates Act, 2004, and municipal base tariffs regulated under the Municipal Finance Management Act, 2003, the Municipal Systems Act, 2000, or sector legislation.

**(b) Municipal Fiscal Powers and Functions Amendment Bill**

During 2020 National Treasury published the Amendment Bill for public comments (Government Gazette Notice No. 3 of 2020) and awaited comments until the 31st March 2020. Since then, it refined the Amendment Bill in line with the public comments received.

The Amendment Bill was introduced to the National Assembly as the Municipal Fiscal Powers and Functions Amendment Act, 2022 as per notice published on 19 August 2022.

National Treasury previously published various draft Policy Frameworks for Municipal Development Charges since the commencement of the 2007 Act. According to those frameworks the guiding principles in relation to development charges were equity and fairness, predictability, spatial and economic neutrality and administrative ease and uniformity. 'Fairness' to ensure that developers pay only for the infrastructure investments which they benefit from. 'Predictability' to enable developers to accurately estimate their liability and hold municipalities to account for the timely delivery of required infrastructure.

Those Policy Frameworks have since been converted into a memorandum of objects to the Amendment Bill. It was part of the document that was published for public comments in the 2020 Government Gazette. Therefore, in the formulation of this policy document, the focus has been to bring it in line with the underlying thinking encountered in the Amendment Bill and in the 'Memorandum of Objects' concerned.

The purposes of the Amendment Bill inter alia include to amend the 2007 Act, so as to regulate the power of municipalities to levy development charges; to set out the permissible uses of income from development charges; to provide for the basis of calculation of development charges; to provide for municipal development charges policies, community participation and by-laws; to provide for the installation of external engineering services by developers instead of payment of development charges; to provide for the consequences of non-provision of infrastructure by a municipality; to regulate reductions to the obligation to pay development charges through subsidies; to provide for matters relating to the budgeting of and accounting for development charges; to establish an entitlement on the part of municipalities to withhold other approvals or clearances due to non-payment of development charges; and to amend the SPLUMA.

Essentially the Amendment Bill seeks to regulate the power of municipalities to levy development charges in respect of a land development application submitted to the Municipality in terms of section 33(1) of SPLUMA or a municipal planning by-law. Section 4 of the Amendment Bill proposes the insertion of Chapter 3A, which deals with development charges and inter alia:

- provides for a power for municipalities to levy development charges and establishes the basis on which they are calculated (Clause 9A);
- allows a municipality which decides to levy development charges to grant a rebate or exemption for a land development or category of land developments through reducing the development charges payable where it has set out a criteria for such rebate or exemption in its policy on development charges (Clause 9E);
- permits a municipality to set off the cost of infrastructure installed by the developer against a development charge in terms of a written agreement with the applicant (Clause 9G);
- deals with the consequences of a municipality not providing infrastructure for which a developer has paid a development charge (Clause 9H)
- provides for a mechanism to resolve disputes for a person whose rights are affected by a decision regarding development charges (Clause 9K).

The Amendment Bill proposes amendments to SPLUMA, including *inter alia* the deletion of the definition of ''engineering service'' and inserting the following definitions:

- *'bulk engineering services' means capital infrastructure assets associated with that portion of an external engineering service which is intended to ensure delivery of municipal engineering services for the benefit of multiple users or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework.*
- *'link engineering services' means the capital infrastructure assets associated with that portion of an external engineering service, which links an internal engineering service to the applicable bulk engineering services.*
- *Internal services mean the capital infrastructure assets associated with that portion of an internal engineering service required in terms of the normal need.*
- *'municipal engineering service' means a system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal required for the purpose of land development management, referred to in Chapter 6.*

The Amendment Bill restricts the scope of engineering services to those already covered in the current definition of engineering services provided in the SPLUMA. These are the provision of water, sewerage, electricity, municipal roads, storm water drainage, gas and solid waste collection and removal required for the purpose of land development. However, some level of flexibility has been provided for municipalities to levy development charges on other engineering services not specified in the SPLUMA, by providing for a municipality to apply to the Minister of Finance for an extension of services to be included in the calculation of development charges.

The Amendment Bill also proposes the following amendments to the SPLUMA.

- The amendment of section 49 by the substitution for subsection (2) of the following subsection:

  *A municipality is responsible for the provision of external engineering services: Provided that link engineering services are installed by an applicant and that the municipality may require that such services are installed to provide a greater capacity than the land development itself needs, subject to the municipality reimbursing the applicant accordingly, unless the applicant waives his or her claim to reimbursement or the value of installing the additional capacity is set off against the applicable development charges liability.*

- The amendment of section 49 by the addition of the following subsection:

  *(6) A municipality may agree to contribute towards the cost of link engineering services, where the applicant's provision of link engineering service that meet the minimum standards of the municipality shall result in capacity that exceeds the requirements of the land development itself: Provided that the maximum contribution of the municipality does not exceed the amount which represents the difference between the cost associated with meeting the minimum standard and the cost of the actual requirements of the land development in question.* (Emphasis added).

  [NOTE: 'Applicant' refers to a 'developer' as defined.]

If the amendments to SPLUMA (as proposed in the Amendment Bill) go through unamended and the Amendment Bill (unamended) becomes law, the following is noteworthy.

- A **development charge** will mean a charge levied by a Municipal Planning Tribunal in terms of section 40(7)*(b)* of, and contemplated in section 49 of, SPLUMA, which must-

  - contribute towards the cost of capital infrastructure assets required to meet increased demand for existing and planned **external engineering services**; or

  - with the approval of the Minister, contribute towards capital infrastructure assets required to meet increased demand for other municipal engineering services not prescribed in terms of SPLUMA.

- Section 9A(1)(a) will empower a municipality to levy a development charge in respect of a **land development application** as contemplated in section 33(1) read with section 45 of SPLUMA.

- Section 9A(4) will require that the amount of a development charge must be-

- **proportional** to the extent of the demand that the land development is projected to create for **existing or planned bulk** engineering services; and

- calculated on the basis of a **reasonable assessment** of **the costs** of providing existing or planned **bulk** engineering services.

- According to the new SPLUMA definition, "**bulk engineering services**" will mean *capital infrastructure assets associated with that portion of an **external engineering service** which is intended to ensure delivery of municipal engineering services for the **benefit of multiple users** or the community as a whole, whether existing or to be provided as a result of development in terms of a municipal spatial development framework.*

- According to the SPLUMA **''external engineering service''** means an engineering service situated outside the boundaries of a land area and which is necessary to serve the use and development of the land area.

- According to the new SPLUMA definition, "**link engineering services**" means the capital infrastructure assets associated with that portion of an external engineering service, which links an internal engineering service to the applicable bulk engineering service.