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# CITY OF JOHANNESBURG DEVELOPMENT CONTRIBUTIONS POLICY

DRAFT

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PREPARED BY THE PROJECT TEAM, LED BY AURECON

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PREPARED FOR:

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## **ACRONYMS AND ABBREVIATIONS**

CoJ	City of Johannesburg
EISD	Environment and Infrastructure Services
ESA	Engineering Services Agreement
INEP	Integrated National Electrification Programme
JW	Johannesburg Water
JRA	Johannesburg Roads Agency
MOE	Municipal Owned Entity
SOE	State Owned Entity
USDG	Urban Settlements Development Grant

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## Definitions

In this Policy, any word or expression to which a meaning has been assigned in the Act bears that meaning and, unless the context otherwise indicates -

**'applicant'** means the person making the application for a change in land use rights;

**'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 (as defined in the Spatial Planning and Land Use Management Act<sup>1</sup>);

**'By-Law'** means the City of Johannesburg Municipal Planning By-Law, 2016;

**'developer'** means an applicant, as defined in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), whose land development application is approved, in whole or in part, by the person or body authorised to do so in terms of applicable legislation;

**'development contribution'** means a charge levied by a Municipal Planning Tribunal or authorised official in terms of section 40(7)(b) of, and contemplated in section 49 of, the Spatial Planning and Land Use Management Act, which must -

- (a) contribute towards the cost of capital infrastructure assets needed to meet increased demand for existing and planned external engineering services;
- (b) with the approval of the Minister, contribute towards capital infrastructure assets needed to meet increased demand for other municipal engineering services not prescribed in terms of the Spatial Planning and Land Use Management Act

**'Engineering service'** means an engineering service to provide one of the following: water, sanitation, electricity, municipal roads, stormwater and public transport, excluding bus rapid transit infrastructure or transport facilities located in the roadway;

**'Engineering Services Agreement'** means a written agreement concluded between the City and the land owner on which a land development application has been brought in terms of section 45 of the Spatial Planning and Land Use Management Act, recording their detailed and specific respective rights and obligations regarding the provision and installation of external engineering services and

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<sup>1</sup> These references to SPLUMA presuppose that it has been amended as per the Municipal Fiscal Powers and Functions Bill (MFPFB).

internal engineering services required for an approved land development and matters ancillary thereto;

**'external engineering service'** means an engineering service situated outside the boundaries of a land area required to serve the use and development of the land area and is either a link engineering service or a bulk engineering service or an engineering service which has been classified by agreement as such in terms of section 46(6) of this By-Law”;

**'infrastructure'** means facilities and systems needed to provide bulk engineering services;

**'internal engineering service'** means an engineering service situated within the boundaries of a land area required for the use and development of the land area and which is to be owned and operated by the City or a service provider;

**'link engineering service'** means an external engineering service required to connect an internal engineering service to a bulk engineering service and includes the land required for the link engineering service;

**'Municipal Owned Entity'** means those City of Johannesburg Municipal Entities that have a mandate to charge engineering services contributions, which include City Power, the Johannesburg Road Agency and Johannesburg Water;

**'The Act'** means the Municipal Fiscal Powers and Functions Act, Act 12 of 2007, as amended;

**'The City'** means, for the purposes of this policy, the City of Johannesburg Metropolitan Municipality and its associated Municipal Owned Entities.

**'Transport'** means the public transport systems and related infrastructure and facilities within the City that are wholly or partially operated and funded by the City as well as non-motorised transport.

# 1 Introduction

Johannesburg is the economic heart of both South Africa and Gauteng and is characterised by a growing economy and a growing population. This results in continual urban expansion and intensified development. This contributes positively to the municipal fiscus through the increased contribution of property rates and services charges. However, this development also has an impact on the demand for engineering services resulting in the need to support development with increased capital investment in infrastructure provision. This has significant cost implications for the City. So, as per Section 73(2)(c) of the Municipal Systems Act, these services must be provided in a financially sustainable manner, including through imposing, *inter alia*, charges to pay for services. Development contributions (DCs) are required to cover the capital costs of providing infrastructure and to ensure that the main beneficiaries of infrastructure make an appropriate and fair contribution to that cost, without unduly burdening the city's ratepayers. Other aspects, such as the operating costs of infrastructure, are covered by other revenue sources such as municipal property rates and consumption tariffs.

The aim of the DC policy is to simplify and integrate the development contributions process and charges for roads and stormwater, water and sewerage, electricity and public transport services across the City. It is intended to speed up the rate of development by providing greater clarity around an existing capital funding instrument that allows for the timely provision of essential bulk infrastructure required to service the needs of new development. It also aims to give further effect to section 47(2) of the City of Johannesburg Municipal Planning By-Law (2016), which indicates that the rules for levying an external engineering services contributions must be set out in a policy/by-law which is adopted and approved by the City.

The policy rescinds all previous City development contributions, engineering services contributions and bulk contributions, policies and calculators (including those of Municipal Owned Entities<sup>2</sup>) from the date of its approval by Council and will be the single source for the application and calculation of development contributions going forward. All developments approved after the date of approval of the policy, will be subject to this policy.

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<sup>2</sup> These policies should be listed.

## 2 Infrastructure Context Overview

Bulk infrastructure in the City is provided by three Municipal Owned Entities (MOEs) and City Department: the Johannesburg Road Agency (JRA), City Power (CP), and Johannesburg Water (JW) are responsible for the provision of roads and stormwater, electricity, and water and sanitation infrastructure respectively; and the Department of Transport is responsible for providing transport infrastructure. The JRA reports to the City's Department of Transport, and City Power and Johannesburg Water report to the Department of Environment and Infrastructure Services<sup>3</sup>. Historically, these bodies have planned and implemented infrastructure separately. This has filtered through to the calculation and charging of development contributions, resulting in different approaches across the different MOEs, although the respective charges have been levied through the City's land use management processes.

In order to address the siloed nature of infrastructure planning, the City has developed the Consolidated Infrastructure Plan (CIP) as a means of consolidating and integrating planning, implementation and management of infrastructure-related programmes. The development of a single development contributions policy aligns with the CIP approach of integrating infrastructure planning and funding. The CIP will shortly be replaced by the Strategic Infrastructure Asset Management Plan (SIAMP). To the extent that the SIAMP materially differs from the CIP in terms of the extent and level of detail of infrastructure planning this policy may have to be amended.

## 3 Principles Guiding Development Contributions in the City

The following principles apply to the implementation of this policy in the municipal area and must be taken into account by all decision-makers implementing this policy.

- 3.1 **Equity.** Developers and land use applicants should pay their fair share, on the same basis and according to the same rules across the City. Similar land uses should be treated similarly and the same rules and principles should apply to all land development applications.
- 3.2 **Fairness.** Only those who benefit from a product or service should pay for it, in proportion to the value they derive from it. The contribution a developer should make is based on the expected impact of the development on the infrastructure. The developer is not asked to contribute to backlogs or to provide infrastructure in excess of the impact the land use change will have. A new development does not have to subsidize existing communities or other new developments but the City may seek to require that a developer install infrastructure to meet

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<sup>3</sup> Pikitup provides solid waste management services, but these services are excluded from the application of this policy.

the planned standards needed to accommodate future demand, provided that the developer may only be compelled to do so where the proposed development is not accommodated in current infrastructure masterplans. There should not be duplication in the recovery of the capital cost of infrastructure from more than one funding source; capital costs recovered through development contributions cannot also be recovered through property rates or service tariffs.

- 3.3 **Justified.** The approval of enhanced land use rights will result in the requirement for new or upgraded infrastructure, and/or take up spare capacity in existing infrastructure. It is therefore justified that the beneficiary of the enhanced rights contributes towards the capital cost of the infrastructure used. This additional load will be determined on the basis that existing communities should not have to subsidize new land developments by allowing free use of previously provided infrastructure for those developments. This is in line with the SPLUMA principle of sustainability, set out in section 7(b)(v) of the Act, which requires that decision makers must 'consider all current and future costs to all parties for the provision of infrastructure ... in in land developments'.
- 3.4 **Reasonableness.** There must be a rational connection between the contribution, the cost of infrastructure and the relative impact of a development on that infrastructure. Contributions should be calculated based on the estimated cost of infrastructure to support growth, apportioned to each unit of growth relative to the benefit that each such unit derives. Development contributions are intended to recover the infrastructure costs incurred or to be incurred because of growth; they are not a form of taxation. As far as possible the amount of the development contribution should be calculated to achieve full cost recovery.
- 3.5 **Predictability.** Development contributions should be a predictable, legally certain and reliable source of revenue to the City for providing infrastructure, and a predictable cost to developers.
- 3.6 **Certainty.** Development contributions revenue should be dedicated only to the purpose for which it was raised, so municipalities must disclose the amounts collected and how the revenue is spent. If developers pay the development contributions, then they are entitled to demand of the City the timeous provision of the engineering services that it must provide, within the requirements of the City's capital budgeting system. This complies with the SPLUMA principle of good administration which requires that 'policies, legislation and procedures must be clearly set out in order to inform and empower members of the public' (section 7(e)(v) of SPLUMA).
- 3.7 **Administrative efficiency.** The determination, calculation and operation of development contributions should be administratively simple and transparent.

## 4 Objectives

- 4.1 The City requires the payment of development contributions to cover the costs of municipal external engineering services required to accommodate increased demand for such infrastructure that arises from intensified land use. It is not practical to calculate the precise costs imposed by each new development on the City's infrastructure, so a policy is needed to determine a fair and efficient method to determine a cost to be covered by each development, so that the full costs of serving increased demand are shared fairly among those creating that demand.
- 4.2 The City may only use the revenue from DCs to increase municipal external engineering services to support growth and development in the municipal area. This revenue may not be used for other purposes.
- 4.3 The policy supports the City in executing its mandate to do "municipal planning" in terms of section 156 read with Schedule 4 Part B of the Constitution, informed by its municipal spatial development framework and in accordance with the City's Municipal Planning Bylaw, 2016.

## 5 Legislative Framework

- 5.1 **The Constitution.** In terms of section 156(1) of the Constitution municipalities have executive authority in respect of, and the right to administer the local government matters listed in part B of Schedule 4 and part B of Schedule 5 and any other matter assigned to it by national or provincial legislation, which includes municipal planning, stormwater management, water and sanitation, cleansing, local amenities, park and recreation, municipal roads, public places, refuse removal and solid waste disposal. Section 229 of the Constitution then provides that municipalities may impose rates on property and surcharges on fees for services provided by or on behalf of the municipality; and if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty. This enables municipalities to receive money to fund their obligations. It also provides that when a municipality imposes rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties, it may not do so in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and may be regulated by national legislation.

- 5.2 **Spatial Planning and Land Use Management Act (SPLUMA)**. In terms of section 49, an applicant is responsible for the provision and installation of internal and link engineering services and a municipality is responsible for the provision of external engineering services<sup>4</sup>. In section 40(7) SPLUMA provides that a municipal planning tribunal or authorised official 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 DCs. The municipality has enacted a Municipal Planning By-Law that prescribes the manner in which applications for land development must be submitted and processed.
- 5.3 **Draft Municipal Fiscal Powers and Functions Bill (MFPFB)**<sup>5</sup>. The draft MFPFB confirms the power for municipalities to levy DCs to contribute towards the cost of bulk infrastructure required to service additional land development. The draft Bill empowers municipalities to withhold approvals or clearances for non-payment of DCs. It sets out the permissible uses of income from DCs and establishes the principles for the calculation of DCs. All municipalities must have a by-law that describes how that municipality intends to levy DCs. Municipalities that charge DCs are required to do so in terms of a municipal DC policy, with a set of minimum content and public participation requirements. An Engineering Services Agreement (ESA) is required to be concluded where bulk engineering services are required to be installed, either by the municipality or by the developer. The ESA, inter alia, covers the nature, timing and standards for the engineering services. Where developers install engineering services instead of payment of DCs, the draft Bill regulates how this is procured, how the value is ascertained and how this value is offset against the development contribution or, in particular cases, reimbursed to the developer. A municipality may only subsidise DCs in terms of its DC policy but must calculate the DC as if it were payable in all cases. The draft Bill also describes the financial management and reporting requirements to be followed in accounting for DCs.
- 5.4 **The City of Joburg Municipal Planning By-Law (2016)** contains specific empowering provisions allowing the decision-maker to require a contribution in respect of engineering services when approving the following land development applications:
- A land use consent (section 19(7)(e) and (f));
  - A scheme amendment, or rezoning, (section 25);
  - Township establishment (section 26);
  - Extension of township boundary (section 32); and
  - A subdivision (sections 33(7) and 35).

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<sup>4</sup> This is a proposed amendment to SPLUMA as per the MFPFB that is still subject to approval.

<sup>5</sup> These provisions may be subject to change in the adopted Act.

Furthermore, in part 4 section 33(6) of the MPBL, provision is made for the City to approve an application for a subdivision or consolidation, subject to any conditions, and in part 6 of the MPBL, similar provision is made in section 42(1) for the City to approve an application for amendment, suspension or removal of restrictive or obsolete conditions or obligations, servitudes or reservations in respect of land, subject to any conditions. Although engineering services contributions are not specified in these sections, engineering services contributions could be applied as a condition of approval in relation to such applications. Similarly, section 21(1)(n) of the City's Land Use Scheme provides that, at the discretion of the City, the construction of a subsidiary dwelling on a Single Residential stand, allowed as of right, may require an engineering services contribution at the submission of a building plan.

Chapter 6 of the By-Law deals directly with engineering services and engineering services contributions and sets the conditions under which development contributions can be charged. Specifically, section 47(1) indicates that the external engineering services contributions must be set out in a policy/by-law which is adopted and approved by the Council, and contributions payable in terms of that policy/by-law will be applicable from the date of Council approval or a date specified by the Council at the time of the approval.

## **6 Municipal Stakeholders**

- 6.1 The key municipal stakeholders affected by DCs generally fall into two categories: those making development applications, which may be private or public entities, and those responsible for the collection of the contribution and the provision of engineering services, which is the City. In addition, the existing businesses and residents of the City of Johannesburg have an interest in the policy ensuring that they are not cross-subsidising new development.
- 6.2 The MoEs and the Department of Transport are responsible for the provision of the respective external engineering services.
- 6.3 Service Delivery Agreements (SDA) concluded in accordance with the provisions of the Municipal Systems Act (MSA) govern the respective entities' relationship with the City of Johannesburg.
- 6.4 The By-Law provides that a decision on a land development application is either taken by the City's Municipal Planning Tribunal or by an authorised official. Specifically, an opposed application is referred to the Tribunal for evaluation, while an unopposed application is evaluated by an authorised official (so authorised in terms of the By-Law).

6.5 In the drafting of this policy, key City Departments and Municipal Owned Entities were included on the Project Steering Committee that oversaw the drafting of the Policy, including representatives from:

- CoJ Development Planning: Legal Administration
- CoJ Development Planning: Finance
- CoJ Development Planning: Land Use Management
- Johannesburg City Parks
- Johannesburg Road Agency
- City Power
- Johannesburg Water
- Environment and Infrastructure Services (EISD)
- CoJ Valuations department
- CoJ Transport department
- CoJ Development Planning: City Transformation and Spatial Planning
- Office of the City Manager (SPMO)

## **7 Scope of Development Contributions**

7.1 The primary purpose of DCs is to cover the capital costs arising from the provision of engineering services to meet the demands of new developments. The By-Law defines engineering services in a manner consistent with the Spatial Planning and Land Use Management Act. For this policy however, the City may determine a DC liability for the following engineering services that are provided by the City:

- Water
- Sanitation
- Electricity
- Municipal roads
- Stormwater
- Transport<sup>6</sup>

7.2 The City will not factor into its DC calculation the costs of engineering services provided by other spheres of government or by state-owned entities. Thus, for example, the costs of

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<sup>6</sup> Transport includes taxi ranks, bus ranks, non-motorized transport routes, pedestrian bridges, public transport interchanges, scholar drop-off facilities and public space improvements, including trading stalls, that are associated with public transport interchanges, ranks, stations and facilities, but excludes the Bus Rapid Transit infrastructure or transport facilities located in the roadway.

designated provincial or national roads cannot be included in the calculation, but developments abutting a provincial or national road will still be required to pay a DC for use of the municipal road network.

- 7.3 Where a new development straddles or abuts the boundary with another municipality the City may agree with that municipality that a portion of the DC revenue is transferred to that municipality.

## **8 Triggers for Development Contributions**

- 8.1 DCs will be levied through the land development application process; thus, the contribution will be imposed by the City as a condition of a land development approval given by the Municipal Planning Tribunal or authorised officials.
- 8.2 In terms of the Municipal Planning By-Law (2016), the following land development applications are subject to DCs:
- 8.2.1 A land use consent (section 19(7)(e) and (f));
  - 8.2.2 A scheme amendment, or rezoning, (section 25);
  - 8.2.3 Township establishment (section 28(15) and (16));
  - 8.2.4 Extension of a township boundary (section 32); and
  - 8.2.5 A subdivision (sections 33(7) and 35).
- 8.3 For land development applications not noted in 8.2, the By-Law and the Land Use Scheme provide that the City may impose conditions that it may deem expedient. This may include the levying of engineering services contributions by the City, subject to the network impact(s) of the proposed land use change. At this point these applications will not trigger a development contribution.
- 8.4 Should amendments be made to the By-Law that impact the range and nature of land development applications referred to in 8.2 and 8.3 then this policy must be understood to apply to the new categories and/or definitions of land development applications introduced by that amendment.
- 8.5 Land development applications resulting in an equal or lesser impact than the existing land use, will not be subject to DCs.
- 8.6 Where the Municipal Planning Tribunal or authorised official approves a land development application that gives rise to a more intensive use of land then it must require that a development

contribution is made as a condition to the approval. The determination of the DC liability will be made by the City.

## **9 Use of Development Contributions**

- 9.1 DCs may only be used for the capital funding of the external engineering services described in Section 7 – Scope of DCs.
- 9.2 DCs collected for an engineering service shall be used to provide new infrastructure for that service, or to pay off loans taken out to fund existing infrastructure for that service.
- 9.3 If adequate external engineering services exist to service a development, the DCs collected from that development may be used to provide infrastructure elsewhere in the City.
- 9.4 In the case of DCs raised to cover Public Transport costs, a generalised transport contribution will be charged across the entire municipal area and a zone-specific transport contribution will be charged in specific transport zones in which transport master planning has been undertaken. The zone-specific transport DCs may only be used in those public transport zones in which they are raised.

## **10 Calculation of Development Contributions**

### 10.1 Calculation Principles

- 10.1.1 Developers are responsible for the provision of internal and link external engineering services. The DC relates only to the cost of bulk engineering services. The link services to be provided for a development will be determined by the City and specified in an Engineering Services Agreement (ESA).
- 10.1.2 The DC liability 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 must be calculated on the basis of a reasonable assessment of the costs of providing existing or planned bulk engineering services.

10.1.3 The DC for each service is calculated as the total impact on the service, multiplied by the unit cost for that service applicable in the current financial year. This calculation is undertaken for each engineering service covered by this policy. The calculation of the total DC is given by the generic formula:

$$\text{Development charge} = \sum_{i=1}^N \text{total impact on service}_i \times \text{unit cost of service}_i$$

*Where: N is the total number of services covered by this policy.*

[Equation 1 DC Calculation]

10.1.4 In turn, the total impact that a development will have on demand for municipal bulk services is calculated by the generic formula:

$$\text{Total impact on service} = \sum_{i=1}^N \text{unit impact for land use}_i \times (\text{proposed units} - \text{existing units})$$

*Where: N is the total number of land uses in the proposed development.*

[Equation 2 Total Impact on Service Calculation]

The data inputs required to calculate the DC are therefore:

- Proposed land use changes (submitted as part of application)
- Unit impact (described below)
- Unit cost (described below)

## 10.2 Determination of Unit Impacts for Land Uses

10.2.1 The proportional impact of developments relative to one another is estimated through the use of standard unit impacts for each land use. The standard unit impacts for the City of Johannesburg are based on national engineering norms and standards and validated against land use and consumption data for Johannesburg. The standard land uses used in the calculation of DCs is a rationalised list of the land uses described in the CoJ Land Use Scheme. The determination of which land use categories apply to the development will be made by the City, at its sole discretion.

The measurement for the impact on each of the engineering services is provided in the table below:

Engineering Service	Measure	Unit of measure
<b>Electricity</b>	After Diversity Maximum Demand (ADMD)	kVA
<b>Roads</b>	Modified vehicle trip generation	Equivalent trips/peak hour
<b>Water</b>	Average Annual Daily Demand (AADD)	kl/day
<b>Sanitation</b>	Average Annual Daily Outflow	kl/day
<b>Stormwater</b>	Runoff coefficient (C)	(unit-less runoff coefficient)
	Development area (site area)	m <sup>2</sup>
<b>Transport</b>	Public transport passenger trips per peak period	PT trips/peak period

Table 1: Engineering Services

### 10.3 Determination of Unit Costs

10.3.1 The reasonable assessment of the costs of providing bulk services has been undertaken through the City of Johannesburg’s Consolidated Infrastructure Plan (CIP). The CIP projected the anticipated demand for engineering services as a result of growth in the city over 20 years. The infrastructure required to service this additional demand has been determined through master planning exercises and the capital projects identified and entered into the Johannesburg Strategic Infrastructure Plan (JSIP). The projects that are required to service new demand over a 10-year period in the city have been extracted from the JSIP project list, excluding all projects addressing infrastructure backlogs or renewal of existing assets. The total cost of engineering services for new development, so derived, is divided by the anticipated demand for each service to generate a unit cost. The unit cost is expressed as a Rand per unit of measure (as per Table 1) for each service.

### 10.4 Adjustment of Unit Costs

10.4.1 Unit cost estimates for each infrastructure category will be inflated annually by the average construction escalation values as published by the South African Forum of Civil Engineering Contractors (SAFCEC) or similar inflation index.

10.4.2 The unit costs will be recalculated at least every five years by updating the capital project list and demand projection used in the unit costing model. In the year in which the unit cost is recalculated, the inflationary escalation will not apply.

## 10.5 Re-Calculation of Contributions

10.5.1 The DC liability will remain fixed for the period specified in sections 28(16) and 35(15) of the By-Law. Should the payment not be made within this period, the DC liability will be re-calculated at the time the DC becomes payable using the new unit cost and the applicant will be informed of the new value.

## 10.6 Exceptional Circumstances

10.6.1 Instances may occur where the specific characteristics of a land development mean that the standard assumptions regarding the unit impact do not hold. This will typically occur where:

10.6.1.1 The impact on one or more engineering service is significantly higher than that assumed in the table of unit impacts because of the type of specific activity on the site (e.g. the impact of a large brewery on water demand or a mine on road impact).

10.6.1.2 The impact on one or more engineering service is lower than that assumed in the table of unit impacts (or nil) because of guaranteed independence from the relevant municipal network, or networks, through the approved use of green infrastructure.

10.6.1.3 If the development presents such an exceptional circumstance, then the DC may be calculated based on an assessed impact on one or more services, to be calculated by a registered professional engineer, and verified by the City.

10.6.1.4 Where a developer wishes to demonstrate a lower impact than that assumed in the table of unit impacts the onus is on the developer to show guaranteed independence from the municipal network. All costs incurred in that demonstration are for the developer's account.

10.6.1.5 No thresholds for these two cases have been set and the qualification of a development for this treatment is at the sole discretion of the City. The City is under no obligation to treat a development as an exceptional circumstance at the request of an applicant.

10.6.1.6 City policies dealing with matters such as green infrastructure or any other matter may prescribe standards as to what will constitute guaranteed independence from municipal network for any engineering services.

## **11 Payment of Development Contributions**

- 11.1 Payment of DCs is due at the payment points set out in the conditions of the land development approval granted by the Municipal Planning Tribunal or authorised official as prescribed in the By-Law.
- 11.2 The City may withhold any approval or clearance it is empowered to grant or issue in terms of any other legislation in respect of either the land owner or land development area in question, including the approval of a building plan in terms of the National Building Regulations and Building Standards Act until the DC envisaged in subsection (1) above has been settled in full or where the obligations in terms of the applicable Engineering Services Agreement have been fulfilled.
- 11.3 Payment must be made into the account specified by the City or at the municipal cashiers for expenditure in line with this policy.
- 11.4 The City will issue receipts for all payments received and will record each payment made in the municipal accounts, specifying the amounts received for each engineering service.
- 11.5 If the application lapses in terms of section 43(2) of SPLUMA any DCs already paid will not be refunded.
- 11.6 Where the developer opts not to proceed with development the City shall only refund any DCs received where the permitted land use change is reversed to reflect the permitted land use applicable before the land development application was made and all professional and administrative costs relating to this reversal of the permitted land use shall be borne by the developer.

## **12 Installation of External Engineering Services to Offset the Payment of Development Contributions**

- 12.1 The City may agree in writing that a developer installs any external engineering services required to serve the development, including both bulk and link engineering services, on behalf of the City and the fair and reasonable cost of installing a bulk engineering service may be set off against the external engineering services DCs payable, on condition that:
- 12.1.1 an Engineering Services Agreement (ESA) is entered into between the developer and the City, which separately specifies the link infrastructure to be provided by the developer and the bulk infrastructure to be provided to offset the payment of DCs;

- 12.1.2 the ESA will stipulate the manner in which the value of the installed engineering services will be valued so that the amount of DCs payable can be reduced accordingly;
- 12.1.3 where there is such an ESA to install all or part of the external engineering services, the terms of that agreement shall comply with all other relevant legislation; and
- 12.1.4 the amount that may be set off for any bulk engineering service may not exceed the total DC amount calculated for that bulk engineering service, provided that, for the purposes of this sub-clause:
- 12.1.5 in the case of Joburg Water, the total DC amount includes the DC amounts payable for both water and sanitation; and
- 12.1.6 in the case of the Johannesburg Roads Agency, the total DC amount includes the DC amounts for payable for both roads and stormwater.
- 12.2 Where a developer installs external engineering services, as contemplated in section 12.1, through one or more contractors appointed by the developer:
  - 12.2.1 the City may require a developer to consult with specified municipal officials prior to making a decision on appointment of a contractor, so that the City has an opportunity to make representations regarding the fairness and reasonableness of the costs of installation of the goods and services procured by the developer;
  - 12.2.2 the City may designate one or more officials of the City to participate as an observer in the developer's deliberations on any bid received by the developer from prospective contractors, in order to satisfy itself that the decision-making process is fair;
  - 12.2.3 the developer must keep a record of the procurement process followed and the contract awarded for the installation of any external engineering services, and append a copy of that record to the Engineering Services Agreement concluded with the City;
  - 12.2.4 the City may appoint an appropriately qualified independent third party to assess the bid process conducted by the developer, including an assessment as to whether the costs of installation claimed by the developer are fair and reasonable;
  - 12.2.5 the developer must keep accurate records of payment made to contractors to verify final payment certificates;
  - 12.2.6 the developer must permit the City to have access on reasonable notice to all relevant records relating to the construction process, including but not limited to records relating to the procurement process, and the contractual documentation, notices, invoices, progress reports and other records;
  - 12.2.7 the developer must appoint an independent, registered professional consulting engineer to certify the monetary value of the external engineering services installed, and the valuation

- performed must take account of the value of any immovable property used for purposes of installation of external engineering services and which is to be transferred to the City;
- 12.2.8 the engineer appointed in terms of subparagraph 12.2.7 must also confirm whether the external engineering services installed conform to the technical standards set by the City, and must deliver a certificate to that effect to the City, or notification as to the defects;
- 12.2.9 the City may appoint an independent, registered professional consulting engineer to verify the valuation and certification carried out by the engineer in terms of subparagraphs 12.2.7 and 12.2.8; and
- 12.2.10 the City may impose, as conditions of approval, or agree with the developer in the ESA, other appropriate procurement and cost-related safeguards on a case-by-case basis, depending on the circumstances.
- 12.3 Where the developer does not appoint a contractor, and installs external engineering services, as contemplated in section 12.1, itself, the provisions of sub-regulations 12.2.6, 12.2.7, 12.2.8, 12.2.9, and 12.2.10 are applicable.
- 12.4 The costs that may be included in the valuation of the work in terms of section 12.2.7 and 12.2.9 are land costs, professional fees related to the technical design of the infrastructure (which may include master planning), materials, labour and reasonable costs of construction but may not include professional fees relating to other aspects of the development or other regulatory processes such as environmental impact assessments, traffic impact assessments, heritage assessments and water use licences.
- 12.5 No engineering services installed by a developer may be accepted by the City until there has been a final site inspection by an authorised representative of the City and the following have been provided by the developer:
- 12.5.1 A detailed breakdown of the costs incurred;
- 12.5.2 A consulting engineer's Certificate of Completion;
- 12.5.3 As-built drawings in the formats required by the City;
- 12.5.4 Record drawings, with a covering letter detailing the project, list of drawings, format of digital drawings and, where applicable, the number of disks provided;
- 12.5.5 Such laboratory tests, conducted by an independent laboratory, as the City may require and in line with the applicable national standards; and
- 12.5.6 A guarantee in the amount of 10 (ten) % of the value of the new works for a further defects liability period of 12 (twelve) months.

- 12.6 If there is an ESA in terms of which the developer agrees to install any external engineering services required to serve the development the City may at its discretion waive the DC payment for the installation of external engineering services and, where deemed necessary, may require a guarantee from a bank up to the value of those services. In this case the balance of the DC amount will still be payable on completion of the installation of external engineering services if the value of the engineering services installed is less than the calculated value of the DC.
- 12.7 Should the cost for installing such bulk engineering service(s) as contemplated in section 12.1 exceed the amount of the bulk engineering services DC as determined by the City, then the City may in its sole discretion refund the owner of the land; provided that the necessary funds are available on the City's approved budget or can be recovered from subsequent developers connecting to the same external engineering services, provided further that these developments are clearly likely to connect to the external engineering services to which the refund pertains and:
- 12.7.1 will take place within three years from completion of the external engineering services; or
- 12.7.2 will take place more than three years from completion of external engineering services where the consent of the Council of the City of Johannesburg has been obtained.
- 12.8 A refund provided in terms of section 12.7 may be made in terms of money or the provision of additional capacity in a particular external engineering service, at the discretion of the City.
- 12.9 Should the cost for installing such bulk external engineering service(s) as contemplated in section 12.1 be less than the amount of the DC amount as determined by the City, then the developer is liable for the payment of the difference between the certified value of the work and the calculated DC, in line with Section 11 of this policy.
- 12.10 Where offset repayment is due in terms of section 12.7 and the municipality, after reasonable effort, is unable to locate the developer after a period of three (3) years, the money will be forfeited by the developer and disbursed to the relevant DC accounts.
- 12.11 All capital infrastructure assets installed by a developer and set off against the liability for payment of DCs must be transferred to the City in a manner consistent with the following requirements:
- 12.11.1 any immovable property upon which the capital infrastructure assets are installed must be transferred to the City or the developer must issue an undertaking in terms satisfactory to the City, that the City will have reasonable access to the capital infrastructure assets installed

by the developer at all times, which undertaking must, at the discretion of the City, be registered by the developer as a servitude in favour of the City; and

12.11.2 any immovable property that is to be transferred may not be so transferred until the land development area is lawfully occupied by the purchasers, tenants or other lawful occupants.

12.12 All capital infrastructure assets transferred to the City must be in good working order.

12.13 Capital infrastructure assets installed by a landowner that become the property of the City as contemplated in section 12.10.1, will be accounted for in accordance with the generally recognised accounting practice as provided in section 122 of the Municipal Finance Management Act.

## 13 Subsidies

13.1 The City may only subsidise the following land developments through a reduction in the DCs liability, either in full or in part where:

13.1.1 existing municipal services or components thereof are established or planned and have been or will be financed from national or provincial transfers, e.g. USDG, INEP, etc, to the extent that the grant funding covers the infrastructure costs and to the extent that the type of development qualifies for that grant funding;

13.1.2 the land development provides social, cultural or economic services that are specified annually by the City for the purposes of implementing this section of the policy;

13.1.3 the land development provides inclusionary housing units in terms of the City's inclusionary housing policy, which are rental units and subject to a capped rental amount;

13.1.4 the Council of the City of Johannesburg has determined that the land development in question will introduce fundamental improvements to the economic growth and job creation trajectory of Johannesburg and the Gauteng City Region and is in line with the City's then applicable municipal spatial development framework.

13.2 Where a subsidy is applied the City will calculate the revenue foregone and identify an alternative revenue source to cover that amount.

13.3 Where a development has a mix of land uses, subsidies may only be applied *pro rata* to qualifying land uses and not to the development as a whole.

## **14 Administrative Process**

- 14.1 All land development applications will be submitted to the City of Joburg Legal Administration department.
- 14.2 The application will be evaluated by the City of Joburg Legal Administration department in terms of the City of Joburg By-Law 2016, taking into consideration all comments received, and a decision taken.
- 14.3 During the post-decision phase, DCs (if applicable) will be calculated by the City of Joburg Legal Administration department as in section 10.
- 14.4 The applicant will be informed of the City's decision, including the DC amount payable, if applicable.
- 14.5 In accordance with the By-Law, a land owner may enter into an Engineering Services Agreement with the City prior to the payment of any DCs (section 46(2)).

## **15 Monitoring, Evaluation and Review**

- 15.1 The City will put in place a system of monitoring the implementation of this policy and evaluation of the DC calculation, payment, expenditure and offset system.
- 15.2 The City will revise this Policy where necessary, for example where amendments to the By-Law affect the application of this policy the policy must be amended accordingly to ensure that there is no inconsistency between the By-Law and the DC Policy.
- 15.3 The City will separately account in the municipal budget and related financial reports for all:
  - 15.3.1 amounts received by the City to discharge DC liabilities; and
  - 15.3.2 expenditure incurred for purposes of providing external engineering services, which is funded from DC revenue; and
  - 15.3.3 the value of external engineering services transferred to the City to offset DC liabilities.

## **16 Dispute Resolution and Appeal Process**

- 16.1 Where a developer or other party to a land development application wishes to challenge the manner in which this policy is applied, he/she may appeal against any decision of the Municipal Planning Tribunal or authorised official or other relevant authority in accordance with the appeal provisions set out in SPLUMA and section 49 of the By-Law.

## Appendix: Standard Unit Impacts

[under development]

Draft

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