

DRAKENSTEIN MUNICIPALITY
DRAFT AMENDMENTS TO THE HOUSE SHOP POLICY AND
THE TELECOMMUNICATION BASE STATION POLICY (TBS)

Notice is hereby given that Council intends to adopt the House Shop Policy and Telecommunication Base Station Policy, respectively.

Members of the public, property owners, interested parties and prospective or current operators of the above-mentioned uses, are herewith invited to comment on the Draft Amendments to the respective policies.

Full particulars of the respective policies are available at the offices of the Planning and Development Department (Land Use Planning and Surveying Section), 4th Floor, Nedbank Building, c/o Breda and Berg River Boulevard, Paarl, as well as all the Drakenstein municipal offices and libraries from 08:00 - 16:45 (Monday to Thursday) and 08:00 - 15:30 (Friday). Any additional information can be obtained from Mr R Mowzer at Tel no: 021 807 4822 or riyaaz.mowzer@drakenstein.gov.za.

Comments can be lodged in writing to the City Manager, Drakenstein Municipality, P O Box 1, Paarl, 7622 or customercare@drakenstein.gov.za, by no later than **Monday, 11 November 2019**. The policies are also available on the municipal website, www.drakenstein.gov.za.

Persons who are unable to read or write, can submit their comments verbally at the Land Use Planning and Surveying Offices, 4th Floor, Nedbank Building, c/o Breda and Berg River Boulevard, Paarl, where they will be assisted by a staff member, to put their comment in writing.

10 October 2019

DR J H LEIBBRANDT
CITY MANAGER
Paarl Post – 10/10/2019

DRAKENSTEIN MUNISIPALITEIT
KONSEP WYSIGINGS AAN DIE HUISWINKELBELEID EN DIE
TELEKOMMUNIKASIE BASIS STASIE BELEID (TBS)

Kennis geskied hiermee dat die Raad van voorneme is om die Huiswinkelbeleid en Telekommunikasie Basis Stasie Beleid, onderskeidelik, goed te keur.

Lede van die publiek, grondeienaars, belangstellendes en voornemende of huidige operateurs van bogenoemde gebruike, word hiermee uitgenooi om kommentaar te lewer op die konsep wysigings van die onderskeie beleide.

Volledige besonderhede aangaande die onderskeie beleide is beskikbaar by die Beplanning en Ontwikkeling Departement (Grondgebruikbeplanning en Opmetings Afdeling), 4de Vloer, Nedbankgebou, h/v Bredastraat en Bergrivier Boulevard, Paarl vanaf 08:00 - 16:45 (Maandag tot Donderdag) en 08:00 - 15:30 (Vrydag) asook by alle munisipale kantore en biblioteke van Drakenstein.

Skriftelike kommentaar kan gerig word aan die Stadsbestuurder, Drakenstein Munisipaliteit, Posbus 1, Paarl, 7622 of customercare@drakenstein.gov.za teen nie later nie as **Maandag, 11 November 2019**. Die twee beleide is ook beskikbaar op die munisipale webtuiste, www.drakenstein.gov.za.

Indien 'n persoon nie kan lees of skryf nie, kan so 'n persoon sy kommentaar mondelings by die Grondgebruikbeplanning en Opmetings Afdeling, 4de Vloer, Nedbankgebou, h/v Bredastraat en Bergrivier Boulevard aflê, waar 'n personeellid sal help om sy kommentaar/vertoë op skrif te stel.

10 Oktober 2019

DR J H LEIBBRANDT
STADSBESTUURDER
Webtuiste – 10/10/2019

UMASIPALA WASE DRAKENSTEIN MUNICIPALITY
UYILO LOLUNGISO LOMGAQO NKQUBO WEVENKILE EZINDLINI KUNYE NOMGAQO NKQUBO
WESIKHULULO SESISEKO SOQAKAMSHELWANO(TBS)

Nasi isaziso isinikwayo okokuba iBHunga liceba ukumilisela House Shop Policy kunye Telecommunication Base Station Policy, ngokwahlukeneyo.

Amalungu oluntu, abanini bepropatiaba, amaqela anomdla, okanye abasebenzisi ngoku abasebenzisa lendawo ikhankatyiweyo ngentla, bayamenywa ukuba banike izimvo kolungiso luyilwayo l kulemigaqo nkqubo yahlukeneyo.

Inkukacha eziphelele zalemigaqu nkqubo ngokohlukeneyo ziyafumaneka kwi ofisi Planning kunye Development Department (Land Use Planning lunye Surveying Section), 4th Floor, c/o Breda ne Berg River Boulevard, Paarl, kwakunye zonke izakhiwo zika Masipala wase Drakenstein ukusukela 08:00 - 16:45 (Mvulo ukuya Lwesine) kunye 08:00 - 15:30 (Ngolwesihlanu). Inkukacha ezongeziweyo zingafumaneka kwu Mnu. R Mowzer kulenombholo yefowuni: 021 807 4822 okanye riyaaz.mowzer@drakenstein.gov.za.

Izimvo zingangeniswa ngembalelwano ku City Manager, Drakenstein Municipality, P O Box 1, Paarl, 7622 okanye customercare@drakenstein.gov.za, kungagqithanga **Mvulo, 11 Novemba 2019**. Le migaqo nkqubo uyafumaneka kwi webhusayiti kaMasipala, www.drakenstein.gov.za.

Abantu abangakwaziyo ukufunda nokubhala bangangenisa izimvo zabo ngomlomokwi ofisi ye Land Use Planning ne Surveying, 4th Floor, c/o Breda ne Berg River Boulevard, Paarl, apho bazakuncediswa ngamagosa ekubekeni kwezimvo zabo ngokuyibhala.

10 Oktobha 2019

GQIRHA J H LEIBBRANDT
MANEJALA KAMASIPALA
Dizindaba – 10/10/2019

**DRAKENSTEIN**

MUNISIPALITEIT • MUNICIPALITY • UMASIPALA

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Drakenstein Municipality Telecommunication Infrastructure Policy

Reviewed / Approved By	Date	Signature of Executive Director/ City Manager
City Manager		
Council		

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Definitions

For purposes of this policy, unless otherwise stated, the following definitions shall apply:

Application	Means an application contemplated in terms of the By-law and/or zoning scheme.
Authorised employee	Means the employee authorised to make a decision on applications for telecommunication infrastructure, in terms of Council's system of delegations.
By-law	Refers to the Drakenstein By-law on Municipal Land Use Planning, 2018, as amended from time to time.
Freestanding mast	Means a freestanding support structure on land or anchored to land and used for telecommunication infrastructure to transmit or receive electronic communication signals, and may include access roads to the structure.
Consent use	Refers to a land use right granted to a property owner on a temporary or permanent basis, in terms of the respective By-law and zoning scheme.
Departure	Relates to an application in terms of the By-law in order to depart from the standard development parameters contained in the zoning scheme.
Dwelling unit	Means a group of interrelated rooms and ancillary facilities for the accommodation of a single household and can be a dwelling house, second dwelling house, third dwelling unit, employee housing or a dwelling unit in an apartment building or a group housing scheme.
Land use rights	Refers to the lawful utilisation of land imposed in terms of the zoning scheme and/or land use application approvals.
Municipality	Means the Drakenstein Municipality.
Rooftop base station	Means the base station infrastructure, any support structure and the antenna or mast attached to the roof, side or any part of a building and used to accommodate telecommunication infrastructure for the transmitting or receiving of electronic communication signals.
Spatial Development Framework (SDF)	Means the Drakenstein Spatial Development Framework.
Site	Means the site on which telecommunication communication infrastructure is being proposed/located.
Technical Approval	Refers to an application in the zoning scheme in which no neighbours' permission is required, and in which the land use may only be

	exercised once the Municipality has approved a site development plan.
Telecommunication infrastructure	Means the infrastructure used and/or required to operate a freestanding mast or rooftop base station.
Zoning scheme	Refers to the Drakenstein Zoning Scheme By-law, 2018, as amended from time to time.

1. INTRODUCTION

The existing Drakenstein Municipality Telecommunication Base Station Policy has been in operation in the municipal area since late 2017. Whilst the adoption of the policy has taken place fairly recently, legislative factors primarily, has necessitated the review of the policy.

The existing policy is based on a suite of national, provincial and municipal legislation, policies and frameworks, the bulk of which have been repealed in Drakenstein Municipality. The most important legislation involved is the repeal of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985) together with the various zoning schemes adopted in terms thereof, namely the Paarl Zoning Scheme Regulations, Wellington Zoning Scheme Regulations, Mbekweni Township Establishment Conditions, as well as the Section 8 Zoning Scheme Regulations.

The above-mentioned legislation have been repealed and subsequently replaced with the Drakenstein By-law on Municipal Land Use Planning and the newly adopted Drakenstein Zoning Scheme By-law. These by-laws have completely changed the manner in which land uses are managed throughout the municipal area, including telecommunication base stations. The need has therefore arisen to review the existing telecommunication base station policy, in order to align it with the new suite of planning legislation in Drakenstein Municipality.

2. PURPOSE OF THE POLICY

The primary purpose of this policy is to assist applicants with preparing land use application and/or building plan applications in respect of the siting and design of telecommunication base stations and associated infrastructure, together with which documentation to submit with such applications. In doing so, the secondary purpose of this policy to assist the Municipality with evaluating the merits of such applications.

It is envisioned that the policy will guide and facilitate the development of new telecommunication infrastructure, as well as to assist with the management of existing telecommunication infrastructure, in a manner that is efficient, environmentally sensitive, unbiased and sustainable.

The policy further aims to:

- Provide a comprehensive set of guidelines in order to give clarity and certainty to applicants, as well as the general public with regard to the identification of acceptable locations and positioning of telecommunication base stations ;
- Improve the quality and efficiency of the decision-making process;
- Minimise delays and confusion involved in the subsequent assessment of land use and/or building plan applications; and
- Protect the visual character and aesthetics of Drakenstein as far as possible.

3. STATUTORY FRAMEWORKS

3.1 THE ELECTRONIC COMMUNICATIONS ACT (36 OF 2005)

The Independent Communications Authority of South Africa (ICASA) and the Electronic Communications Act regulate all forms part of telecommunication infrastructure and the issuing of approvals and licenses.

3.2 NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) (AS AMENDED), AND THE AMENDED ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS LISTING NOTICE 3 OF 2014 (GN NO. 324)

The Department of Environmental Affairs and Development Planning is the competent authority to authorise the construction of freestanding masts or towers of any material or type used for telecommunication broadcasting or radio transmission purposes, where the freestanding mast:

- 3.2.1 Is to be placed on a site not previously used for this purposes; and
- 3.2.2 Will exceed 15m in height, but excluding the attachments to existing buildings and masts on rooftops.

Where the development of such masts or towers are proposed in:

- (a) All areas outside urban areas;
- (b) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority, or zoned for conservation purpose, within urban areas;
or
- (c) Areas zoned for use as public open space or equivalent zoning within urban areas.

3.3 THE NATIONAL BUILDING REGULATIONS AND BUILDINGS STANDARDS ACT, 1977 (103 OF 1977)

The erection and construction of telecommunication infrastructure is also regulated by the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977) (NBR). In terms of the Act, a building includes, any structure erected or used for or in connection with the rendering of a service. Building plans must therefore be submitted to the Municipality for approval, prior to construction.

3.4 THE NATIONAL HERITAGE RESOURCES ACT, 1999 (ACT 25 OF 1999)

Section 34 of the Act requires a permit for any alteration or new addition to a building older than 60 years. Section 27 requires a permit for provincial heritage sites, including former national monuments and, Section 38 requires a permit for development which would change the character of certain classes of sites.

3.5 DRAKENSTEIN BY-LAW ON MUNICIPAL LAND USE PLANNING, 2018 (AS AMENDED)

Section 15(1) of the Drakenstein By-law on Municipal Land Use Planning, 2018, as amended, states that no person may commence, continue, or cause the commencement or continuation of, land development, other than the subdivision or consolidation of land referred to in Section 24, without the approval of the Municipality in terms of Subsection (2).

Section 15(2)(n) further states that the owner or his agent may apply to the Municipality for the development of the land concerned, which involves a consent use contemplated in the zoning scheme.

3.6 DRAKENSTEIN ZONING SCHEME BY-LAW, 2018

In terms of the Drakenstein Zoning Scheme By-law, 2018, telecommunication infrastructure are catered for in the base zones as follows:

<u>Base Zone</u>	<u>Freestanding mast</u>	<u>Rooftop base station</u>
Natural Environment Zone	Consent use	Consent use
Agriculture Zone	Consent use	Consent use
Open Space Zone	Consent use	Consent use
Community Use Zone	Consent use	Technical approval
Conventional Housing Zone	Prohibited	Consent use

Multi-Unit Housing Zone	Not addressed	Technical approval
Neighbourhood Business Zone	Consent use	Technical approval
Transport Zone	Consent use	Additional permitted use
Utility Zone	Consent use	Additional permitted use
Industrial Zone	Primary right	Additional permitted use
Mixed-Use Zone	Additional permitted use	Additional permitted use

Notwithstanding the provisions of the base zones above, where telecommunication infrastructure has not been listed as a land use in any of the particular zones, an application for temporary departure may be submitted.

4. IMPACTS OF TELECOMMUNICATION INFRASTRUCTURE

Telecommunication infrastructure generally poses two major areas of concern, which includes the visual impact and the possible impacts on health and wellbeing. It should be noted that with regard to the latter concern, cognisance should be taken of the fact that all environmental health related concerns are not a functionary of the municipality, due to the responsibility for the regulation and control of electromagnetic energy emissions being with the National Department of Health. The Department has on numerous occasions confirmed that telecommunication infrastructure does not pose a serious health risk to the general public, and any claims that the infrastructure poses a health risk are considered to be unsubstantiated unless proven otherwise.

Given the above, this policy will solely focus on the visual impact of telecommunication infrastructure, so as to ensure that the visual character and amenity of the Drakenstein municipal area is maintained as far as possible.

5. TOWN PLANNING REQUIREMENTS

5.1 Telecommunication infrastructure will only be considered in the following circumstances:

5.1.1 Where provision is made for the use of a freestanding mast or rooftop base station within the zoning scheme or as a temporary departure in exceptional circumstances;

5.1.2 Telecommunication infrastructure will not be considered if there are existing telecommunication infrastructure on the application property, except in exceptional circumstances, being motivated by the applicant;

- 5.1.3 Notwithstanding paragraph 5.1.2 above, the Municipality may consider more than one rooftop base station on a building, provided that the visual integrity of the surrounding area is not negatively impacted on;
- 5.1.4 The proposed application should adhere to all relevant regulations applicable to telecommunication infrastructure.
- 5.2 The following information and/or documentation must be submitted with the land use and/or building plan application for the erection of telecommunication infrastructure, in addition to other relevant documentation associated with the submission of land use planning/building plan applications:
 - 5.2.1 A motivation report detailing the development proposal, including siting and design of the facility, in relation to the characteristics of the property and the surrounding area. The report should include, amongst others, what other alternatives have been explored, the need for the telecommunication infrastructure, and details regarding decommissioning of the infrastructure.
 - 5.2.2 If and when required by the Municipality, a visual representation, with either a land use or a building plan application, illustrating the visual impact of the telecommunication infrastructure, in relation to the surrounding area, including any necessary mitigating measures such as landscaping;
 - 5.2.3 In the case of a freestanding mast, the type of mast being applied for such as monopole, lattice or disguised, etc;
 - 5.2.4 A site plan indicating exactly where the proposed telecommunication infrastructure will be located on the application property, together with the necessary dimensions;
 - 5.2.5 Elevations showing the extent, height and appearance of the proposed facility as viewed from the adjacent areas;
 - 5.2.6 A plan indicating any areas of environmental or heritage significance on the site or in the surrounding area, together with the location(s) of the nearest telecommunication infrastructure within a 1km radius, if applicable;
 - 5.2.7 An approval letter or zoning certificate clearly stipulating the relevant land use rights applicable to the property;
 - 5.2.8 Any approvals needed to be obtained by other relevant authorities such as an environmental authorisation or heritage approval;

- 5.2.9 In cases where a freestanding mast extends beyond 30m in height, the written permission of the affected surrounding property owners, as determined by the Municipality; and
- 5.2.10 Written permission from a homeowners' association or body corporate, together with the necessary minutes of meetings and attendance registers, where applicable.

6. ADDITIONAL INFORMATION THAT MAY BE REQUESTED

- 6.1 It should be noted that all applications are assessed and evaluated based on its own merits and characteristics. The Municipality may therefore at any time request additional information, in order to assist in the assessment of applications for telecommunication infrastructure, to ensure that it is designed and located in the best possible manner, so as to minimise any possible negative visual impacts and any other concerns. The following information and/or documentation can therefore be requested, at the cost of the applicant, if deemed necessary by the Municipality:
- 6.1.1 A visual impact assessment prepared by a suitably qualified professional;
- 6.1.2 A landscaping plan to be provided by the applicant, to demonstrate how landscaping measures will be implemented and maintained, on the site, prior to the building plan submission;
- 6.1.3 Proximity to adjacent or nearby buildings or other tall structures; and
- 6.1.4 Any other specialist study, plan or information required by the Municipality to assist in the processing and evaluation of the land use/building plan application, at the cost of the applicant.

7. LOCATIONAL CRITERIA FOR TELECOMMUNICATION INFRASTRUCTURE

- 7.1 Telecommunication infrastructure should be erected where they have the least visual impact.
- 7.2 Telecommunication infrastructure should preferably be located in the following locations, as indicated in the table below:

	Freestanding mast	Rooftop base station
7.2.1	Within industrial areas surrounded by industrial-zoned properties or industrial land uses, except for in	Rooftop base stations should preferably be located on the highest buildings within the Central Business

	cases where the property borders onto residential-zoned or business-zoned properties.	District (CBD) area, at the point with the least visual impact.
7.2.2	On mountainous areas with the backdrop clearly masking the proposed telecommunication infrastructure.	Rooftop base stations on church buildings which will be visually mitigated or camouflaged as part of a church tower or steeple.
7.2.3	Within rural areas where no dwelling units are located in the nearby vicinity, which could possibly be of any visual nuisance.	The use of existing towers or authority infrastructure for rooftop base stations.
7.2.4	On the periphery of residential areas.	Within commercial and industrial areas with tall buildings in the nearby vicinity.
7.2.5	Within rural/agricultural zoned areas which clearly has a numerous amount of equally high trees on the application site or adjacent to a mountain, or where a mountainous area forms a backdrop.	
7.2.6	Within commercial and industrial areas with tall buildings in the nearby vicinity.	
7.2.7	Within areas where land cover is characterised by forests/plantations with tall trees.	

7.3 Telecommunication infrastructure will not be allowed in the following locations:

7.3.1 Properties that are not compliant with paragraph 7.2 above;

7.3.2 With the exception of rooftop base stations and freestanding masts located on the periphery of residential areas, no telecommunication infrastructure will be allowed on residential-zoned properties or within residential areas;

7.3.3 Freestanding masts will not be allowed on any property that is situated within a residential area, where that property is completely surrounded by residential land uses;

- 7.3.4 Rooftop base stations on buildings where there are higher buildings situated adjacent to it;
- 7.3.5 Within any scenic route or protected areas or areas of special significance, as identified in the SDF and/or zoning scheme; and
- 7.3.6 Within rural areas where the telecommunication infrastructure will be visually obtrusive, due to lack of equally high trees or any mountains in the backdrop, which could possibly help create the illusion that the proposed telecommunication infrastructure is smaller than what it truly is.

8. PARAMETERS FOR TELECOMMUNICATION INFRASTRUCTURE

8.1 FREESTANDING MASTS

- 8.1.1 Except in exceptional circumstances, the mast of a freestanding mast installation may not extend more than 30m in height, above the natural ground level.
- 8.1.2 The height of any structures and buildings associated with a freestanding mast installation (excluding the mast itself) may not exceed 4m, unless permission is granted by the Municipality.
- 8.1.3 The Municipality may require appropriate context-specific screening or other measures to mitigate the impact of a freestanding mast, and its ancillary infrastructure and buildings.
- 8.1.4 The Municipality may request that pre-electromagnetic radiation test be commissioned.
- 8.1.5 Freestanding masts should be located adjacent to tall trees and designed as the same type of trees in order to blend in with the natural environment.

8.2 ROOFTOP BASE STATIONS

- 8.2.1 The antennae associated with a rooftop base station may not extend beyond 3m in height above the part of the building that is attached, unless the permission of the Municipality has been obtained.
- 8.2.2 All supporting equipment (whether installed in cabinets or shelters or inside the building) which are ordinarily attached to the antennae shall be accommodated within the envelope of the building itself, or inside the roof structure and shall not be visible from a public street, unless permission has been granted by the Municipality.

- 8.2.3 The Municipality may request that a pre-electromagnetic radiation test be commissioned.

8.3 SATELLITE DISH ANTENNAE

- 8.3.1 Satellite dish antennas of 1.5m in diameter and smaller and used solely for the purposes of television reception or telecommunication on the property concerned, to do not require the Municipality's approval and are excluded from height restrictions.
- 8.3.2 Any satellite dish antenna with a diameter of more than 1.5m requires permission from the Municipality, must be placed in a position that minimises the visual and other impacts on the surrounding area, and must comply with building parameter as contained in the base zone of the property.

8.4 MITIGATING MEASURES

- 8.4.1 Telecommunication infrastructure should at all times be erected in such a way as to blend in with the surrounding or natural environment, as far as possible. The visual impact of telecommunication infrastructure can be suitably mitigated in the following ways, but is not limited to:
- 8.4.2 Use of existing structures to accommodate telecommunication infrastructure wherever possible;
- 8.4.2 Freestanding masts should preferably be located adjacent to tall trees and designed in a manner so as to blend in with the natural environment;
- 8.4.3 Telecommunication infrastructure can be designed and erected in such a way so as to form part of the primary use of the property, such as church steeples or towers;
- 8.4.4 Telecommunication infrastructure proposed within rural areas or on farms may be camouflaged as windmills or form part of an existing windmill;
- 8.4.5 Equipment rooms on rooftops should be set back as far as possible;
- 8.4.6 Telecommunication infrastructure which are proposed adjacent to roads or access roads should be landscaped; and
- 8.4.7 Telecommunication Infrastructure may become an architectural feature on the building or in the landscape.

9. DECOMMISSIONING OF TELECOMMUNICATION INFRASTRUCTURE

- 9.1 The owners of land where telecommunication antennae masts and other similar infrastructure are to be erected, shall be responsible for the rehabilitation, decommissioning and reparation and any damage to the environment.
- 9.2 The Municipality may impose conditions, prior to construction commencing, relating to rehabilitation, decommissioning and repair of any environmental damage, and may require that the owner makes financial provision upfront for such rehabilitation, decommissioning and repair, to the satisfaction of the Municipality.
- 9.3 In all instances where financial provisions were put in place or not, the owner remains financially responsible for any rehabilitation, decommissioning and repair to the environment, should the costs of rehabilitation, decommissioning or repair exceeds the financial provision made.
- 9.4 If the facility is abandoned or the owner fails to rehabilitate, decommission or repair as the case may be, as contemplated in paragraphs 8.5.1-8.5.3 above, the Municipality may, after written notice to the owner, use all or part of the financial provisions to rehabilitate, decommission or repair the environmental damage, or to remove the facility and may recover such or any related additional costs from the owner.

10. APPLICATION PROCEDURES AND PUBLIC PARTICIPATION

- 10.1 The process and level of public participation required is dependent on whether or not the proposed telecommunication infrastructure is a primary right in terms of the zoning scheme, or whether it requires certain approvals from the Municipality.
- 10.2 When a freestanding mast or rooftop base station is indicated as a primary right in zoning scheme and complies with the provisions of this policy, then no further land use approvals are required;
- 10.3 When a freestanding mast or rooftop base station is indicated as a consent use in the zoning scheme, then the necessary application procedures as stipulated in the By-law are applicable.
- 10.4 When a freestanding mast or rooftop base station is indicated as a technical approval in the zoning scheme, then the provisions of the zoning scheme, in respect of technical approvals, shall apply.

- 10.5 When a freestanding mast or rooftop base station is indicated as an additional permitted use in terms of the zoning scheme, then such freestanding mast or rooftop base station may be erected, provided that a primary permitted use applicable to the property in terms of the zoning scheme, is being exercised.
- 10.6 When a freestanding mast or rooftop base station is indicated as prohibited in any particular zone in the zoning scheme, then no application of any sorts, other than a rezoning, or temporary departure will be considered.
- 10.7 Notwithstanding paragraphs 10.1-10.4 above, a building plan shall be submitted to the Municipality for approval in all instances, and in which additional information/documents/plans may be requested.
- 10.8 The Municipality may refer any land use and/or building plan application to relevant external advisory committees, to the satisfaction of the Municipality, and in which the comments provided by such committees shall be taken into consideration.
- 10.9 All applications must be circulated to the Planning Portfolio Holder and Ward Councillor for input.

11. DELEGATED AUTHORITY TO APPROVE APPLICATIONS

All building plans and formal land use planning applications will follow the same processes according to the applicable legislation and internal standard operating procedures.

Building plan applications are recommended by the Building Control Officer and approved by the Manager Building Control in terms of the National Building Regulations and Buildings Standards Act, 1977 (Act 103 of 1977) with normal building work after circulation to the Land Use Planning and Surveying Section for comment .

Land use planning applications are approved in terms of the Drakenstein By-Law on Municipal Land Use Planning, 2018, read together with Council's system of delegations, by the Manager: Land Use Planning and Surveying, being the authorised employee, or the Municipal Planning Tribunal, depending on the nature and extent of the application. In cases when an appeal is lodged against a decision taken by the Manager: Land Use Planning and Surveying or the Municipal Planning Tribunal, then the Executive Mayor, being the Appeal Authority, will be the final decision maker.

12. EXISTING LAWFUL TELECOMMUNICATION INFRASTRUCTURE

- 12.1 All telecommunication infrastructure that have legally been approved in terms of a former zoning scheme and subsequently acted on, which is in contravention with the zoning scheme and this policy, will not be considered an offence, but a lawful non-conforming use.

13. DISCLAIMER

- 13.1 The provisions of this policy does not apply to underground telecommunication infrastructure such as telephone lines, fibre optic networks, etc.

14. COMMENCEMENT DATE

- 14.1 Unless otherwise specified, the commencement date of this policy will be the date of adoption by Council, and shall remain in effect until it is reviewed, revoked or amended by Council.



DRAKENSTEIN

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Drakenstein Municipality House Shop Policy

Reviewed / Approved By	Date	Signature of Executive Director/ City Manager
City Manager		
Council		

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DEFINITIONS

For purposes of this policy, unless otherwise stated, the following definitions shall apply:

Application	Means an application contemplated in terms of the By-law and/or zoning scheme.
Authorised Employee	Means the employee authorised to make a decision on applications for house shops, in terms of Council's system of delegations.
By-law	Refers to the Drakenstein By-law on Municipal Land Use Planning, 2018, as amended from time to time.
Consent use	Refers to a land use right granted to a property owner on a temporary or permanent basis, in terms of the respective By-law and zoning scheme.
Conditions of approval	Refers to the measures that are put in place in order to ensure that the house shop is compliant with relevant legislation, policies, norms and standards.
Co-operative	Means the ability of the house shop to operate as a distributor of products.
Council	Means the municipal Council of the Drakenstein Municipality.
Departure	Relates to an application in terms of the By-law in order to depart from the standard development parameters contained in the zoning scheme.
Dwelling unit	Means a group of interrelated rooms and ancillary facilities for the accommodation of a single household and can be a dwelling house, second dwelling house, third dwelling unit, employee housing or a dwelling unit in an apartment building or a group housing scheme.
House shop	Refers to the use of a portion of a dwelling house or outbuildings or structure on the premises for the sale of convenience goods to the public, that allow for the serving of goods to customers directly from the street.
House shop operator	Refers to the person who is the permanent resident or operator of the house shop, to whom the house shop approval is granted.
Land use rights	Refers to the lawful utilisation of land imposed in terms of the zoning scheme and/or land use application approvals.
Municipality	Means the Drakenstein Municipality.
Neighbours' permission	Means a land use in any zone provided for in the zoning scheme, the use of which may only be exercised if the written permission of the affected neighbours have been obtained, in which case the Municipality's permission is deemed to have been granted.
Overlay Zone	Relates to a designated area identified in the zoning scheme in which the development rules or use rights relating to that specific area or land unit may differ from that in the base zone, or may set new development rules or use rights.

Technical approval	Refers to an application in the zoning scheme in which no neighbours' permission is required, and in which the land use may only be exercised once the Municipality has approved a site development plan.
Zoning scheme	Refers to the Drakenstein Zoning Scheme By-law, 2018, as amended from time to time.

1. INTRODUCTION

The existing Drakenstein Municipality Integrated House Shop Policy has been in operation in the municipal area since 2013. At the time, the policy was the first of its kind, aimed at regularising the house shop/spaza shop industry.

Since adoption, the policy has been operating seamlessly, and house shop operators have largely been complying with the policy ever since. A significant amount of approvals have been issued since the adoption of the policy, with only a few cases of house shop operators not complying with their conditions of approval being reported, subsequently leading to the revoking of approvals and/or the institution of legal proceedings.

However, the house shop policy is based on a suite of national, provincial and municipal legislation, policies and frameworks, the bulk of which have been repealed in Drakenstein Municipality. The most important legislation involved is the repeal of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985) together with the various zoning schemes adopted in terms thereof and other legislation, namely the Paarl Zoning Scheme Regulations, Wellington Zoning Scheme Regulations, Mbekweni Township Establishment Conditions, as well as the Section 8 Zoning Scheme Regulations.

The above-mentioned legislation have been repealed and subsequently replaced with the Drakenstein By-law on Municipal Land Use Planning and the newly adopted Drakenstein Zoning Scheme By-law. These by-laws have completely changed the manner in which land uses are managed throughout the municipal area, including house shops. The need has therefore arisen to review the existing house shop policy, in order to align it with the new suite of planning legislation in Drakenstein Municipality.

2. PURPOSE OF THE HOUSE SHOP POLICY

The purpose of the house shop policy is to:

- 2.1 Provide a set of criteria that will assist the Municipality in the assessment of all applications for house shops;

- 2.2 Outline the processes which should be followed in order to obtain the necessary land use rights to operate a house shop;
- 2.3 Provide law enforcement measures which could be taken against the house shop owner/operator, should it be found that the house shop is operating in contravention with the conditions of approval, or be operating illegally; and
- 2.4 To align the house shop policy with the current suite of planning legislation in Drakenstein Municipality.

3. STATUTORY FRAMEWORK

3.1 NATIONAL BUILDING REGULATIONS AND STANDARDS ACT, ACT 103 OF 1977

This Act stipulates that a building plan for a structure to be used as a house shop, albeit for the conversion of a portion of an existing house or garage or a new structure (permanent or temporary), must be submitted to the Municipality for approval.

3.2 DRAKENSTEIN BY-LAW ON MUNICIPAL LAND USE PLANNING, 2018, AS AMENDED

Section 15(1) of the Drakenstein By-law on Municipal Land Use Planning, 2018, as amended, states that no person may commence, continue, or cause the commencement or continuation of, land development, other than the subdivision or consolidation of land referred to in Section 24, without the approval of the Municipality in terms of Subsection (2).

Section 15(2)(n) further states that the owner or his agent may apply to the Municipality for the development of the land concerned, which involves a consent use contemplated in the zoning scheme.

3.3 DRAKENSTEIN ZONING SCHEME BY LAW, 2018

Section 15(1) of Drakenstein Zoning Scheme By-Law, 2018, stipulates that consent use applications are made in terms of the Planning By-law. In this regard, house shops are categorized as consent uses in the Conventional Housing Zone, Multi-Unit Housing Zone, as well as the Community Use Zone.

It should also be noted that a house shop is permitted as a technical approval in the Agriculture Zone. In this regard, Section 13(1) states that where a land use falls in the "Technical Approval" column of a land use table in a zone, it may only be exercised once the Municipality has approved a site development plan. It is furthermore important to note that applications for technical approval are not meant to be evaluated in terms of desirability, but only against

technical compliance with the provisions of the zoning scheme. No right of appeal exists against the refusal of a technical approval.

In addition, in terms of the Local Economic Development Overlay Zone contained in the zoning scheme, approval of house shop applications are deemed to be granted in the event of the applicant obtaining the affected surrounding property owners' written permission. Should the applicant fail to obtain the written permission of the affected surrounding property owners, permission is deemed not to have been granted, and in which an ordinary consent use application must be submitted.

4. GUIDELINES AND PARAMETERS FOR HOUSE SHOPS

The following section serves to provide clear guidelines and parameters which will be used by the Municipality in evaluating the merits of house shop applications, or in cases of technical approvals, the criteria in ensuring technical compliance with the zoning scheme and policy.

4.1 EXCLUSIONS FROM THIS POLICY

4.1.1 The provisions of Paragraph 4 do not apply to the properties located within the Local Economic Development Overlay Zone, as indicated in the zoning scheme.

4.1.2 Notwithstanding point 4.1.1 above, a 20l refuse bin must be provided by the operator at all house shops, and must be easily accessible to the clients at all times.

4.1.3 The standard conditions applicable to house shops located in the Local Economic Development Overlay Zone, as indicated in the zoning scheme, shall be applicable to house shops in these areas.

4.2 CRITERIA AND CONDITIONS FOR EVALUATING APPLICATIONS FOR HOUSE SHOPS

4.2.1 HOUSE SHOP OPERATOR

4.2.1.1 A house shop operator must be a permanent resident of the property on which the house shop is being proposed.

4.2.1.2 When submitting a house shop application, sufficient proof must be provided that the operator permanently resides on the property. Such proof includes, but is not limited to, a title deed, municipal account or a lease agreement between the operator and the owner of the property.

- 4.2.1.3 The Municipality will consider, only in exceptional circumstances and with sufficient motivation, to allow the operation of a house shop, where the operator is not a permanent resident of the property.

4.2.2 HOUSE SHOP STRUCTURE AND EXTENT

- 4.2.2.1 An operator may utilise a portion of a dwelling unit in which he permanently resides in order to operate the house shop, on condition that all other parameters contained in the zoning scheme are adhered to.
- 4.2.2.2 The total floor area occupied by the house shop, including storage of goods, may not exceed 25% of the coverage of the property or 30m², whichever is the lesser.
- 4.2.2.3 The trading area of the house shop shall not extend beyond the cadastral boundaries of the property.
- 4.2.2.4 The serving counter of the house shop must be set back at least 1.5m from the street boundary to allow sufficient space for clients, and the pavement must not be obstructed by any goods or clients.

4.2.3 ADDITIONAL PERMITTED STRUCTURES

- 4.2.3.1 Additional and alternative structures (built or temporary) may be erected in order to operate a house shop, provided that the property shall have a main residential dwelling unit on it.
- 4.2.3.2 The dominant use of the property shall remain residential.
- 4.2.3.3 The trading area may not be used for sleeping/habitable purposes.
- 4.2.3.4 Any new or additional structures (built or temporary) erected with the purpose of accommodating the operation of a house shop shall be done with due cognisance of the residential character of the area.
- 4.2.3.5 All additional (built) structures, including renovations/extensions to existing built structures, with the intention of accommodating the house shop, shall be subject to the submission and approval of a building plan by the Municipality.

4.2.4 ABLUTION FACILITIES

- 4.2.4.1 The house shop operator shall have unfettered access to ablution and hand-washing facilities on the property, at all times.

4.2.5 CITIZENSHIP AND EMPLOYMENT

- 4.2.5.1 All house shop operators must submit a certified copy of their ID and in the case of a foreign national, legal documents for residing in South Africa and proof of place of residence.
- 4.2.5.2 A house shop operator may employ no more than two additional persons, which may or may not be permanent residents on the property, to assist with the operation of the house shop.
- 4.2.5.3 A certified copy of the person(s) assisting the house shop operator must accompany the house shop application.
- 4.2.5.4 In the event of a change in the person(s) assisting the operator with the operation of the house shop, the operator shall inform the Municipality thereof, and submit certified copies of the new persons' ID documents.

4.2.6 TRADING HOURS

- 4.2.6.1 The house shop shall not operate outside the hours of 07:00 and 21:00 daily.

4.2.7 SIGNAGE

- 4.2.7.1 Only 1 un-illuminated sign, with a maximum of 2000cm² in size, which can be affixed to the wall of the house/second dwelling/third dwelling/outbuilding/container/caravan or any other legal structure as approved by the Municipality, shall be permitted.
- 4.2.7.2 No illuminated-, mobile-, freestanding-, or protruding signs shall be allowed.
- 4.2.7.3 No signage of any nature may be erected beyond the boundaries of the property on which the house shop is located.

4.2.8 ADDITIONAL FACILITIES

- 4.2.8.1 No additional facilities in the form of video games, pool tables, vending machines, jukeboxes, or limited pay-out gambling machines shall be permitted.

4.2.9 RESTRICTION ON PRODUCTS SOLD

- 4.2.9.1 The following products may not be stored and/or sold from house shops:

- (a) Sale of fireworks, sale or storage of gas or flammable fuel or gas/fuel containers, alcoholic beverages, or any other substance deemed to be of an illegal nature.

4.2.10 OTHER REGULATIONS

- 4.2.10.1 All house shops must comply with health, safety and fire regulations in terms of the relevant legislation.

4.2.11 CASES IN WHICH APPLICATIONS FOR HOUSE SHOPS WILL NOT BE CONSIDERED

- 4.2.11.1 When the house shop operator has not obtained the written permission/Power of Attorney of the registered owner of the property.
- 4.2.11.2 Where the house shop operator illegally occupies the land on which the house shop is being proposed.
- 4.2.11.3 When the house shop is being proposed to operate from a municipal rental unit, which has not yet been transferred to the tenant/beneficiary, except where the deed of sale makes provision for immediate occupation or where Council has granted its consent for the tenant/beneficiary to operate a house shop.

4.3. STANDARD CONDITIONS OF APPROVAL

- 4.3.1 Approval for the operation of a house shop shall be linked to the specific property and the house shop operator of the respective property, with a Power of Attorney from the registered owner of the respective property, if applicable.

- 4.3.2 The rights to operate a house shop are NOT TRANSFERRABLE.

- 4.3.3 Any deviation from the standard conditions of approval for the operation of a house shop can only be considered upon application.
- 4.3.4 The house shop may not be operated as a co-operative.
- 4.3.5 A 20l refuse bin must be provided by the operator and must be easily accessible to clients at all times.
- 4.3.6 Building plans must be submitted for approval in all instances for the structures or portions thereof, which is to be utilised for the operation of the proposed house shop.
- 4.3.7 A certificate of acceptability must be obtained from the Cape Winelands District Municipality in all instances where food are prepared and processed.
- 4.3.8 The house shop approval must be displayed on the premises at all times.

4.4 PUBLIC NUISANCE

- 4.4.1 The house shop may not constitute a noise nuisance (people shouting, loud music being played, extraction fans, etc) and/or create a nuisance for any neighbouring property owner (as a result of vehicles parking in the street, damaging neighbour's property, smoke from fires, cars hooting/stopping in front of neighbours' property, etc).

5. APPLICATION PROCEDURES

- 5.1 The application process in order to obtain the necessary land use rights to operate a house shop, will be as follows:
- 5.1.1 The applicant must submit an application to the Land Use Planning and Surveying Section, on the prescribed application form together with the necessary supporting documentation. The form will make provision for the comments of the adjoining property owners as well as the relevant Ward Councillor.
- 5.1.2 An application fee shall be payable and may vary depending on the type of application required. This application fee may be reviewed on an annual basis, as in the case of all other land use application fees.
- 5.1.3 In cases where house shops are proposed from properties which formed part of municipal human settlement projects, the transfer to the beneficiary of which has not yet been affected, the applicant must provide written confirmation that the property

owner is in fact the beneficiary of the property. The Land Use Planning and Surveying Section will also confirm these details during the processing of the application.

5.1.4 The surrounding property owners, Ward Councillor and/or Ward Committee are required to indicate their support or objection in respect of the proposed house shop, on the applicant's prescribed application form. Once all surrounding owners, Ward Councillor and/or Ward Committee have indicated that they do not object and that the applicant has proved that the proposed house shop will comply with the guidelines and parameters for house shops as indicated in this policy (see paragraph 4), a letter of approval will be issued by the Corporate Services Department, upon approval of the application by the authorised employee or the Municipal Planning Tribunal, in terms of the Municipality's system of delegations.

5.1.5 If one or more of the adjoining property owners, Ward Councillor and/or Ward Committee object to the application, the objection(s) will be forwarded to the applicant for comments. Once the applicant's response to this objection has been received, a report will be compiled by the Land Use Planning and Surveying Section for consideration by the authorised employee or Municipal Planning Tribunal for final decision-making. The applicant and objector(s) will thereafter be informed of the decision by the Corporate Services Department, together with their right of appeal against the decision to the Executive Mayor.

5.1.6 All approvals will be made subject to the standard conditions of approval applicable to house shops. Additional conditions may be imposed on a case by case basis.

5.1.7 After approval has been received, the applicant must submit building plans for approval, which will be scrutinized via the normal building plan application process, and will be evaluated in terms of environmental health regulations, fire prevention regulations, technical building requirements, compliance with land use application conditions of approval, etc.

6. LAW ENFORCEMENT PROCEDURES

6.1 Law enforcement in respect of house shops will be dealt with in accordance with Chapter IX of the By-law, or any other corresponding chapter or any other relevant municipal by-laws dealing with land use enforcement and compliance.

7. EXISTING LAWFUL HOUSE SHOPS

- 7.1 All house shops that have legally been approved in terms of a former zoning scheme and subsequently acted on, which is in contravention with the zoning scheme and this policy, will not be considered an offence, but a lawful non-conforming use.

8. DISCLAIMER

- 8.1 Where the provisions of this policy contradicts with the provisions of the zoning scheme and/or any other law, then the provisions of the zoning scheme and/or that law will take precedence.

9. COMMENCEMENT DATE

- 9.1 Unless otherwise specified, the commencement date of this policy will be the date of adoption by the Council, and shall remain in effect until it is reviewed, revoked or amended by Council.