

CITY OF CAPE TOWN

DIRECTORATE : STRATEGY & PLANNING
DEPARTMENT OF PLANNING & BUILDING DEVELOPMENT MANAGEMENT

DEVELOPMENT POLICY & PROCESSES BRANCH

'GATED DEVELOPMENT' POLICY

Extract

In a 2005 report, the South African Human Rights Commission concluded that, although it did not find gating and road closures ordinarily unconstitutional, it did not support the use of such security measures, as amongst others it causes social division, dysfunctional cities and lead to further polarisation of society. In context of the constitutional conflict between 'freedom of movement' and the 'right to security' as it manifests in gated communities and developments, this policy attempts to set out Council's position on and approach to this phenomenon, which increasingly is becoming part of the city's urban fabric and landscape.



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1 INTRODUCTION, BACKGROUND AND PROBLEM STATEMENT

Driven by increased market popularity and having become part of our urban fabric, gated settlements can have far reaching consequences for the structure, functionality and character of cities, especially when extensive areas are enclosed. Whereas cities are usually open and accessible places where citizens can freely move about and interact, engage in business, social activity and recreation, gated communities can result in an exclusionary environment with large areas closed off from general public access, causing fragmentation and segregation of the social and urban fabric.

In addition to their cumulative impact, the extent and size of such gated areas is also of concern. Whereas smaller gated settlements (which aren't clustered together) may have less serious implications for its immediate environment, extensive enclosed settlements concentrated in certain (typically higher income) suburbs may result in reduced mobility through and within such suburbs, while the cost and complexity of maintaining services and infrastructure may become excessive and the risk of failing services increase.

Cape Town has not escaped this phenomenon and past proposals involving gated communities have largely been considered on an ad-hoc basis in the absence of a uniform approach in this regard. Recognising the diverse needs of communities when it comes to security and that a 'one size fits all' approach is not realistic, this policy specifically addresses the above concerns and is meant to give guidance to developers and decision makers alike in respect of when, where and how such gated developments or areas should be allowed or disallowed.

As a responsible land use regulator, the city promotes development of open, inclusive, integrated and equitable societies, generally discourages gated developments and will only consider such forms of development if a developer or community can clearly illustrate that it is constitutionally justifiable and won't have any adverse impacts or that such impacts will sufficiently be mitigated.

2 POLICY APPROACH AND METHODOLOGY

In developing this policy, the following broad approach was followed :

- identification and agreement of underlying policy principles
- background research and scoping process to identify all potential impacts and problems
- development of draft policy
- public and specialist consultation on draft policy
- amendment, final adoption and implementation

3 SCOPE AND APPLICATION

In addition to discussing possible conventional and alternative security options, this policy address both categories of gated communities, ie purpose or newly built, greenfield developments and retrospective conversion (where public areas are fully

or partly converted to private or semi-private areas, usually long after their original establishment), as described further hereinafter.

Although titled 'Gated Development Policy' (which implies an element of physical barrier), the policy extends to a wider interpretation of the 'gated communities' phenomenon. It includes 'enclosed settlements' where there might not be any physical gate or obstruction, but the rest of the development or settlement is still enclosed in some or other way and access may perhaps only be monitored (or not). As such, generally the term 'gated communities' or 'gated development' is used in this policy to refer to the entire collection of possible categories and types of gated and enclosed developments and areas.

In addition, the policy is not restricted to residential areas or forms of development only and as the principles and processes involved are related, it also sets criteria and guidelines for the closing of public pedestrian and service lanes, alleyways and footpaths.

While addressing components such as 'conventional and alternative (to gating) security measures', 'retrospective conversions' and 'new or greenfield developments', the scope of the policy is restricted to private sector development and initiatives and is intended to serve as a guide for assessing proposals and applications in this regard. As such, it doesn't necessarily apply to Council initiatives, nor does it in itself create any expectation or place any obligation on Council other than assessing and deciding applications and Council's other normal statutory duties.

In terms of its application, this is a Land Use Management policy in support of the Planning & Building Development Management department's statutory development control function, as well as the Property Management department's property administration function. Whereas the Council's existing By-law and Policy on the management of immovable property also deals with the closure and alienation (or letting) of public streets and places and the processes prescribed and principles involved in this regard, it doesn't set any criteria for or provide any guidelines to consider road closure proposals for the purpose of establishing gated communities and enclosed areas or otherwise. In addition to guiding decisions on development applications, this (the Gated development) policy is therefore intended to supplement (and should be read together with) Council's existing By-law and Policy on the management of Council's immovable property and provide direction to property management processes in this regard by setting specific criteria and guidelines to be taken into consideration in proposals involving public roadway and similar immovable property. It is however not intended to address the normal closure and disposal of redundant public road reserves or portions thereof to abutting property owners.

This policy is applied in assessing and deciding development applications involving gated community proposals or road closure / property management applications involving retrospective conversion of areas to gated or enclosed areas. In addition, retrospective enforcement thereof will be undertaken on a complaints-driven basis, as well as continued enforcement of specific individual conditions of approval in respect of any existing gated communities where necessary.

The policy further applies city-wide to all areas under jurisdiction of the City of Cape Town.

4 LEGISLATIVE CONTEXT AND LEGAL MANDATE

The legislative context which impacts on and in terms of which this policy is framed (and also provides the legal mandate for it), includes the following :

4.1 South African Constitution, Act 108 of 1996

Important clauses in the Bill of rights (Chapter 2) include Section 9 (the right to equality), Section 10 (the right to dignity), Section 12 (the right to freedom and security of person), Section 14 (the right to privacy) and Section 21 (the right to freedom of movement, residence and entrance to any public place), as well as Section 33 (the right to just administrative action, eg when a local authority takes any decisions). Clearly evident from the above is the constitutional dilemma created by the 'freedom of movement' versus the 'right to security', which this policy takes into account and attempts to balance.

To be constitutionally acceptable, any limitation on these rights (ie an access restriction on a public road) must be reasonable and justifiable (ie Section 36 of the Constitution). This in turn requires that any such limitation must address the actual problem and that its purpose could not have been achieved through other less restrictive means. In a 2005 report, the South African Human Rights Commission concluded that, although it did not find gating and road closures ordinarily unconstitutional, it did not support the use of such security measures, as amongst others it causes social division, disfunctional cities and lead to further polarisation of society.

Section 156(1) (read with Schedules 4 and 5) designates municipal planning and land use management as a function and competency of local government.

4.2 Land Use Planning Ordinance, No 15 of 1985

With the general purpose of allowing regulation of land use and development, local authorities are empowered to approve applications for development in terms of various sections of the ordinance. When approving such applications, Section 42 enables Council to impose any relevant conditions of approval. Section 39 further places an obligation on local authorities to enforce compliance with the provisions of the ordinance and any applicable condition of approval.

4.3 Roads Ordinance, No 19 of 1976

Section 13 states that no person shall erect a gate or other barrier across a public road or path as defined in the ordinance, except with the approval of the relevant roads authority, who shall be entitled to remove any such illegally erected gate or barrier after serving notice of its intension in this regard. Section 3 permits a responsible roads authority to close public roads and paths, while in terms of Section

17 its approval is required to erect any structures (ie entrance features, walls etc) in or within 5m from the statutory width of a public road.

4.4 City of Cape Town By-law relating to the management and administration of immovable property (PN 5988 of 28 February 2003)

Having superseded and replaced the previous Municipal Ordinance, No 20 of 1974 (which contained similar provisions), Section 2 of this by-law vests the ownership of public roads and places with Council. Sections 4 and 6 respectively allows for the closure of public roads and places on Council's initiative and alienation or letting of its immovable property, after advertising its intentions to do so.

4.5 City of Cape Town Policy on the management of Council's immovable property (PN 6340 of 3 February 2006)

Set out in Section 4, guiding principles of the policy include the use of Council's immovable property to promote social and spatial integration, build strong, integrated and dignified communities and promote access to services, amenities, transport and employment opportunities. Section 5.4 and 5.5 permits Council to alienate or let its immovable property (including portions of public roads and open spaces), subject amongst others to the following criteria and principles :

- that it is not required for the purposes of municipal services provision
- that in the case of surplus streets, lanes and public open spaces, it is 'non-viable' (ie property can't be developed on its own or function as a separate entity, owing to urban planning, physical constraints or extent, which can only become functional if alienated or leased to an adjoining owner for usage in conjunction with the adjoining owner's property)

In view of the above statutory provisions and subject to various legal requirements in this regard, Council is thus clearly legally mandated to set and implement a policy to manage the phenomenon of gated community developments and areas.

5 RATIONALE AND JUSTIFICATION

In the absence of a standard city-wide policy addressing this matter, the Council is receiving increasing requests for the approval of gated settlements and developments, as well as retrospective closure of existing public roads, paths and places to establish enclosed neighbourhoods.

In context of such increased popularity and proliferation and possible cumulative adverse impacts as described earlier, development or establishment of such gated communities should be regulated to ensure, when permitted, they conform to acceptable standards and potential adverse impacts are minimised or mitigated. This is necessary to prevent compromising the city's functionality and sustainability and minimise any detrimental impact on its social, visual and functional amenities and infrastructure. Such regulatory action would be in the interest of the broader public and community's general welfare.

Together with encouraging openness and integration, it is necessary to guard against over-exclusiveness, separation and inward orientation by communities and a lack of social integration generally. In addition, it is also in Council's own interest (and thus by implication in the interest of the broader community) to ensure the continuity and integrity of municipal and public service infrastructure networks are maintained and protected.

In context of the above and as enabled by the national Constitution, a policy to address this concern is considered justified.

6 OUTCOME AND OBJECTIVES

The overall outcome of this policy should be the better regulation of all forms of gated developments and enclosed areas. In addition, the policy is intended to address and achieve the following objectives :

- Clearly set out Council's position on gated communities and settlements and the framework within which applications involving such elements are assessed and decided, thereby establishing uniformity of approach.
- Support Council's IDP objectives of 'Meeting the integrated access and mobility challenge', 'Building strong communities' and being a 'Safe and caring city'.
- Recognise uniqueness and diverse needs of individual areas, while reasonably balance security concerns of local communities with the broader public ideals of integration, accessibility, equity and inclusivity.
- Clearly articulate the preconditions, criteria and procedures (including guidelines for mitigating adverse impacts) that are to be adhered to and complied with where gated developments or retrospective conversions are to be permitted.
- Provide guidelines to applicants and developers and guide decision makers on applications involving gated communities and retrospective conversions.

In addition and bearing in mind the constitutional test for limiting rights, the intention of this policy is further to promote consideration of a progressive spectrum of possible security measures and design interventions to address settlement security (whether in new developments or existing areas) where this is necessary, from a minimal impact conventional approach (eg target hardening at home) to fully gated communities and developments (only as a last resort).

7 CONVENTIONAL AND ALTERNATIVE SECURITY MEASURES

A wide variety of conventional and alternative (to gating) security measures exist and are available to be implemented to enhance settlement security without having to resort to full gating or closing of accesses. Intended to serve as a guide to individual property owners, developers or communities wishing to enhance the security of their properties or areas, these may include (but are not necessarily limited to) any combination of the following :

- conventional target hardening and securing of individual property boundaries, such as (visually permeable) boundary walls or fences, burglar bars, domestic alarms and improved perimeter (and public area) lighting
- foot, bicycle or vehicle patrols (with or without armed response) and/or neighbourhood watches
- area monitoring mechanisms, ie CCTV surveillance or guards
- active and effective Community Policing Forums (or CPF's) and ratepayers' or residents' associations (with local crime prevention strategies)
- establishment of City Improvement Districts (or CID's) as provided for in Council's City Improvement District By-law (as per Provincial Gazette no 6118 of 26 March 2004) (with local crime prevention strategies)
- traffic calming measures, such as speed humps, mini-traffic circles, road markings and signs (subject to specific engineering criteria and policy)
- ensuring safer public open spaces and places by means of community ownership and maintenance of public open spaces through Council's 'adopt a park' programme

8 POLICY

8.1 Policy statement

Council's policy on gated communities and enclosed settlements is as follows :

The City of Cape Town promotes, encourages and supports the development of open, integrated and accessible communities and an inclusive, equitable society. Sensitive to its potential adverse impacts, the city therefore adopts a cautious approach in dealing with proposals involving gated settlements and developments that might impede or interfere with, prohibit, remove or close general access to public amenities, facilities and areas. Such proposals are thus only considered as a last resort and subject to strict criteria. Where allowed, such proposals should comply with the requirements, criteria, guidelines, mitigation measures and procedures prescribed in this policy.

In the interests of community safety and enhanced settlement security (where this is necessary), Council also supports the implementation of various options in a full range of conventional and alternative private security measures that don't require public road or access way closures, interfere with general public access rights or that would undermine or compromise any of the above stated ideals and aspirations.

As part of Council's development control function, this policy therefore serves to guide consultants and decision-makers alike in the planning and assessment of private sector development proposals (those involving any form of gating, enclosing or road / lane closure) but in itself, doesn't place any other obligation on Council.


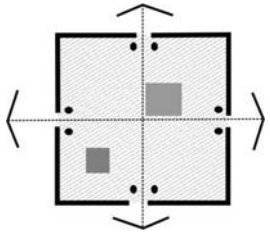
8.2 Assessment framework

For the purposes of managing and assessing proposals in terms of this policy, gated settlements (and their access control measures) are defined and classified in the following way :

		CATEGORIES	
		Purpose built / planned / greenfield	Retrospective conversion
TYPES	Entirely private	<ul style="list-style-type: none"> • private internal roads and spaces (typically private security estate) • full access control • subject to all policy criteria 	<ul style="list-style-type: none"> • privatised roads (typically closed cul-de-sac, purchased / leased from Council) • full access control • subject to design and other criteria in this policy
	Partially private	<ul style="list-style-type: none"> • public roads, but private open spaces internally • no gates / booms, only access monitoring at entrance • subject to all policy criteria 	<ul style="list-style-type: none"> • internal roads and open spaces remain public • no gates / booms, only access monitoring at entrance • subject to all policy criteria
	Public	<ul style="list-style-type: none"> • internal roads and open spaces remain public • no gates / booms, only access monitoring at entrance • subject to all policy criteria 	

Purpose built / planned

Also referred to as ‘greenfield development’, this category of gated communities is usually developed through the formal township establishment process. Illustrated and described in the table below, a number of types are possible under this category, namely :

Purpose built / planned		
Entirely private	All internal roads and open spaces are entirely private, gates or booms are erected at entrance, full access control permitted (typically private security estates).	
Partially private	Public internal roads but private open spaces, no gates or booms erected at entrance, only access monitoring permitted.	
Public	All internal roads and open spaces remain public, no gates or booms erected at entrance, only access monitoring permitted.	

Although previously allowed on a limited scale, hybrid-type gated settlements with public roads and open spaces beyond a privately owned ‘access / gatehouse erf’ on

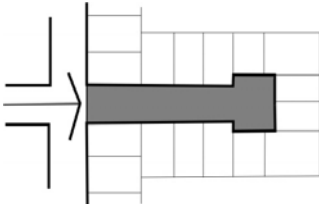
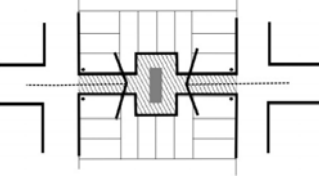
which gates or booms are erected, are not permitted in terms of this policy. This is necessitated by a clear current legislative framework (as discussed in Section 4 above) that prohibits any obstruction of access to public areas and facilities (which effectively occurs in this scenario).

In addition, and notwithstanding the good intention of strict conditions (requiring unfettered public access) usually imposed at approval of such cases, Council is unable (as suggested by the Human Rights Commission and evident from practise) to effectively police and prevent human rights infringements or unauthorised public access obstruction where it occurs in these types of access control situations.

Moreover, it facilitates an inequitable situation as internal public roads and spaces are turned into unofficial but *de facto* private roads and spaces while they continue to be maintained by the local authority with public funding (therefore effectively subsidising private interests).

Retrospective conversion

Originally developed as open public areas, this category of gated communities involves parts of existing neighbourhoods or entire road portions (for instance a cul-de-sac) that are privatised or converted to an enclosed or secure area, usually long after its original establishment. Illustrated and described in the table below, primarily two types are possible under this category, namely :

Retrospective conversion		
Entirely private	Privatised roads (ie formally closed as public place and purchased or leased from Council by abutting owners), gates or booms erected at entrance, full access control permitted (typically a cul-de-sac).	
Public	All internal roads and open spaces remain public, no gates or booms erected at entrance, only access monitoring permitted.	

As the principles involved are fairly similar, this second category also includes the closing of pedestrian and service lanes / alleyways and public footpaths.

In order to enable improved security while still complying with existing legislation prohibiting obstruction of access on public roads and constitutional requirements in this regard (as discussed under Section 4 above), the option of 'access monitoring' is

introduced under both categories. Without erecting gates, booms or any other kind of physical barrier or obstruction that may prevent general access, this only allows for monitoring access to a development or area (whether in person or automated), together with specific design interventions like traffic calming measures, guard houses, entrance features and notice boards etc (ie typically the Canal Walk example).

8.3 Policy criteria

Depending on the nature, type and category of gated community proposed, any development or road closure application in this regard should comply with the detailed requirements, criteria and guidelines set out hereunder. Although certain requirements and guidelines may be more applicable or relevant to a specific category of gated community only, all sections hereunder should be carefully considered and applied in its full context in assessing proposals involving gated community elements.

Conventional and alternative security measures

Before any proposal involving a gated / enclosed development or retrospective closure of existing public roads or access ways are submitted for consideration, the applicant or proponent should first investigate and consider implementing any possible conventional or alternative security measures (as set out under Section 8 above) to enhance settlement security.

Any application for a gated development or area should thus first demonstrate and illustrate through research how these measures have been considered (in the case of new developments) or previously implemented (in the case of retrospective conversions), to the following extent :

- individual measures considered or undertaken (including any examples / precedents in the area)
- time period in operation (in case of existing areas)
- before and after situation (in case of existing areas)

Access monitoring

Where public roads are involved, this option only allows for monitoring access to a development or area, without erecting gates, booms or any other kind of physical barrier or obstruction that may prevent general public access. Where this option is proposed or allowed, the following criteria should be considered and adhered to :

- The form, size, number and location of access points into monitored complexes must ensure direct and easy access to any public parks, spaces, buildings and facilities.
- No boom, gate or any other kind of physical barrier or obstruction to general public access is permitted to be erected at the entrance.
- Subject to engineering approval (in respect of location, impact on services and traffic safety etc), access monitoring mechanisms are permitted, ie CCTV surveillance or guards.

- Subject to engineering approval, traffic calming measures (ie speed humps) may be introduced at entrance.
- Subject to building plan and engineering approval (and any zoning scheme requirements and the design guidelines further down in this policy), guard house structures may be erected within the road reserve at the entrance. However, in certain cases and as a prerequisite, this may also require a separate application to the relevant roads authority in terms of Section 17 of the Roads Ordinance to erect structures in or within 5m from the statutory width of a public road.
- Subject to building plan, signage and engineering approval, aesthetically acceptable entrance features or signs / name boards may be erected within the road reserve at the entrance. Again, in certain cases and as a prerequisite, this may also require a separate application to the relevant roads authority in terms of Section 17 of the Roads Ordinance to erect structures in or within 5m from the statutory width of a public road.
- Notice (in accordance with Annexure D) informing public of access monitoring arrangements and their rights in this respect must be erected by applicant / proponent at own cost to Council's standards.

Access control

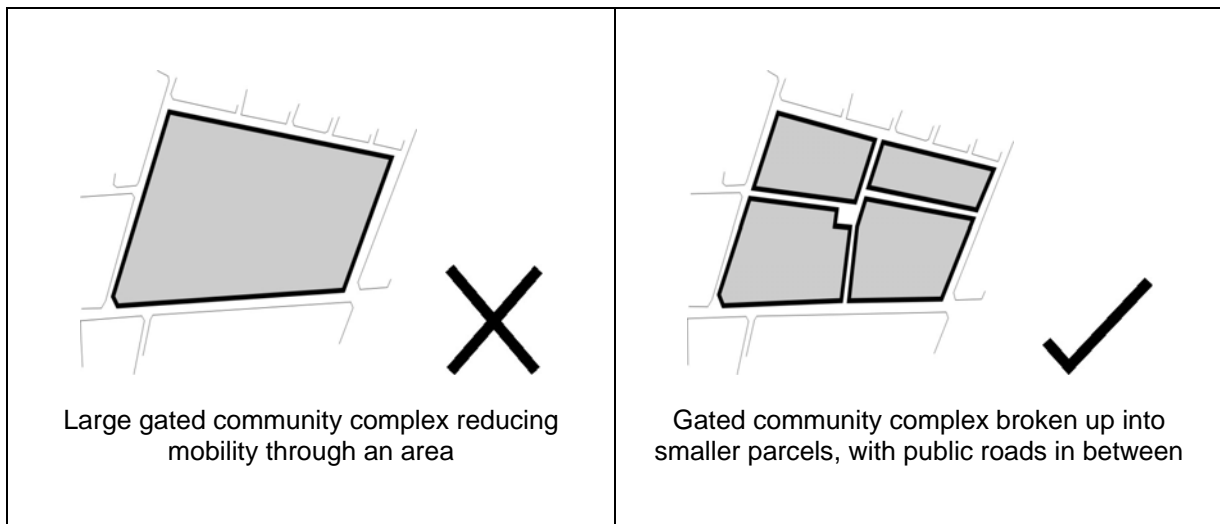
Where entirely private estates and areas (with private roads) are concerned, full access control is permitted (as only private roads and spaces are involved). In addition to general access, design, layout and other general criteria as detailed further down in this section, the following specific criteria apply in these instances :

- Booms, gates or any other kind of physical barrier and associated features to be erected at the entrance should comply with Council's requirements as per this policy.
- Subject to engineering approval (in respect of location, impact on services and traffic safety etc), access monitoring mechanisms are permitted, ie CCTV surveillance or guards.
- Subject to engineering approval, traffic calming measures (ie speed humps) may be introduced at entrance.
- Subject to building plan approval (and any zoning scheme requirements) and the design guidelines further down in this policy, aesthetically acceptable guard house structures may be erected on private land at the entrance.
- Subject to building plan and signage approval and design guidelines further down in this policy, aesthetically acceptable entrance features or signs / name boards may be erected on private land at the entrance.
- Notice (in accordance with Annexure D) informing public of access monitoring arrangements and their rights in this respect must be erected by applicant / proponent at own cost to Council's standards.

Location and scale

Large scale gated or enclosed developments or areas that take on the form of mini-suburbs (as is sometimes the case in purpose built security estates) generally have a detrimental impact on city form and connectivity or mobility and are thus unacceptable and should be avoided by restricting the scale and nature thereof.

In order to not compromise the structural access network of an area (ie the system of routes and linkages that ensure general mobility for pedestrians, cyclists and motorists), the size of such developments or areas should be broken up into smaller parcels (as illustrated below) and 'embedded' within the existing urban fabric to ensure they don't fragment neighbourhoods or undermine attempts to spatially integrate areas.



Specific criteria that apply and should be adhered to in this regard include the following :

- Subject to detailed engineering investigations, a gated community development or area may not be of such a scale or be located in an area where the following services, infrastructure and amenities (together with its supporting infrastructure, such as pump stations, reservoirs etc) would be found to be within its boundaries :
 - Class 4 roads and higher (as per 'Red book'), mobility, public transport or strategic routes
 - Bulk or main water and sewer lines
 - Bulk or main storm water channels or drainage systems
 - Bulk or main electricity transmission lines / cables and major substations
 - Regional or higher order social and economic / commercial infrastructure and facilities (ie schools, stadiums and other public buildings etc)
 - Regional / district parks, nature areas or extensive open spaces forming part of the MOSS network (including areas providing access to or linking with a nature reserve / mountain / coastline / river corridor or any other major natural resource)
- In addition to not being located on main routes or roads, gated developments or areas may not be located where it would disrupt the continuity of important movement links or popular desire lines (where indicated on a Council plan).

- Locating gated developments or areas in existing communities should also avoid creating utter extremes of wealth next to each other, as this would only encourage higher and stronger enclosures. Rather a gentle grading of housing (and income) types would facilitate easier spatial integration.
- Where allowed, not more than 3 gated or enclosed development pockets may be directly abutting each other.

General public access and traffic implications

Public access to gated developments and areas is a critical issue. The following criteria and guidelines apply and should be adhered to in relation to general public access and the associated traffic impacts resulting from gated communities :

- Except in the case of entirely private gated developments (where access control rules are set by owners, represented in a body corporate or home owners' association), a gated community proposal may not preclude, compromise or deny convenient and practical pedestrian (including any other non-motorised forms of movement) and vehicular access to public spaces, places, amenities and facilities located within it. Such amenities and facilities must therefore remain accessible at all times to any member of the public, Council staff or other service provider. Where this is the case, access may only be monitored as discussed earlier.
- Where public access is monitored, a notice (in accordance with Annexure D) informing public of such access monitoring arrangements and their rights in this respect must be erected by the applicant / proponent at own cost to Council's standards.
- Security staff at the entrance to any gated development or area may not forcibly obtain any information from or search any person seeking reasonable entry to the area concerned. Any information offered in this regard is on a voluntary basis.
- A gated development proposal would be considered unacceptable if it compromises public access to surrounding natural resources, including nature areas / reserves or extensive open spaces forming part of the MOSS network, mountainsides, coastlines, river corridors etc (as identified on a Council spatial plan).
- A gated community proposal would be considered unacceptable if it would cause an unacceptable increase in travel time or detours, 'rat runs' through or unacceptable displacement of traffic to surrounding areas or any other unsatisfactory or inappropriate road usage to develop (as found in a TIA / TIS).
- Subject to engineering approval and policy in this regard, traffic calming measures (ie speed humps, mini-traffic circles, road markings and signs) may form part of the access arrangements (whether fully controlled or only monitored) at the entrance to a gated development or area.
- A TIA / TIS (prepared by a qualified / registered practitioner at the applicant / proponent's cost) is required to be submitted to consider any likely adverse impact of a gated community proposal on the surrounding road and transport network, traffic flows and patterns (including possible traffic congestion / displacement, road deterioration, longer routes / detours etc), public transport and pedestrians.

- Provincial Roads Engineer must be consulted where necessary (ie where a provincial road would be affected or abutted by a gated community proposal).
- Where only vehicle access closure (ie through bollards etc) is proposed as part of a gated community development or area, this would only be permitted if sufficient vehicular access to the subject area remains (as found in a TIA / TIS, accepted by the engineering department), and subject to compliance with Council's by-laws and policies on road closure and statutory procedures in this regard.
- Subject to detailed engineering investigations (ie a TIA / TIS in this regard), gated developments or enclosed areas consisting of more than 250 individual units must have more than one vehicular entrance or must have access to an alternative escape route.

Pedestrian and other non-motorised movement

In considering gated community proposals, it is essential that continuous and convenient access for pedestrians and any other non-motorised forms of movement (ie cycling) be protected and prioritised. The following additional criteria and guidelines apply in this regard and should be adhered to :

- A gated development proposal may not preclude, compromise or deny continuous and convenient pedestrian (including any other non-motorised forms of movement, ie cycling) access to public spaces, places, amenities and facilities located within it.
- A gated development proposal may not be of such a nature or extent that it would cause the walking distance from its entrance to anywhere inside the development or area to exceed 20 minutes walking time for a normal person (based on an average speed of 20 min / km).
- A gated development proposal may not compromise existing or planned pedestrian (including any other non-motorised forms of movement, ie cycling) access to surrounding natural resources, including nature areas, reserves or extensive open spaces forming part of the MOSS network, mountainsides, coastlines, river corridors etc (as identified on a Council spatial plan).
- A gated development proposal (or its access arrangements) may further not affect existing pedestrian routes or desire lines to the extent that it would cause an additional pedestrian detour around the complex of more than 20 minutes walking time for a normal person (based on an average speed of 20 min / km).

Emergency services and law enforcement access

In order to ensure undisrupted emergency, law enforcement and other service to gated developments and areas, the following criteria and guidelines apply in this regard and should be adhered to :


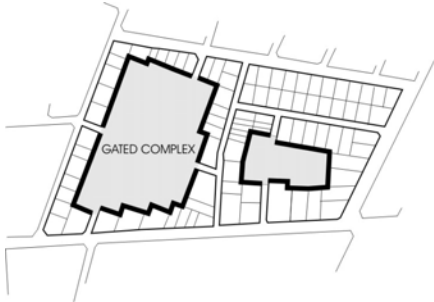
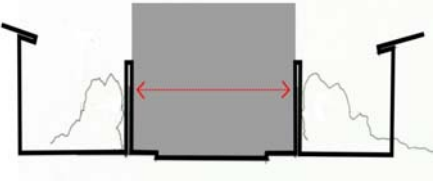
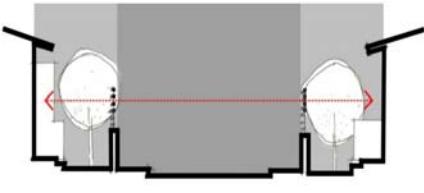
- Where full access control or gating is permitted (ie in the case of entirely private developments), unlimited emergency services, law enforcement agency and Council service staff access must be guaranteed by the applicant / proponent prior to approval of the application / proposal. The same applies to semi-private and public forms of gated developments and areas.

- Notice (in accordance with Annexure D) highlighting such unlimited emergency services or law enforcement agency access must be erected by the applicant / proponent at own cost to Council's standards at all forms of gated community developments or areas.
- Where full access control or gating is permitted (ie in the case of entirely private developments), all gates or accesses must remain accessible on a 24 hour basis.

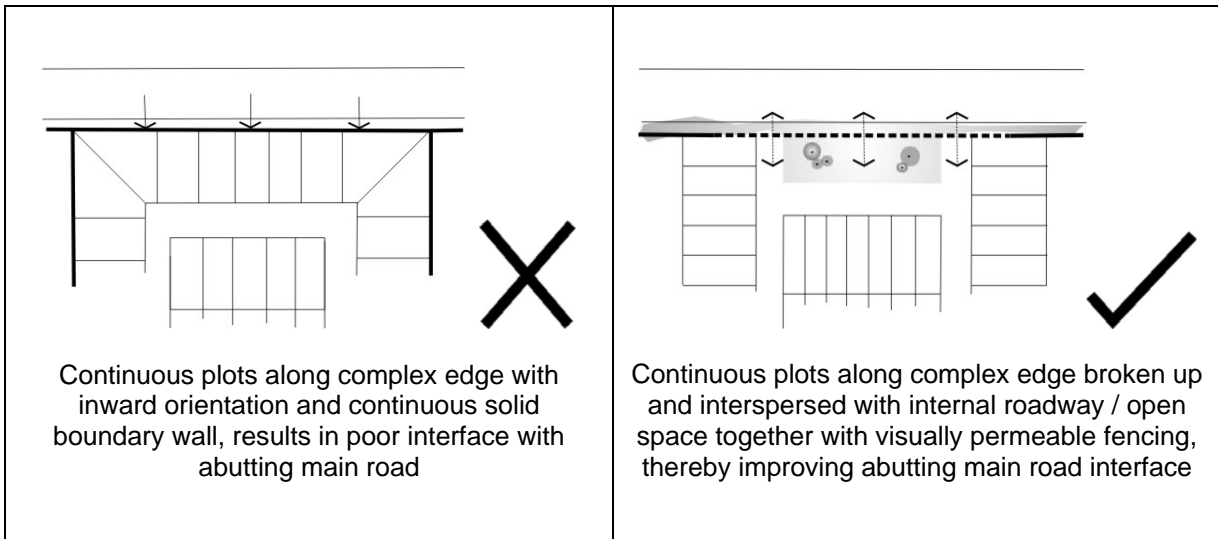
Layout

An important and fundamental aspect of gated community developments are their detailed internal layouts. The following criteria and guidelines apply in this regard and should be adhered to :

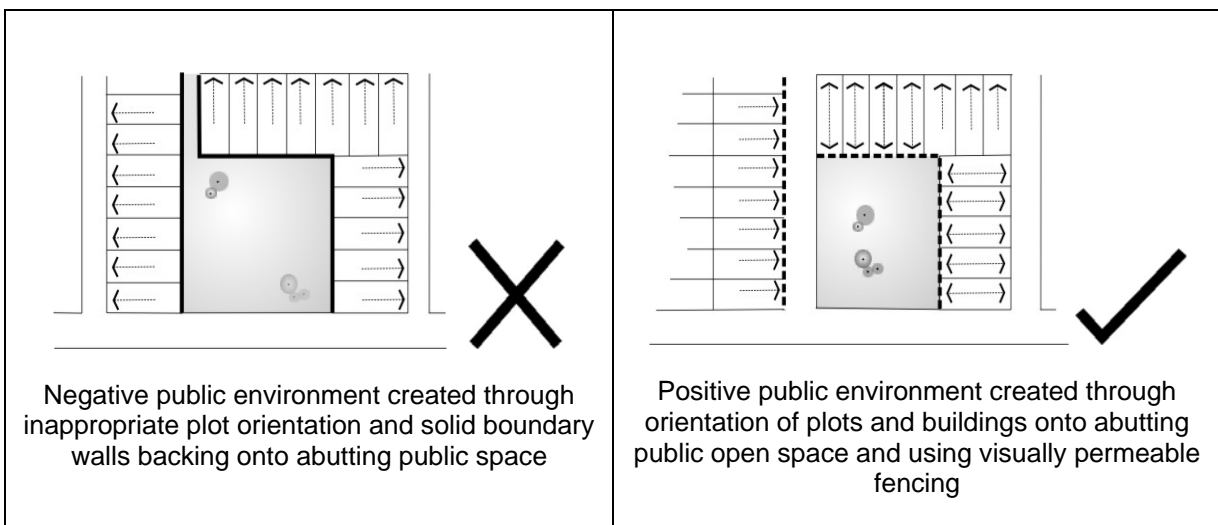
- In locating and laying out gated community developments, care should be taken in subdivision plans to prevent the 'canyon effect' through backing complexes directly onto main or access roads and enclosing them with high solid walls (as this creates a hostile perception from the main road). Instead, gated complexes should be buffered from main or access roads by means of single residential (or other small scale) plots in between, leaving only the width of the entrance road exposed from the main road (as illustrated below).

 <p style="text-align: right; font-size: 2em;">✗</p>	 <p style="text-align: right; font-size: 2em;">✓</p>
<p>'Canyon' effect created through gated community development (enclosed by solid walls) backing onto abutting main road</p>	<p>Gated complexes embedded within conventional residential fabric with visibility from and impact to surrounding area limited to entrance points</p>
 <p style="text-align: right; font-size: 2em;">✗</p>	 <p style="text-align: right; font-size: 2em;">✓</p>
<p>Inward orientation of buildings and solid boundary walls lacks interface with abutting public road and create negative streetscape</p>	<p>Building orientation onto abutting public road and permeable boundary walls creates positive interface and streetscape</p>

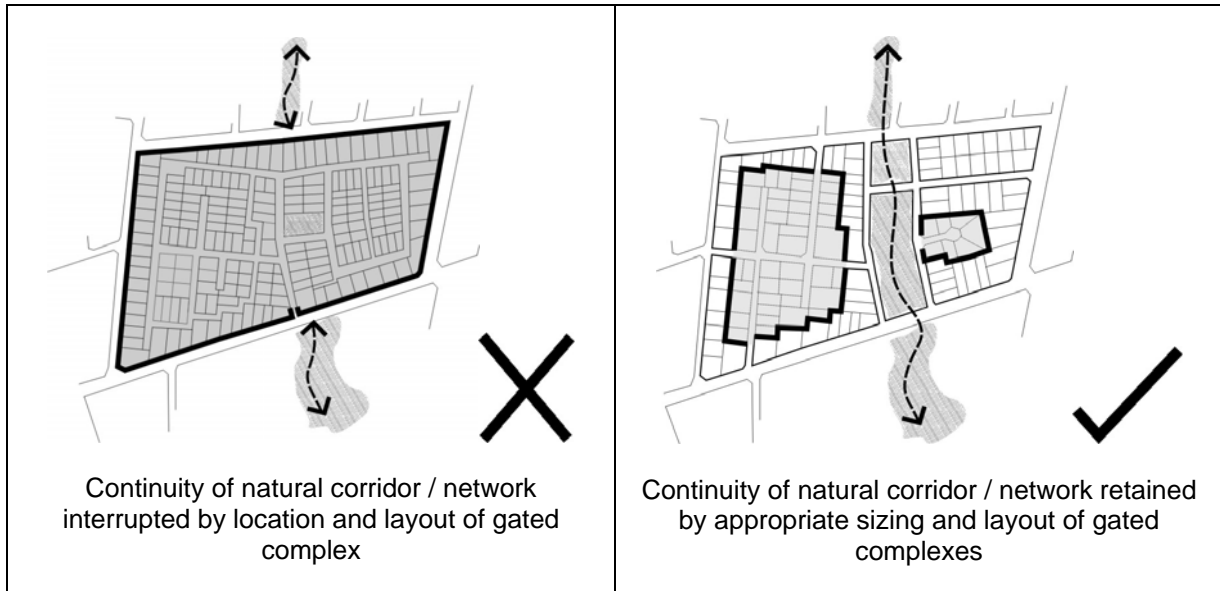
Where unavoidable (ie where positive interfaces can't be created through direct vehicular access from the abutting public roadway to individual plots), this 'canyon' effect should be countered by having continuous development along the perimeter edge broken up into pockets and interspersed with open space and/or internal roadway right up to the boundary (as illustrated below), while any fencing / walling on such edge should be visually permeable. Such an edge interface arrangement should further be limited to a maximum of two sides of the development.



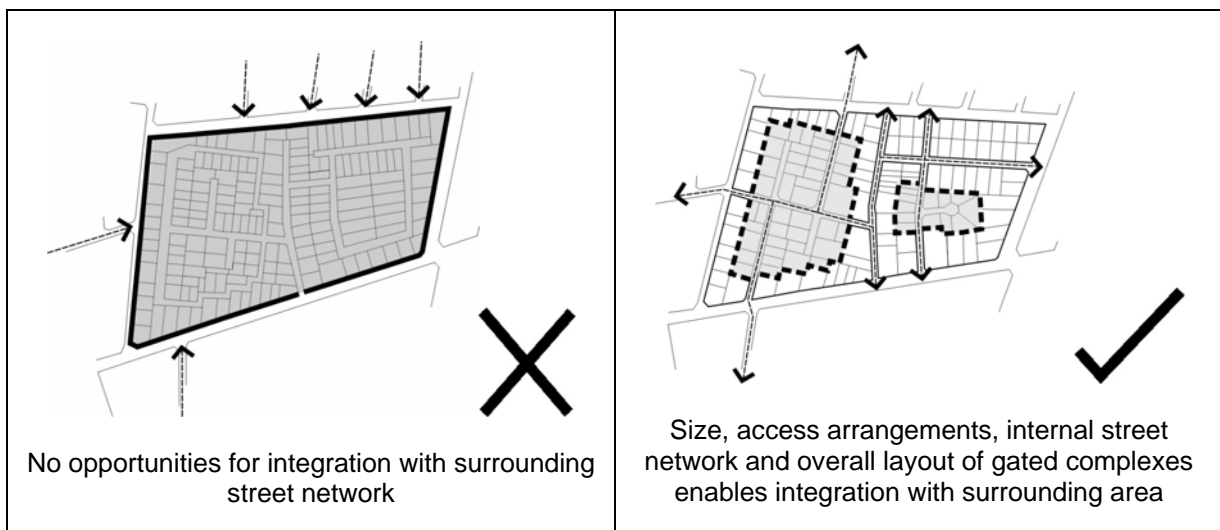
- Internal street, plot and open space layout should be so designed to facilitate maximum territoriality (or community ownership) and natural surveillance of public areas and open spaces in order to achieve defensible space, ie plots should be orientated onto common open spaces instead of backing onto it, only visually permeable fencing should be used and pedestrian entrances onto abutting open spaces where appropriate should be encouraged (as illustrated below).



- A gated community proposal is further considered unacceptable if it would compromise the continuity of biodiversity networks or ecological corridors (and species mobility) or the open space network in the surrounding community (as illustrated below).



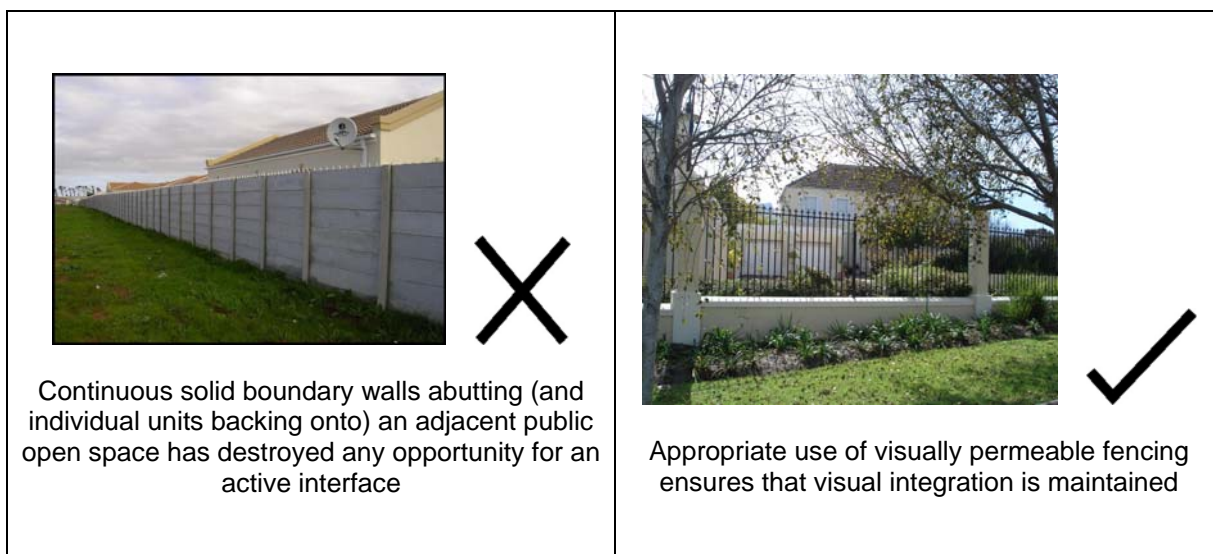
- Where applicable, placement of large parking areas as a buffer between public roads and adjacent buildings should be discouraged in the layout of gated developments, as it creates dead edges to the street and facilitates antisocial behaviour. Parking areas should thus be broken up into smaller pockets and be evenly distributed throughout the complex.
- The layout of the complex should further relate to the surrounding area and context and be such that it is possible to fully reintegrate it with the surrounding urban pattern without negative impacts on the existing spatial grid and movement routes (as illustrated below).



Visual impact and interfaces (edges)

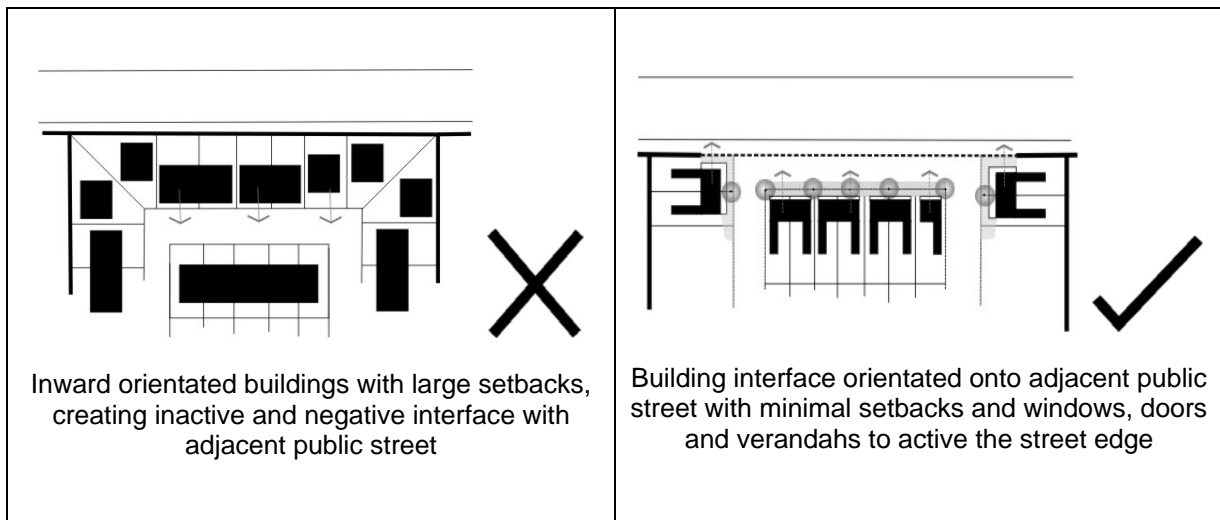
In an attempt to reduce and mitigate some of the potential adverse visual impacts of gated developments on urban form, the following criteria and guidelines apply in this regard and should be adhered to :

- Council may require a proponent to investigate and address any potential impact on local visual amenity and the character of the area. This may be in the form of a detailed visual impact assessment (undertaken by a qualified person), to be submitted as part of a development / road closure application involving a gated community.
- To ensure contextually appropriate, sympathetic design and maximum passive surveillance externally and internally, high walls should be avoided as far as possible and any wall, fence or other form of enclosure (both around the development as a whole, as well as internally in respect of individual units, where it abuts roads or public places) must be visually permeable for at least 50% of its length (see illustration below). As such, continuous blank walls facing onto public streets and places are therefore not permissible and boundary walls between individual units in new developments should be coordinated.



- To maximise opportunities for passive surveillance further, create active interfaces and promote activity and interaction, buildings within gated complexes should seek to create direct relationships with adjacent public streets and spaces. This should be achieved by orientating interfaces (ie placement of windows, doorways and verandahs) onto boundary edges and abutting public roads, open spaces and pedestrian routes as far as possible and avoiding impersonal building interfaces (ie blank walls), excessive setback distances, non-human scale buildings and creating hiding places (as

illustrated below). This should be considered and applied at Site development / building plan stage.



- Structures and architectural features at entrances to gated (including non-gated monitored) developments and areas must be in proportion to its surroundings, as large, visually dominant gateways and guardhouses reinforce the negative qualities of seclusion and elitism and do not support the principles of spatial and social integration.
- Subject to building plan and engineering approval where appropriate, other (non-gating / -physical) visual demarcation or design measures may be employed at entrance areas to communicate the transition from public to private space in promoting defensible space.

Services and infrastructure

Any gated development or area proposal should also be carefully considered in respect of its potential impact on existing services and infrastructure in the surrounding area. The following criteria and guidelines apply in this regard and should be adhered to :

- A gated community proposal may not prejudice or adversely affect (in Council's opinion) the continuity or integrity and normal functioning or service delivery in respect of planned or existing servicing infrastructure networks. Where Council considers it necessary, the proponent may be required to investigate this and provide assurance in this respect in the form of a detailed services impact assessment (undertaken by a qualified / registered person at the applicant / proponent's cost), to be submitted as part of an application involving a gated development.
- Where necessary, approval of a gated community development or area (including where public pedestrian lanes are considered for closure) must be preceded by conclusion of an agreement or contract on detailed servicing arrangements between a juristic person representing the applicant or proponent parties and Council (represented by its affected Service

- departments). Amongst others, such agreement should address ownership, accessibility, indemnity and future maintenance arrangements.
- Approval of a gated development proposal (including where public pedestrian lanes are considered for closure) must be subject to assurance by the applicant or proponent of unfettered access to internal services infrastructure for the purposes of maintenance (where applicable) and consumption recording by municipal staff.
 - In general, Council delivers public services upto a property boundary. As such, installation of a bulk meter or bulk servicing facilities (such as a refuse room etc) at the applicant / proponent's cost to Council's satisfaction may be required where public roads / areas are privatised.
 - Where public services infrastructure in a gated community development or area would not be completely private / alienated or deviated out of the area concerned, servitudes must be registered across all existing services infrastructure in any portion of public road / pathway that is closed or privatised at the applicant(s)'s expense in favour of and to the satisfaction of Council (or the relevant service provider). Similarly so, where public services infrastructure would be required to run through a gated development or area (in order for instance to serve abutting areas).
 - Any infrastructure / entrance features installed by an applicant / developer shall be properly illuminated at night to Council's satisfaction.
 - Subject to failure by the responsible juristic person to do so upon reasonable notice by Council, Council retains the right to undertake any emergency or other maintenance or repairs of services infrastructure in connection with a gated development or area it considers necessary, the cost of which will be charged to such responsible party.

Retrospective conversions and closures

Due often to its more complicated nature, gated development proposals in the form of retrospective conversions should adhere to the following unique additional criteria and guidelines :

- As required under the '*Conventional and alternative security measures*' section above, any applicant or proponent in this regard must demonstrate and illustrate that other approaches to settlement security have been ineffective and unsuccessful.
- Where proposed, an applicant must illustrate that 80% of residents (or any other parties, ie pedestrians) that might be affected by it (or 100% of residents in case of a lane), are in favour of and have agreed in writing to the proposed retrospective gating, closure (privatisation) or monitoring of the area in question.
- In addition to the above, the relevant local rate payers / civic / residents' association and ward councilor for the area should also be consulted by an applicant or proponent when considering or preparing a gated development proposal.
- Where required in Council's view (ie where communal property are involved), satisfactory evidence must be submitted by an applicant of establishment at its expense of a juristic person in the form of a body corporate or home / property owner's association, to Council's satisfaction prior to approval of an

application involving a gated community component. Such evidence must include a copy of the juristic person's constitution (drafted and approved to Council's normal standards) and imposition of the relevant obligations into the title deed's of affected land units, which provisions must include (but are not necessarily limited to) the following :

- transfer to and vesting of ownership of any communal property with HOA, which property shall not be disposed of, alienated or transferred to any other party nor mortgaged
- HOA responsibility for maintenance of communal property
- amendment of certain paragraphs of HOA constitution not without Council's prior written consent
- that membership of the HOA comprise of the registered owners of all applicable land units, which membership shall be mandatory and include any successor in title
- first meeting of the HOA to be called within 3 months of its establishment / approval of its constitution, until which time the applicant / developer shall assume all responsibilities of the HOA
- Council won't be held liable for any damage in any privatised (former public) road or pedestrian lane / passageway as a result of continued maintenance or carrying out its normal constitutional duties. Where necessary, Council must be indemnified against any future claims in this respect prior to approval of an application involving a gated community proposal.

Service and pedestrian lanes / passages and public footpaths

Whereas this category include both public service lanes, as well as predominantly pedestrian lanes, passages and footpaths, the following unique additional criteria and guidelines apply and should be adhered to where any such lanes are to be closed (ie in the case of retrospective conversion) :

- Fences or any other structures or restrictions / barriers may only be erected across public land by abutting owners with Council's prior written consent.
- As required under the '*Conventional and alternative security measures*' section above, any applicant or proponent in this regard must demonstrate that other approaches to enhance security in and around pedestrian and service lanes which are to be closed, have been ineffective and unsuccessful. Such closing of a lane may therefore only be motivated by security concerns.
- In addition to the above, a lane closure proposal may not compromise existing or planned pedestrian (including cycling) routes or desire lines (including access to surrounding natural resources) and would be subject to a spatial planning exercise or investigation in this regard to show that such connectivity or mobility would not be lost.
- Where proposed, an applicant must illustrate that 100% of residents that might be affected by it, are in favour of (and have agreed in writing to) the proposed retrospective closure or monitoring of the lane in question.
- In addition to the above, the relevant local rate payers' / civic / residents' association and ward councilor for the area should also be consulted by an applicant or proponent when considering or preparing any such proposal.

- Except where otherwise allowed by Council, lane closure may only be by means of gates and fencing and not by means of brick or other type of solid walling.
- Where permitted, Council would retain the right to, if necessary, remove any walls, fences or gates for infrastructure maintenance purposes, if the respective areas are no longer properly maintained by the abutting owners (where relevant) or if the closure would no longer be in the public interest. No compensation shall be payable by Council for any existing private improvements in such a case.
- Where allowed, the applicant or proponent will be required to erect at own expense and to Council's requirements in a visually prominent location (eg on the gate) a notice advising of the closure / monitoring of the lane, as well as any local access arrangements (ie where key is kept etc) if applicable.

Public property administration requirements

The following general property management criteria and guidelines apply and should be adhered to :

- Where permitted, any gated community (including lane closure) proposal must comply with both Council's policy and by-law relating to the management and administration of its immovable property and any other relevant legislation in this regard.
- Where permitted, leasing or alienation of public roadway or lanes or portions thereof (including all municipal services infrastructure within such roadway or lane, as directed by Council's policy and by-law in this regard) must be preceded by formal closing (in terms of the aforementioned by-law), subdivision (if necessary) and rezoning thereof out of public roadway. Where appropriate, such former public roadway (or lane portion) must be registered in the name of the relevant juristic person.
- Where necessary (and as required under the *Services and infrastructure* section), ownership, accessibility, indemnity and future maintenance / servicing arrangements in respect of a gated community (including public lanes closure) proposal, which is being considered for approval, must be formalised in an agreement or contract between a juristic person representing the applicant or proponent parties and Council (represented by its various affected Service departments) beforehand.
- In order to not create inaccessible public land pockets or islands, only entire road portions or public lanes abutting affected land owner(s) (and not merely sections of such roadway or lane) will be considered for closure or access monitoring as part of a gated community proposal.

Miscellaneous principles and criteria

The following miscellaneous principles, criteria and guidelines apply and should be adhered to :

- A gated or enclosed community proposal may not result in an unacceptable adverse impact (whether in relation to amenity, traffic patterns etc) to abutting

communities or prejudice further cost effective urban development of the surrounding area in future.

- In considering gated community proposals, a long term perspective and solutions should be taken into account (ie proposals should either remain appropriate or be reversible if for instance the current security situation improves in future).
- Where it occurs, illegally erected obstructions on or closure of any public roadway or lanes / footways must immediately be removed and legal action taken by Council against any offenders to rectify the situation. Should Council be required to undertake such removal, it will charge the cost thereof to the responsible party.
- The cost of any required infrastructure provision or improvement (including any investigations in this regard) will be for the account of the proponent / applicant.

8.4 Procedural requirements and institutional arrangements

- Amongst others, any development or road closure application involving a gated community proposal (whether greenfield development or retrospective conversion) must include motivation and/or documentary evidence in respect of and adequately address the following :
 - applicant's contact details (and power of attorney if necessary)
 - scaled plan or diagram, clearly illustrating proposal or area concerned
 - detailed motivation for gating / access restriction and circumstances surrounding it
 - conventional and alternative security measures considered or undertaken
 - impact on or threat to abutting communities
 - detailed, scaled designs / sketches of any proposed structures and access mechanisms
 - Traffic impact assessment or statement (as determined by Council)
 - consideration of surrounding pedestrian (and other non-motorised transport) movement routes and access arrangements
 - servicing impact and arrangements / agreement
 - extent (and result) of prior consultation with affected abutting communities (including residents' and rate payers' associations)
 - written consent of abutting / affected owners(s) and any other affected parties
 - proof of compliance with any emergency services requirements
 - copies of consultation with SA Police Service (in case of retrospective conversion)
- There is no separate application procedure for gated development proposals. Instead, approval thereof forms part of and is integrated with normal land use and property management procedures. As such, application for such gated development or area proposals may be made either to the Director : Planning and Building Development Management as part of a normal application for development approval (in case of greenfield developments) or the Director : Property Management as part of an application for road / lane closure,

monitoring or leasing / alienation (in case of retrospective conversions), with such application made on the prescribed form and accompanied by any supporting documentation and application fee (as determined and required by Council). This policy and its guidelines is therefore applied in deciding all applications where a development or public road / place closure proposal falls within the definition of a gated development.

- Any gated community proposal (whether as part of a greenfield development or retrospective conversion), including road and public lane closures, must be properly advertised (as determined by Council) for public comment. Such advertising must be incorporated as part of the normal public participation requirements on related land use or property management applications, extend wider than only directly abutting land owners and include the relevant local rate payers / civic / residents association, ward councillor, site notices and a prominent notice in the local community press circulating in the subject area.
- Where (in Council's view) it is considered necessary or appropriate (ie in order to test or evaluate practical implementation issues in case of a retrospective conversion), any approval of a gated community proposal may be on a temporary basis (for a limited number of years, not exceeding 5, but which if applicable must coincide with a lease period), upon expiry of which it may be reconsidered or reviewed.
- Upon approval of any gated development proposal, standard appeal procedures, as laid down in the Land Use Planning Ordinance and Local Government : Municipal Systems Act (where applicable), applies.
- In the interest of compliance monitoring of approved gated / enclosed communities and developments (in relation to this policy and any conditions of approval), Council may introduce a system of regularly (possibly annually) renewable permits if necessary.
- Council retains the right to rescind or retract any decision to approve a gated community proposal should it be found that any relevant conditions of approval or requirements in this policy are contravened or in the case of persistent public complaints in this regard, entirely in its own discretion.

9 GLOSSARY, DEFINITIONS AND TERMINOLOGY

Gated community / settlement / development

Means a physical area or development (whether specifically planned and designed or not) that is walled or fenced off from its surroundings and where general public access is monitored, controlled, restricted or prevented in any way, often by means of gates or booms at a specific point(s). A common feature of such a development is usually its internalised layout and limited access points, which facilitates easy gating and access control. The size of such gated development can further differ dramatically, from a small group housing complex or closed cul-de-sac to large security estates. Similarly, so may the actual form of the physical barrier (ie gated, boom etc) and the access control (ie manned by security staff or automated). By reason of its nature, gated settlements are usually controlled by a Body Corporate or Home / Property Owners' Association which, amongst others, would manage all common assets and amenities (including the access gates) and takes responsibility

for common security. Although usually residential in nature, it can also involve industrial or commercial developments (ie industrial or business parks) or contain a mix of land-uses.

MOSS Metropolitan open space system or network

10 COMMENCEMENT AND IMPLEMENTATION

Application of this policy commences on the date of its adoption by Council (see official minutes attached as Annexure A). It is therefore not applied retrospectively.

In addition, it further supersedes the previous SPM 'Policy guidelines on Privatisation of public roads and boom control mechanisms or locking gates on public roads' (dated 29 August 2000) and any other similar policies that may be in existence at the time.

Council may further determine the applicable level of decision maker and manner or extent in which this policy may be deviated from.

MINUTES OF COUNCIL ADOPTION RESOLUTION

CITY OF CAPE TOWN		
GATED DEVELOPMENT POLICY		
GOOD PRACTICE GUIDELINE CHECKLIST FOR APPLICANTS		
The following aspects and guidelines should be considered by applicants / consultants when preparing an application for proposals involving gated community developments.		
Aspect / issue to be considered	Compliance	
	YES	NO
General		
Have other conventional or alternative (to gating) security options been investigated, considered and/or implemented and is this requirement sufficiently motivated and demonstrated in the application?		
In the case of 'access monitoring' areas where internal public roads and open spaces are concerned (and where no gates are permitted), is consent / a separate application required to erect structures and features (or signage) within the public road reserve? If so, has an application in this regard been prepared?		
Has engineering approval been obtained to erect any structure (including any CCTV cameras) or features in the public road reserve or implement any traffic calming measures?		
Will the required formal access arrangement notice (ie Annexure D) be erected at the complex / area / lane entrance(s)?		
Would the gated development / area proposal result in any unacceptable impact (ie by reason of displacement of crime, traffic congestion / 'rat running' etc to 'lesser protected' areas) on existing abutting communities?		
Location & scale		
Would any of the identified 'prohibited' infrastructure types (as listed under the 'Location and scale' section under par 8.3 in the policy) be located within the proposed gated development, complex or area?		
Would there be any existing (or planned) gated developments located on abutting land?		
Traffic, access & services infrastructure		
Would the gated development / area proposal compromise any convenient public pedestrian (including cycling) and vehicular access to the area or any public facilities (including access to any surrounding natural resources and areas) located within it or prejudice any existing / planned pedestrian route through the area?		
If exceeding 250 individual units in total, will an alternative vehicular escape route be provided as part of the proposed development?		
Would the proposed gated development / area be of an extent that would result in walking time from its entrance to anywhere inside to exceed 20 minutes or an additional pedestrian detour around it in excess of 20 minutes walking time?		
Would the proposal comply with all emergency services / law enforcement and municipal maintenance access requirements?		
Where full access or gating is permitted, would gates / entrances be accessible on a 24 hour basis?		
Would the gated development / area proposal compromise the continuity and integrity of any existing (or planned) servicing / infrastructure networks?		
Has a detailed agreement / contract on servicing arrangements been reached / concluded between the applicant / proponent and Council?		
Layout, visual impact & urban design		
Would the proposed gated development or complex be appropriately sized, scaled		

and buffered / embedded within the existing fabric to prevent a 'canyon' effect on abutting roads?		
Would internal street, plot and open space layout facilitate maximum territoriality through natural surveillance of public areas (ie no erven backing onto adjacent public open spaces etc)?		
Would layout of the proposed gated development compromise the continuity of any existing biodiversity, open space or ecological networks through the area?		
Are any 'dead' edges or blank walls onto public areas proposed throughout the development?		
Would the gated development proposal adversely affect the area's visual amenity and character?		
Are high boundary walls prevented as far as possible throughout the development and are any boundary enclosures of a visually permeable nature (at least 50% of its length)?		
Are building interfaces appropriately orientated onto abutting public streets and places?		
Are any structures or features proposed at the entrances to the gated development / area in proportion to its surroundings?		
Retrospective conversions & service / pedestrian lanes		
Has the support (written consent) of 80% of residents / land owners potentially affected by the proposed gated community (100% in case of a pedestrian / service lane) been obtained and is evidence of this accompanying the application?		
Has the local rate payers / civic / residents' association and ward councillor been consulted and are they in support of the proposal?		
Does a juristic person exist (or will one be created) as part of this proposal and is evidence of this (including its constitution) accompanying the application?		
Has a spatial planning exercise / analysis been undertaken to ascertain whether a proposed lane closure would compromise any existing (or planned) pedestrian and/or cycle routes or connectivity in this regard?		
Procedural requirements		
<p>Are the following additional items / information also included with your application submission?</p> <ul style="list-style-type: none"> • Applicant's contact details (& power of attorney, if necessary) • Scaled plan / diagram illustrating proposal / area concerned • Detailed motivation • Info on conventional and alternative security measures considered / undertaken • Information regarding impact on / threat to abutting communities • Detailed designs of proposed structures / features / access mechanisms • Traffic impact assessment (if necessary) • Proposed servicing arrangements and Services impact assessment / agreement (if necessary) • Evidence (& results) of prior consultation with affected residents, communities & land owners, as well as with the SA Police Services • Written consent of abutting / affected land owners • Proof of compliance with any emergency services requirements 		

CITY OF CAPE TOWN
GATED DEVELOPMENT POLICY

RECOMMENDED CONDITIONS OF APPROVAL

The following conditions of approval should be imposed when land use / property management applications are granted by Council :

Applications involving purpose built / planned gated developments :

1

2

3

Applications involving retrospective conversions / road closures :

4

5

6

Applications involving service and pedestrian lanes :

7

8

9

CITY OF CAPE TOWN

GATED DEVELOPMENT POLICY**STANDARD NOTICE TO BE ERECTED AT GATED OR ACCESS MONITORED DEVELOPMENTS AND AREAS**

- Notice must
- be clearly legible and not smaller than 0,5m²
 - be in 3 official languages
 - be erected and maintained in a prominent, visible place
 - contain the following wording and information

ACCESS CONTROL

Please note

- This is a private estate with private roads beyond this point and your access to this area may be restricted and/or recorded.
- Emergency services, law enforcement agency and municipal service staff access may however not be restricted.
- Any complaints regarding access arrangements can be lodged with the complex management on phone no 021 ??? ????? or the local municipal police department on phone no 021 ??? ?????.

ACCESS MONITORING

Please note

- Roads beyond this point are public property and members of the public / visitors may not be stopped, searched or refused entry to this area.
- Your access to and through this area may however be monitored and/or recorded.
- Any information supplied by visitors is on a voluntary basis.
- Emergency services, law enforcement agency and municipal service staff enjoy unlimited access.
- Any complaints regarding access arrangements can be lodged with the (*complex / area name*) complex / area management on phone no 021 ??? ????? or the local municipal police department on phone no 021 ??? ?????.