DEVELOPMENT MANAGEMENT



CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD

JOY SAN GIORGIO SENIOR PROFESSIONAL OFFICER

T: 021 400 6444 F: 021 400 5830 / 086 202 9981 E: appeals.tablebay@capetown.gov.za Case ID: 70396369

BLUM017

30 SEPTEMBER 2020

Applicant and Objectors

Dear Sir / Madam

PROPOSED APPLICATION FOR REZONING, APPROVAL OF COUNCIL AND DEVIATIONS FROM CITY POLICIES IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BYLAW IN RESPECT OF ERF 151832, 6 LIESBEECK PARKWAY (BOUNDED BY LIESBEECK PARKWAY AND OBSERVATORY ROADS), OBSEVATORY, CAPE TOWN

This letter is addressed to the applicant or to an objector in the case where there has been an objection to the above application.

The application with reference in the above regard, refers.

The Municipal Planning Tribunal (MPT) on 18 September 2020 **approved** in terms of section 98(b) of the City of Cape Town Municipal Planning By-Law, 2015 (MPBL), the application for rezoning, approval of council and deviations from city policies, as per the attached Annexure A.

Kindly also note where applicable, the above approval does not guarantee approval of any related building plan application in terms of the National Building Regulations and Building Standards Act, No 103 of 1977 and that building work may therefore only commence once such plans are formally passed.

Reasons for the above decision are set out in the **attached** extract of the minutes of the meeting concerned, dated 18 September 2020.

Should the reasons for the above decision not be contained in this notification you are advised in terms of section 104(2)(c) of the MPBL and section 5 of the Promotion of Administrative Justice Act, No 3 of 2000 that you are entitled to request in writing reasons for the above decision.

In terms of section 108(1) of the City of Cape Town Municipal Planning By-Law, 2015, you may appeal to the Appeal Authority against the above decision by giving written notice of the appeal and grounds of appeal and by completing and signing the prescribed form.

In terms of section 108(1) of the City of Cape Town Municipal Planning By-Law, 2015, you may appeal to the Appeal Authority against the above decision by giving written notice of such appeal and the grounds of appeal.

An appeal, including the written notice and the grounds of appeal (and not only the intention to appeal), must be lodged on the prescribed form (the form can be **downloaded here**: (http://www.capetown.gov.za/LandUseAppeals) with the City Manager, c/o the Table Bay District Manager, at the following email address: appeals.tablebay@capetown.gov.za within **21 days of the**

date of notification of the decision. If the appeal cannot be lodged by email it may be hand delivered to the 2nd floor, Media City Building, Cnr of Hertzog and Heerengracht Boulevard, Cape Town or faxed to 021 400 5830 / 086 202 9981 within 21 days of the date of notification of the decision. See definition of notification date to be read together with the provisions of the Interpretation Act 1957 in footnote below to determine the closing date for submission. If this letter has been sent to you by registered mail, then it is your responsibility to establish the date stamped upon the receipt for registration issued by the post office when accepting this notice from the City of Cape Town. You will need to contact the post office and use the tracker number on the envelope for this purpose.

Failure to comply with the above requirements and provisions within section 108 of the MPBL will result in the appeal being ruled invalid.

Kindly note that the operation of the approval of this application is suspended and may therefore not be acted on until such time as the City gives notice that no appeal has been lodged and the decision is effective or the date that the appeal is decided by the appeal authority. If an appeal is lodged against a condition of approval the City may determine that the operation of the approval of the application is not suspended.

Yours faithfully

for DIRECTOR: DEVELOPMENT MANAGEMENT

Notes and extracts from sections of the City of Cape Town Municipal Planning By-Law, 2015

105 Effective date of decision

- (2) The effective date of a decision in terms of this By-Law is -
 - (a) the date that the City gives notice that no appeal has been timeously lodged and that the decision is accordingly effective; or
 (b) subject to subsection (3), if an appeal is timeously lodged, the date that the appeal is decided by the appeal authority.
- (3) If an appeal is lodged only against a condition imposed in terms of section 100, the City may determine that the operation of the approval of the application is not suspended

Method and date of notification

The date of notification is determined as follows:

- if the notification is provided –
 (a) orally, it is the date of oral communication;
 - (b) by hand ,it is the date of delivery or collection;
 - by registered post, it is regarded as the fourth day after the date stamped upon the receipt for registration issued by the post office which accepted the notice; or
 - (d) by email or fax, it is the date that the email or fax is sent,

Interpretation Act No 33 of 1957 section 4

(4) Reckoning of number of days. – When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusive of the first and inclusive of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusive of the first day and exclusive also of every such Sunday or public holiday.

As an example, if the date of notification is 1 October, then the first day of calculation of the 21day appeal period will be 2 October and the 21st day would be 22 October. If 22 October is either a Sunday or a public holiday, then the closing date will the next following day that is not either a Sunday or a public holiday.

INTERVIEW

SMPTNW 06/09/20 WARD 57: APPLICATION FOR REZONING, APPROVAL OF COUNCIL AND DEVIATIONS FROM CITY POLICIES IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: ERF 151832, 6 LIESBEECK PARKWAY (BOUNDED BY LIEBEECK PARKWAY AND OBSERVATORY ROADS), OBSERVATORY

Ms San Giorgio introduced the application

Messrs Florence, Arendse and Hugo spoke in support of the application. Mr Hugo made a PowerPoint presentation (Annexure 1)

Ms Mgedezi made a powerpoint presentation (Annexure 2). Mr Jenkins, Prof London and Mr Cogger addressed the Tribunal and spoke against the application. Mr Cogger's written submission is attached (Annexure 3)

The applicant was given an opportunity to rebut

The MPT asked several questions to the applicant, the objectors and the case officer. The individual MPT members gave extensive input in support of the application

UNANIMOUSLY RESOLVED that:

- a. The application for the rezoning of the property from an Open Space Zoning 3: OS3 to a Subdivisional Area Overlay Zone in respect of Erf 151832, 6 Liesbeek Parkway Observatory **BE APPROVED** in terms of Section 98(b) of the Municipal Planning By-Law subject to conditions contained in Annexure A attached.
- b. The application for the approval of Council to permit retaining structures to be 5.7m high in Precinct 1 and 5.9m high in Precinct 2 in lieu of 2.0m high above ground level in respect of Erf 151832, 6 Liesbeek Parkway Observatory **BE APPROVED** in terms of Section 98(b) of the Municipal Planning By-Law subject to conditions contained in Annexure A1 attached.
- c. The application for:
- the deviation from the Table Bay District Plan
- Deviation from the Floodplain and River Corridor Management Policy (2009) seeking permission to:
- i. develop/obstruct the free flow of water within the 20-year and 50-year floodplain and to seek the in-filling below the 1:50 year floodplain.
- ii. Deviation from the Management of Urban Stormwater Impacts Policy (2009) seeking permission to:
- Deviate from the annexure table requiring 24-hour extended detention of the 1-year Recurrence Interval, 24-hour storm event in a greenfield development greater than 50 000m²; to deviate from the annexure table

requiring up to 10 year recurrence interval peak flow to be reduced to pre-development level in a greenfield development greater than 50 000m² and to deviate from the annexure table requiring up to 50 year recurrence interval peak flow to be reduced to existing development levels in a greenfield development greater than 50 000m².

in respect of Erf 151832, 6 Liesbeek Parkway Observatory **BE APPROVED** in terms of Section 98(b) of the Municipal Planning By-Law subject to conditions contained in Annexure A attached.

REASONS FOR DECISION

The applications for the rezoning from an Open Space 3 to a Subdivisional Area Overlay Zone, approval of Council and deviation from policy comply with the requirements of Sections 99(1)(2)(3) of the MPBL and are approved for the following amended and summarized reasons:

- 1. All the applications required in terms of the MPBL have been applied for and relevant public participation processes followed.
- 2. The applications are consistent with the requirements of the MSDF as the property is located within the Urban Inner Core and integration zone where development of this nature is encouraged. To this extent, the deviation from the District Plan is warranted
- 3. The proposal will result in intensification and densification of the land which is supported by City policy.
- 4. A diverse range of land uses will be accommodated on the property.
- 5. Densification and intensification of land contributes toward the spatial restructuring of the City and ensures better utilization of the service infrastructure.
- 6. Short and long term employment opportunities will be created.
- 7. The mixed use development is suitably located being surrounded by residential, business and industrial uses.
- 8. The property provides access to opportunities being located close to, and providing access to, places of employment and various services and amenities.
- 9. Reduced parking provision ensures improved thresholds for public transport use.
- 10. The reduced parking ratio is considered rational as the site is located within a public transport corridor.
- 11. It will result in road improvements that will offer wider connections to various parts of the city.
- 12. There will be no adverse impact on the service infrastructure as either sufficient capacity exists or improvements to the services infrastructure will be implemented to accommodate the proposal. In some instances, on-site provision will be made to accommodate services.
- 13. Heritage impacts have been carefully considered and heritage components will be incorporated into the development.
- 14. Certain landscaping and other measures are proposed to mitigate against impacts on the receiving environment.
- 15. Specialist studies sufficiently demonstrate that measures proposed will mitigate against impact of development within the floodplain. This is agreed to by the competent Department.

- 16. The proposal supports the principles contained in both the LUPA and SPLUMA the developer also offered to provide inclusionary housing in support of the spatial justice principle
- 17. The permitting of GB7 with a height limitation in Precinct 2 enables flexibility to be achieved at SDP Precinct level
- 18. The elevated height in Precinct 2 enables a sensitive bulk distribution where it is deemed most appropriate
- 19. In order to develop a viable solution for potential flooding and storm water management, deviation from Council policy in this regard is required and merited in order to facilitate a sustainable flood/stormwater management system for the development

<u>Annexure A1</u> Delete paragraph 4 and 5

<u>Conditions imposed in terms of Section 100 of the MPBL</u> **Note**: These conditions refer to the original conditions in the report and not the amended conditions tabled at the meeting

- 6.1 The property shall accommodate two Precincts (Precinct 1 and Precinct 2) comprising areas designated for General Business purposes and the overall combined floor space for the two Precincts shall not exceed 150 000m²
- 6.1.1 Precinct 1 shall not exceed a floor space of 60 000m2 and Precinct 2 shall not exceed a floor space of 90 000m²
- 6.1.2 The maximum height that will be permissible in the GB7 zone must not exceed 44.7m above base level.

Delete the heading 'Subdivision'

- 6.2 The subdivision plan required pursuant to in 6.1 above, shall
 - 6.2.1 Accompany the site development plan submissions, and
 - 6.2.2 Be in accordance with the indicative subdivision plan (Concept subdivisional area plan) attached in Annexure D1 attached
- 6.3 The submission of a subdivision plan clearly identifying the
 - a. Cadastral boundary of the site and each portion
 - b. Extent of each portion
 - c. Zone of each portion including the sub-zone as approved herein
 - d. Servitude rights of way registered in favour of the general public
 - e Services.

Delete paragraph 6.3.1

- 6.3.1.1 Portion 3 of the subdivision shall be zoned for Open Space Zoning 3: Special Open Space purposes and shall be a minimum of 49835m² in extent.
- 6.3.1.2 Portion 3 shall comprise servitude rights of way registered in favour of the general public and shall be to the satisfaction of the authorized official (Development Management).

Amend paragraph 6.3.2 as follows:

6.3.2 A servitude right of way to permit the general public access across internal private roads shall be registered prior to the first occupancy to the satisfaction of the authorized official

Delete paragraph 6.3.3

Replace the heading 'Development Framework' with 'Site Development Plan'

Amend paragraph 6.4 as follows:

6.4 Prior to any development, the owner/developer shall submit an SDP for approval by the authorized official

Amend 6.4.1 as follows:

6.4.1 The SDP mentioned in 6.4 above shall be informed by the HIA/EIA and principles established in the Urban Design Study, Visual Impact Assessment, Hydrology Study (which may be amended to meet further requirements of relevant City departments).

Amend paragraph heading 6.4.2 as follows:

- The SDP shall, furthermore, include -
- Overall site design;

6.4.2

- Spatial distribution of land uses within each Precinct;
- Phasing of development across the site;
- Vehicular movement and access arrangements;
- NMT movement and linkages to NMT routes external to the development

• Areas of historic significance with specific regard to areas on the property where the history of the property will be memorialised;

- Public and private spaces;
- Open spaces with associated linkages external to the development;
- Edges of the site.

• Character Precincts identified in the HIA/EIA, Visual Impact Study and Urban Design Study.

Delete paragraph 6.4.3

- 6.5 Each character Precinct referred to in 6.4.2 above shall
- 6.5.1 Ensure that buildings located along Berkley Road extension shall be higher than those located along the southern edge of the eco-corridor identified in the EIA.
- 6.5.2 Have regard for the heights of buildings and display a hierarchy of spaces, demonstrate the treatment of corners and edges, internal roads and building being stepped to accommodate light penetration.
- 6.5.3 Identify appropriate locations where foreground and background buildings are to be situated.

Delete paragraph 6.6 Delete paragraph 6.6.1

- 6.6.2 The design of each Precinct shall show -
 - The extent of each Precinct;
 - Character areas;

• Appropriately located bulk, including for example: - hierarchy of spaces; - light penetration; and - foreground and background buildings;

- Visual/view corridors;
- Road / built form interfaces;
- Any boundary treatments
- Floor space ratio per Precinct,
- Land use mix,
- Number of parking bays,
- Gateway buildings;
- Landscaping interventions.
- NMT;
- Maximum heights building heights measured from base level;
- Floor space per Precinct;
- Ranges of uses having regard to the permissible floor space;
- The number of parking bays provided;
- Public, semi-public and private spaces

• Interface conditions with the public realm having specific regard to the Urban Design policy demonstrating compliance with the principles contained therein and;

• Holding areas for public transport stops.

Delete paragraph 6.6.3

6.7 In respect of Precinct 1:

- 6.7.1 Building heights shall ensure that the lowest buildings observe the heritage indicators in relation to the SAAO (Erf 26493 to the east of the property).
- 6.7.2 East/west pedestrian access into the retail component shall be open-tothe-sky and shall permit public access that links to the wider NMT network and surrounds.
- 6.7.3 Gateway buildings shall be reflected in height and architectural treatment.
- 6.7.4 Buildings shall be designed to ensure an appropriate interface with the surroundings.

6.8 In respect of Precinct 2:

- 6.8.1 The built form shall be separated to a greater degree than that proposed with greater levels of articulation to break up the monolithic form still experienced.
- 6.8.2 Highest buildings are to respond to the higher order Berkley Road. The height, mass, and bulk of buildings needs to be carefully considered to avoid conditions that may cause a 'walled development response'.

Amend paragraph 6.9 as follows:

6.9 Each Precinct plan and all subsequent Site Development Plan shall be accompanied by a bulk register detailing:

• Floor space per land use within each Precinct utilised and residual available;

- Overall floor space for the property utilised and residual available;
- Parking provision per Precinct required and that constructed.
- 6.10 The floor space allocated per Precinct shall not be transferable between Precincts.

Delete paragraph 6.11

- 6.12 The proposed link road alignment and form shall be designed to further reduce the negative visual impact on the "sense of place" experienced so as not to detract from the public and NMT users' experience, especially within and adjacent to, the ecological corridors.
- 6.13 Traffic circles provided on the property shall endeavour to accommodate a NMT prioritised environment which will facilitate the accessibility of the OS3 as part of the NMT route.
- 6.14 Detailed design of any vehicular or pedestrian control measures introduced on the property shall accompany the SDP for each phase.

Delete paragraph 6.15 Delete paragraph 6.16

6.17 The base level indicated for buildings and structures shown on each SDP shall accord with that indicated in Annexure C17.

Amend heading 'Land Uses' to 'Zoning and Land Uses' Amend paragraph 6.18 as follows:

- 6.18 The land uses accommodated on-site in use zones GB3, GB6 and GB7 shall be limited to:
 - •Business Premises (Shops, Offices, Restaurants)

• Flats (including a minimum of 6000m2 of inclusionary housing or 20% of the residential component – whichever is the greatest)

- Hotel
- Place of entertainment (gym, conference facility, events pavilion)
- Place of Instruction
- Parking appurtenant to the abovementioned uses
- Ancillary uses appurtenant to uses accommodated on the property.

Delete 6.19

Amend paragraph 6.20 as follows:

- 6.20 The provision of inclusionary housing shall be interspersed with the open market dwelling units and other activities. At least 6000m² (or 20% of the residential component whichever is the greater) shall be provided for affordable housing, as defined in the MSDF and must be indicated on the SDP and at building plan submission stage. The developer shall submit the plan for implementation of rental units in perpetuity, which shall be to the satisfaction of the authorized official
- 6.21 Housing typologies within the River Club shall be varied in typology and nature.

Replace paragraph 6.22 with the following:

6.22 An Owners' Association shall be established, as provided for in the By-Law, to be responsible for maintenance and management of the private roads and private open spaces

<u>Landscape plan</u>

- 6.23 A master landscape plan, drafted by a suitably qualified landscape architect, shall be included in the development framework referred to above. Furthermore, the master landscape plan shall
 - 6.23.1 Conform to the associated guidelines and principles set out in the landscape guidelines accompanying this application and shall be generally in accordance with the landscape concept plan submitted.
- 6.23.2 The master landscape plan shall detail

• Planting, terrestrial and riverine amongst others that will be removed, retained, transplanted and new planting;

- The provision of buffer areas along the river/canal edges;
- Servitude rights of way;
- Hard and soft landscaping

• Areas of historic significance and the memorialising the history of the site

- Street furniture
- Lighting and light fixtures across the site

• Provision of attenuation measures (including vegetated swales, bioretention areas, source control, etc.) which shall have regard to the stormwater flood management plan referred to below

• NMT routes comprising pedestrian and cycle paths, amongst others and links to existing NMT routes and networks;

- NMT routes shall have connections with existing,
- A plan for the phased development of the site and
- Flood attenuation measures
- 6.23.3 The master landscape plan referred to in above shall be to the satisfaction of the authorized official (Development Management).
- 6.23.4 A detailed landscape plan shall accompany each SDP which shall be generally in accordance with the master landscape plan and shall be to the satisfaction of the authorized official (Development Management).
- 6.23.5 All corresponding and adjacent open spaces details of the development area shall correspond, and be integrated, with the City of Cape Town's open spaces, having regard to the streets, pedestrian walkways, amongst others and shall be to the satisfaction of the authorized official (Development Management).
- 6.23.6 An open space register shall be submitted with each application submitted with each Precinct plan showing
- 6.23.6.1 Hard and soft landscaping
- 6.23.6.2 Ecological areas
- 6.23.6.3 Space of active play and
- 6.23.6.4 Heritage spaces.
 - 6.24 The developer/owner shall be responsible for implementation of the approved master landscape plan and landscape plans (including all costs) in accordance with the landscape phasing plan.

- 6.25 The Owners' Association shall ensure the maintenance and upkeep of the riverine habitat in respect of portions of the Liesbeek River canal that has been decanalised.
- 6.26 The developer shall be responsible for all costs associated with implementation of landscaping.
- 6.27 The owner/developer shall submit a Construction Phase Environmental Management Plan prior to commencement of construction demonstrating how habitats will be protected during the construction phase of the development to the approval of the delegated authority (Development Management) in consultation with the Directors: Environment and Heritage Resources Management and Catchment Stormwater and River Management.
- 6.28 All habitable spaces shall be provided above the 1:100-year floodplain in accordance with various City policies. Catchment and Stormwater Management

Catchment and Stormwater Management

- 6.29 A Stormwater Management Plan for the property shall be submitted for the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management in accordance with their requirements which may include further studies or modelling to be undertaken.
- 6.30 The developer/owner shall ensure that the necessary measures in mitigation of impacts as a consequence of flood level rise, including any necessary insurances, to safeguard properties affected by flood level rise as a consequence of this submission.
- 6.30.1 Any measures proposed in mitigation of the submission, shall be to the approval of the authorized official (Development Management) in consultation with the Director: Catchment, Stormwater and River Management.

Delete paragraph 6.31 Delete paragraph 6.31.1

- 6.32 The owner/developer shall provide a detailed river corridor management plan (as per requirements of Catchment Stormwater and River Management).
- 6.32.1 The plan referred to in 6.32 above, shall show measures to enhance water quality and restoration of water flows to the natural Liesbeek River, in addition to the management of the quality of the stormwater discharging into the Liesbeek River.
- 6.32.2 The plan shall be submitted simultaneously with the submission of the Stormwater Management Plan.
- 6.32.3 Any implementation measures referred to in 6.32.1 and 6.32.2 shall be to the account of the owner/developer.

- 6.33 The proposed upgrade of the Liesbeek River Canal on the eastern side of the property shall be subject to detailed Construction and Operational Environmental Management Plans (including plans, elevations and sections) for the design and management of the future rehabilitated environment to the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management.
- 6.34 The rehabilitation of the canalised section of the eastern Liesbeek River shall accord with international best practice trends and is not to be regarded as a substitution of habitat for filling in the historic Liesbeek River channel.
- 6.35 A report drafted by a suitably qualified professionally registered engineer shall accompany the first SDP submission and shall demonstrate that all (proposed) new and existing structures on the property, on the unsubdivided remainder Erf 151832, can withstand the forces and effects of floodwaters to the satisfaction of the delegated authority (Development Management) in consultation with the Director: Water and Waste (Catchment Stormwater and River Management).
- 6.36 The determination of the buffer width along each river and riparian landscape shall be to the satisfaction of the Director: Development Management in consultation with the Director: Water and Waste (Catchment, Stormwater River Management).

Amend paragraph 6.37 as follows:

- 6.37 Flood attenuation measures for the development as proposed and contained in the Hydrologic Study or any revision or amendment thereof that may be required resulting from this approval shall be approved by the Catchment Stormwater and River Management Department.
- 6.38 Upon the advice of the Director: Catchment, Stormwater and River Management, should it be so deemed necessary by said department, flood warning systems shall be installed and to the developer/owner/ home owner's association's account.

<u>Transport</u>

- 6.39 The proposed road infrastructure and intersections as recommended in the TIA be implemented and that Malta/ Berkley / Liesbeeck intersection shall be design option 2 as indicated in the TIA drafted by Aurecon.
- 6.40 Improvements to Liesbeek Parkway to prevent flooding of the Liesbeek Parkway shall be implemented to the owner/developer's account and shall be to the approval of the Director: Road Infrastructure and Management and Director: Transport Forward Planning (Transport Planning).
- 6.41 Detailed civil engineering plans shall provide for the road upgrades along with the associated costs which shall be to the developer/owners account.

- 6.42 The proposed Public Transport routes and infrastructure facilities shall be provided to the satisfaction of the Director: Transport Forward Planning (Transport Planning).
- 6.43 No trapped low points be created with the geometric design of all roads, parking areas and overland escape routes.
- 6.44 The developer shall be responsible for the reinstatement of all damaged municipal infrastructure after completion of the construction work to the full municipal standards.
- 6.45 At least 4801 parking bays shall be provided on the property where Precinct 1 shall accommodate 1829 parking bays and Precinct 2 shall accommodate 2972 parking bays.
- 6.46 Shared parking shall be encouraged.
- 6.47 In the event that parking is provided above the 1:100-year floodplain provision shall be made for future conversion thereof to enable the conversions to habitable space in the future.
- 6.48 Signage shall be displayed along Liesbeek Parkway and any other road identified by Director: Catchment, Stormwater and River Management and/or Director: Transport Forward Planning (Transport Planning) warning motorists of the likelihood of flooding.
- 6.49 Provision shall be made internal to the development for shared parking to occur between businesses and residential uses to prevent the underutilisation of parking.

Amend paragraph 6.50 as follows:

Provision shall be made internal to the development for a holding area to accommodate stop and drop facilities to the approval of the Director: Transport Forward Planning (Transport Planning).

6.51 Prior to the approval of a Site Development Plan, any further permissions and approvals of Heritage Western Cape and/or the Department of Environment and Development Planning shall be obtained.

<u>Note:</u>

- 1. In accordance with the Item 136 of the development management scheme, the submission of any further land use applications whether as a consequence of MPT Report Template 8 June 2017 Page 263 of 277 conditions imposed or not shall be subject to further comment and may be subject to further conditions to ensure the appropriate development of the property.
- 2. The conditions of the Provincial Administration: Western Cape (Department of Transport) shall be adhered to.
- 3. The requirements of the Director: Asset Management and Maintenance.
- 4. Various requirements of the National Water Act must be complied with in order to provide for certain water uses.
- 5. The requirements of various service branches in respect of water and sanitation, water and sewer, solid waste and electrical connections to the site.
- 6. These conditions shall be read in conjunction with the Record of Decision as submitted by the Heritage Western Cape dated January 2012 attached as Annexure I.
- 7. In respect of the subdivision: The conditions referred to be shall relate only to the subdivision of the consolidated property into portions 1 and 2. The

8. A home owners' association constitution shall be submitted after the further subdivision of each superblock for approval of the authorized official

Add a 'Note' as follows:

9. Pursuant to this approval, further development of the property shall consider the subdivision conditions referred to in the report under consideration

FOR INFORMATION: SAN GIORGIO / SEPTEMBER

SMPTNW 07/09/20 MEETING CLOSING

The Chairperson thanked the Councillors, SMPTNW Panel members and Officials for their input and for logistical arrangements of the meeting.

REASONS FOR DECISION

The applications for the rezoning from an Open Space 3 to a Subdivisional Area Overlay Zone, approval of Council and deviation from policy comply with the requirements of Sections 99(1)(2)(3) of the MPBL and are approved for the following amended and summarized reasons:

- 20. All the applications required in terms of the MPBL have been applied for and relevant public participation processes followed.
- 21. The applications are consistent with the requirements of the MSDF as the property is located within the Urban Inner Core and integration zone where development of this nature is encouraged. To this extent, the deviation from the District Plan is warranted
- 22. The proposal will result in intensification and densification of the land which is supported by City policy.
- 23. A diverse range of land uses will be accommodated on the property.
- 24. Densification and intensification of land contributes toward the spatial restructuring of the City and ensures better utilization of the service infrastructure.
- 25. Short and long term employment opportunities will be created.
- 26. The mixed use development is suitably located being surrounded by residential, business and industrial uses.
- 27. The property provides access to opportunities being located close to, and providing access to, places of employment and various services and amenities.
- 28. Reduced parking provision ensures improved thresholds for public transport use.
- 29. The reduced parking ratio is considered rational as the site is located within a public transport corridor.
- 30. It will result in road improvements that will offer wider connections to various parts of the city.
- 31. There will be no adverse impact on the service infrastructure as either sufficient capacity exists or improvements to the services infrastructure will be implemented to accommodate the proposal. In some instances, on-site provision will be made to accommodate services.
- 32. Heritage impacts have been carefully considered and heritage components will be incorporated into the development.
- 33. Certain landscaping and other measures are proposed to mitigate against impacts on the receiving environment.
- 34. Specialist studies sufficiently demonstrate that measures proposed will mitigate against impact of development within the floodplain. This is agreed to by the competent Department.
- 35. The proposal supports the principles contained in both the LUPA and SPLUMA the developer also offered to provide inclusionary housing in support of the spatial justice principle
- 36. The permitting of GB7 with a height limitation in Precinct 2 enables flexibility to be achieved at SDP Precinct level
- 37. The elevated height in Precinct 2 enables a sensitive bulk distribution where it is deemed most appropriate
- 38. In order to develop a viable solution for potential flooding and storm water management, deviation from Council policy in this regard is required and merited in order to facilitate a sustainable flood/stormwater management system for the development

ANNEXURE A1

(Conditions amended by the MPT 18-09-2020)

[Words indicated in italics have been added, words struck through must be omitted]

REF: Case ID: 70396369

In this annexure:

"City" means the City of Cape Town

"The owner" means the registered owner of the property

"The property" means Erf 151832, 6 Liesbeek Parkway Observatory

"By-law" and "Development Management Scheme" has the meaning assigned thereto by the City of Cape Town Municipal Planning Bylaw, 2015

"Item" refers to the relevant section in the Development Management Scheme

"Commissioner: TDA" means Commissioner: Transport and Urban Development Authority or his/her delegatee.

"Director: DM" means Director: Development Management or his/her delegatee.

1. REZONING GRANTED IN TERMS OF SECTION 98(b) OF THE MUNICIPAL PLANNING BY-LAW:

1.1. Rezoning of the property from Open Space 3: Private Open Space zone to a Subdivisional Area (i.e. general business and open space zones).

2. APPROVAL GRANTED IN TERMS OF SECTION 98(b) OF THE MUNICIPAL PLANNING BY-LAW:

2.1. To permit the Approval of Council in terms of Item 126 of the DMS to enable retaining structures to be constructed to a height of more than the permitted 2.0m above the existing level of the ground in lieu of 2.0m.

3. DEVIATIONS FROM THE FOLLOWING CITY POLICIES <u>SUPPORTED</u> IN TERMS OF SECTION 98(d) OF THE MUNICIPAL PLANNING BY-LAW:

- 3.1. With respect to the Table Bay District Plan in order to permit urban development on land designated as "open space", "core 2" and "buffer 1".
- 3.2. With respect to the Floodplain and River Corridor Management Policy (2009) to develop/ obstruct the free of water within the 20-year and 50-year floodplain and to seek the in-filling below the 1:50 year floodplain (excluding the in-filling of the ::Liesbeek River).
- 3.3. With respect to the Management of Urban Stormwater Impacts Policy (2009) to enable deviation from the annexure table requiring
 - 24hr extended detention of the 1-year Recurrence Interval, 24hr storm event in a greenfield development greater than 50 000m²
 - up to 10 year recurrence interval peak flow to be reduced to pre-development level in a greenfield development greater than 50 000m² and
 - up to 50 year recurrence interval peak flow to be reduced to existing development levels in a greenfield development greater than 50 000m². meet policy standards in respect of the ½ year stormwater recurrence/return intervals for a 24hr storm event.*

4. **REZONING <u>REFUSED</u> IN TERMS OF SECTION 98(c) OF THE MUNICIPAL PLANNING BY-LAW:**

4.1. Rezoning of the property from Open Space 3: Private Open Space zone to a Subdivisional Area (General Business, Sub-zone GB7).

5. DEVIATIONS FROM CITY POLICY IS <u>NOT SUPPORTED</u> IN TERMS OF SECTION 98(d) OF THE MUNICIPAL PLANNING BY-LAW RELATING TO:

- 5.1 The Floodplain and River Corridor Management Policy (2009) the in-filling of the portion of the Liesbeek River on the western side of property.
- 5.2 The Management of Urban Stormwater Impacts Policy (2009) seeking deviations from the requirement to meet the policies pollutant removal targets.*
- 5.2.1 Te annexure table requiring 24hour extended detention of the 1-year Recurrence Interval, 24h storm event in a greenfield development greater than 50 000m² and
- 5.2.2 The requirement to improve the quality of run-off relating to the annexure table requiring pollutant removal targets to be met.

6. 4. CONDITIONS IMPOSED IN TERM OF SECTION 100 OF THE MUNICIPAL PLANNING BY-LAW:

- 6.1 4.1 The property shall accommodate two precincts (Precinct 1 and Precinct 2) comprising areas designated for General Business purposes and the overall combined floor space for the two precincts shall not exceed 150 000m².
- 6.4.1.1 Precinct 1 shall not exceed a floor space of 60 000m² and Precinct 2 shall not exceed a floor space of 90 000m².
- 4.1.2 The maximum height that will be permissible in the GB7 zone must not exceed 44.7m above base level.

<u>Subdivision</u>

- 64.2 The subdivision plan required pursuant to in 64.1 above, shall –
- 64.2.1 Accompany the precinct site development plan submissions,
- 64.2.2 Be in accordance with the indicative subdivision plan attached in Annexure D1 attached., and
- 6.2.3 Be to the prior approval of the delegated authority (Development Management).
- 64.3 The submission of a subdivision plan clearly identifying the
 - a. Cadastral boundary of the site and each portion
 - b. Extent if each portion
 - c. Zone of each portion including the sub-zone as approved herein
 - d. Servitude right of ways registered in favour of the general public
 - e. Services.
- 6.3.1. The subdivision plan shall show the subdivision of the property into three portions comprising:

- Portion 1 being 48361m² in extent,
- Portion 2 being 49148m² in extent, and
- Portion 3 being 49835m² in extent.
- 6-4.3.1.1 Portion 3 of subdivision shall be zoned for Open Space 3: Special Open Space purposes and shall be a minimum of 49835m² in extent.
- 64.3.1.2 Portion 3 shall comprise servitude rights of way registered in favour the general public and shall be to the satisfaction of the delegated *authorized* official (Development Management).
- 6 4.3.2 A servitude right of way to permit the general public access across any internal private roads shall be registered prior to the first occupancy certificate being issued for the portion 2 in accordance with the Annexure D1 to the satisfaction of the authorized official.
- 6.3.3 Subject to the prior approval of the delegated authority (Development Management), servitude rights of way to permit the general public access across any internal private roads shall be registered for portions 1 and 3.

6.3.4

Development Framework-Site development Plan

- 6-4.4 Prior to any development, the applicant/owner/developer shall prepare and submit a SDP development framework for the property detailing the development of the site approval by the authorized official.
- 64.4.1 The SDP framework mentioned in 64.4 above shall be informed by the HIA/EIA and principles established in the Urban Design Study, Visual Impact Assessment, Hydrology Study (which may be amended to meet further requirements of relevant City departments).
- 64.4.2 The SDP framework shall, furthermore, include
 - The two precincts mentioned in condition $\frac{65.2}{100}$.
 - Overall site design;
 - Spatial distribution of land uses within each precinct;
 - Phasing of development across the site;
 - Vehicular movement and access arrangements;
 - NMT movement and linkages to NMT routes external to the development
 - Areas of historic significance with specific regard to areas on the property where the history of the property will be memorialised;
 - Public and private spaces;
 - Open spaces with associated linkages external to the development;
 - Edges of the site.
 - Character precincts identified in the HIA/EIA, Visual Impact Study and Urban Design Study.

6.4.3 The framework shall be to the approval of the delegated authority (Development Management).

Precinct Plans

- 64.5 Each character precinct referred to in 64.4.2 above shall
- 64.5.1 Ensure that buildings located along Berkley Road extension shall be higher than those located along the southern edge of the eco-corridor identified in the EIA.
- 64.5.2 Have regard for the heights of buildings and display a hierarchy of spaces, demonstrate the treatment of corners and edges, internal roads and building being stepped to accommodate light penetration.
- 64.5.3 Identify appropriate locations where foreground and background buildings are to be situated.
- 6.6 Prior to the submission of site development plans, Precinct plans shall be submitted for each precinct and shall include –
- 6.6.1 Urban design and development guidelines for the entire development in general accordance with 6.4 above.
- 6.6.2 4.6 The design of each precinct shall show
 - The extent of each precinct;
 - Character areas;
 - Appropriately located bulk, including for example: hierarchy of spaces; light penetration; and foreground and background buildings;
 - Visual/view corridors;
 - Road / built form interfaces;
 - Any boundary treatments
 - Floor space ratio per precinct,
 - Land use mix,
 - Number of parking bays,
 - Gateway buildings;
 - Landscaping interventions.
 - NMT;
 - Maximum heights building heights measured from base level;
 - Floor space per precinct;
 - Ranges of uses having regard to the permissible floor space;
 - The number of parking bays provided;
 - Public, semi-public and private spaces
 - Interface conditions with the public realm having specific regard to the Urban Design policy demonstrating compliance with the principles contained therein;
 - Holding areas for public transport stops.

6.6.3 The Precinct plans shall be to the approval by the delegated authority (Development Management).

- 64.7 In respect of Precinct 1:
- 64.7.1 Building heights shall ensure that the lowest buildings observe the heritage indicators in relation to the SAAO (Erf 26493 to the east of the property).
- 64.7.2 East/west pedestrian access into the retail component shall be open-to-the-sky and shall permit public access that links to the wider NMT network and surrounds.
- 64.7.3 Gateway buildings shall be reflected in height and architectural treatment.

- 64.7.4 Buildings shall be designed to ensure an appropriate interface with the surroundings.
- 64.8 In respect of Precinct 2:
- 64.8.1 The built form shall be separated to a greater degree than that proposed with greater levels of articulation to break up the monolithic form still experienced.
- 64.8.2 Highest buildings are to respond to the higher order Berkley Road. The height, mass, and bulk of buildings needs to be carefully considered to avoid conditions that may cause a 'walled development response'.
- 64.9 Each precinct plan and all subsequent site development plans shall be accompanied by a bulk registered detailing
 - Floor space per land use within each precinct utilised and residual available;
 - Overall floor space for the property utilised and residual available;
 - Parking provision per precinct required and that constructed.
- 64.10 The floor space allocated per precinct shall not be transferable between precincts.

6.11 The area proposed as OS3 on Erf151832, and the remaining full development area shall be registered as a public right of way servitude in perpetuity.

- 6.12 4.11 The proposed link road alignment and form shall be designed to further reduce the negative visual impact on the "sense of place" experienced so as not to detract from the public and NMT users' experience, especially within and adjacent to, the ecological corridors.
- 6.13 4.12 Traffic circles provided on the property shall endeavour to accommodate a NMT prioritised environment which will facilitate the accessibility of the OS3 as part of the NMT route.
- 6.14 4.13 Detailed design of any vehicular or pedestrian control measures introduced on the property shall accompany the SDP for each phase.
- 6.15 Site Development Plans (SDP) shall be submitted for each individual development within the Precinct Plans and Character Areas and with the corresponding Landscape SDP Plans.
- 6.16 All SDP's shall be accordance with the development framework and precinct plans.
- 6.174.14 The base level indicated for buildings and structures shown on each SDP shall accord with that indicated in Annexure C17.

Zoning and Land uses

6.18 4.15 The land uses accommodated on-site in use zones GB3, GB6 and GB7 shall be limited to

- Business Premises (Shops, Offices, Restaurants)
- Flats (including a minimum of 6000m² of inclusionary house)
- Hotel
- Place of entertainment (gym, conference facility, events pavilion)
- Place of Instruction
- Parking appurtenant to the abovementioned uses and

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• Ancillary uses appurtenant to uses accommodated on the property.

6.19 Notwithstanding the provisions of the DMS, coverage on the property (after subdivision) shall not exceed 35%.

- 6.204.16 The provision of inclusionary housing shall be interspersed with the open market dwelling units and other activities. At least 6000m² (or 20% of the residential component whichever is greater) shall be provided for affordable housing, as defined in the MSDF and must be indicated on the SDP and at building plan submission stage. The developer shall submit the plan for implementation of rental units in perpetuity, which shall be to the satisfaction of the authorized official.
- 6.214.17 Housing typologies within the River Club shall be varied in typology and nature.
- 6.22 With respect to the overall maintenance and management responsibilities for the property, the applicant/owner/developer shall enter into any necessary agreements with the City prior to issuance of any occupancy certificate/s.
- 4.18 An Owners' Association shall be established, as provided for in the By-Law, to be responsible for maintenance and management of the private roads and private open spaces.

Landscape plan

- 6.23 4.19 A master landscape plan, drafted by a suitably qualified landscape architect, shall be included in the development framework referred to above. Furthermore, the master landscape plan shall -
- 6.23.14.19.1 Conform to the associated guidelines and principles set out in the landscape guidelines accompanying this application and shall be generally in accordance with the landscape concept plan submitted.
- 6.23.2 4.19.2 The master landscape plan shall detail
 - Planting, terrestrial and riverine amongst others that will be removed, retained, transplanted and new planting;
 - The provision of buffer areas along the river/canal edges;
 - Servitude rights of way;
 - Hard and soft landscaping;
 - Areas of historic significance and the memorialising the history of the site;
 - Street furniture;
 - Lighting and light fixtures across the site;
 - Provision of attenuation measures (including vegetated swales, bioretention areas, source control, etc.) which shall have regard to the stormwater flood management plan referred to below;
 - NMT routes comprising pedestrian and cycle paths, amongst others and links to existing NMT routes and networks;
 - NMT routes shall have connections with existing, and
 - A plan for the phased development of the site.
 - Flood attenuation measures

6.23.34.19.3 The master landscape plan referred to in above shall be to the satisfaction of the delegated authority authorized official (Development Management).

- 6.23.4 4.19.4 A detailed landscape plan shall accompany each precinct plan SDP which shall be generally in accordance with the master landscape plan and shall be to the satisfaction of the delegated authority (Development Management).
- 6.23.5 4.19.5 All corresponding and adjacent open spaces details of the development area shall correspond, and be integrated, with the City of Cape Town's open space in addition to having regard to the streets, pedestrian walkways, amongst others and shall be to the satisfaction of the delegated authority (Development Management).
- 6.23.6 4.19.6 An open space register shall be submitted with each application submitted with each precinct plan showing
- 6.23.6.14.19.6.1 Hard and soft landscaping
- 6.23.6.2 4.19.6.2 Ecological areas
- 6.23.6.3 4.19.6.3 Space of active play and
- 6.23.6.4 4.19.6.4 Heritage spaces.
- 6.24 4.20 The developer/owner shall be responsible for implementation of the approved master landscape plan and landscape plans (including all costs) in accordance with the landscape phasing plan.
- 6.25 4.21 The applicant Owner's Association shall ensure the maintenance and upkeep of the riverine habitat in respect of portions of the Liesbeek River canal that has been decanalised.
- 6.26 4.22 The developer shall be responsible for all costs associated with implementation of landscaping.
- 6.27 4.23 The applicant/owner/developer shall submit a Construction Phase Environmental Management Plan prior to commencement of construction demonstrating how habitats will be protected during the construction phase of the development to the approval of the delegated authority (Development Management) in consultation with the Directors: Environment and Heritage Resources Management and Catchment Stormwater and River Management.
- 6.28 4.24 All habitable spaces shall be provided above the 1:100 year floodplain in accordance with various City policies.

Catchment and Stormwater Management

- 6.29 4.25 A Stormwater Management Plan for the property shall be submitted for the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management in accordance with their requirements which may include further studies or modelling to be undertaken.
- 6.30 4.26 The developer/owner shall ensure that the necessary measures in mitigation of impacts as a consequence of flood level rise, including any necessary insurances, to safeguard properties affected by flood level rise as a consequence of this submission.
- 6.30.14.26.1 Any measures proposed in mitigation of the submission, shall be to the approval of the delegated authority (Development Management) in consultation with the Director: Catchment, Stormwater and River Management.

- 6.31 Buildings on the South African Astronomical Observatory shall be flood proofed where necessary and in consultation with that land owner and shall be to the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management.
- 6.31.1 Unless determined otherwise by the delegated authority (Development Management), the flood proofing mentioned inn 6.31 above shall be implemented prior to the issuing of the first occupancy certificate for the development proposed and shall be to the owner/developers account.
- 6.324.27 The applicant/owner/developer shall provide a detailed river corridor management plan (as per requirements of Catchment Stormwater and River Management).
- 6.32.14.27.1 The plan referred to in 6.32 4.27 above, shall show measures to enhance water quality and restoration of water flows to the natural Liesbeek River, in addition to the management of the quality of the stormwater discharging into the Liesbeek River.
- 6.32.2 4.27.2 The plan shall be submitted simultaneously with the submission of the Stormwater Management Plan.
- 6.32.3 4.27.3 Any implementation measures referred to in 6.32.1 4.27.1 and 6.32.2 4.27.2 shall be to the account of the owner/developer.
- 6.33 4.28 The proposed upgrade of the Liesbeek River Canal on the eastern side of the property shall be subject to detailed Construction and Operational Environmental Management Plans (including plans, elevations and sections) for the design and management of the future rehabilitated environment to the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management.
- 6.344.29 The rehabilitation of the canalised section of the eastern Liesbeek River shall accord with international best practice trends and is not to be regarded as a substitution of habitat for filling in the historic Liesbeek River channel.
- 6.35 4.30 A report drafted by a suitably qualified professionally registered engineer shall accompany the first SDP submission and shall demonstrate that all (proposed) new and existing structures on the property, on the unsubdivided remainder Erf 151832, can withstand the forces and effects of floodwaters to the satisfaction of the delegated authority (Development Management) in consultation with the Director: Water and Waste (Catchment Stormwater and River Management).
- 6.36 4.31 The determination of the buffer width along each river and riparian landscape shall be to the satisfaction of the Director: Development Management in consultation with the Director: Water and Waste (Catchment, Stormwater River Management).
- 6.37 4.32 Flood attenuation measures for the development as proposed and contained in the Hydrologic Study or any revision or amendment thereof that may be required resulting from this approval, including but not limited to alternate measures to filing in of the Liesbeek River, shall be approved by the Catchment Stormwater and River Management.

6.38 4.33 Upon the advice of the Director: Catchment, Stormwater and River Management, should it be so deemed necessary by said department, flood warning systems shall be installed and to the developer/owner/ home owner's association's account.

<u>Transport</u>

- 6.39 4.34 The proposed road infrastructure and intersections as recommended in the TIA is implemented and that Malta/ Berkley / Liesbeeck intersection shall be design option 2 as indicated in the TIA drafted by Aurecon.
- 6.40 4.35 Improvements to Liesbeek Parkway to prevent flooding of the Liesbeek Parkway shall be implemented to the owner/developer's account and shall be to the approval of the Director: Road Infrastructure and Management and Director: Transport Forward Planning (Transport Planning).
- 6.41 4.36 Detailed civil engineering plans shall provide for the road upgrades along with the associated costs which shall be to the developer/owners account.
- 6.42 4.37 The proposed Public Transport routes and infrastructure facilities shall be provided to the satisfaction of the Director: Transport Forward Planning (Transport Planning).
- 6.43 4.38 No trapped low points are created with the geometric design of all roads, parking areas and overland escape routes.
- 6.44 4.39 The developer shall be responsible for the reinstatement of all damaged municipal infrastructure after completion of the construction work to the full municipal standards.
- 6.45 4.40 At least 4801 parking bays shall be provided on the property where precinct 1 shall accommodate 1829 parking bays and precinct 2 shall accommodate 2972 parking bays.
- 6.46 4.41 Shared parking shall be encouraged.
- 6.47 4.42 In the event that parking is provided above the 1:100 year floodplain provision shall be made for future conversion thereof to enable the conversions to habitable space in the future.
- 6.48 4.43 Signage shall be displayed along Liesbeek Parkway and any other road identified by Director: Catchment, Stormwater and River Management and/or Director: Transport Forward Planning (Transport Planning) warning motorists of the likelihood of flooding.
- 6.49 4.44 Provision shall be made internal to the development for shared parking to occur between businesses and residential uses to prevent the underutilisation of parking.
- 6.50 4.45 Provision shall be made internal to the development for holding area to accommodate stop and drop facilities internal to the development to the approval of the Director: Transport Forward Planning (Transport Planning).
- 6.51 4.46 Prior to the approval of a site development plan, any further permissions and approvals of Heritage Western Cape and/or the Department of Environment and Development Planning shall be obtained.

<u>Note:</u>

- 1. In accordance with the Item 136 of the development management scheme, the submission of any further land use applications whether as a consequence of conditions imposed or not shall be subject to further comment and may be subject further conditions to ensure the appropriate development of the property.
- 2. The conditions of the Provincial Administration: Western Cape (Department of Transport) shall be adhered to.
- 3. The requirements of the Director: Asset Management and Maintenance.
- 4. Various requirements of the National Water Act must be complied with in order to provide for certain water uses.
- 5. The requirements of various service branches in respect of water and sanitation, water and sewer, solid waste and electrical connections to the site.
- 6. These conditions shall be read in conjunction with the Record of Decision as submitted by the Heritage Western Cape dated January 2012 attached as Annexure I.
- 7. In respect of the subdivision: The conditions referred to be shall relate only to the subdivision of the consolidated property into portions 2 and 3. The further subdivision of portions 2 and 3 shall necessitate circulation to branches for comment and further service related conditions in respect of the subdivisions to be imposed.
- 8. A home owners' association constitution shall be submitted after the further subdivision of each superblock for approval the approval of the Director: Development Management.
- 9. Pursuant to this approval further development of the property shall consider the subdivision conditions referred to in the report under consideration.





