

**CASE ID 150010695
ERF 28173, 10 DIXON RD
OBSERVATORY**

ADDENDUM TO OBJECTION NOTICE MPBL – LUM 18

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INTEREST IN THE APPLICATION: I am a local resident interested in the preservation of the historic buildings in Observatory and Greater Cape Town.

REASON FOR OBJECTION – SEE BELOW

INTRODUCTION

1. The applicant is seeking the removal of certain Title Deed Restrictions, Council's Consent and approval to permit a place of worship and a place of instruction as set out in annexure A to Applicant's application.
2. It is our view that the site is not suitable for either:
 - a. A place of Worship; nor
 - b. A place of instruction, for the reasons enumerated below which will be expanded on later in our submission.

Heritage

- i. The erf enjoys double protection in terms of Municipal protections in that:
- ii. The Erf is zoned single residential, but is also zoned a heritage site in the City Zoning Map.
- iii. The Erf is also situated within the Observatory Heritage Protection Overlay Zone, which exempts this portion of Observatory and the particular erf from Cape Town's Municipal Spatial Development Framework, Table Bay District Plan 2023 and falls within TRUP which requires the City to protect the historic fabric and residential character of Observatory.

Parking

- iv. The application fails to mention that the erf is the last erf in a short cul-de-sac which is incapable of being linked to any other exit as it is bounded by Liesbeek Rd (a turn-off from Settler's Way) on the South, and private property on the North, East and West.
- v. The applicant proposes placing 24 parking bays on the property.
- vi. The 24 parking bays do not cater adequately for the envisaged 142 congregants, nor for any vehicles parked permanently for the envisaged place of instruction. There have been ongoing and continuous issues with parking since the applicant commenced using the erf as a place of worship.

- vii. The City is reminded that despite compliance with Item 137 of the DMS, a place of worship attracts all the congregants at the same time, unlike other businesses which have staggered customers.
- viii. The historic buildings consist inter-alia of the Dove Cote and two barns. The barns have thatched rooves. In the light of the unique historic value of the erf, there are two fire hydrants placed on the street outside the property. These hydrants are blocked by congregants parking over them on an ongoing and continuous basis.
- ix. The 24 parking bays will destroy the gardens of the property by tarring the entire frontage, leading to a permanent change in the character of the erf from a garden residence to commercial erf.

Use and noise

- x. The erf is situated in a quiet residential cul-de-sac.
- xi. The church does not restrict its activities to Sunday services. In addition to the Sunday services, the church has midweek band practise other week night functions, , Weekend functions and weekend band practises and the Sunday Service. In other words, the character of the neighbourhood is being changed for the benefit of one applicant. This is not acceptable.

- xii. With the addition of a creche it is envisaged that the number of functions will increase proportionately which will further degrade the neighbourhoods characteristics.
- xiii. The applicant proposes that the children play in an area on the Western side of the property. Of 60m². This is unrealistic.

Applicant's status

- xiv. Applicant is a company, Cape Lorraine (Pty) Ltd with its registered address as 19 Richleu St, Courtrai, Paarl. It is therefore quite apparent that Applicant neither resides on the premises nor is part of the community of Observaory. Applicant's director is the director of 63 companies no others of which are situated in Observatory.
- xv. The premises are presently occupied by the Shofar Church registered as a Voluntary Association with the Department of Social Development. The Shofar Church has over 50 churches both locally and internationally. The church is 'in business' at the premises and has been for approximately 5 years.
- xvi. During the period that the church has occupied the premises, there have been previous contraventions of the City by-laws, which have resulted in the city taking action against the occupant¹.
 - i. The transgression in particular was the unauthorised land use undertaken by the owner in the form of a barn which was

¹ See the Report to the Municipal Planning Tribunal MPTNW150821

converted to a place of worship - (the barn being an 18th Century building for which heritage status is pending by the Provincial Heritage Council).

- xvii. Given the nature of the application (a church and chreche), we believe that the application is driven by the tenant, the Shofar Church and that the applicant has merely formally endorsed the application. Applicant has given its authority to Thomas Brummer to submit the application on its behalf.
- xviii. Given that the Shofar Church is a large multinational institution, we are surprised that it has not investigated more suitable premises in Observatory from which to conduct its business.
- xix. A brief search on the Web “Business premises to let in Observatory Cape Town” will reveal that there are multiple premises which have the potential to suit the needs of the Shofar Church, which are not constrained by residential use, parking issues, noise and use issues, and the destruction of the heritage component on premises which are doubly protected in terms of the city by-laws.

Municipal Services

- xx. Given the above, the impact on municipal services must be taken into consideration. In particular:
 - 1. Garbage collection is difficult at present as Dixon Road is a narrow cul-de-sac. Access by garbage trucks is regularly blocked due to parked cars on both sides of the street, thereby limiting access.

2. The problem of access to fire hydrants has already been noted. See photographs attached.
3. Water and Sewage services in the area will have to be up-scaled to cater for an estimated 142 people.

Observatory Civic Association

- xxi. We endorse the separate objection submitted by the Observatory Civic Association and request that it be read as if submitted as part of this application.

THE APPLICATION

3. The Application available at the City Website contains
 - a. Annexure A – The list of applications required,
4. The application does not contain
 - a. Annexure B – The Application Form
 - b. Annexure C – The copy of the Title Deed
 - c. Annexure D – The company resolution and power of attorney
 - d. Annexure F – The Site Development Plan
 - e. Annexure H – The Heritage Impact Assessment
 - f. Annexure I – The Coornhoop Landscape Character analysis.
 - g. The Traffic Impact Assessment as mentioned on Page 2 of the application.
5. We are therefore unable to determine the merits of the missing documents, and submit that these should have been attached to the list of documents available at the City Website.

6. The application seeks approval to demolish the Library. The application does not mention the age of the Library, but does mention that all the buildings on the site are Grade IIIA buildings². The application further does not mention the style of the Library (Victorian, Cape Dutch, Modern etc). We believe that the style of the building is important in assessing its heritage status.
 - a. The Dovecote in particular has further heritage protection and there is presently an application pending with the Heritage Western Cape for Grade II protection of all the other buildings.
 - b. We do not know whether the Heritage Impact Assessment has commented on the pending application, but believe that Heritage Western Cape's input is needed.
7. The Application seeks consent to erect an auditorium with a seating capacity of 142 people. As noted above, the church has continuously used the premises in contravention of the City by-laws, and is now seeking to regularise an unlawful use by applying for deviations of the City by-laws. This cannot be acceptable, particularly when the church has shown no enthusiasm for finding alternative, suitable premises.
8. The Application seeks consent for the creation of an Early Childhood Development Centre (pre-school) for 30 children.
9. A close and critical examination of the Early Childhood Development Policies set out on 24 – 26 of the application will show that:
 - a. The surrounding land use is not suitable, being entirely residential in nature.

² Page 15 of the application.

- b. The facility cannot be incorporated into the surrounding area without detrimentally affecting the character and nature of the area.
 - c. There is no pedestrian access.
 - d. The site is inherently problematic in terms of parking, and will be affected by the ECD.
 - e. There is no mention in the application of the City Health Department Standards.
 - f. The ECD is in conflict with the density and urban fabric of the surrounding area.
 - g. The operator is not the owner and does not reside on site.
 - h. The proposal to mitigate noise levels by allowing the children to play in a 60m² area located at the back of the property is unrealistic and shot sighted.
10. The combined nature of a church and ECD means that the premises will be used continuously from Monday to Sunday on a business model. This is unacceptable in a residential area and must be refused.

THE MUNICIPAL PLANNING BY LAW

11. We submit that the application offends against S99 of the MPBL in that:
- a. The application is not desirable as contemplated in S99(3).
 - b. The application pays lip service to the development framework but the church has in the past breached conditions of the framework.
 - c. The application offends against the special development framework for the area both in general terms and in terms of the Table Bay District Plan and TRUP.
 - d. The social impact as contemplated in S99(3).
 - e. The compatibility with surrounding uses.

f. The impact on heritage. The City is reminded of Spatial Strategy 2 Policy P11 which provides for the identification, conservation and management of heritage resources. We submit that the application must be refused as it contradicts this principle.

g. Traffic impacts.

12. We further submit that the imposition of conditions will not assist the applicant in that limiting conditions will prevent the applicant from achieving its desires.

We therefore request that the City refuse the application to which this objection is directed.