

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70466546				
CASE OFFICER	L van Blerk				
CASE OFFICER PHONE NO	0214441042				
DISTRICT	Northern				
REPORT DATE	13/08/2019				
INTERVIEW REQUESTED	APPLICANT OBJECTOR(S)	YES		NO	✓
					✓

ITEM NO **MPTNE22/09/19**

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 2616, BRACKENFELL

1 EXECUTIVE SUMMARY

Property description	Erf 2616, Brackenfell
Property address	2 Windhoek Way Arauna
Site extent	945.47m ²
Current zoning	Single residential 1 (SR1)
Current land use	Office
Overlay zone applicable	None

Submission date	24/07/2019
Subject to PHRA / SAHRA	N/A
Any unauthorised land use / building work?	The subject property has been used as offices since 2012 without planning approval.
Has owner applied for the determination of an administrative penalty	Yes
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No
Has the City served a notice on the owner or other person in respect of	No

the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	932
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

Erf 2616, Brackenfell has been used as an office since January 2007. A Temporary departure application to use the property for Financial Service Business was approved in February 2007. This approval however lapsed in 2012. The property has since been used in its entirety as offices for financial services.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation of the proposed is attached as **Annexure C** and may be summarised as follows:

- The owner was not informed or aware of the time period attached to the temporary land use departure approval.
- The duration of the unlawful use is over 7 years.
- The entire dwelling is used for office purposes and measures 217m² in extent.
- Considering that 50m² may be utilised as-of right for office purpose as a home occupation, the total area of unlawful land use is deemed to be approximately 167m².
- The temporary departure granted must be considered as an extenuating circumstances.
- A land use application is being prepared for a rezoning to rectify the unauthorised land use.
- The operations cannot be terminated as it will negatively impact on the financial interests of the owner, the employees and to the client base that it serves.
- The owner did not contravene the By-Law purposefully or in a premeditated manner.

5 ASSESSMENT OF APPLICATION

933

- 5.1 As indicated above, the unauthorized use Development Management Scheme.
- 5.2 In terms of section 129(7)(b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

Administrative Penalty: Calculation

5.2.1 Unauthorised land use

- Property Value R2 480 000
- Property size: 945.47m²
- Area of the unauthorized use: 945.47m²

$$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2\text{)}} \times \text{Total Unlawful Area (m}^2\text{)} = R$$

$$\frac{2480000}{945.47 \text{ (m}^2\text{)}} \times 945.47 \text{ (m}^2\text{)} = R2480000$$

1% of total value	2% of total value	5% of total value	10% of total value	20% of total value
R 24800	R 49600	R 124000	R 248000	R 496000

An amount which is not more than 100% of R may be imposed as an administrative penalty.

- 5.3 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

a) **The nature, duration, gravity and extent of the contravention**

The property is zoned for Single Residential 1 purposes. The approved dwelling house was converted and is currently being utilized as offices. There is no residential component on the subject property, therefore it is deemed that the full extent of the property is used unlawfully and not only the extent of the dwelling unit as per the applicant's motivation. There are 28 permanent office workers working from the subject property. The duration of the unlawful is just over 7 years.

b) **The conduct of the person involved in the contravention**

The land owners have indicated that they were unaware of a lapsing period for the temporary departure granted. When considering the term temporary land use departure, and when something is temporary it is clear that a time period is attached to it. The current operation has been ongoing for 12 years as if a permanent approval was granted, therefore it

is difficult to accept the explanation that the operator was unaware of lapsing period.

c) Whether the unlawful conduct was stopped

The office use is still in operation as the owner employs 28 people, and is in the process of submitting a land use application for the rezoning of the property.

d) Whether a person involved in the contravention has previously contravened by this By-Law or any other planning law

As far as can be ascertained, the owner of the property has not previously contravened this By-Law or any other planning law.

5.4 It is recommended that a 2% (R 49600) penalty be charged.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The full extent of the property is used unlawfully with no residential component.
- 6.2 The unlawful use has been ongoing for more than 7 years.
- 6.3 The operator complied with the requirements for a submission of an Administrative Penalty application.
- 6.4 As far as can be ascertained, the owner of the property has not previously contravened this By-Law or any other planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R49600 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 2616, Brackenfell.

ANNEXURES

- Annexure A District Context and Locality Plan
- Annexure B Site map / building plan
- Annexure C Applicant's motivation / representations



Section Head

Name: Sean van Rensburg

Tel no: 021 444 1044

Date: 15-8-2019



District Manager

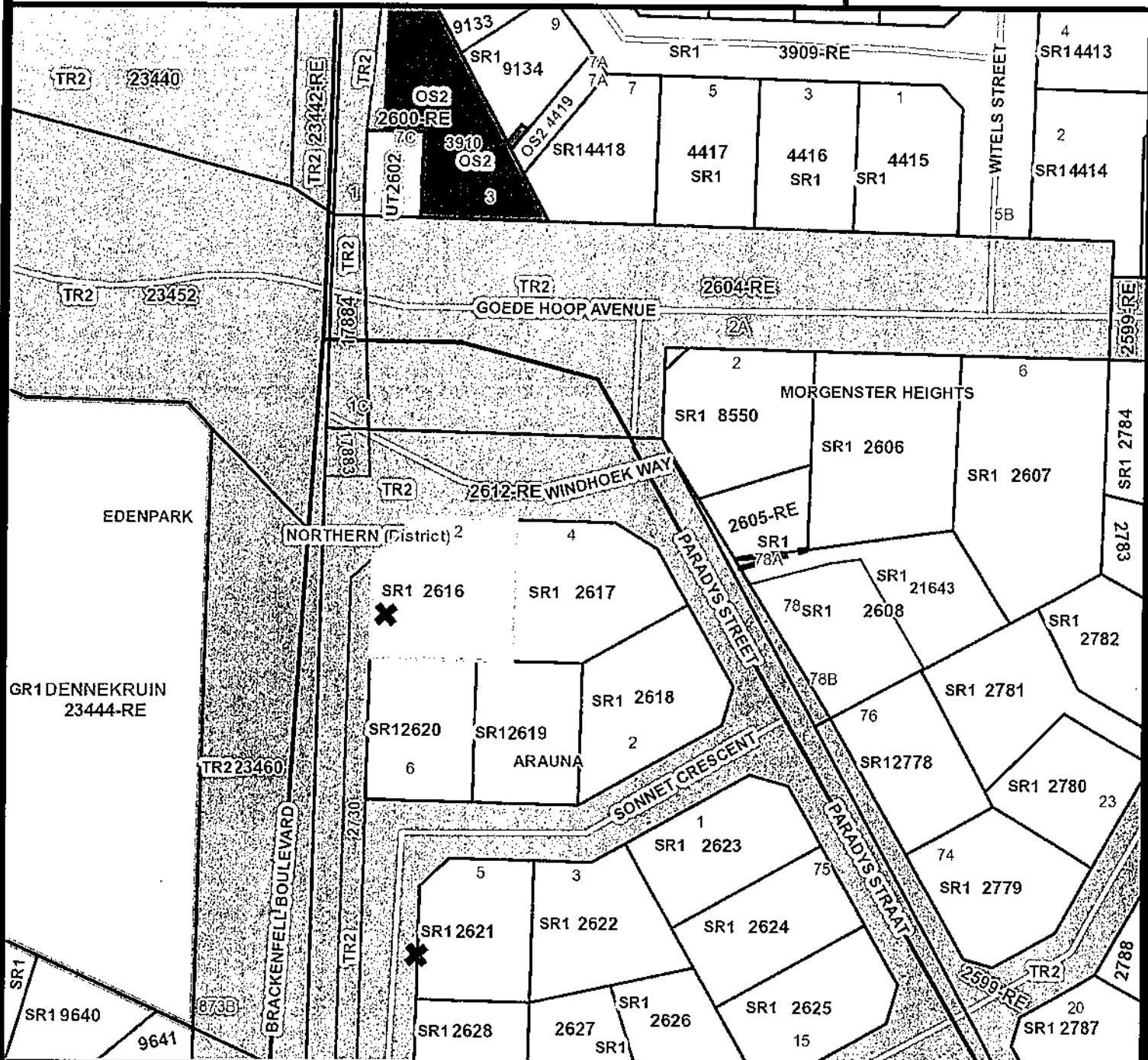
Susan Matthysen

021 444 1061

21/08/2019

Annexure A

Locality plan



Overview

Erf: 2616

District: NORTHERN

Allotment: BRACKENFELL (S)

Suburb: ARAUNA

Ward: 102

Sub Council: Subcouncil 2



1:1 278

Notices Served

Support
Received

Petition Signatory



Objections
Received



Generated by:

Date: Tuesday, 13 August 2019

File Reference:



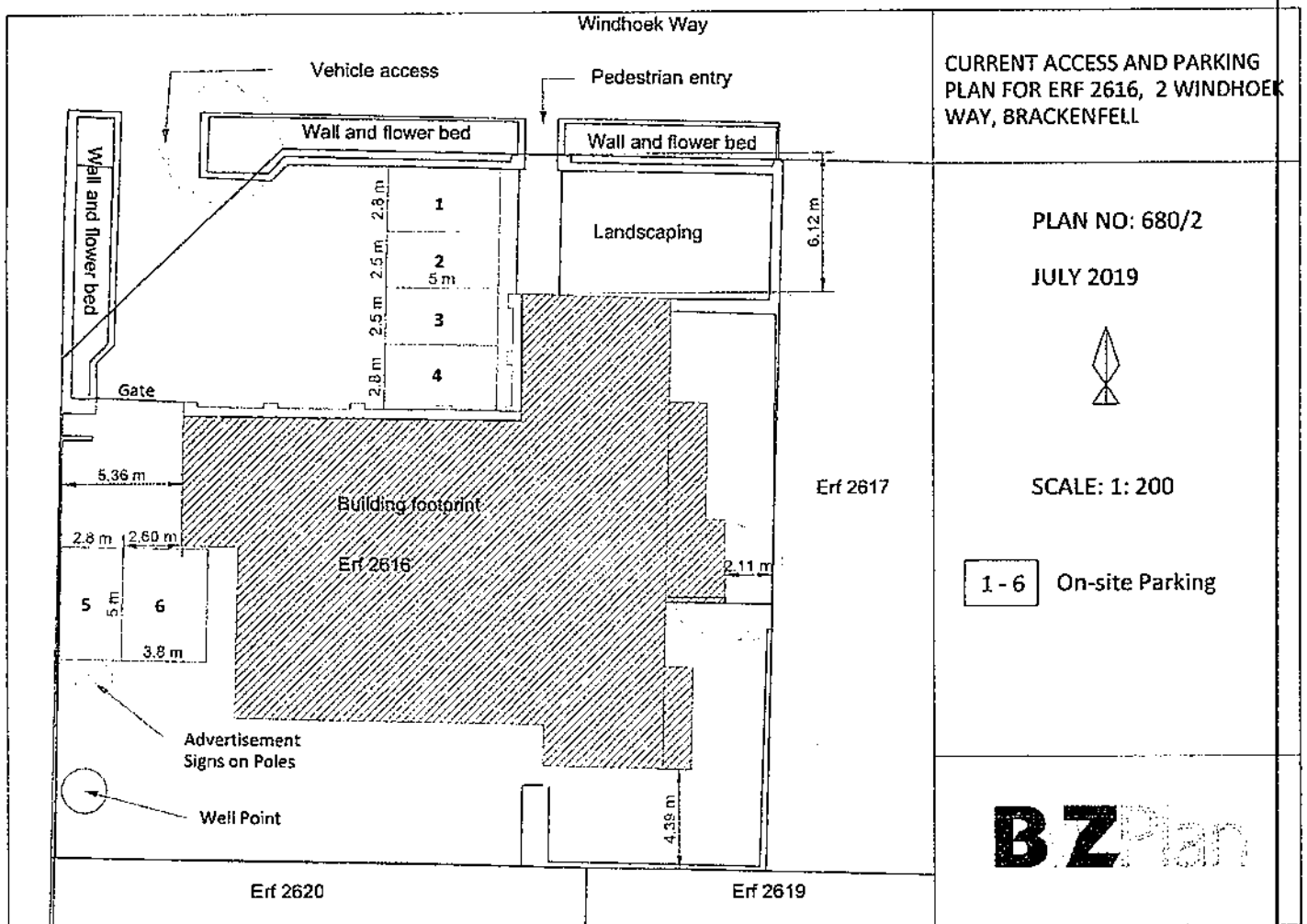
CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Annexure B

Site development / Layout plan

938



Annexure C

Applicant's motivation

APPLICATION FOR
- THE DETERMINATION OF AN ADMINISTRATIVE PENALTY

In relation to:
Erf 2616, Brackenfell;

Also known as:
2 Windhoek Way, Arauna, Brackenfell

July 2019

Application presented to the City of Cape Town

Applicant:



Professionele Beplanningskonsultante / Professional Planning Consultants

• T 021 981 1406 • F 021 982 3672 • C 082 7744563 • E nicky@bvzplan.co.za

On behalf of:

Home Bound Investment (PTY) LTD

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2.1 Ownership, title description and municipal valuation

2.2 Location

2.3 Existing land uses

2.4 Existing zoning

2.5 Background and previous approvals

2.6 Pre-application meeting

3. APPLICATION**4. DETERMINATION OF AN ADMINISTRATIVE PENALTY**

4.1 Perspective on contravention

4.2 The nature, duration, gravity and extent of the contravention

4.3 The conduct of the person involved in the contravention

4.4 The termination of unlawful conduct

4.5 Previous contraventions

5. CONCLUSION AND RECOMMENDATION

A: LOADED ON DAMS AS SEPARATE DOCUMENTS**SUPPORTING PLANS**

A1 - General Plan

A2 - Location Plans

SUPPORTING INFORMATION

A3 - Title Deed No T96112/2006, dated 01/12/2006

A4 - Power of Attorney

A5 - Resolution for the Signatory

A6 - Summary of Pre-Application Meeting with City, dated 17 April 2019

A7 - Application Form

B: ATTACHED TO THIS MOTIVATION**SUPPORTING PLANS**

B1 - Current Zoning and Spatial Designation Plans

B2 - Building Plans Permission, Application number 136661, dated 23/03/2007

B3 - Current Access and Parking Plan, Plan No: 680/2, dated July 2019

B4 - Ground Floor Plan, Plan No: 680/1, dated July 2019

SUPPORTING INFORMATION

B5 - Municipal Valuation Rates Estimation, dated 12 July 2019

B6 - Emails between Llewellyn van Blerk (CoCT) and BvZPlan, dated 13/05/2019, 15/05/2019 and 13/06/2019

B7 - Previous Final Notification and Letter of Approval, OB BC/NP Erf 2616 (Application Nr. 125031), dated 23/02/2007 and 26/01/2007

B8 - Application to lease to Property Management – City of Cape Town, dated 08/01/2008

1. EXECUTIVE SUMMARY

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Property description	Erf 2616, Brackenfell
Property address	2 Windhoek Way, Arauna, Brackenfell
Application components / description	Determination of an Administrative Penalty to allow the continued use of a residential property as an office (Application for rezoning to follow)
Site extent	945m ²
Current zoning	Single Residential 1 (SR1)
Current land use	Unauthorised office use (No notice was served)
Overlay zoning applicable	None
PHRA or SAHRA heritage	None

2. PROPERTY INFORMATION

2.1 Ownership, title description and municipal valuation

Ownership	Bond	Title description	General diagram	Municipal valuation
Home Bound Inv Pty Ltd	FirstRand Bank Ltd (continuing bond)	T96112/2006	T28558/1968	R2 480 000.00 Rating Category: Business and Commercial

The property's ***Title Deed***, ***General Diagram*** and ***Municipal Valuation Rates Estimation, dated 12 July 2019*** are attached.

A ***Power of Attorney*** and ***Resolution for the Signatory*** in relation to Erf 2616 that nominates BvZPlan as the registered owner's legal representative/agent are attached. A bond is registered against the property. The Title Deed does not contain restrictive conditions that need to be removed in order for the proposed development to take place. This has been confirmed with a planning officer, Llewellyn van Blerk at the Northern District, per ***Email dated 13/05/2019*** (attached).

2.2 Location

The location of the site is shown on the attached ***Location Plans***. It is located in Arauna, Brackenfell to the south of the N1 and to the east of Brackenfell Boulevard (M100). The site is bounded by Windhoek Way (cul de sac) to the north, with a narrow strip of public open space along the west and and public road and open space to the north (partially located on Erven RE2612 and RE2604). Brackenfell Boulevard is within close proximity to the application site and is regarded as Development Route (Northern District Plan – See ***Current Zoning and Spatial Designation Plans***) and a Class 3 Secondary Arterial with many public transport options.

2.3 Existing land uses

The application site is located in a residential area and has the appearance of a residential property, except for advertising signs on poles which are visible from Brackenfell Boulevard. The residential property has been used as an office since 2007. The residential property to the east is being used as a place of instruction, known as Cowley Reading Centre; whilst this part of Arauna, especially the properties in close proximity to Brackenfell Boulevard is characterised by converted residential properties that are used for small businesses/offices.

Windhoek Way is a cul de sac and is generally used for parking of vehicles associated with the office use (Erf 2616) and place of instruction (Erf 2617). An open space (part of Erf RE2604) exist directly to the north of Windhoek Way. A small section of this open space has a hard surface, apparently a children's play-area with equipment was located on this hard surface, however the equipment has been removed. The open space area has a number of trees.

2.4 Existing zoning

Erf 2616 is zoned as *Single Residential (SR1)*. The surrounding properties are mostly zoned *Single Residential Zone 1 (SR1)*. Erven RE2612, 17883 and RE2604 to the north are zoned as *Transport Zoning 2: Public road and public parking (TR2)*. Please see the ***Current Zoning and Spatial Designation Plans*** attached for an extract of the Zoning register.

2.5 Background and previous approvals

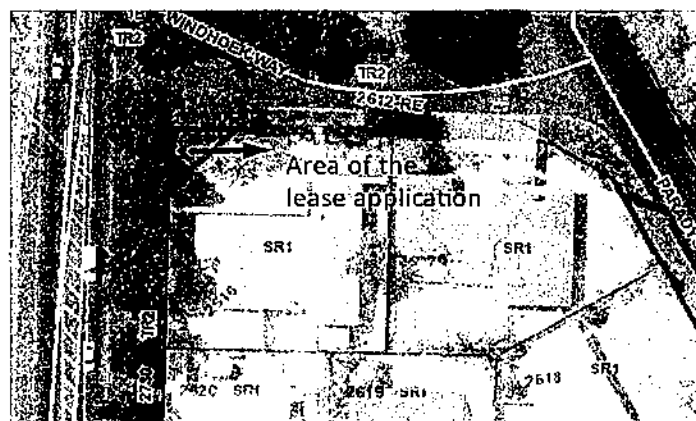
945

Erf 2616, Brackenfell has been used as an office since January 2007. In that same year on 23 February 2007 a Temporary Departure Application to use the property for Financial Service Business has been approved. The owner then known as Home Bound Investments has remained the same till today.

- Details of this Approval are as follows: **OB BC/NP 2616, Application Nr.: 125031, dated 23/02/2007** (see attached for full particulars).
- Conditions to this approval were contained in **Annexure A** (also attached).

Although it is not specifically mentioned in the approval, the most restrictive condition was that the office use (as any temporary departure permission), was only allowed for a period of five years. Therefore this period has lapsed in February 2012.

Since the Temporary Departure Approval in 2007, some internal alterations took place and the owner erected a wall around the property. **Building Plans Permission, Application number 136661, dated 23/03/2007** was granted for the erection of a new boundary wall and a change to the front elevation (approved plans attached). After this the client submitted an **Application to lease to Property Management – City of Cape Town, dated 08/01/2008** (attached) to lease part of the TR2 zoned area (ownership City of Cape Town) in front of the property. Unfortunately the client has no record of any response to this application.



2.6 Pre-application meeting

946

On 16 April 2019 BvZPlan met with City of Cape Town officials: Llewellyn v Blerk, Sigmund Storm and Willie Liebenberg regarding the proposed continued use of the office and proposed parking arrangements. Please see the ***Summary of Pre-Application Meeting with City***. At this meeting it was confirmed that an Application for Rezoning to Local Business would be supported, subject to the provision of sufficient parking and that an Application for Administrative Penalty needs to be submitted.

3. APPLICATION

The purpose of this application is to legalise the continued use of an office on an erf zoned as *Single Residential*. BvZPlan has instruction from the owner to submit a Land Use Application for Rezoning, which will follow in due course. This Application is for the Determination of an Administrative Penalty as contemplated in section 129(1) of the Municipal Planning By-Law, 2015 (MPBL). Please see the completed ***Application Form*** for more information.

4. DETERMINATION OF AN ADMINISTRATIVE PENALTY

4.1 Perspective on contravention

The fact that the land use on Erf 2616, which is used as an office, is in contravention of the By-Law is not in dispute. It should, however, be borne in mind that a previous Temporary Departure Permission has been approved on 23/02/2007 for the use of the residential property for office purposes. It can only be assumed that the owner was not informed of the time-period attached to the Temporary Departure Permission. It is now the intention of the owner to rectify the situation.

4.2 The nature, duration, gravity and extent of the contravention

The current nature of the office use can be described as a small business and has a low impact. There are 28 permanent office workers who provide professional, financial services to their clients. The office hours are 07:45-16:00, Monday to Friday. Visits from the public

is minimal. Most work is done via e-mail correspondence and telephone communication. There are also 2 non-permanent workers who assist with house-keeping.

It is considered that the office use creates a suitable interface between business and surrounding residential areas. Of the 28 permanent workers, 10 own cars and about 5 utilises public transport. It is considered that many of the workers share lifts to and from work. The impact of the exiting use on motorised traffic is considered to be low. Please see the attached ***Current Access and Parking Plan, dated July 2019***. This plan shows that currently there are 6 on site parking spaces available. At this point it must be mentioned that the client is intending to provide an additional 3 on-site parking spaces and that he is exploring ways to utilise the adjacent TR2 zoned Erf RE2612 for additional off-site parking – These aspects will be covered in the proposed Application for Rezoning.

In addition, the site is located adjacent to Brackenfell Boulevard, which has many public transport options.

The office use as a whole was never a nuisance to the neighbours and will not become offensive in any way in future. It also ties in with other non-residential uses in the surrounding area. As already mentioned the adjacent property is operating as a place of instruction and that these 2 properties are the only properties located in a quiet cul-de-sac. The continued use of the building for office accommodation is considered to be appropriate in the locality.

The activity is not taking place in an environmentally sensitive area and no heritage authorisation is required for the proposed rezoning application.

The duration of the unlawful use is just over 7 years.

In terms of the gravity of the unlawful use, the fact that a temporary departure allowing the office use has been approved in 2007, must be considered as a genuine extenuating circumstance.

The extent of the unlawful use can be calculated in terms of Gross Leasable Area (GLA) of the main dwelling which is measured at 217m². Please see the ***Ground Floor Plan, Plan No: 680/1, dated July 2019*** attached. Considering that 50m² may be utilised as-of-right for office purpose as a home occupation, the total area of unlawful land use is deemed to be approximately 167m².

Erf size	Total unlawful area	Duration
945m ²	167m ²	7 years

4.3 The conduct of the person involved in the contravention

Home Bound Investment was unaware of the lapsed temporary approval for land use departure and is currently trying to rectify the contravention to set the way for a rezoning application, which is soon to follow.

4.4 The termination of unlawful conduct

A Land Use Planning Application for the rezoning of the property to Local Business use is being prepared and will be submitted in due course. The subject property is occupied by a small reputable small business, which employs several people. The termination of the office use will be to the detriment of the financial interests of the owner, the employees and to the client base that it serves.

4.5 Previous contraventions

We are not aware of any other contraventions in terms of the MPBL and Home Bound Investment has never received any notice from the City instructing them to cease unlawful activity.

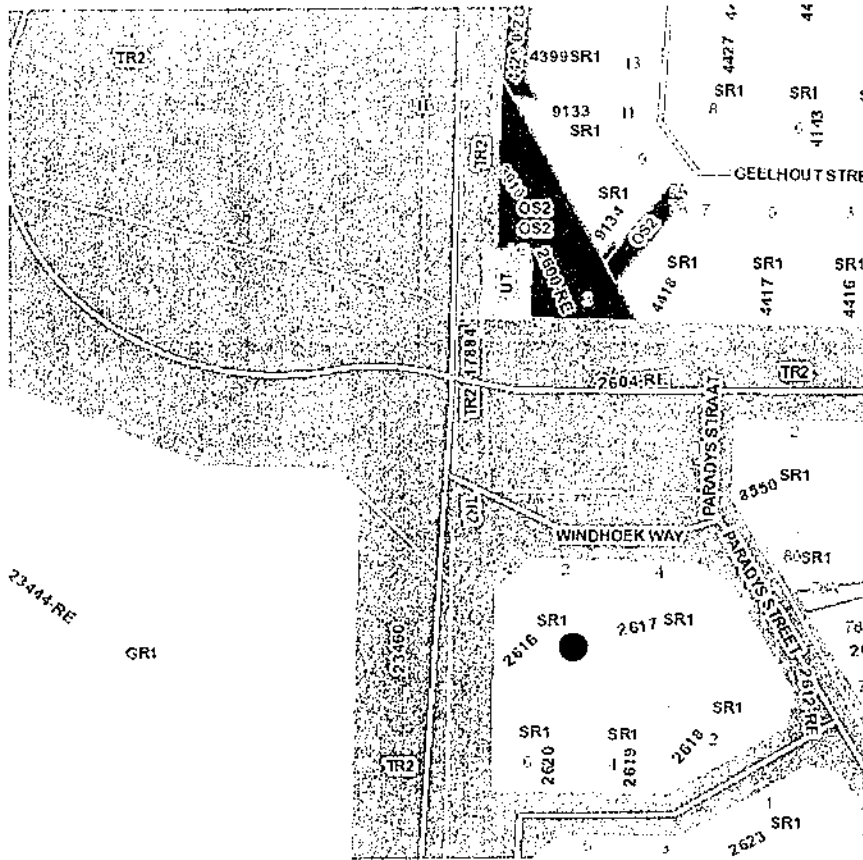
5. CONCLUSION AND RECOMMENDATION

From this report and other available documentation it is concluded that:

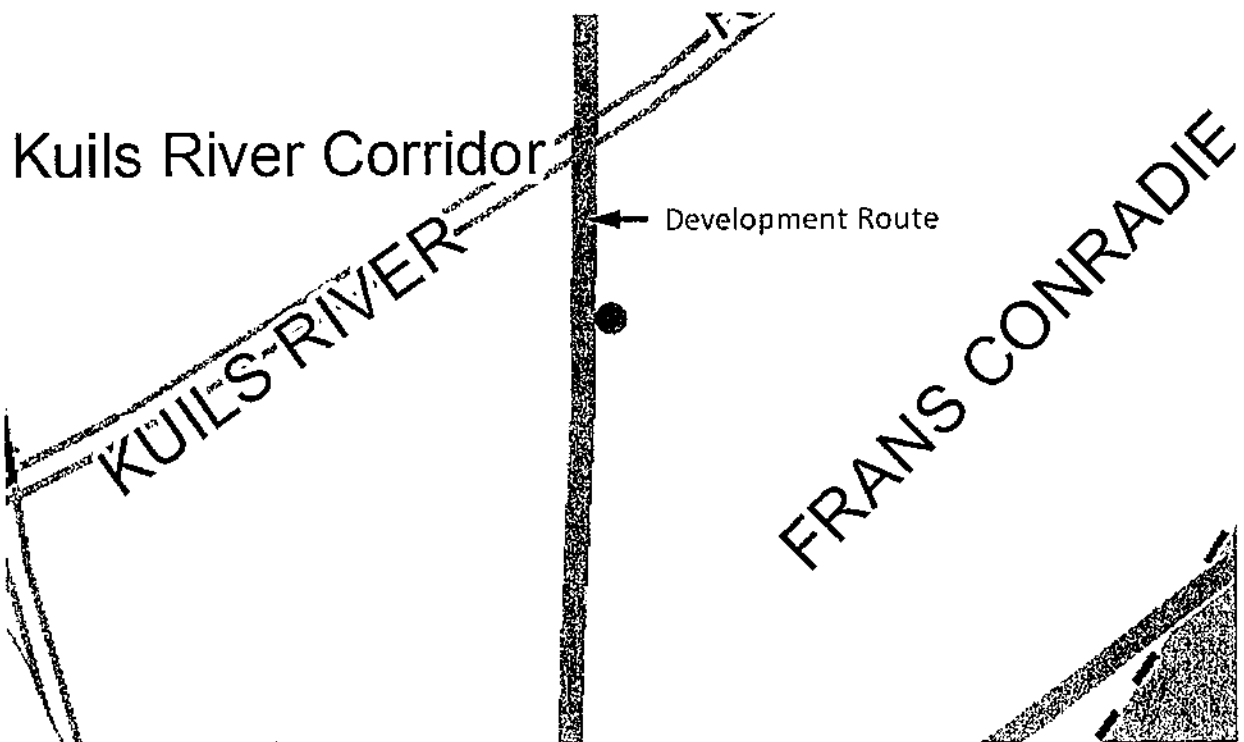
- An existing residential building is used for a low-impact, small-business office use, following a Temporary Departure Permission for office use, which has lapsed;
- Home Bound Investment did not contravene the By-Law purposefully or in a premeditated manner;
- Home Bound Investment will submit a Land Use Planning Application as soon as practically possible to rectify the situation; and
- The building in its current use does not have any detrimental impact on surrounding developments, services, neighbours, traffic, heritage or the environment.

Considering the above, we respectfully call on the Municipal Planning Tribunal to impose a minimal administrative penalty percentage.

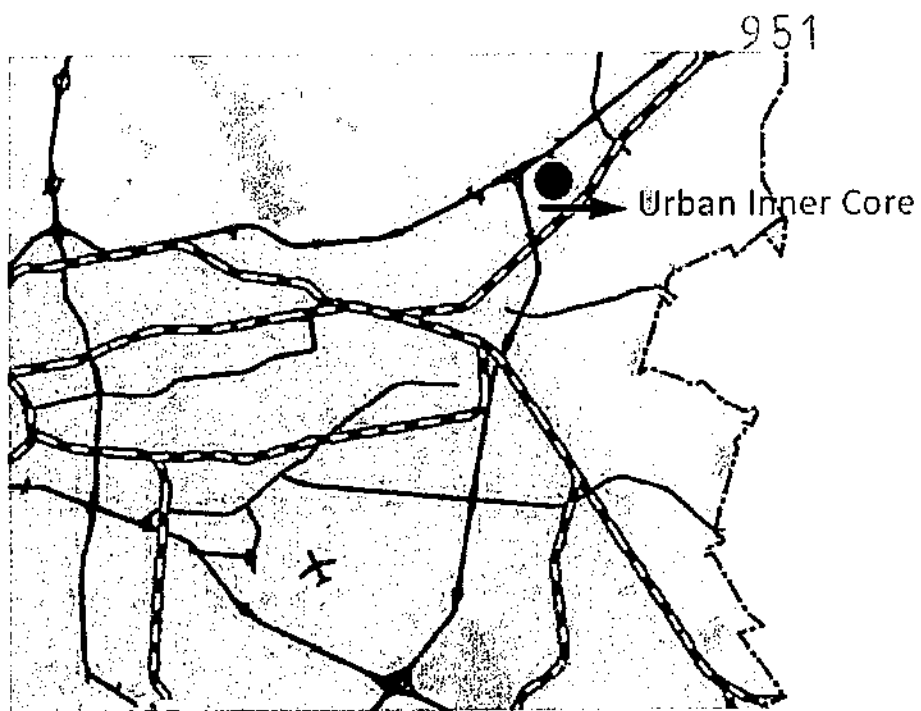
**Current Zoning and Spatial Designation Plans
Erf 2616, 2 Windhoek Way, Arauna, Brackenfell**



Extract from PBDM Zoning Viewer



Extract from Northern District Plan (Sub-District 2: Cape Gate / Okavango Corridor)



Extract from Spatial Development Framework

SUPPORTING PLAN B2 - BUILDING PLANS PERMISSION

952

12661

23/03/07

Date

Drawn

Application number

Aansoeknummer

Land Use Management (endowed copy)

Grondgebruiksoort (gedaagde gebruik)

CITY OF CAPE TOWN

STAD KAAPSTAD

Land Use Management (endowed copy)

Grondgebruiksoort (gedaagde gebruik)

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CITY OF CAPE TOWN

STAD KAAPSTAD

PROJECT

Proposed new boundary wall and
change of front elevation
erf 2616, windhoek street
Arauna, Brackenfell

DRAWING

plan

sections

page 1 of 2

scale

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05-03-2007

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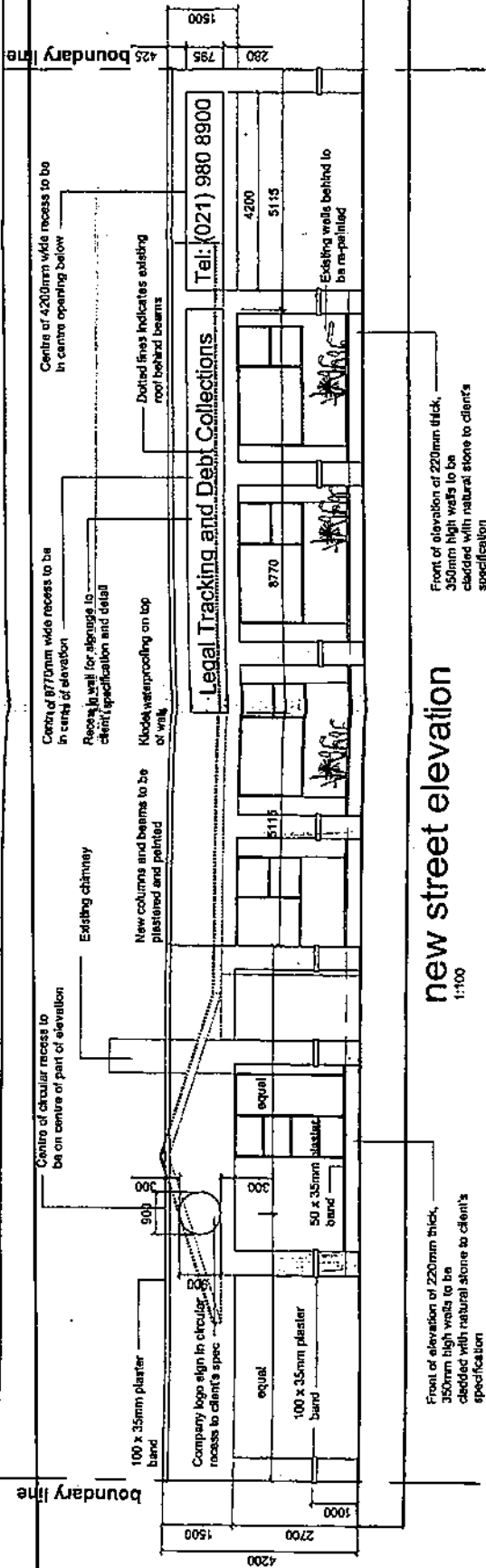
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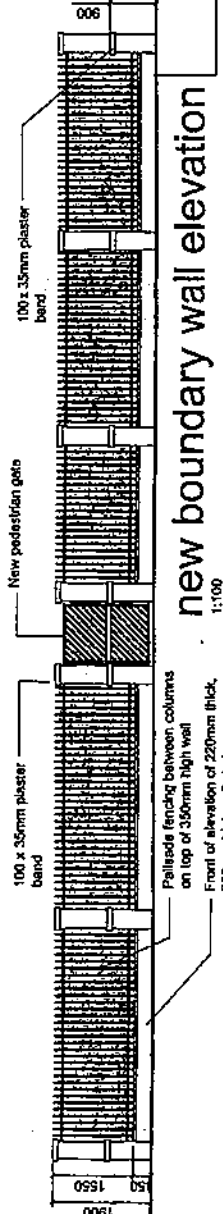


new street elevation
1:100

CITY OF CAPE TOWN
STAD KAAPSTAD

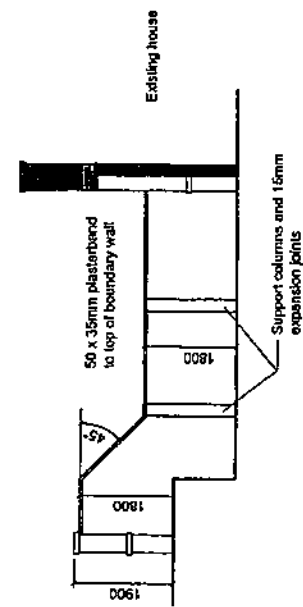
Land Use Management (eng. & arch.)
Grondgeboubeheer (gebouwe en grond)

Application number
A1360618
Date
27/03/07
Status
Final

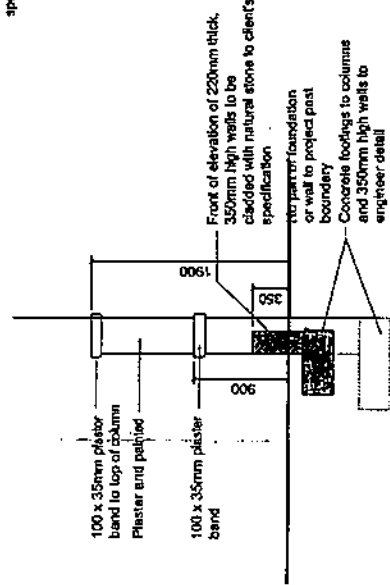


new boundary wall elevation
1:100

Front of elevation of 220mm thick, 350mm high walls to be clad with natural stone to client's specification (below 50mm plasterband)



new boundary wall elevation 2
1:100



section b-b
1:30

PROJECT

Proposed new boundary wall and change of front elevation
erf 2616, windhoek street
Arauna, Brackenfell

DRAWING

elevations
boundary wall section

page 2 of 2

scale
shown

drawn
mma

date
05-03-2007

checked

SUPPORTING PLAN B4 - GROUND FLOOR PLAN

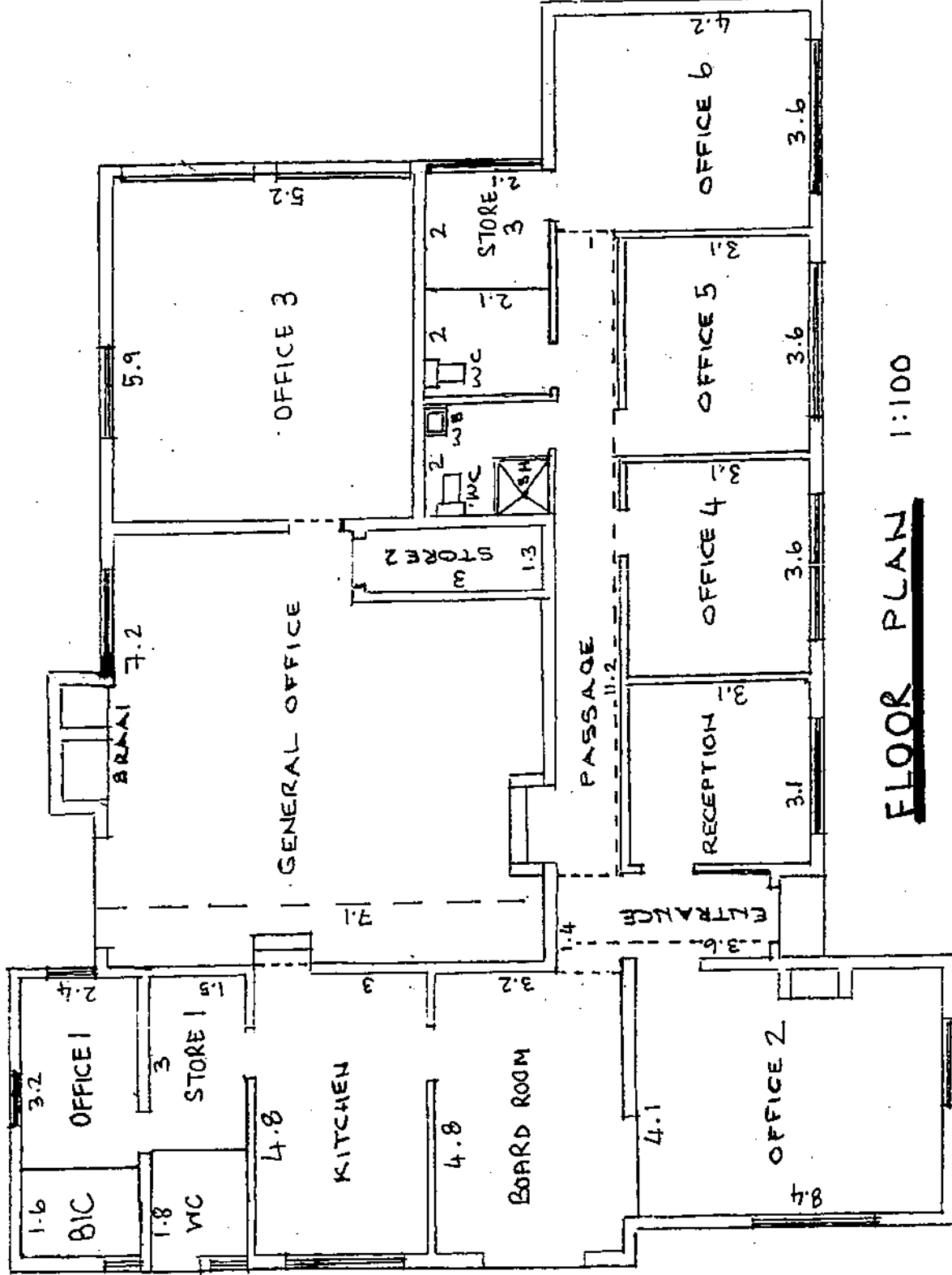
Ground Floor Plan for
building on
Erf 2616
2 Windhoek Way,
Brackenfell

Calculation of GLA			m²
BIC	1.6	2.4	3.8
Office 1	3.2	2.4	7.7
Store 1	3	1.5	4.5
Kitchen	4.8	3	14.4
Board Room	4.8	3.2	15.4
Office 2	4.1	8.4	34.4
General Office	7.2	7.1	51.1
Store 2	1.3	3	3.9
Office 3	5.9	5.2	30.7
Reception	3.1	3.1	9.6
Office 4	3.6	3.1	11.2
Office 5	3.6	3.1	11.2
Office 6	3.6	4.2	15.1
Store 3	2	2.1	4.2
Total			217.2

PLAN NO: 680/1
JULY 2019

BIZplan

Bertie van Zyl Beplanning Ingelyf
Reg No 1997/021475/21



FLOOR PLAN 1:100

DRAWN BY: M.B. KOEN (TEL: 021-9390445) / REVISIONS BY BIZplan