

2449

REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO MPTSW38/11/19

CASEID	70472396
CASE OFFICER	Y Jafta
CASE OFFICER PHONE NO	021 444 9536
DISTRICT	Southern
REPORT DATE	4 November 2019

WARD 71: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): REMAINDER ERF 83188 & ERF 83190 CAPE TOWN AT RETREAT, 397 & 395 MAIN ROAD, STEENBERG

1 EXECUTIVE SUMMARY

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Property description	Remainder Erf 83188 & Erf 83190 Cape			
	Town at Retreat			
Property address	397 & 395 Main Road, Steenberg			
Site extent	477m ² & 478m ² (955m ² combined extent)			
Current zoning	General Business Subzone GB1 and			
	Transport Zone 2			
Current land use	Offices for a security company			
Overlay zone applicable	None			
Submission date	28 August 2019			
Subject to PHRA / SAHRA	No			
Any unauthorised land use / building work?	Non-compliance with conditions relating			
1, 2	to access arrangements.			
Has owner applied for the determination of an	Yes			
administrative penalty				
Has the City Manager applied to the MPT for an	No			
order that a person who is contravening the MPBL				
must pay an administrative penalty in an amount				
determined by the MPT				
Has the City issued a demolition directive i.t.o	No			
section 128 of the MPBL? If yes, an administrative				
penalty may not be applied for.				
Has the City served a notice on the owner or other	No			
person in respect of the unlawful land use or				
building work which required the owner or other				
person to apply for the determination of an				
administrative penalty?				

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 The subject properties are notarially tied and are regarded as one property for all intents and purposes.
- 3.2 In 2010 the South Peninsula Subcouncil approved an application for (1) rezoning of those portions of Erf 83190 & Remainder Erf 83188 that were

 Making progress possible. Together.
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zoned Single Dwelling Residential to General Business B1, and (2) consent to permit a portion of the existing building falling within the area zoned Proposed Street Purposes, to be used for business purposes. The final notification letter was issued on 6 October 2010. This required that vehicular access be from neighbouring Erf 83191. The conditions of approval are attached as Annexure D.

- 3.3 In 2014 Subcouncil 20 approved an application for the amendment/deletion of rezoning conditions for the subject properties regarding, inter alia, access/egress and parking (see Annexure D). This excluded Erf 83191 from access arrangements to the subject properties.
- 3.4 In 2016 a building plan application for garages and additions to the existing buildings on the subject property was submitted. The plan was approved and building work commenced.
- 3.5 An application for amendment/deletion of conditions for the subject properties relating to gross leasable area (to increase it from 168m² to 245m²) and access & egress was submitted on 17 July 2019. The access and egress conditions that are applied to be deleted are listed in paragraph 5.1 below. The application is currently in the advertising stage.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The applicant was made aware of a need for an administrative penalty application at additional information stage of a related application.
- The contravention relates to non-compliance with the timeframes of conditions imposed in 2014.
- The gravity of the contravention is not serious.
- The current access and egress arrangements do not result in a nuisance or a threat to the surrounding community.
- The access and egress arrangements work well with the existing parking conditions on site.
- There is no impact on the character of the area.
- As soon as the owner was informed of the need to submit an administrative penalty application, they obliged.
- The approved building plan which shows the carriageway crossings are in conflict with conditions of approval and the owner assumed that there was no need to comply with the conditions of approval.
- The unauthorized conduct has not stopped.
- The owner has not been involved in a previous contravention.

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5 ASSESSMENT OF APPLICATION 2451

- 5.1 The contravention relates to non-compliance with the following conditions:
 - (i) Within 3 months of this approval being granted, the parking and access / egress arrangements described above shall be implemented to the satisfaction of the Director: Transport. [Imposed in 2010]
 - (ii) Vehicular access and egress to the properties is restricted to the carriageway crossing on Erf 83188. [Amended in 2014]
 - (iii) The existing 6m wide carriageway crossing on Erf 83190 as well as the existing 6m wide carriageway crossing on Erf 83188 are to be closed and 1 new 6m wide carriageway crossing is to be constructed on Erf 83188, to the satisfaction of the Manager: Transport for Cape Town: Maintenance. [Amended in 2014]
- 5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for the building work contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.
- 5.3 Due to the absence of standard operating procedure guidelines for transgressions relating to carriageway crossings, approximate values of work were obtained from Council's Department of Asset Management and Maintenance (Transport) which has estimated that the cost could amount to R20 000 for the construction of a new carriageway crossing and R265/m² for the closure thereof.
- 5.4 Calculation of the maximum administrative penalty:

 $R20\ 000.00 + ((R265 \times 18m^2) \times 2) = R29\ 540.00$

- 5.5 An amount which is not more than 100% of R29 540.00 may be imposed as an administrative penalty.
- 5.6 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:

Nature – The contravention relates to non-compliance with previous conditions of approval relating access and egress.

Duration – The relevant conditions of approval were imposed in 2010 and amended in 2014. The duration of the contravention is thus long.

Gravity – The gravity of the contravention is not serious given that the Department: Transport Planning has no objection to the proposed access arrangements.

Extent – The contravention involves 2 carriageway crossing that were to be demolished and the construction of a new carriageway crossing.

b) The conduct of the person involved in the contravention

According to the applicant, the owner was of the opinion that the approval of the building plan in 2016 (see Annexure E) which showed the parking and access arrangements in conflict with the conditions of approval negated the need to comply with such conditions. This is difficult to accept as the building plan does not deal with access (this aspect would not have been looked at when the plan for the garages at the rear of the property was considered) and, furthermore, it is clear that the owner was aware that conditions relating to access were applicable and that these could be amended (but were not amended).

Furthermore, as detailed in Section 5.5(d) below, the applicant was not factually correct in stating that the current owner had not previously contravened planning law. In this regard it is also important to note that on the application form for the main application, that was signed by both the applicant (a professional town planner) and the owner, it states that there is no unlawful land use or building work. This is patently incorrect.

In this regard it must be noted that Section 78 of the MPBL states that:

- (1) An applicant must ensure that -
 - (a) no misrepresentation is made to the City;
 - (b) the City is not misled:
 - (c) all information furnished to the City is accurate; and
 - (d) the application does not omit any relevant information.
- (2) A person who contravenes subsections (1)(a) or (1)(b) is guilty an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

It is clear that the applicant provided inaccurate information and made a misrepresentation to the City. The conduct of the owner cannot be condoned.

c) Whether the unlawful conduct was stopped

The unlawful has not been stopped.

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

The owner has previously contravened planning law in the following ways:

- The same owner previously contravened planning law in that the 2010 rezoning application was to legalise the operation of the security company operating on the property.
- The operator further did not comply with the conditions of the 2010 rezoning approval and the 2014 report to Subcouncil 20 states that "the use of the extension to the domestic staff quarters conflicts with a condition of approval. Furthermore, a number of parking and access related conditions are not being complied with. Hence the submission of this application."

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The applicant's statement in the motivation for the administrative penalty that the owner has not been involved in any previous planning law contravention is incorrect.

5.7 In view of the abovementioned considerations, especially the conduct of the owner, and the fact that the owner has previously contravened planning law, and that administrative penalties are intended, in part at least, to serve as a deterrent, an administrative penalty of **R5 000.00** is recommended.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The contravention relates to non-compliance with previous conditions of approval relating access and egress.
- 6.2 The duration of the contravention is thus long.
- 6.3 The gravity of the contravention is not serious given that the Department: Transport Planning has no objection to the proposed access arrangements.
- 6.4 The extent of the contravention involves 2 carriageway crossing that were to be demolished and the construction of a new carriageway crossing.
- 6.5 Misleading and incorrect information regarding previous contraventions and current unlawful conduct was submitted. The conduct of the owner cannot be condoned.
- 6.6 The owner has been involved in previous contraventions of planning law.

7 RECOMMENDATION

In view of the above, it is recommended that:

a) An administrative penalty in the amount of **R5000.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Remainder Erf 83188 & Erf 83190 Cape Town at Steenberg, for non-compliance of conditions of the previous 2014 approval relating access arrangements.

ANNEXURES

Annexure A Locality plan

Annexure B Plan showing existing access

Annexure C Applicant's motivation

Annexure D Previous conditions of approval

Annexure E Approved building plan 2016

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Comment

[HAIRS.

Section	Head:	Land	Use
Manage	ement		

Name

P Hoffa

Tel no

021 444 7724

Date

2019-11-04

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District Manager

Name

U Gonsalves

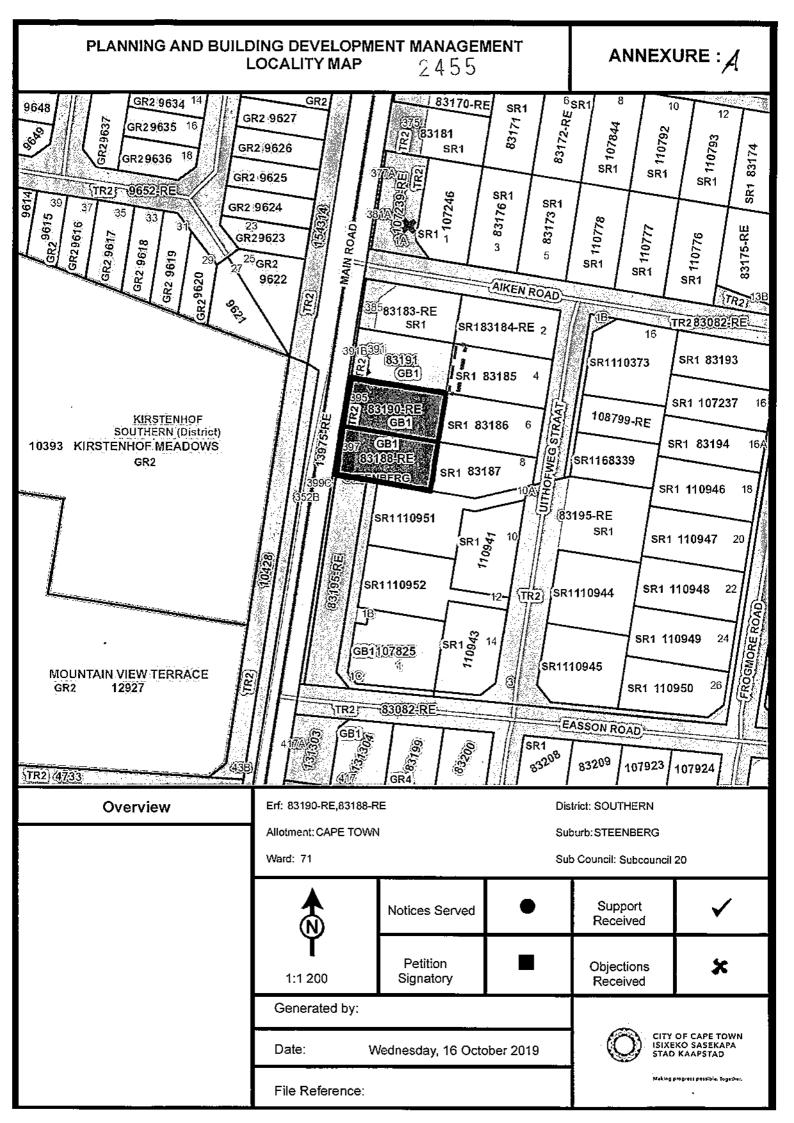
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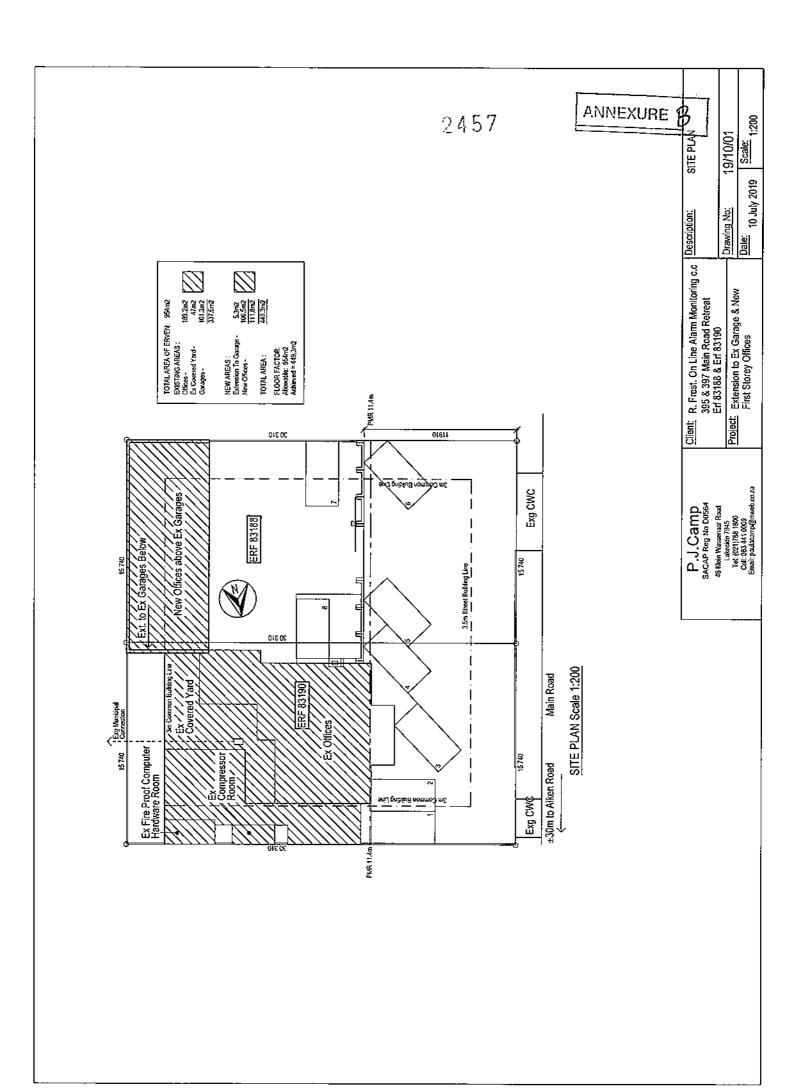
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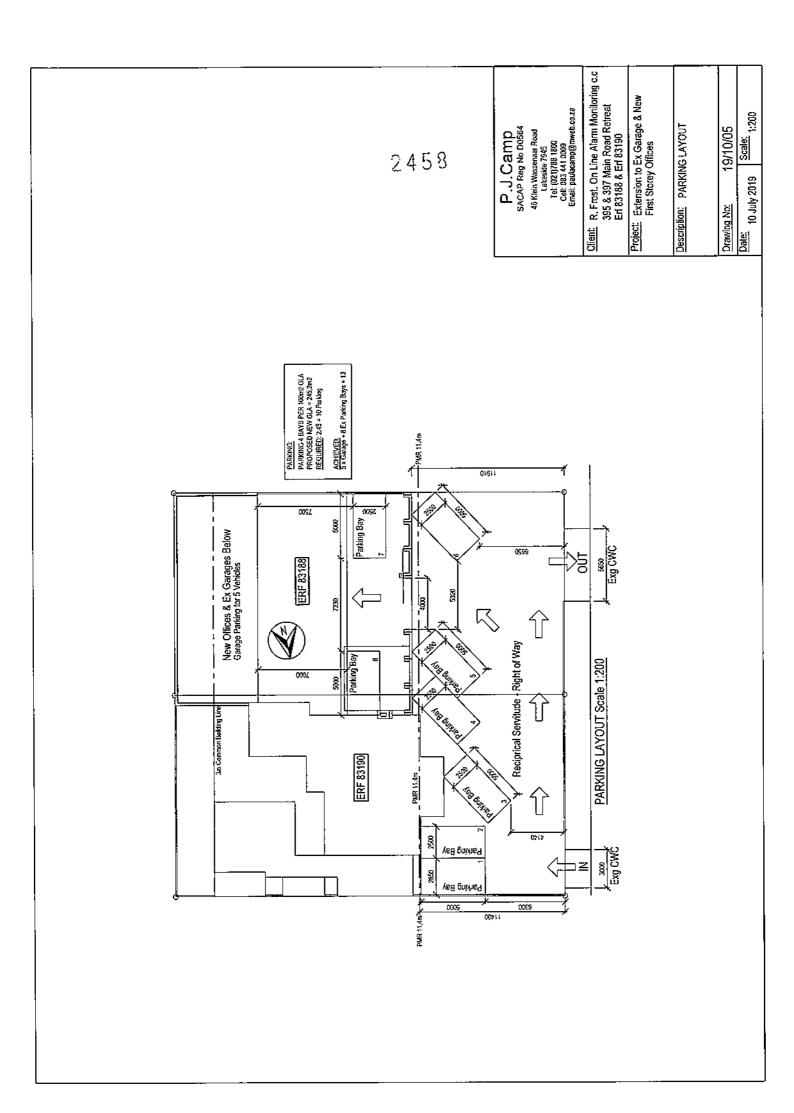
2019-11-04

Comment



PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP 2456				ANNEXURE: A		
RESCENT (10619) GR1 (10619) GR	HAMPSHIRE HAMPSHIRE REGRZ 10886 6886	9383 9384 9385 9386 9386 9387	100 11 10	83193 107803 107803 107803 107804 10946 107803 107803 107804 107803 107804 10949 107803 107804 10949 107803 107805 1080 1080 1080 1080 1080 1080 1080 1	ROAD (RZ) (RZ) (ALKEN CLOS) (SR1 SR1 SR1 SR1	
Overview	Erf: 83190-RE,83188-R			trict: SOUTHERN		
			Council: Subcouncil 20			
	★ (N)	Notices Served	•	Support Received	✓	
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OLDEN & ASSOCIATES
Urban & Regional Planners

Tel: 021 762 4080 | Fax: 021 762 4097 | email: info@oldenplanners.co.za P O Box 483 Plumstead Cape Town 7800 | Block A Richmond Centre Main Road Plumstead 7800 www.oldenplanners.co.za

Ref: S:\OA\1675-1 27 August 2019

Dear Municipal Planning Tribunal,

APPLICATION FOR DETERMINATION OF ADMINISTRATIVE PENALTY IN TERMS OF SECTION 129 OF THE MUNICIPAL PLANNING BY-LAW OF 2015 FOR ERF 83188-Re & 83190-Re, STEENBERG – 397 & 395 MAIN ROAD

Background

Erf 83188-Re & Erf 83190-Re, Steenberg are the subject of this application and hereafter referred to as the subject property. The subject property is currently used as offices for a security company. The owner of the subject property wishes to continue to use it as Offices and has applied for an additional GLA for offices above the existing garage on Erf 83188-Re.

It should be noted that a land use application has been made in this regard for the amendment and deletion of conditions of approval dated 05 November 2014 to permit additional GLA and allow for the existing carriageway crossings to remain. The land use application has case ID: 70466240.

It was during assessment of the land use application to which the applicant was informed that there will be a need to apply for an administrative penalty for non-compliance with the previous conditions of approval.

As a result, the purpose of this application is for an administrative penalty for the non-compliance with conditions of approval.

2. Consideration of Criteria in Accordance with Section 129(8) of the MPBL 460

2.1. The nature, duration, gravity and extent of the contravention

The nature of the contravention is the non-compliance with conditions of approval $\underline{1.2, 1.3}$ and $\underline{2.16}$ dated 05 November 2014. The conditions in question pertain to the closing of 2 carriageway crossings and the reconstruction of a new one on Erf 83188-Re. This was stipulated in condition 2.16 that it be done within 3 months of land use approval.

The gravity of the contravention is not serious as the existing carriage way crossings and functioning of the site with the vehicular movement has never been a nuisance to the surrounding community and neighbouring properties. For the sake of good circulation on the site the two carriageway crossings allow for better movement as well as access and egress. With the current approved plan, the carriageway crossings work well with the existing approved parking on the site.

Having two carriageway crossings does not pose a threat to the traffic in the area, in particular Main Road. The non-compliance to the conditions of approval pertaining to access egress does not pose a threat to the safety and security of the surrounding properties nor does it impact on the character of the area.

The total extent of the contravention amounts to the non-closure of 2 carriageway crossings of 4.5 m each and the non-construction of a 6m carriageway crossing on Erf 83188-Re. The existing scenario of access and egress does not present a hazard to the health and safety of surrounding landowners and users and visitors of the subject property.

2.2. The conduct of the person involved in the contravention

The owner of the property has been cooperating fully with what is needed in order to get land use approval. As soon as the owner was informed that there will be a need to apply for a determination for an administrative penalty, the owner obliged. The owner has made every effort to cooperate with the Council and to obtain land use approval. The owner had assumed that due to the approval of the building plan dated 04 Feb 2016, which has the carriageway crossings on them, there was no need to comply with the conditions of approval 1.2 and 1.3.

2.3. Whether the unauthorised conduct was stopped

No, the conditions of approval applicable have not been complied with due to the applicant making application to have the conditions 1.2, 1.3 and 2.16 removed from the conditions of approval dated 05 November 2014.

2.4. Whether a person involved in a previous planning law contravention

The owner, Online Alarm Monitoring, has not been involved in any contravention of previous planning law.

3. Concluding Remarks

The owner had assumed that due to the approval of the building plan dated 04 Feb 2016, which has the carriageway crossings on them, there was no need to comply with the conditions of approval 1.2 and 1.3. However, this was an honest misunderstanding. The owner of the property is merely wishing to comply with the planning legislation and continue to use both carriageway crossings on the subject site due to functionality of the site. It is clear, from the motivation stipulated above and from the approved building plan that the existing carriageway crossings are desirable and do not negatively impact on the surrounding neighbours and thus we request that the MPT take this into consideration when making the determination.

Yours sincerely,

Lungelo Nkosi

For Olden & Associates

2010 REZONING APPROVAL

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ANNEXURE A

In this annexure:

"Council" means the City of Cape Town.

"The owner" means the registered owner of the property.

"The properties" means Remainder Erf 83188 and Erf 83190 Cape Town at Retreat, 395 & 397 Main Road

"Scheme Regulations" has the meaning assigned thereto by Ordinance 15 of 1985.

"Gross Leasable Area (GLA)" means: the area of a building designed for, or capable of, occupancy and control by tenants, measured from the centre line of the joint partitions to the inside finished surface of the outside walls, and shall exclude the following:

- i) All exclusions from the definition of Actual floor Area
- ii) toilets
- iii) lift shafts, service ducts, vertical penetration of floors
- iv) lift motor rooms and rooms for other mechanical equipment required for proper functioning of the building
- ν) areas reasonably used in connection with the maintenance, cleaning and care of the building, excluding dwelling units for caretakers, supervisors, cleaners or maintenance staff
- vi) interior parking and loading bays.

APPLICATION NUMBER: 181269 File Reference LUM/00/83190

- 1 REZONING APPROVED IN TERMS OF SECTION 16 OF THE LAND USE PLANNING ORDINANCE NO 15 OF 1985.
- 1.1.1 To zone those portions of the properties that are not zoned Proposed Street Purposes from Single Dwelling Residential to General Business B1.
- 2 CONSENT GRANTED IN TERMS OF SECTION 15 OF THE LAND USE PLANNING ORDINANCE NO 15 OF 1985.
- 2.1 Consent of Council to permit the portion of the existing building on Erf 83190 Cape Town falling within the area of the site zoned Proposed Street Purposes, to be used for business purposes.
- 3 CONDITIONS TO BE IMPOSED IN TERMS OF SECTION 42(1) OF THE LAND USE PLANNING ORDINANCE NO 15 OF 1985.

Land Use

- 3.1 Within 3 months of the approval of this application, formal building plans shall be submitted to Council for approval showing the conversion of the existing Dwelling House on the property to business use as well as the approval of the other buildings on the property.
- 3.2 No building on the property may exceed a height of 3 storeys.
- 3.3 No restaurant or place of assembly shall be permitted on the property.
- 3.4 The owner shall be responsible for all costs incurred in respect of the upgrading, extension, deviation or removal of any existing stormwater, sewerage, electricity or

other services or works, whether on the property of the Council or any other body having authority so to require as a result of the development of the property concerned and for any connection costs in respect of such services or work.

3.5 The conditions attached to this approval do not exempt the owner from compliance with any other laws or requirements.

Transport

- 3.6 No retail use shall be permitted on the property.
- 3.7 A maximum of 102m² of GLA is permitted on both properties combined.
- 3.8 Except as set out below, vehicular access to the properties is restricted to carriageway crossing on Erf 83191.
- 3.9 The existing 6m-wide carriageway crossing at the southern end of Erf 83188 may be used for egress and access.
- 3.10 Vehicles may only move in a southerly direction along the servitude right of way referred to in condition 3.11.
- 3.11 A 4.24m wide reciprocal servitude right-of-way must be registered in favour of the properties and Erf 83191, across the front portions of these erven. The servitude right of way is to permit one way access in a southerly direction only.
- 3.12 A Notarial Tie agreement must be registered between Erven 83190 and 83188 in order to ensure that neither erf may be sold or dealt with separately.
- 3.13 A minimum of 7 permanent parking bays must be provided on Erf 83188. An additional 5 x 45° bays are to be provided on the road-widening portion of the properties until such time as the road widening is taken by Council.
- 3.14 All parking on, access to and egress from the properties shall be to the satisfaction of the Director: Transport.
- 3.15 No structures shall be erected on Erf 83188 without the permission of the Director: Transport.
- 3.16 Within 3 months of this approval being granted, the parking and access/egress arrangements described above shall be implemented to the satisfaction of the Director: Transport.
- Note. The conditions contained in the letter dated 2010-05-25 from the Provincial Department of Transport and Public Works must be adhered to.

Engineering Services

- 3.17 A development contribution of 11 580-54 shall be paid in accordance with the signed Acknowledgement of Debt.
- 3.18 The owner shall pay an additional development contribution to the Director: Roads and Stormwater, in the event that the GLA exceeds 115.4m². The said development contribution must be determined by the Director: Roads and Stormwater and paid before the approval of any building plan to increase the GLA beyond 115.4m²

2014 CONDITIONS TO FENEN 83188 483/90

ANNEXURE A

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In this annexure:

"Council" means the City of Cape Town

"The owner" means the registered owner of the property

"The properties" means Remainder Erf 83188 and Erf 83190 Cape Town at Retreat, 395 & 397 Main Road

"Scheme Regulations" has the meaning assigned thereto by Ordinance 15 of 1985.

"Gross Leasable Area (GLA)" means: the area of a building designed for, or capable of, occupancy and control by tenants, measured from the centre line of the joint partitions to the inside finished surface of the outside walls, and shall exclude the following:

- i) All exclusions from the definition of Actual Floor Area
- ii) toilets
- iii) lift shafts, service ducts, vertical penetration of floors
- iv) lift motor rooms and rooms for other mechanical equipment required for proper functioning of the building
- v) areas reasonably used in connection with the maintenance, cleaning and care of the building, excluding dwelling units for caretokers, supervisors, cleaners or maintenance staff
- vi) interior parking and loading bays.

CASE ID:

70070943

FILE REFERENCE:

LUM/00/83190

- 1. THE AMENDMENT/DELETION OF CONDITIONS (OF ANNEXURE A ATTACHED TO COUNCIL'S LETTER OF APPROVAL DATED 2010-10-06 WITH REFERENCE LUM/00/83190 APPLICATION NUMBER 181269) IN TERMS OF SECTION 42(3) OF THE LAND USE PLANNING ORDINANCE 15 OF 1985 (NOTE THAT UNDERLINING REFLECTS NEW WORDING AND STRIKETHROUGH INDICATES WORDING TO BE DELETED):
- Condition 3.7: A maximum of 102 m² 168 m² of GLA is permitted on both properties combined. Within 3 months of the approval of this application, the building that straddles the boundary between Remainder Erf 83188 and Erf 83190 shall be demolished to the satisfaction of the local building inspector. (Note that a demolition permit will be required.)
- 1.2 Condition 3.8: Except as set out below; vehicular access and earess to the properties is restricted to the carriageway crossing on Erf 83191 83188.
- 1.3 Condition 3.9: The existing 6 m wide carriageway crossing et-the southern end of Erf 83188 may be used for egress and access on Erf 83190 as well as the existing 6 m wide carriageway crossing on Erf 83188 are to be closed and 1 new 6 m wide carriageway crossing is to be constructed on Erf 83188, to the satisfaction of the Manager: Transport for Cape Town: Maintenance.
- 1.4 Condition 3.10: Vehicles may only move in a southerly direction along the servitude right of way referred to in Condition 3.11.

- 1.5 Condition 3.11: A 4.24 m wide reciprocal servitude right of way must be registered in favour of the properties and Erf 83191, across the front partiens of these erven. The servitude right of way is to permit one way access in a southerly-direction only.
- 1.6 Condition 3.13: A minimum of 7.9 permanent parking bays must be provided on Erf Erven 83188 and 83190. An additional 5 x 45° bays are to be provided on the road-widening portion of the properties until such time as the road widening is taken by Council.
- 2. EXISITING CONDITIONS APPLICABLE TO THE PROPERTIES (FOR INFORMATION PURPOSES ONLY):

Land Use

- 2.1 Within 3 months of the approval of this application, formal building plans shall be submitted to Council for approval showing the conversion of the existing Dwelling House on the property to business use as well as the approval of the other buildings on the property.
- 2.2 No building on the property may exceed a height of 3 storeys.
- 3.3 No restaurant or place of assembly shall be permitted on the property.
- 2.4 The owner shall be responsible for all costs incurred in respect of the upgrading, extension, deviation or removal of any existing stormwater, sewerage, electricity or other services or works, whether on the property of the Council or any other body having authority so to require as a result of the development of the property concerned and for any connection costs in respect of such services or work.
- 2.5 The conditions attached to this approval do not exempt the owner from compliance with any other laws or requirements.

Transport

- 2.6 No retail use shall be permitted on the property.
- 2.7 [Amended as per 1.1 above.]
- 2.8 [Amended as per 1.2 above.]
- 2.9 [Amended as per 1.3 above.]
- 2.10 [Amended as per 1.4 above.]
- 2.11 [Amended as per 1.5 above.]
- 2.12 A Notarial Tie agreement must be registered between Erven 83190 and 83188 in order to ensure that neither erf may be sold or dealt with separately.
- 2.13 [Amended as per 1.6 above.]

- 2466 All parking on, access to and egress from the properties shall be to the 2.14 satisfaction of the Director: Transport.
- No structures shall be erected on Erf 83188 without the permission of the 2.15 Director: Transport.
- 2.16 Within 3 months of this approval being granted, the parking and access/egress arrangements described above shall be implemented to the satisfaction of the Director: Transport.
- Note. The conditions contained in the letter dated 2010-05-25 from the Provincial Department of Transport and Public Works must be adhered to.

Engineering Services

- A development contribution of R11 580-54 shall be paid in accordance with 2.17 the signed Acknowledgement of Debt.
- The owner shall pay an additional development contribution to the Director: 2.18 Roads and Stormwater, in the event that the GLA exceeds 115.4m². The said development contribution must be determined by the Director: Roads and Stormwater and paid before the approval of any building plan to increase the GLA beyond 115.4m².

Operating hours

The workshop hours be limited to 8:00 to 17:00 on weekdays and 8:00 to 13:00 2.19 on Saturdays.

