

DRAFT ITEM
MUNICIPAL PLANNING TRIBUNAL

⇒	PROPERTIES INITIATOR:	S NGXISHE
---	-----------------------	-----------

LAND PLANNING AND MANAGEMENT				
		DATE RECEIVED	DATE SIGNED OFF	SIGNATURE
⇒	SNR. DIRECTOR: LAND PLANNING AND MANAGEMENT:			
⇒	EXECUTIVE DIRECTOR : HUMAN SETTLEMENTS:			
⇒	WORD PROCESSING (Brister House):			

KINDLY NOTE:
ITEMS NOT COMPLETELY SIGNED OFF WILL BE RETURNED AND NOT BE INCLUDED IN AGENDA.

PLEASE NOTE THAT THE FOLLOWING ITEM WAS WITHDRAWN FROM THE MEETING HELD ON 17 JUNE 2021 TO ADDRESS ISSUES RELATED TO THE PROPOSAL THAT IS NOT IN LINE WITH THE LSDF (SIZE). THIS ITEM IS RESUBMITTED FOR CONSIDERATION.

SUBJECT: REMOVAL OF RESTRICTIONS AND TOWN PLANNING AMENDMENT
ERF: 190, NEWTON PARK
SITUATION: 37-6th AVENUE
APPLICANT/
OWNER: DERANCO ELECTRICAL CC
FILE: CF17/00190 (S Zulu) (S Ngxishe)
APPLICATION DATE: 28 AUGUST 2018

EXECUTIVE SUMMARY

File	CF17/00190
Subject (Ref.)	1. Removal of Restrictive Title Deed Conditions B.1, B.3, B.4, B.6, B.7, B.8, B.9 and B.10 contained in the Deed of Transfer No. T54643/2013. 2. Town Planning Amendment 9339: Rezoning of Erf 190, Newton Park
Property Description	Erf 190, Newton Park
Street Address	37-6 th Avenue
Owner	Deranco Electrical CC
Applicant	Deranco Electrical CC
Size	1 606m ²
Existing Land Use Rights	Residential 1
Additional Rights	As per the Port Elizabeth Zoning Scheme regulations.
Previous Applications	N/A
Land Use Rights being applied for	Business 3.
Current Use	Business-Offices. However, it was never reported for an illegal use.
Building Plan related	N/A
LSDF	The Cape Road Local Spatial Development Framework (LSDF) recommends: <ul style="list-style-type: none"> • Uses: Business 1 • FSI: 1 • Height: 8 Storeys
Removal of Restrictions	Conditions B.1, B.3, B.4, B.6, B.7, B.8, B.9 and B.10 contained in the Deed of Transfer No. T54643/2013.
Conveyancer's Certificate	N/A
Objections	None
Ward Councillor	No comments received

Bondholder's consent	The bondholder's consent has been submitted
Comments	<p><u>Approval of the Removal of Restrictive conditions is based on the following reasons:</u></p> <ul style="list-style-type: none"> • The functions of Restrictive Title Deed conditions are adequately regulated by the Port Elizabeth Zoning Scheme regulations and Cape Road Local Spatial Development Framework (LSDF). <p><u>Approval of the rezoning is based on the following reasons:</u></p> <ul style="list-style-type: none"> • The proposal is partially in accordance with the Cape Road Local Spatial Development Framework (LSDF) as it recommends the property to be zoned for Business 1. • However, the LSDF encourages consolidation of properties to coherent land entity of minimum 3000m² in extent so as to minimise multiple access points within the area. • In this case, the subject property measures an extent of 1 606m² and does not comply with the minimum requirements for development approval which requires a minimum erf size of 3000m². • The Applicant did not motivate for a departure from the provisions of the Cape Road Local Spatial Development Framework (LSDF) in terms of SPLUMA Section 22(2). Therefore, this disqualifies the application to be considered for site-specific circumstances that may result in a deviation from the Municipal spatial vision.
Recommendation	PARTIALL SUPPORTED

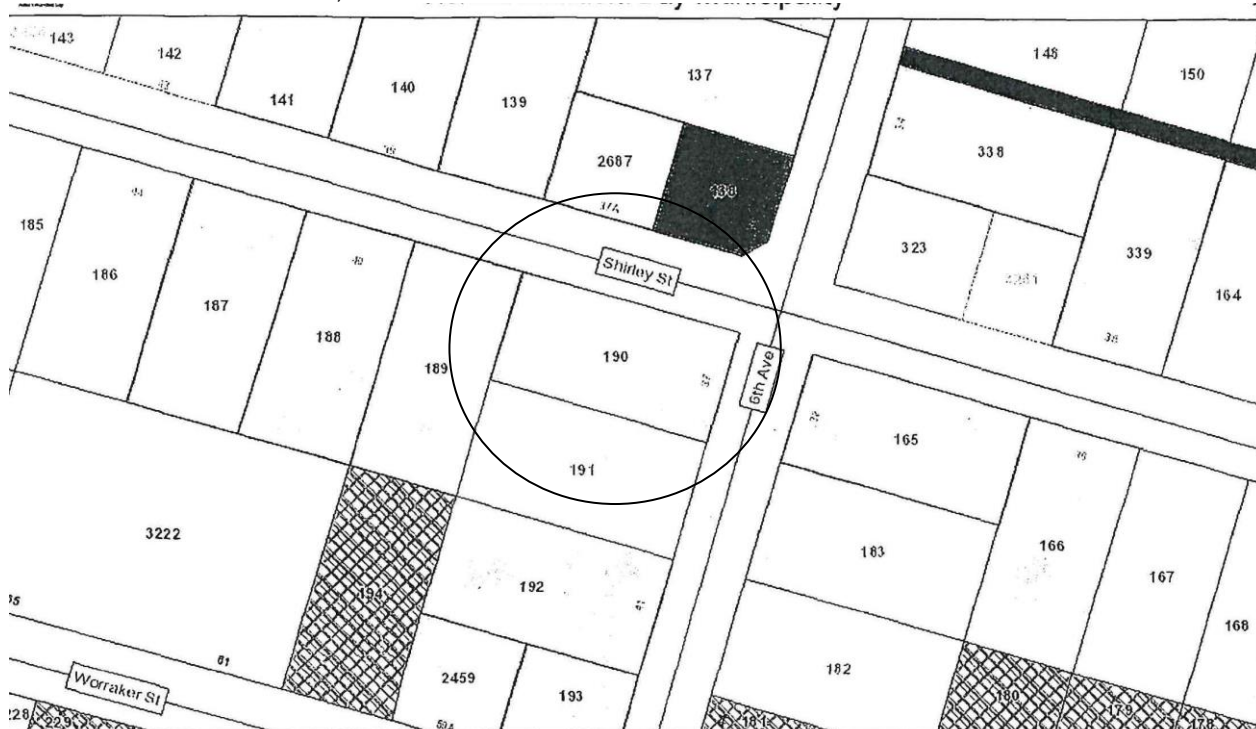
INTRODUCTION AND BACKGROUND:

The proposal is for Removal of Restrictive Title Deed conditions and the rezoning of Erf 190, Newton Park from Residential 1 to Business 3 purposes in terms of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013).

SUBJECT PROPERTY AND SITE INSPECTION:

The conducted site inspection revealed that Erf 190, Newton Park is located in the area that is dominated by business properties. The subject property is accessible via 6th Avenue. The subject property is being used for business purposes. It should be noted that the current illegal use was never reported.

LOCALITY PLAN: ERF 190, NEWTON PARK



APPLICANT'S MOTIVATION:

The applicant's motivation is as follows (Verbatim):

- The predominant reason for the Owner seeking to have the restrictive conditions removed and the property rezoned is to enable it to be utilised offices.
- Numerous properties in the greater Newton Park area have already been rezoned to allow for business and residential development, with numerous businesses operating from properties in the township.
- The proposal conforms with the proposals of the Spatial Development Framework.

PUBLIC PARTICIPATION:

Registered notices were sent to the surrounding property owners, the office of the Ward Councillor and the application was concurrently advertised in the press. The closing date for objection was on 10 September 2019. No objections were received in respect of this application.

TECHNICAL ASSESSMENT:

Deferral of the subject item

The subject item was deferred by the MPT pending investigation to determine if any similar applications were recommended for rezoning by the MPT in the past where deviations from the minimum erf size of 3000m² were recommended or resolved on. The resultant research done, indicated that no applications in Newton Park affected by this 3000m² size limitation, have been considered by the Municipality before, as per the MPT's request. The only precedent is in Lorraine where the Applicant motivated on site-specific circumstances as property was also affected by the 3000m² minimum size requirement. However, in this case, the applicant did not motivate for site-specific circumstances that warranted for a departure from the provisions of the Cape Road Local Spatial Development Framework (LSDF). Therefore, this disqualifies the application to be considered for site-specific circumstances that warrants a deviation from the Municipal spatial vision in terms of SPLUMA Section 22(2).

Zoning and Character

The proposal is for Removal of Restrictive Title Deed conditions and the rezoning of Erf 190, Newton Park from Residential 1 to Business 3 purposes in terms of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013). The subject property is currently used for business purposes.

The Port Elizabeth Zoning Scheme regulations permits the following use rights under Business 3 use zone:

Use Zone	Development parameters	
Business 3	Primary Uses	Offices, Medical uses, Dwelling units, Residential Buildings
	Consent Uses	Restaurants for on-site consumption of food.
	Prohibited Uses	Uses other than those mentioned in Columns 2 and 3
	Building lines	<ul style="list-style-type: none"> • Street building line – 5m. • Side and rear spaces – 3.0m
	FSI	0.5
	Coverage	50%
	Height	2 floors
	Subdivision	N/A

Title Deed Conditions

According to the application, the restrictive conditions to be removed are as follows: B.1, B.3, B.4, B.6, B.7, B.8, B.9 and B.10 contained in the Deed of Transfer No. T54643/2013. The conditions to be removed read as follows:

"B Subject to the following special terms and conditions contained in Deed of Transfer No. T17209/1948 imposed by FAIRVIEW SUBURBAN ESTATE COMPANY LIMITED in favour of itself and its successors in title as owners of the remainder of the land held under Amended Title dated 8 October 1906, Port Elizabeth Quitrents Volume 4 No.13, Nos., 6, 7, 8, 9 and 10 having been imposed by the Administrator of the Province of the Cape of Good Hope, namely:

1. The Company shall not in any way be obliged to make, maintain, repair or keep in order any streets or roads approaching the said lot nor any drains, culverts or other works of any nature or kind so ever. The terms of this paragraph shall apply to the approaches of the said lot as well as to every portion of the property known as the Fairview Estate.
3. The Company reserves to itself the right of controlling the nature and value of the buildings to be erected on the said Lot and the residence to be erected on the said lot shall be of a substantial character and of a minimum value of TWO THOUSAND RAND (R2000,00) unless the Company shall otherwise consent in writing before the erection of the building shall be commenced.
- 4 No building shall be erected on the said Lot unless plans and specifications have been previously submitted and approved by the Company in addition to the requirements of any Local Authority in control over the area of the Township. Every building which shall be commenced on the said Lot shall be completed without delay strictly in accordance with the whole of such approved plans and specifications. failing completion of such building with a reasonable time after commencement of the building, the Company shall have the right to call upon the owner of the Lot in writing to do so or to pull down and remove the materials from the Lot with reasonable time, failing which the company shall have the right to pull down and remove from the lot at the expense of the owner such portion of the buildings as shall then have been erected.
- 6 That the said Lot shall be used for residential purposes only.
- 7 That not more than one dwelling be erected on the said Lot.
- 8 That no building be erected within 3,15 metres from the line of any street or avenue on which the Lot may front, such space may be used for garden but may not be built upon.
- 9 That not more than half the area of the said Lot shall be built upon.
- 10 That the said Lot shall not be subdivided without the written approval of the Company."

It should be noted that the Fairview Suburban Estate Company (Pty) Ltd consented to the removal of the aforementioned restrictive conditions in a letter dated 12/12/2017.

The subject restrictive conditions were aimed to create and preserve a neighbourhood with specific characteristics. However, the Port Elizabeth Zoning Scheme's development controls for Business 3 Zone (as per the table above) adequately regulate the functions of the restrictive conditions. Development controls such as density, coverage, building restriction areas and use zone clearly regulate the function of the subject restrictive conditions in conjunction with the current development trends and future development implementation.

MSDF and LSDF

Regarding the rezoning of the subject property from Residential 1 to Business 3 purposes in terms of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), the subject property falls within the Cape Road Local Spatial Development Framework (LSDF) which provides clear guidelines for future development and upgrading. The purpose of the said LSDF is to manage the pressure placed on the fragile residential area by the demand for commercial uses and offices. The Cape Road LSDF clearly articulate the areas to be retained for residential use only, but also identifies which part of Newton Park is

earmarked for different levels of commercial and business uses. The subject property is earmarked for "Business 1" purposes, under Mixed Use: Commercial (Zone C), with a permitted maximum FSI of 1.0, as per the Cape Road LSDF.

In this case, the Applicant intends to rezone the subject property to "Business 3" which is a lesser intensive zone based on what is permitted as per the LSDF. However, the LSDF encourages consolidation of properties to coherent land entity of minimum 3000m² in extent so as to minimise multiple access points within the area. The subject property measures an extent of 1 606m². Although the application is in line with the LSDF business intent, but it does not comply with the minimum requirements for development approval which requires a minimum erf size of 3000m² or a consolidation of existing erven to form a coherent single land entity of at least 3000m². There are no special circumstances that were highlight that warrant the deviation from the council approved spatial vision. It is the responsibility of the applicant to provide sufficient motivation for a deviation contemplated in SPLUMA Section 22 (2).

Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA) Principles

The proposal at hand was advertised as required by SPLUMA. It should be noted that the proposal is assessed against SPLUMA development principles as required by Chapter 2 of the aforementioned Act. The SPLUMA development principles were considered as follows:

The principle of Spatial Sustainability well as the principle of Efficiency: The proposed application promotes land development in a financial responsible manner as the proposed development will utilize existing municipal resources (municipal services).

The subject property is within the urban edge, this promotes the efficient use of space and curbs urban sprawl. The subject property is to be developed in a manner that maximizes the development potential of the site. The proposed use ensures that the area has a range of land uses, this makes the area flexible and able to accommodate a range of community needs.

The principle of Spatial Resilience: The proposed application is partially in line with the applicable Cape Road Local Spatial Development Framework (LSDF). Development according to the LSDF ensures that the area is resilient in the long term as the LSDF facilitates development in an informed manner that takes into development trends, needs and functions of the area as well as the general city. The proposed development promotes the City's vision as it facilitates the realization of the LSDF for this area of Newton Park.

The principle of Good Administration: The proposed application has been subjected to public scrutiny thus ensuring that the general impact on neighbours is considered. The Council's support for the proposed application is in line with this principle as well as ensuring good governance.

There are no negative impacts envisaged from the proposed removal of the said restrictive condition as contained on Title Deed No. T54643/2013. The subject property is located in the area which the Port Elizabeth Zoning Scheme and Cape Road Local Spatial Development Framework guide the planning. The functions of Restrictive Title Deed conditions are adequately regulated by the Port Elizabeth Zoning Scheme regulations and other relevant policies. Therefore, it is recommended that the stipulated restrictive conditions be removed. However, the rezoning of the subject property is not supported since it does not meet the minimum requirements for development approval which requires a minimum erf size of 3000m², and the never motivated for a departure from the provisions of the Cape Road Local Spatial Development Framework (LSDF) in terms of SPLUMA Section 22(2).

CONCLUSION:

In light of the above assessment, the application can be partially supported for the following reasons:

(a) Approval of the Removal of Restrictive conditions is based on the following reasons:

The functions of Restrictive Title Deed conditions are adequately regulated by the Port Elizabeth Zoning Scheme regulations and Cape Road Local Spatial Development Framework (LSDF).

(b) The Refusal of the rezoning is based on the following reasons:

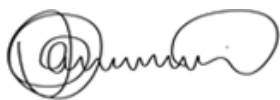
- Although the proposal is in accordance with the Cape Road Local Spatial Development Framework (LSDF) as it recommends the property to be zoned for Business 1 the LSDF encourages consolidation of properties to coherent land entity of minimum 3000m² in extent so as to minimise multiple access points within the area.
- In this case, the subject property measures an extent of 1 606m² and does not comply with the minimum requirements for development approval which requires a minimum erf size of 3000m².
- The Applicant never motivated for a departure from the provisions of the Cape Road Local Spatial Development Framework (LSDF) in terms of SPLUMA Section 22(2). Therefore, this disqualifies the

application to be considered for site-specific circumstances that warrants a deviation from the Municipal spatial vision.

Therefore, the application is partially supported.

RECOMMENDATION:

- (a) That, in terms of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), the restrictive Title Deed Conditions B.1, B.3, B.4, B.6, B.7, B.8, B.9 and B.10 as contained in the Deed of Transfer No. T54643/2013 and any subsequent Deed applicable to Erf 190, Newton Park, **BE REMOVED**, subject to:
- (i) compliance with the requirements of the Registrar of Deeds;
 - (ii) the provisions of applicable zoning scheme regulations applying;
 - (iii) compliance with the provisions of National Building Regulations.
- (b) That, in terms of the Provincial Circular LDC/GOK9/1988, the Town Planning Amendment (TPA 9339) to rezone Erf 190, Newton Park from Residential 1 to Business 3 purposes be REFUSED in terms of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013)



.....
TOWN PLANNER
SIYABONGA ZULU

14-07-2021

.....
DATE



.....
SENIOR TOWN PLANNER
ALAN DE VRIES

21/7/2021

.....
DATE



.....
MTHULISI MSIMANGA
DIRECTOR: LAND USE

21/07/2021

.....
DATE

190-Newton Park-RoR&TPA-SZulu