



MOTIVATING MEMORANDUM IN TERMS OF SECTION 41 OF THE CITY OF JOHANNESBURG MUNICIPAL PLANNING BY-LAW, 2016, READ WITH THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT 16 OF 2013) IN SUPPORT OF AN APPLICATION TO:

REMOVE RESTRICTIVE CONDITIONS OF TITLE FROM THE TITLE DEEDS OF
ERVEN 306-309 PARKWOOD

Applicant: Planning Worx

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2021

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TABLE OF CONTENTS

| | | |
|-------|---|---|
| 1. | INTRODUCTION | 1 |
| 2. | LEGAL ASPECTS | 1 |
| 2.1. | Property Description | 1 |
| 2.2. | Registered Landowner | 1 |
| 2.3. | Mortgage Bonds..... | 1 |
| 2.4. | Servitudes | 1 |
| 2.5. | Title Deed Conditions..... | 1 |
| 3. | SITE INFORMATION AND CONTEXT | 1 |
| 3.1. | Locality | 1 |
| 3.2. | Size | 1 |
| 3.3. | Existing Zoning of the Site..... | 2 |
| 3.4. | Existing Development, Connectivity and Access of the Site | 2 |
| 3.5. | Surrounding Land Uses and Zonings | 2 |
| 3.6. | Flood Lines and Wetlands | 3 |
| 3.7. | Topography | 3 |
| 3.8. | Heritage..... | 3 |
| 3.9. | Environmental factors..... | 3 |
| 3.10. | Geotechnical Investigation | 3 |
| 4. | CONDITIONS OF TITLE TO BE REMOVED | 4 |
| 4.1. | Johannesburg Land Use Scheme, 2018..... | 4 |
| 4.2. | 9.2 Section 41 of the Municipal Planning By-Law, 2016 | 4 |
| 5. | SUMMARY AND CONCLUSION..... | 5 |



1. INTRODUCTION

This memorandum is submitted in terms of Section 41 of the City of Johannesburg Municipal Planning By-Law, 2016 read with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) to support of the removal of various conditions of title from Deed of Transfer, T34928/2015 in respect t of Erven 306 to 309 Parkwood (the site).

A separate application has simultaneously been submitted to rezone Erven 306 to 309 Parkwood in order to increase the height, coverage and FAR.

2. LEGAL ASPECTS

2.1. Property Description

Erven 306-309 Parkwood (the site) in terms of Deed of Transfer T34928/2015.

2.2. Registered Landowner

Luzocube (Pty)Ltd.

2.3. Mortgage Bonds

The land is subject to a mortgage bond. The consent of the bondholder has been obtained and enclosed herewith.

2.4. Servitudes

There are no servitudes registered over the site affecting this application.

2.5. Title Deed Conditions

There are restrictive conditions of title which are sought to be removed in terms of this application, refer Section 4.

3. SITE INFORMATION AND CONTEXT

3.1. Locality

The site is located at 130-136 Jan Smuts Avenue (132 is practically used as the combined street address as reflected on-site), as shown on the Locality Map, attached as Annexure A.

3.2. Size

The site measures 4 024 m² as summarised in the table below:

| Property Description | Size |
|----------------------|---------------------|
| Erf 306 Parkwood | 1 006m ² |
| Erf 307 Parkwood | 1 006m ² |
| Erf 308 Parkwood | 1 006m ² |
| Erf 309 Parkwood | 1 006m ² |



| Property Description | Size |
|----------------------|---------------------|
| Total Site | 4 024m ² |

3.3. Existing Zoning of the Site

The site is zoned “Business 1” in terms of Johannesburg Amendment Scheme 01-1580E as per the enclosed zoning information.

3.4. Existing Development, Connectivity and Access of the Site

The existing land use on the site and surrounding uses are shown on the enclosed Annexure B, Land Use Map and Aerial Photo.

The site is developed with a “five storey” structure of which the street level along Jan Smuts Avenue is used for a filling station, tyre fitment centre and basement purposes. The levels above are used for offices. There is an illuminated billboard on-top of the structure.

The site gains access off both Jan Smuts Avenue and the lane adjoining the site to the east thereof.

Parking is provided in the basement on-site and per arrangement on the consolidated Erf 991 Parkwood to the east of the lane. Access to this parking is gained through the site from Jan Smuts Avenue and directly from the lane, which is open on both the Wells Avenue and Bolton Road ends thereof. The lane is fully functional, unobstructed and tarred from end to end.

Jan Smuts Avenue is a major north-south arterial connecting the Johannesburg Inner City Node (to the south of the site) to the nodes of Rosebank (in which the site is located) and Hyde Park/Dunkeld, Randburg, Bryanston/Sloane and Fourways, all to the north of the site.

Jan Smuts Avenue carries high volumes of both private and public transport (all forms of public transport are catered for including taxis, Metrobus and various other bussing companies).

The site is located within the Rosebank Metropolitan Node, within walking distance of all its amenities, including all forms of employment, housing provision, shopping, social and health facilities.

The Gautrain Station is also within walking distance from the site (approximately 1.1km) and for those unable or unwilling to walk that distance the Gautrain bus service is located on Bolton Avenue, approximately 140m from the site.

The site is therefore highly connected and accessible in relation to a wide range of amenities.

3.5. Surrounding Land Uses and Zonings

The surrounding land uses and zonings are reflected on the enclosed Annexure B, Land Use Map and Annexure C, Zoning Map.

The surrounding environment is a robust mixed-use environment.

The erven in the same city block along Jan Smuts Avenue are all zoned “Business 1” and are used for a variety of uses including restaurants, shops, art galleries, offices and residential purposes.



The erven in the same city block but opposite the lane to the east of the site are predominantly used for non-residential purposes, including home offices and parking purposes in support of the uses on Jan Smuts Avenue. Zonings include, "Residential 3", "Residential 1" permitting offices and a consent for parking purposes. Erf 991 Parkwood, directly to the east of the site is zoned "Residential 3", including private parking purposes at a height of 4 storeys.

The row of erven opposite the site, along Jan Smuts Avenue, are all used for non-residential purposes in mostly converted dwellings and include offices, art galleries and shops. The Goodman Gallery on the south-western corner of Jan Smuts Avenue and Chester Road has been rezoned for a mixed-use development at 6 storeys in height containing offices, restaurants, shops and dwelling units.

The Remainder and Portion 1 of Erf 208 Rosebank, north-eastern corner Jan Smuts Avenue and Bolton Road, are developed with an office building at 7 storeys in height and a new residential building at 10 storeys in height and are zoned accordingly.

A rezoning application is currently in progress on the Garden Shop site, north-western corner Jan Smuts Avenue and Chester Road also for a mixture of land uses at 6 storeys in height.

There is a public parking area on Erven 312 and 313 Parkwood to the south of the site, corner Wells and Jan Smuts Avenues.

3.6. Flood Lines and Wetlands

There are no bodies of water affecting the proposed development of the site.

3.7. Topography

There is no substantial slope negatively affecting the proposed development or required to be considered in this application.

3.8. Heritage

There are no heritage considerations.

3.9. Environmental factors

There are no environmental considerations relevant to the application.

3.10. Geotechnical Investigation

The site is located within an established township with no detrimental soil conditions.



4. CONDITIONS OF TITLE TO BE REMOVED

It is proposed to remove the following conditions in Deed of Transfer T34928/2015:

| | |
|---------------------------------------|----------------------|
| Erf 306 Parkwood – Paragraph 1 | Conditions (a) – (k) |
| Erf 307 Parkwood – Paragraph 2 | Conditions (a)-(k) |
| Erf 308 Parkwood – Paragraph 3 | Conditions (a)-(l) |
| Erf 309 Parkwood – Paragraph 4 | Conditions (a)-(k) |

The conditions correspond to each other in most cases as per the deed submitted with the application.

Specifically, Condition (b), in paragraphs 1-4 is contrary to the zoning of the land as it prohibits the opening of a canteen, hotel, restaurant, shop or other place for the sale of wines, beer or spirituous liquors.

It is possible that the owner of the land may wish to include such a use in the redevelopment of the property. The zoning of land already permits such uses. The sale of liquor is now regulated by more appropriate laws, which remain applicable to the land. The conditions are now redundant and can be removed.

The remainder of the conditions to be removed relate to old land use controls introduced at the time of the establishment of the township, many of which are in favour of the township owner at the time. The township owner is no longer interested in exercising their rights and the enforcement of the conditions has now become the responsibility of the local authority. The local authority has over time established a land use scheme and developed far more comprehensive laws to control and evaluate the use of land and specifically this site. It now makes sense to simultaneously remove these conditions as they have now become redundant. There is no prejudice against any party and the removal thereof will facilitate better administration of the site and local area moving forward.

4.1. Johannesburg Land Use Scheme, 2018

Title conditions were introduced prior to the Johannesburg Land Use Scheme, 2018, coming into operation and hence, this dual control serves no other purpose other than to hamper the implementation of the Scheme on this site.

The requirements of the Johannesburg Land Use Scheme, 2018, are adequate to control the proposed development on the site and there is no need to maintain two sets of control mechanisms for properties in the larger metropolitan area.

4.2. 9.2 Section 41 of the Municipal Planning By-Law, 2016

The removal of these conditions should also be assessed in terms of Section 41 of the Municipal Planning By-Law, 2016 and Section 47, read with Section 25 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013).

An application for the removal, amendment or suspension of a restrictive condition must promote economic growth, social inclusion, efficient land development and minimal impact on public health and the



environment. The proposed land use that the conditions of title hinder promotes the above objectives and is hence in line with the legislation. As far as the legislation is concerned, the desirability of any deletion of conditions must be motivated but such deletion must also be reasonable. In view of the proposed development as motivated for in the accompanying rezoning application, it is both reasonable and desirable to have the restrictive conditions removed in order to provide allow for a land use that will be in keeping with the residential character of the area and that is aligned with the Planning Policies of the local authority.

The deletion of conditions must be in the interest of the public and must be motivated as such. Furthermore, it is in the public's interest to ensure that the approved policies, where applicable, benefit the development of the area as intended by the policies. To eradicate inconsistencies in the title deed conditions and thereby to promote the uniform application of the Town Planning Scheme or policies of the local authority must surely be viewed as a factor in the interest of the public.

5. SUMMARY AND CONCLUSION

Considering the above, it is respectfully requested that the application to remove restrictive conditions of title a detailed in Section 4 above be approved.

ANNEXURE A
LOCALITY AND CADASTRAL MAPS



Locality Map

PREPARED BY:
Erven 308-309 Parkwood
DATE:
05/07/2022

City of Johannesburg
CORPORATE GEO-INFORMATICS

1:10 000



ANNEXURE B
EXISTING LAND USE MAP AND AERIAL PHOTO



Land Use Map

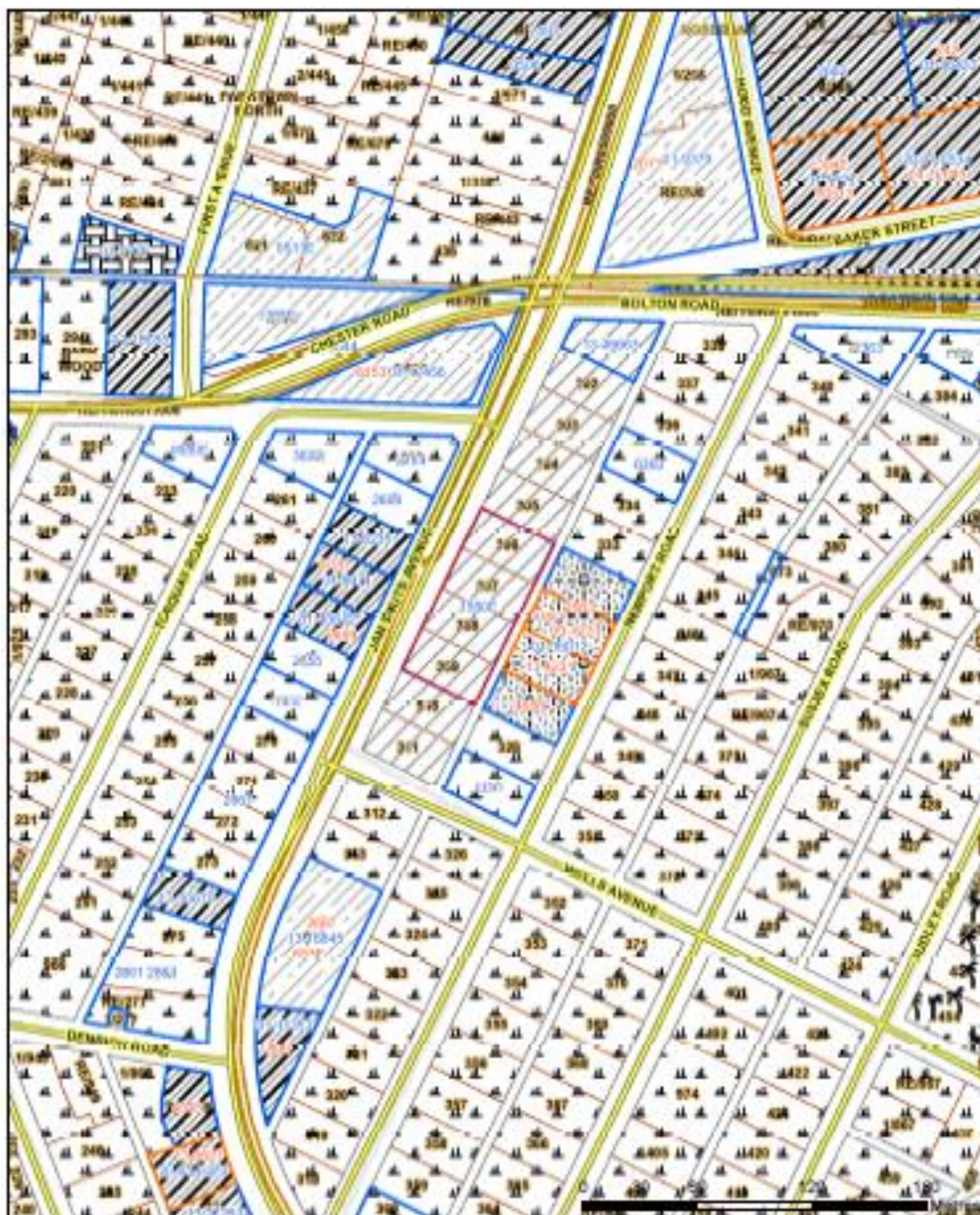
PREPARED BY:
Erven 306-309 Parkwood
DATE:
05/07/2022

City of Johannesburg
CORPORATE GEO-INFORMATICS

1:2 500



**ANNEXURE C
ZONING MAP**



Zoning Map

PREPARED BY:
Erven 308-300 Parkwood
DATE:
05/07/2022

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1:2 500

