

**MOTIVATIONAL MEMORANDUM:
APPLICATION FOR REZONING IN
CONJUNCTION WITH SECTION 66 OF
THE MUNICIPAL PLANNING BY-LAW
FOR
ERF 200 BORDEAUX
ON BEHALF OF
CST INVESTMENTS (PTY) LTD**

Date	21 September 2022
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INTRODUCTION

The purpose of this memorandum is to introduce, elaborate upon and motivate the rezoning application in respect of erf 200 Bordeaux in conjunction with section 66 of the Municipal Planning Bylaw for exemption to procedurally comply.

The full extent of the application is set out in this memorandum, which comprises of the following:

- ❖ Chapter 1: General Information
- ❖ Chapter 2: The Application
- ❖ Chapter 3: Clause 66 Exemption
- ❖ Chapter 4: Policy Environment
- ❖ Chapter 5: Motivation
- ❖ Chapter 6: Conclusion

1. GENERAL INFORMATION

KiPD (Pty) Ltd, the authorised agent, has been appointed by CST Investments (PTY) Ltd, the registered owner of the property being Erf 200 Bordeaux, to lodge an application for rezoning of erf 200 Bordeaux to allow the protection of previously approved development controls, the increase in coverage, and relaxation of building lines. The property will be referred to as “the site”, “the subject properties” and/or “the proposed development” in this memorandum.

2. THE APPLICATION

Application is hereby made in terms of Section 21 of the City of Johannesburg (CoJ) Municipal Planning By-Law, 2016, hereinafter referred to as the “By-Law” read together with Clause 66 of the By-law and read together with the provisions of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA).

2.1. AGENT AND CLIENT

2.1.1. Agent

The authorised town planning agent acting on behalf of the client is:

Name	KiPD (Pty) Ltd
Responsible Persons	Paul Kotze
Postal Address	47 Third Street, Linden, 2195
Contact Number	082 894 1232
Email	paul@kipd.co.za

2.1.2. Client

The client's details are as follows:

Name	Jose de Jesus CST Investments (Pty) Ltd
Contact Number	072 123 3460
Address	1 Evelyn Ave, Bordeaux
Email	jose.kingsliquor@gmail.com>

2.2. LAND DEVELOPMENT AREA

2.2.1. Site Locality

(Annexure A: Plan 1 and 2)

The property is located at 1 Evelyn Ave, Bordeaux (corner of Bordeaux Drive and Evelyn Ave). Bordeaux is located north east of Blairgowrie, southwest of Lyme Park and Glenadrienne.

2.3. LEGAL ASPECTS

2.3.1. Ownership

(Annexure B)

In terms of Deed of Transfer T33509/2021, the property is registered in the name of CST Investments (Pty) Ltd and measures 984 m².

2.3.2. Power of Attorney

(Annexure C)

The owner of the property provided a signed power of attorney and company resolution to enable KIPD to submit a formal application as per the requirements of the CoJ Municipal Planning By-Law, 2016.

2.3.3. Restrictive Title Conditions

There are no title restrictions affecting this application.

2.3.4. Bond Holder's Consent

(Annexure D)

There is a bond registered against the property in favour of First National Bank. The bond-holder's consent is attached as Annexure D.

2.4. EXISTING LAND USE

The property is currently being used as a business premises for shops and offices.

2.5. SURROUNDING LAND USE

(Annexure A: Plan 4: Land Use Plan)

This part of Bordeaux is predominantly a mixed business area accommodating commercial activities, shops and service orientated enterprises.

2.6. EXISTING ZONING AND DEVELOPMENT CONTROLS

(Annexure E: Zoning Certificate)

In terms of the City of Johannesburg Land Use Scheme, 2018, the property is currently zoned as follows:

Zoning	Business 2
Primary rights	Shops, dwelling units, residential buildings, places of instruction, business purposes, car sales lots, institutions
Secondary rights	As per scheme
Floor Area	2.1
Coverage	50% for 1 and 2 storeys, 40% for 3 storeys
Height zone	3 storeys
Density	1 unit per erf
Building Lines	3m street boundary

2.7. SURROUNDING ZONING

(Annexure A: Plan 5: Surrounding zoning plan)

In terms of the Johannesburg Land Use Scheme 2018, the properties immediately surrounding the site are zoned the Business 2 and Special (for nominated business or commercial activities).

2.8. PROPOSED ZONING

Application is hereby made the following land use rights:

Zoning	Business 2
Primary Rights	As per Scheme
Height	As per Scheme: 3 Storeys
FAR	As per Scheme: 2.1
Coverage	As per Scheme: 75%
Building Line	All Street Boundaries: Nil All other boundaries: As per Scheme: 1m
Parking	1. For the life of the existing building previously approved prior to the coming into operation of this amendment scheme, measuring 1142.17 m ² (comprising of 534,80 m ² shops, 198.70 m ² office, 220 m ² Medical Consulting Rooms and 188.57 m ² Communal Area): Nil parking bays

	<ol style="list-style-type: none"> 2. For the expansion of the existing shop floor area stipulated in (1) above by 73m² : Nil parking bays 3. For any further additions: As per scheme
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2.9. PROPOSED DEVELOPMENT AND USE

(Annexure A : Map 7: Site Development Plan, Map 8: Ground Floor Configuration, Map 9: 1st Floor Configuration)

The site to be used in terms of the provisions of the Scheme for shops, offices and medical consulting rooms.

The intent is to expand the existing shop on the premises by 73m² as indicated in Annexure A: Map 7 Site Development Plan.

Map 8 and 9 in Annexure A illustrates the land use configuration on the site as follows:

Land Use	Ground Floor	1 st Floor	Total
Shops (Existing)	534.90	0.00	534.90
Shops Proposed	72.36	0.00	72.36
Offices	0.00	198.70	198.70
Medical Consulting rooms	0.00	220.00	220.00
Passage, stair and ablutions	46.00	142.57	188.57
Total	653.26	561.27	1214.53

This proposed extension requires an amendment to the current Land Use Scheme conditions in respect of building lines, coverage and parking provision.

3. APPLICATION TO BE EXEMPTED FROM COMPLIANCE ITO CLAUSE 66 OF BYLAW

In terms of the provisions of Clause 66 of the City Planning Bylaw application is made for exemption to procedurally comply in respect of:

- **Publish a notification of the application calling for comments and objection.**

This application has the intent of bringing the zoning of the site in line with what was previously approved and does not constitute a new development initiative. Prior this this application an application was submitted to the Municipality for written consent to relax the building line and relax the provision of parking as well as the approval of a Site Development Plan by the owners Architects. This application was formally advertised and presented to the neighbours of which none had any problem with the development intent of the applicant.

- **Omission of internal Circulation**

This application has no impact on the municipal services capacity and has no impact on the transportation system of the municipality. The application merely rectifies what was approved in the past by legal confirmation once this rezoning application is approved.

4. SPATIAL PLANNING ENVIRONMENT

In terms of Section 5(2) of the City of Johannesburg Municipal Planning By-Law, 2016 – “any land development application in terms of said By-Law shall be guided and informed by the City’s Integrated Development Plan and Municipal Spatial Development Framework as adopted and approved in terms of Section 20 of SPLUMA and Section 10 of said By-Law.”

This section therefore reviews all relevant spatial planning documents and plans, to determine the suitability and compliance to the spatial plans of the City.

The following spatial planning documents have been reviewed :

- City of Johannesburg Spatial Development Plan, 2040 (2016);
- Nodal Review Policy 2019/2020.

4.1. SPATIAL DEVELOPMENT FRAMEWORK 2040

The Spatial Development Framework 2040 (SDF) is a city wide spatial policy document that identifies the main challenges and opportunities for the City, sets a spatial vision for the future city and outlines a set of strategies to achieve that vision.

Along with providing a spatial vision, the SDF defines the strategic spatial areas to be used in the City’s capital investment prioritisation model. This will ensure that infrastructure investment is directed to areas with the highest potential to positively impact on the development trajectory of the City as defined in the SDF.

In terms of the SDF, the subject property falls within a “Metropolitan Node”. this area is the highest mix of land uses (up to 100% coverage is encouraged, subject to conditions).

The proposal to increase the coverage allowed on the subject properties remains in line with the SDF as the existing use will remain the same.

4.2. NODAL REVIEW POLICY 2019/2020

In terms of the Nodal Review Policy, 2019/2020, the subject property falls within the Randburg “Metropolitan Node”.

In terms of the Nodal Policy 2020, the land use mix within a Metropolitan Node includes but not limited to commercial, residential, offices, retail, urban agriculture, public open space, recreation, community services, childcare, health care, and small scale non-polluting (including noise) urban manufacturing uses. Coverage should be high, up to 100%. Where parking is placed along a street frontage, it may not exceed 30% of the total street front. Direct pedestrian access to building from the street.

This application is wholly in line with the developmental policy of the City. It reiterates the need to intensify the land use within the node whilst keeping with the envisioned land use i.e Shops and Business

5. MOTIVATION: NEED AND DESIRABILITY

5.1. STATUS OF EXISTING BUILDING

(Annexure F: Previously Approved Plans)

The existing building erected on the site was approved in 1999 in accordance with the provisions of the Randburg Town Planning Scheme 1976. In terms of previous approved plans the owner was absolved from providing on-site parking. In terms of Clause 11 and 12 of the COJ Land Use Scheme 2018 the existing building is protected as it conformed to previous enacted development controls in accordance with a town planning scheme in operation.

5.2. CURRENT SITUATION

5.2.1. Coverage Dilemma

With the enactment of the CoJ Land Use Scheme of 2018 the development controls administering development of the site were amended with the effect that , although the existing development is protected, new additions to the existing building could not be approved as it rendered the building in contravention of the scheme. The following table illustrates the previous and current development controls.

Site Area (m ²): 984				
1976 Randburg TPS			CoJ LUS 2018	
	Permissible	Actual	Permissible	Actual
Coverage	60% 590.4	59% 580.9	50% 492	59% 580.9
FAR	1.8 1771.2	1.16 1142.17	2.1 2066.4	1.16 1142.17

In terms of the Randburg TPS 1976, clause 23 the permissible coverage for all floors was 60%. The TPS did not make provision for an increase in coverage. The existing development on the site as per the previous approved plans in Annexure F adhered to the coverage limitation.

In terms of the current 2018 LUS the coverage can be increased by 10% with the written consent of the municipality. Should such a consent be granted it would increase the coverage to 60% which is the coverage of the existing building. No extension of the building could thus be permitted in terms of the provisions of the 2018 LUS. Should the coverage stipulation have been the same as per the Randburg

1976 TPS namely 60% by applying the provisions of the 2018 LUS the coverage will be increased to 70% which would bring it in line with the FAR allowance of 2.1 (3 storeys x 70% Coverage).

There is however a possible interpretation challenge in respect of whether a canopy be construed as coverage or not. The current building has a canopy extending for approximately 3m wide along the street front of the existing building. The 2018 CoJ LUS defines Coverage as:

Means the total area of land that may be covered by buildings, as seen vertically from the air measured from outer face of exterior walls, expressed as a percentage of the land area, and shall include all roofed areas; provided that the following portions of buildings shall be disregarded in the calculation of coverage:

- i. Unroofed areas such as a stoep, entrance steps and landing;
- ii. Projecting balconies, open on all vertical sides.
- iii. Retractable awnings or pergolas, with or without
- iv. louvres and areas covered by permeable material;
- v. Cornices, chimneys, water pipes, drain pipes and
- vi. minor decorative features not projecting more than
- vii. 500mm from the building wall;
- viii. Eaves and canopies not projecting more than 1,0m
- ix. from the wall of the building;
- x. A canopy erected on the street frontage of a shop;
- xi. Electrical high and low tension chambers;
- xii. The area covered by open air swimming pools;

The 1979 Randburg TPS excluded a canopy as part of coverage as per the approved building plans attached in Annexure F.

Since the intent is to extent the current shop by 73m² using the existing canopy as the roof of the extension the balance of the canopy now becomes enclosed and as such seemingly do not conform to the gist of the 2018 CoJ LUS definition of coverage. If the existing canopy is considered as coverage then the coverage of the site jumps from the original 60% to 72%.

To make provision for this conundrum in interpretation the application is to increase the permissible coverage from 50% to 75% in line with the recommendations and advocations of the Nodal Policy.

5.2.2. Parking Dilemma

(Annexure H: Report by MPAMOT Africa (Pty) Ltd – Traffic Engineers)

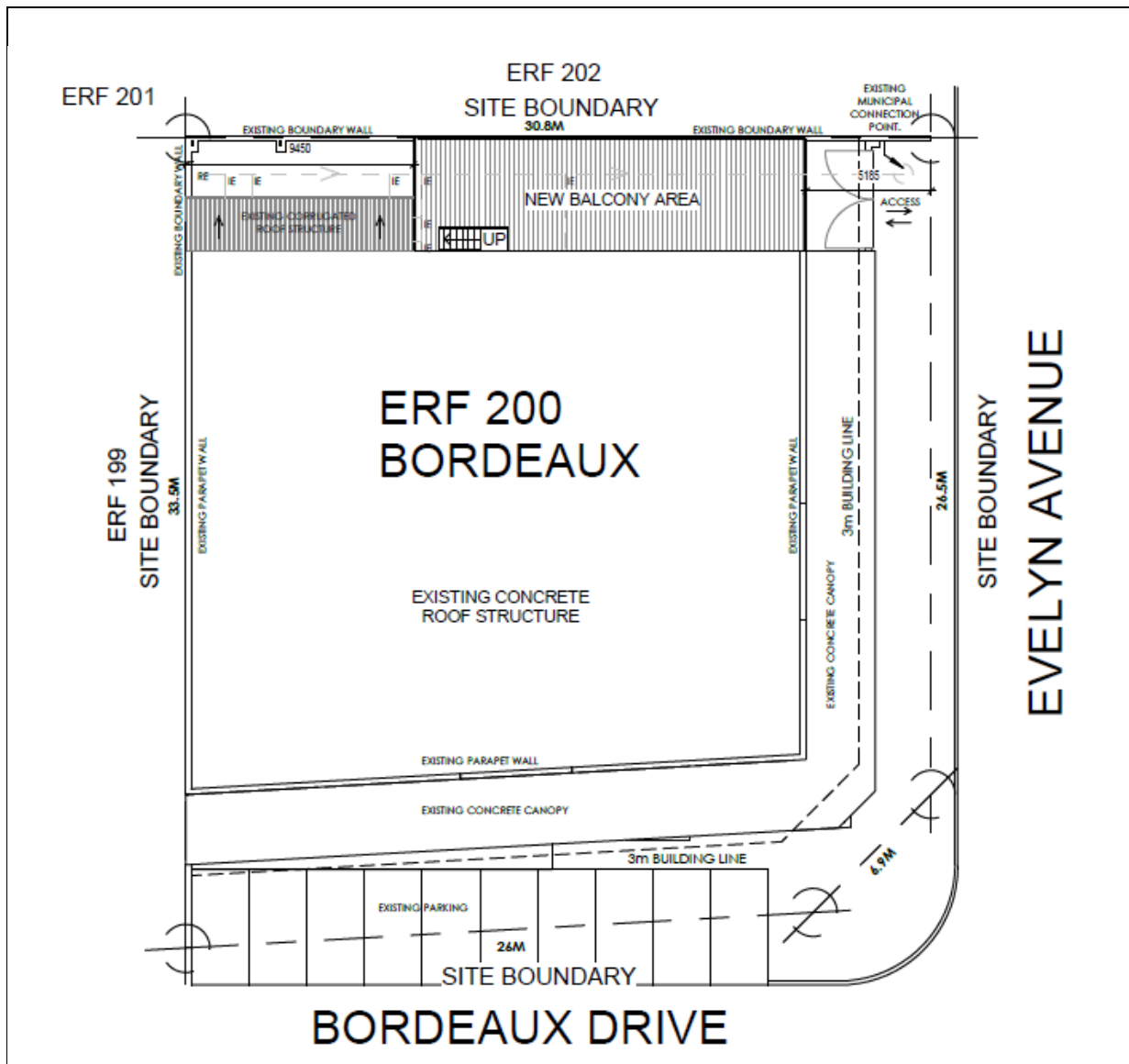
Clause 29 of the Randburg TPS 1976 required the on-site provision of parking in the ratio of 6 (six) spaces per 100m² lettable shop area and 4 spaces per 100m² lettable office area. However, subclause (i) allowed the municipality to relax the parking provisions **in total** should the municipality be satisfied with the special circumstances. The previous approved building plans clearly demonstrates that the municipality applied sub-clause (i) as no on-site parking has been provided on the site. Street parking within Boardeaux Drive as well as the stands within Bordeaux specifically reserved for public parking (erven 69, 70,100 and 164 as per Table B, clause 14 of the Randburg TPS 1979) were seemingly favourably considered as alternative to the TPS requirement and buildings were subsequently approved (See Annexure F : Previously Approved Plans).

Whilst Clause 11 and 12 of the 2018 LUS protects the existing development on the site, new additions to the existing building will have to comply to the parking requirements of the current scheme in operation. Clause 36, Table 8, of the current scheme requires 3 bays per 100m² for shops and 2 bays per 100m² for offices. The scheme further in terms of Clause 37 allows for alternatives to the provision of on-site parking viz:

Where the parking accommodation with regard to an erf or site has been determined in terms of Clause 36, the Council may, if satisfied of the necessity and desirability thereof, on account of the size of the site, the nature of the buildings thereon and the likely parking demand, grant written consent for the provision of the required number of parking bays elsewhere than on the site of the building / development concerned.

With regard to the obligation to provide parking accommodation on a site, the Council has, in terms of this Land Use Scheme or in terms of similar provisions in any town planning scheme previously administered by the Council, granted such consent, then the arrangement thus consented to as an alternative to the provision of parking on site shall be taken into account in the form of a credit against any parking accommodation, which has to be provided where erecting any building on the site following such consent.

Due to the nature of the existing legal development on the site it will only be possible to provide 3 parallel parking bays along Bordeaux Drive as per Annexure A : Plan 7: Site Development Plan for any further extension on the site. Since 1999 the current "on-street" parking provision is perpendicular parking permitting 10 bays along Bordeaux Drive as per the following figure:



Should “on-site’ parking be required for the proposed 73m² shop extension (as illustrated in Annexure A : Map 7 Site Development Plan) the current off -site parking provision will be reduced by 7 bays. It would thus be in the best interest for the development on the site (and for the surrounding businesses) that the current street parking configuration be maintained.

The proposed add-on of 73m² shop area will in terms of the current 2018 CoJ LUS require the provision of 2 on-site parking bays. It is advocated in this application that the provision of 2 on-site parking be waived as it will not contribute to the operability of the development on site. In fact, it will jeopardise the effective and efficient existing street parking configuration by losing 10 perpendicular bays for the provision of 2-3 parallel on-site parking bays. From a traffic engineering perspective Annexure H attached also advocates the retention of the current street parking configuration in lieu of providing 2 – 3 parallel parking bays on site.

This application is to maintain the nil parking provision of the existing building and to apply a nil parking requirement for the proposed additional 73m² shop area as follows:

Parking	<ol style="list-style-type: none"> 1. For the life of the existing building previously approved prior to the coming into operation of this amendment scheme, measuring 1142.17 m² (comprising of 534,80 m² shops, 198.70 m² office, 220 m² Medical Consulting Rooms and 188.57 m² Communal Area): Nil parking bays 2. For the expansion of the existing shop floor area stipulated in (1) above by 73m² : Nil parking bays 3. For any further additions: As per scheme
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5.2.1.Reduced Building Line

(Annexure H: Nodal Development Guidelines)

To enable the addition of the 73m² additional shop area (See Annexure A: Map 7 – Site Development Plan) it would require the relaxation of the existing building line restriction from 3m to 1.5m along the street frontage of the building. Taking into consideration that the site is situated close to the nodal core (Randburg CBD) and along a prominent high street (Jan Smuts Avenue)) and within an activity street (Bordeaux Drive). From this position the advocacy of a zero building line along the street frontage is supported by the policy documents referred to. As such application is made for:

Building Line	<p>All Street Boundaries: Nil</p> <p>All other boundaries: As per Scheme: 1m</p>
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6. SPLUMA DEVELOPMENT PRINCIPLES

In terms of the Spatial Planning and Land Use Management Act (Act 16 of 2013) (SPLUMA), the following principles apply to spatial planning, land development and land use management and are hereby applied to this application:

SPLUMA Referral		Proposed Development Compliance
7 (a)	Spatial Justice	The development addresses the principle of spatial justice as it answers to the rectification of previous injustices by improving access to a service previously not easily accessible.
7 (b)	Spatial Sustainability	The principle of spatial sustainability is addressed in the fact that the development is being implemented in an area that is considered viable for the development to occur within and addresses the immediate need to the amenity.
7 (c)	Efficiency	The land development optimises the use of existing engineering infrastructure.
7 (d)	Spatial Resilience	the principle of spatial resilience applies in that the Spatial Development framework supports the type of development that’s been instituted in the area, therefore adhering to the vision of the City.
7 (e)	Good Administration	The development answers to the broader scope and the microscope of all spheres of government, in that it answers the need of the intention to increase accessibility to necessary social needs within South Africa.

7. RECOMMENDATION

The application is in line with the City of Johannesburg's vision for this area and supports the policy; the proposed development would align with the surrounding area. This application aims at more efficiently utilising a well located space in the City.

We therefore recommend that the application be approved.