

**MOTIVATIONAL MEMORANDUM:**  
**Simultaneous Rezoning and Removal of**  
**Restrictions Application**  
**for**  
**Erf 41 Bramley Park**

**on behalf of**  
**WASHIRIKA 3 OAKS (PTY) LTD**

|                    |   |
|--------------------|---|
| <b>Date</b>        | 13 December 2022  |
| <b>Prepared by</b> | <b>Raesa Soomar Cassim (Pr Pl. A/1852/2014)</b><br>raesa@kipd.co.za      084 440 5957<br><b>Saskia Cole (Pr Pl. A/1554/2012)</b><br>saskia@kipd.co.za      082 574 9318 |
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## INTRODUCTION

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The purpose of this memorandum is to introduce, elaborate upon and motivate the application for the simultaneous rezoning and removal of restriction in respect of Erf 41 Bramley Park.

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: Policy Environment
- ❖ Chapter 4: Motivation
- ❖ Chapter 5: Conclusion

## 1. GENERAL INFORMATION

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KiPD (Pty) Ltd, the authorised agent, has been appointed by Washirika 3 Oaks (Pty) Ltd, the registered owner of the property, to lodge an application for the simultaneous rezoning and removal of restrictive title conditions of Erf 41 Bramley Park to allow for the property to be used for business uses. The property will be referred to as “the site”, “the subject properties” and/or “the proposed development” in this memorandum.

### 1.1. THE APPLICATION

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Application is hereby made in terms of Sections 21 and 41 of the City of Johannesburg (CoJ) Municipal Planning By-Law, 2016, hereinafter referred to as the “By-Law”, read together with the provisions of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA), for simultaneous rezoning from “Residential 1” to “Business 4” and removal of restrictions A.(a), A.(b), A.(c), A.(d), A.(e), A.(f), A.(g), A.(h), A.(i), A.(j), B.(a), B.(b), B.(c) and C. from the title deed.

### 1.2. AGENT AND CLIENT

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#### 1.2.1. Agent

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

|                     |                               |
|---------------------|-------------------------------|
| Name                | KiPD (Pty) Ltd                |
| Responsible Persons | Raeesa Soomar                 |
| Postal Address      | 47 Third Street, Linden, 2195 |
| Contact Number      | 011 888 8685 / 084 440 5957   |
| Email               | raeesa@kipd.co.za             |

### 1.2.2. Client

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The client's details are as follows:

|                |                               |
|----------------|-------------------------------|
| Name           | Mr Sean Roberts               |
| Contact Number | 082 348 1984                  |
| Address        | 34 Boero Avenue, Bramley Park |
| Email          | sean@w30.co.za                |

## 1.3. LAND DEVELOPMENT AREA

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### 1.3.1. Site Locality

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The property is located at no 32 Boero Avenue, Bramley Park. Bramley Park is located east of Atholl, west of Wynberg and north of Bramley North.

The property lies within 650m from Old Pretoria Main Road (Louis Botha Ave ext) and within 250m from Andries Street, which connects with the Grayston Ave intersection over the M1 motorway.

## 1.4. LEGAL ASPECTS

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### 1.4.1. Ownership

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In terms of Deed of Transfer T73845/2021, the property is registered in the name of Washirika 3 Oaks (Pty) Ltd and measures 2083 m<sup>2</sup>.

### 1.4.2. Company Resolution

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The directors of Washirika 3 Oaks (Pty) Ltd have provided a resolution authorising the nominated individual to provide a power of attorney to enable KiPD to submit a formal application as per the requirements of the CoJ Municipal Planning By-Law, 2016.

### 1.4.3. Power of Attorney

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The authorised individual has in turn provided a signed power of attorneys to enable KiPD to submit a formal application as per the requirements of the CoJ Municipal Planning By-Law, 2016.

### 1.4.4. Restrictive Title Conditions

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The Title Deed T73845/2021 contains some conditions which restricts the use of the land for business purposes and application is hereby made to remove them. Details on the removal of restrictive conditions are detailed in paragraph 2.

### 1.4.5. Registered Mortgage Bonds

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There is a mortgage bond registered against the property with First Rand Bank. The bondholders consent letter is attached to this application.

## 1.5. EXISTING LAND USE

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The property is currently being used as offices.

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## 1.6. SURROUNDING LAND USE

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The properties surrounding the subject property vary in uses, from industrial, commercial, business, offices to the north and north east of the property in mainly Wynberg, open space for an Eskom powerline adjacent north and single residential units adjacent south in Bramley View.

Erven 41, 42 and 43 Bramley View are being used as offices. Applications for the rezoning of Erven 41 and 42 Bramley View have been submitted simultaneously to this application.

Erf 38 is vacant in that the house has been demolished.

Boero Avenue has an underpass under the M1 motorway linking Andries Street and Wynberg to Bramley North Ext 1, west of the M1.

## 1.7. EXISTING ZONING AND DEVELOPMENT CONTROLS

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

|                |  |
|----------------|--|
| Zoning         | Residential 1  |
| Primary rights | Dwelling units   |
| Floor Area     | As per scheme: 1.2                                       |
| Density        | One dwelling unit per erf                                |
| Coverage       | As per scheme : 50% - 1 and 2 storeys<br>40% - 3 storeys |
| Height zone    | As per Scheme : 3 storeys                                |
| Parking        | As per scheme  |
| Building Lines | 3m street boundaries                                     |

## 1.8. SURROUNDING ZONING

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In terms of the City of Johannesburg Land Use Scheme, 2018, most of the erven of the subject property are zoned "Special" for business and industrial related uses and the properties south of the subject property are zoned "Residential 1".

## 2. THE APPLICATION

### 2.1. PROPOSED REMOVAL OF TITLE RESTRICTIONS

Application is hereby made to remove the following title conditions from the title deed.

| Condition | Description   | Reason  |
|-----------|---|---|
| A.(a)     | The applicant and any other person or body of persons so authorised in writing by the Administrator shall for the purpose of securing the enforcement of these conditions and any other conditions referred to in Section 56 bis of Ordinance No. 11 of 1931 have the right and power to enter into and upon the erf at all reasonable times for the purpose of such inspection or inquiry as may be necessary to be made for the abovementioned purpose. | The Local Authority is the enforcer of all property conditions and by laws as stipulated by the Municipal Systems Act, Act 32 of 2000                       |
| A.(b)     | Neither the owner nor any other person shall have the right to make or permit to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of a like nature.   | The use of the property is regulated by the CoJ Land Use Scheme, 2018   |
| A.(c)     | Except with the written approval of the local authority, the roofs of all buildings, hereafter erected on the erf shall be of tiles, shingles, slate, thatch or concrete.   | Regulated by the National Building Regulations (NBRs)   |
| A.(d)     | Plans and specifications of all buildings and of all alterations or additions thereto shall be submitted to the local authority whose approval in writing shall be obtained before the commencement of building operations. All buildings or alterations or additions thereto shall be completed within a reasonable time after commencement.   | As per Municipal Policy, all plans are to be submitted to the City of Johannesburg for assessment and approval prior to the commencement of building works. |
| A.(e)     | The elevation treatment of all buildings shall conform to good architecture so as not to interfere with the amenities of the neighbourhood.   | Regulated by the National Building Regulations (NBRs)   |
| A.(f)     | Neither the owner nor any other person shall have the right save and except to prepare the erf for building purposes, to excavate therefrom any material without the written consent of the local authority.  | Regulated by the CoJ Land Use Scheme, 2018  |
| A.(g)     | Except with the consent of the local authority, no animal as defined in the Local Authorities' Pounds Regulations as published under Administrator's  | Regulated by municipal by laws  |

|       |  |  |
|-------|--|--|
|       | Notice No. 2 of 1929 shall be kept or stabled on the erf.  |  |
| A.(h) | No wood and/or iron buildings or buildings of unburnt clay-brick shall be erected on the erf.  | Regulated by the National Building Regulations (NBRs)  |
| A.(i) | Except with the written approval of the local authority and subject to such conditions as the local authority may impose neither the owner nor any occupier of the erf shall sink any wells or boreholes thereon or abstract any subterranean water therefrom.   | Regulated by CoJ Land Use Scheme, 2018 and the Water Act   |
| A.(j) | Where, in the opinion of the local authority it is impracticable for stormwater to be drained from higher lying erven direct to a public street, the owner of the erf shall be obliged to accept and/or permit the passage over the erf of such stormwater, provided that the owners of any higher lying erven, the stormwater from which is discharged over any lower lying erf, shall be liable to pay a proportionate share of the cost of any pipeline or drain which the owner of such lower lying erf may find necessary to lay or construct for the purpose of conducting the water so discharged over the erf. | Regulated by CoJ Land Use Scheme, 2018.  |
| B.(a) | The erf shall be used for the erection of a dwelling house only, provided that with the consent of the Administrator after reference to the Townships Board, and the local authority, a place of public worship or a place of instruction, social hall, institution or other buildings appertaining to a residential area may be erected on the erf, provided further that the local authority may permit such other buildings as may be provided for in an approved Town planning Scheme, subject to the conditions of the scheme under which the consent of the local authority is required.                         | Contradictory to the application for rezoning, thus necessitating the removal thereof.<br>Regulated by CoJ Municipal Planning By Laws, 2016 and CoJ Land Use Scheme, 2018. |
| B.(b) | Except with the consent of the Administrator who may prescribe such conditions as he may deem necessary, not more than one dwelling house together with such outbuildings as are ordinarily required to be used in connection therewith shall be sub-divided or if such erf or any portion thereof is consolidated with any other erf or portion of an erf this condition may with the consent of the  | Contradictory to the application for rezoning, thus necessitating the removal thereof.<br>Regulated by CoJ Municipal Planning By Laws, 2016 and CoJ Land Use Scheme, 2018. |

|       |   |  |
|-------|---|--|
|       | <p>Administrator be applied to each resulting portion or consolidated area.</p> <p>(i) The dwelling house, exclusive of outbuildings to be erected on the erf shall be of the value of not less than R7 000,00.</p> <p>(ii) The main building, which shall be a completed building and not one partly erected and intended for completion at a later date, shall be erected simultaneously with or before the erection of the outbuildings.</p> |  |
| B.(c) | If the erf is fenced or otherwise enclosed, the fencing or other enclosing device shall be erected and maintained to the satisfaction of the local authority.   | Regulated by the National Building Regulations (NBRs)  |
| C.    | Buildings, including outbuildings, hereafter erected on the erf shall be located not less than 7,62 metres from any boundary thereof abutting on a street.  | Contradictory to the application for rezoning, thus necessitating the removal thereof.<br>CoJ Land Use Scheme, 2018. |

The need for the above title conditions is superfluous as they predate the newer legislation which regulates the spectrum of property restrictions.

Some conditions (C. for example) are contradictory to the CoJ Land Use Scheme, and therefore should be removed.

Conditions related to the use of the property also need not be included as a title condition as the use of the property is regulated by the CoJ Land Use Scheme, and also contradicts the rezoning and spatial policy which allows for a different use.

## 2.2. PROPOSED ZONING

Application is hereby made for the following land use rights :

|                |                                    |
|----------------|------------------------------------|
| Zoning         | Business 4                         |
| Primary rights | Offices                            |
| Floor Area     | As per scheme: 0.24                |
| Coverage       | As per scheme : 50%                |
| Height zone    | As per Scheme – 3 storeys          |
| Parking        | As per Scheme                      |
| Building Lines | As per scheme – 3m Street Boundary |



### **3. CITY OF JOHANNESBURG SUPPORT FOR REZONING**

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An inquiry was submitted to the City of Johannesburg to ascertain their stance on the proposed use of the subject property. The City have confirmed that they are in a position to support the proposed use as it does not deter or detract from the spatial policy guidelines and will therefore be a good fit for the area.

The letter issued by the Municipality is attached to this application.

### **4. SPATIAL PLANNING ENVIRONMENT**

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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);
- Strategic Area Framework - Louis Botha Avenue Development Corridor; and
- Nodal Review Policy 2019/2020.

#### **4.1. SPATIAL DEVELOPMENT FRAMEWORK 2040**

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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 the “Consolidation Zone”, this area (neither within the Transformation Zone, nor outside the urban development boundary) is viewed as a focus of urban consolidation, infrastructure maintenance, controlled growth, urban management, addressing backlogs (in social and hard infrastructure) and structural positioning for medium to longer term growth.

The focus of the strategy is to create liveable lower to medium density suburban areas that are well-connected to areas of higher intensity through transit infrastructure, without the need for additional investment in service infrastructure. Mixed uses are encouraged in strategic areas within this zone.

The transformation of this property into professional office suites along a major through-route, high street as well as a major public transport route is wholly in line with the principles of the SDF. It is ideally located in a strategic area that is easily accessible.

#### 4.2. NODAL REVIEW POLICY 2019/2020

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In terms of the Nodal Review Policy, 2019/2020, the subject property falls within the "General-Urban Zone" and thus is earmarked for slightly higher intensity residential development as well as mixed uses throughout the neighbourhood.

The property lies within 650m from Old Pretoria Main Road (Louis Botha Ave ext), being a trunk route to the Bus Rapid Transport (BRT) bus system and within 250m from Andries Street, being a regional connector for the BRT bus system, which also connects with the Grayston Ave intersection over the M1 motorway.

The property lies adjacent to the Louis Botha Development Corridor, which properties are earmarked for mixed use.

As the property lies on the periphery of the residential area adjacent to the industrial and commercial area, the proposed office land use will form a buffer. Offices located on the property will be removed from the busy and noisy setting of the industrial area but remain within easy access.

The proposed zoning is in line with the Nodal Review.

#### 4.3. STRATEGIC AREA FRAMEWORK - LOUIS BOTHA AVENUE DEVELOPMENT CORRIDOR

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The strategy around the spatial economy in the Louis Botha Corridor is directed towards protecting and enhancing key economic areas that currently exist in that area and looking at ways of new development opportunities and growth areas. This includes, inter-alia, the following :

- Supporting mixed use developments that integrate residential, work and related opportunities;
- Strengthening key employment centres;
- Promoting finer grained development response that is supportive of a more differentiated economy and form response.

The subject property lies adjacent to Local area 7, which area is earmarked for mixed use. The policy does not speak directly to the subject erf, however, the general idea is to use the public transport infrastructure and pedestrian infrastructure improvements as a means to encourage and support mixed land uses within the precinct.

The proposed use of offices, in close proximity to Andries Street, Old Pretoria Road, Watt Street and the current BRT stations makes the use of the site ideal, as employees can easily access the property as well as support infrastructure such as the proposed public spaces, retail facilities and the like.

Furthermore, the proposed use of Erven 40, 41 and 42 Bramley Park as offices is ideally located as it forms a buffer between the lower density residential suburb south of the site and the industrial and commercial uses north and east of the properties.

## 5. MOTIVATION

### 5.1. NEED AND DESIRABILITY

It is proposed that the property be rezoned to “Business 4” to allow for the property to be used for offices.

The property is located along Boero Avenue where a number of properties have been transformed into business uses. North of the site are a variety of business and industrial uses. East of the site is the Wynberg industrial node. The site is ideally suited to create a barrier between the residential suburb to the south and the industrial and commercial nodes to the north and east.

The high level of accessibility and changing nature of the street, as well as public transport infrastructure makes the location of professional office suites – an employment opportunity- perfectly suited along Boero Avenue.

The property has sufficient space for parking on site.

## 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 employment opportunities in close proximity to residential stock and transport infrastructure.                   |
| 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 (along a high street) 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     | By providing business services along a high street, 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 business and social needs within South Africa.                             |

## 7. RECOMMENDATION

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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. The City is in need of more well located business and employment opportunities. This application aims at addressing this need and more efficiently utilising well located space in the City.

We therefore recommend that the application be approved.