

**PROPOSED SPECIAL CONSENT FOR OFFICES ON  
PORTIONS 12 AND 18 OF 125 DURBAN  
WITHIN A GENERAL RESIDENTIAL 2 ZONE**



John Forbes Associates

**JOHN FORBES ASSOCIATES**

**JUNE 2020**

# **MOTIVATION FOR SPECIAL CONSENT FOR OFFICES ON PORTIONS 12 AND 18 OF 125 DURBAN WITHIN A GENERAL RESIDENTIAL 2 ZONE IN TERMS OF CHAPTER 7 OF THE ETHEKWINI MUNICIPALITY PLANNING AND LAND USE MANAGEMENT BY-LAW, 2016 READ WITH CHAPTER 6 OF THE SPATIAL PLANNING AND DEVELOPMENT ACT NO 16 OF 2013.**

## **1. SUMMARY**

The application to seek special consent in terms of sub-section 9.4 [Important Buildings & Objects] of the Central Scheme to establish offices at 277 Percy Osborn Road on Portions 12 and 18 of 125 Durban<sup>1</sup> within a General Residential 2 Zone. This is in order to facilitate the conversion of the existing house and the primary outbuilding/ancillary unit on the site into offices. The primary outbuilding in the past having been used as an architectural practice.

### **1. OWNER**

Stuart Edward Neil Quinn  
Oerwoud Farm (Tuli Wilderness)  
MR 40 Tuli Block  
Botswana  
Mobile: +27 78 2911 460  
[stuart@tulitrails.com](mailto:stuart@tulitrails.com)

### **2. APPLICANT/AGENT**

John Forbes Associates (John A Forbes)  
26 Plantations  
47 Shongweni Road  
Hillcrest 3610  
Tel: 031-765-4359  
Fax: 031-765-4359  
Mobile 082-856-2511  
email: [forbesj@eastcoast.co.za](mailto:forbesj@eastcoast.co.za)

---

<sup>1</sup> Prior to renumbering to Portions and Erven of Durban these properties were known as Lot N of Lot A /13 of Block A and Lot N of Lot Z of Lot A /13 of Block A all situated on the Townlands of Durban No 1737. These descriptions are still used in Annexure B of the Central Scheme.

### 3. APPLICATION

An application is hereby made for special consent in terms of sub-section 9.4 [Important Buildings & Objects] of the Central Scheme to establish offices on Portions 12 and 18 of 125 Durban within a General Residential 2 Zone. This is in order to facilitate the conversion of the existing house and the primary outbuilding or ancillary unit on the site into offices in terms of Chapter 7 of The eThekweni Municipality Planning and Land Use Management By-Law, 2016 read with Chapter 6 of the Spatial Planning and Land Use Management Act No 16 of 2013.



Figure 1 - Application Property - Portions 12 and 18 of 125 Durban

### 4. APPLICATION SITE

The application property is located at 277 Percy Osborn Road, Morningside, Durban on Portion 12 and Portion 18 of Erf 125 Durban. The total area of the application site is some 653 m<sup>2</sup> in total extent (19 m<sup>2</sup> + 634 m<sup>2</sup> respectively). See Figure 1.

The structures on the site consist of a main house, a front open-plan cottage or ancillary unit (which has been used as an office by previous owners) with a double garage below on the road frontage, a detached garage and a back outbuilding serving as a staff cottage. See Figure 2.

See Annexure 1 containing the survey diagrams Sub Vol 418 Fol 53 and Sub Vol 418 Fol 48 obtained from the Surveyor General's Office for greater detail. See Annexure 2 containing the Title Deeds T 000027196/2014



Figure 2 - Site in its immediate environs

## 5. LOCATION & SITE CHARACTERISTICS

The site fronts onto Percy Osborn Road (a Class 5 road) in the east and is located a short distance (+- 70 metres) north from the corner of Smiso Nkwanyana (Goble) Road (a Class 3 road) in the south. See Figure 2 and Figure 3. Percy Osborne Road opposite the site has a road reserve width of some 20 metres which contains a 9 metre wide road carriageway as measured from kerb to kerb with broad hardened sidewalks on either side. Clearly the road carriageway was designed to accommodate kerb side parking in the event of this being required by the adjacent properties.



Figure 3 - Locality Plan – site shown in red.

The application site's terrain is relatively flat as engineered with retaining walls and steps, with a fall from the west to the east comprising an approximately 6 metre fall in total across the full length of the site. See Figure 4.



Figure 4 - Site plan with 2 metre contours.

## 6. EXISTING LAND USE

The application site, Portions 12 and 18 of Erf 125 Durban contain an existing single storey house in the rear which is currently used for residential purposes, with an outbuilding/ancillary unit above double garages located on the street frontage. In the rear of the property there is a single garage approached by a long driveway and an outbuilding located on an upper tier. See Figures 5 and 12.



Figure 5 - Showing existing structures as viewed from Percy Osborn Road.

The applicant property at 277 Percy Osborn Road has been previously used for office purposes by a various owners and/or tenants. A search on the internet reveals (listed alphabetically) the following operations used this address at some time in the past:-

- Capstone 1070 CC
- Falkson A Architect
- KZN Online Advertising
- Prolead - Business Development Agency

Currently the property is used purely for residential purposes and the house is let out by the owner to a tenant while the front ancillary unit is vacant.

Abutting the application site to the north is a single residence before reaching Larch Road, while to the south there is Woodleigh - a block of flats, Soulhouse – a guest house and Santhos Manilall Forensic investigator offices on the corner of Smiso Nkwananya (Goble) Road. Over Percy Osborne Road to the east, other than some houses, there is the Beeny Bunny Pre-school, the KZN DOT Durban Motor Licensing offices and a new guest house under construction. To the west there is a single house abutting the property whose owner is sympathetic to low key offices such as have existed in the past.



## 7. EXISTING ZONING

The existing zoning of the applicant site, Portions 12 and 18 of Erf 125 Durban, as shown on the GIS in the Berea North District of the Central Scheme, is General Residential 2. See Figures 7.



Figure 7- Extract taken from Central Scheme Berea North District map showing zoning in the immediate vicinity of the site.



The application site falls within an area which appears from the zoning map to be a very homogenous area of General Residential 2 zoning extending from Umgeni Road to Lillian Ngoye Road other than for the nearby Government and Municipal zoned properties on which the Durban Motor Licensing Department is located. See Figure 8. However this is far from the case when it comes to land use.



Figure 8 - Existing Zoning in the vicinity of application site - site outlined in red

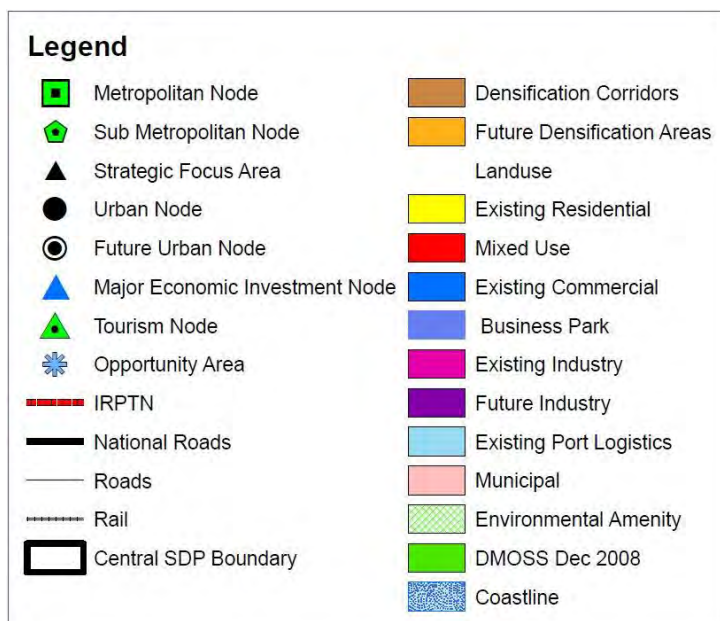
## 8. D'MOSS & ENVIRONMENT

The site proposed to be rezoned is NOT affected by the current D'MOSS or Durban Metropolitan Open Space System overlay. Furthermore, there is nothing of any environmental significance on the site.

## 9. CENTRAL STRATEGIC SPATIAL PLANS



Figure 9- Extract taken from the Central SDP 2014/15 showing the approximate location of the site. The site falls within a densification corridor which runs parallel to the IRPTN route along uMgeni Road.



The Morningside area of the Berea North area does not show up in much detail at the scale of either the eThekweni Spatial Development Framework or in the more detailed Central Spatial Development Plan (See Figure 9). The site falls within a Densification Corridor given its close proximity to the Integrated Rapid Public Transport Network (IRPTN) route and the railway line parallel to Umgeni Road.

The now dated Berea Urban Core Extension Plan (BUCEP) prepared in 2012 on the contrary, indicates a greater level of detail with the larger roads shown but still not where individual cadastra may be identified. The application site is located approximately between Area 15 and 48 in BUCEP. See Figure 10.

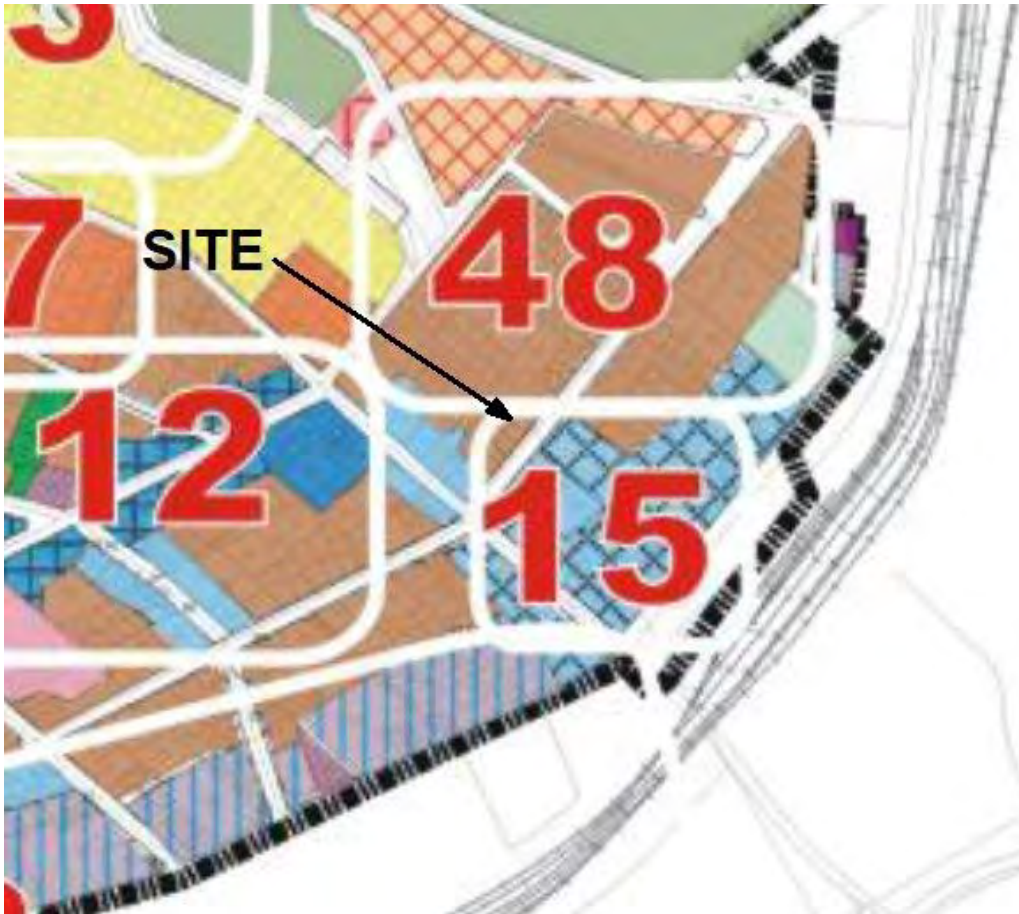
















Figure 10- - Extract taken from the Berea Urban Core Extension Plan (BUCEP) 2012 – The application site is located between areas 48 and 15. The 2012 proposals broadly designate the respective areas for Residential High Density 2 and Suburban Offices

Area 15 is broadly identified in the 2012 proposals as a Mixed Use Corridor in which Suburban Offices with the ability to create employment opportunities given its close proximity to the BRT [bus rapid transport] and the railway station in uMgeni Road. Area 48 on the other hand is broadly identified as Residential High Density 2 and is described as a mixed residential area. See Figure 10 and the associated legend.

AREA	AREA TYPE	AREA NO	AREA DESCRIPTION	CURRENT ZONING (Primary Zones)	2012 PROPOSALS	DESCRIPTION INTENTION
Flats	Medium to High Rise	47	Gordon Road	General Residential 1	▪ RESIDENTIAL HIGH DENSITY 2	This is an area of largely older blocks of flats interspersed with houses. At least 50% of the area is still available for redevelopment within the zoning
		48	Lower Morning side	General Residential 2	▪ RESIDENTIAL HIGH DENSITY 2	This area is another of the mixed residential areas; where at least some 50% is still available for redevelopment
		49	Earl Haig	General Residential 1	▪ RESIDENTIAL HIGH DENSITY 2	This enclave zoned for flats is largely developed with high-rise flats on the ridge and a series of medium density development interspersed with existing houses behind.
	High Density	50	Musgrave District	General Residential 1	▪ RESIDENTIAL HIGH DENSITY 3	This area is already fully developed with relatively new high rise flat development. There are only a few sites available for further redevelopment in this Mixed-Use District
		51	Overport District	General Residential 1	▪ RESIDENTIAL HIGH DENSITY 3	A small enclave between the hospital and Peter Mokaba Ridge (Ridge Road) is appropriate for redevelopment at this higher density as part of this Mixed-Use district.
Mixed-Use Corridor	Urban Offices	15	Goble / Umgeni Road Cluster	General Residential 2 Government & Municipal	▪ SUBURBAN OFFICES	This cluster is not associated with any major node but is a response to the potential to be released by combination rail station and BRT station. It also encompasses the Percy Osborne licensing development which is essentially an office type development, but with major parking requirements. The topographic separation between Percy Osborne and Umgeni roads serves to separate this area from the adjacent residential areas. This, in a sense, creates a new employment.



Figure 11- Extract taken from the Berea Urban Core Extension Plan 2012 (BUCEP) – The application site is designated as Residential High Density 2.

	Residential Only Detached 180		Residential and Office Conservation Only
	Residential Only Detached 400		Residential and Office Redevelopment
	Residential Only Detached 900		Office and Retail / Restaurant
	Residential Only Detached 1800		Urban Office
	Medium Density Residential		Multi-Use Retail & Office 1 (General Shopping)
	Residential High Density 2		Multi-Use Retail & Office 2 (Special Shopping)
	Residential High Density 3		Controlled Interface

In the draft 2012 land use plan contained in BUCEP, the application site falls in a **Residential High Density 2** zone in very close proximity to **Residential and Office Conservation Only** within the same block fronting Smiso Nkwanyana (Goble) Road and over Percy Osborn Road and **Urban Office** opposite over Percy Osborn Road. See Figure 11 and the associated legend.

## 10. PROPOSAL

The proposals for the applicant site, consists simply of converting the existing house to offices and legalizing the use of former primary outbuilding on the road and/or house for office purposes by way of obtaining special consent as envisaged in terms of sub-section **Clause 9.4 Important Buildings & Objects** (Listed Building) of the Central Scheme for any important building as contained in Annexure 2 of the Scheme.

The area of the main house is approximately 150m<sup>2</sup> (with three bedrooms), the front cottage or ancillary unit is 49 m<sup>2</sup> and back staff cottage of 18 m<sup>2</sup> in extent. The property is ideally suited as an office area for a sole tenant. There is sufficient space on site for the parking for 8 cars (3 in the garages and 5 behind one another in the driveway). See figure 12.

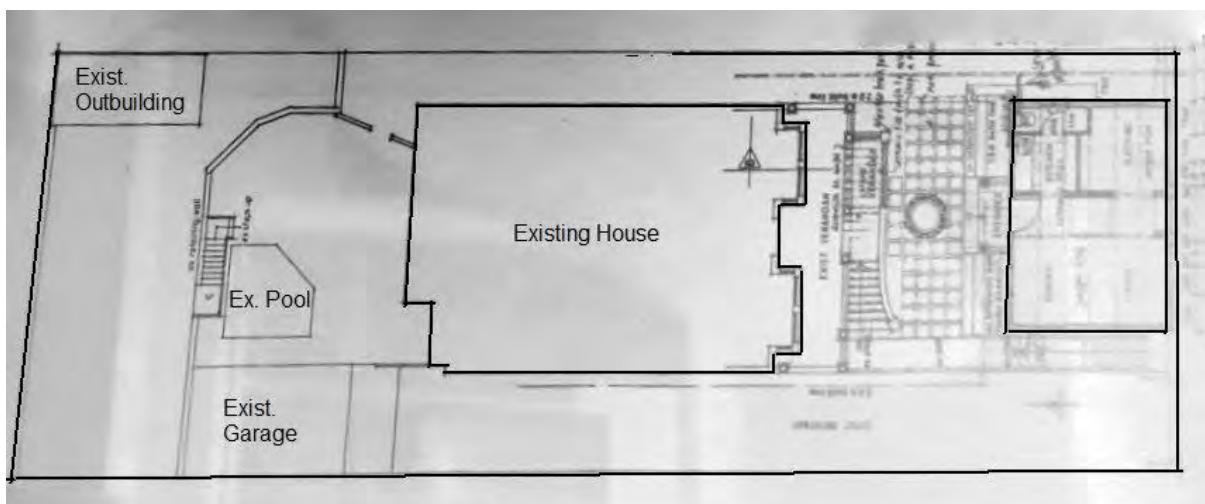


Figure 12 - Site Plan of Existing Structures as taken from the approved building plans for the ancillary unit.

In the past a special consent application for offices could have been brought for approval under the General Residential 2 zone in terms of the then Durban Town Planning Scheme. That option disappeared with the adoption of the Central Scheme on 31 October 2019.

Alternatively, a special consent application could perhaps have been lodged for offices in terms of the Central Scheme for **Uses Authorised in terms of Sub-sections (1.13.3 – 1.13.8)** and specifically for a Home Business or arguably for **Offices in the Vicinity of Commercial Zones**. In the former option the office is however not to exceed the greater of 30% of the existing area of the dwelling house or a maximum area of 40 m<sup>2</sup> and in the latter option the site is required to be situated contiguous to a site zoned commercial or where the major portion of the site is opposite such a zoned site and separated there from by only a street.

The current scheme map for the Berea North however does not match land uses which have been largely authorised by Special Consent by using the earlier Urban Core Extension Project of circa 2001 and the later Iyer prepared Berea Urban Core Extension Plan of 2012 as a

“ghost” scheme map. This method of approval was done by utilising the somewhat notorious Clause 6(28) of the erstwhile Durban Town Planning Scheme, the special circumstances clause, which allowed for the approval of land uses by special consent which conflicted with Appendix 1 of the Scheme. Consequently the nearby commercial operations in Smiso Nkwanyana Road are not reflected in the zoning map.

This short coming of the scheme ideally needs to be addressed by the Land Use Management Branch. The prolonged lack of certainty dating from 2001 (something which land use schemes are meant to provide) when the first BUCEP was initiated under Brian Widdowson has arguably led to certain significant controversies, among other, at both 317 Currie Road and 10 Poynton Place where rezoning approvals by the Municipality significantly deviated from the 2012 BUCEP proposals, culminating in a series of court cases in the former instance and in a high powered appeal in the latter instance. An updating of the Berea Scheme map is accordingly long overdue to restore greater certainty and to end the significant gap between the existing zoning map and the now approved land uses.



**Figure 13- View of the application site as viewed from Percy Osborne Road showing entrances off the road – Note the buildings are painted grey. The primary outbuilding/ancillary unit with a double garage below is located on the road frontage with the main house behind.**

In the circumstances, it is deemed that the best and most appropriate option to follow in respect of the application site is to seek special consent for offices in terms of sub-section 9.4 Important Buildings & Objects whereby the current building, with a significant upkeep cost, is alternatively utilised for office purposes. Annexure B of the Central Scheme under Item 14.65 and under the original erf designations describes the existing house on the property as follows:-

14. 65

2 77 PERCY OSBORN ROAD

N of A/ 13 of A; N of Z of A/ 13 of A, Townlands of Durban No 1737 FRONT AND SIDE SPACES INCLUDING BOUNDARY WALL(S), POSTS, GATES AND FENCING OVERALL FORM SINGLE-STORIED HIPPED ROOF WITH CORRUGATED SHEETING PLASTERED WALLS GABLE WITH BRICK DETAILS VERANDAHS WITH PRECAST CONCRETE COLUMNS OF TUSCAN DORIC FORM AND BALUSTRADE WALLS OR BALUSTRADING FRONT DOOR, SIDELIGHT AND FANLIGHT CASEMENT WINDOWS INCLUDING CILLS PLASTERED DETAILS INCLUDING QUOINS, STRING CORNICES, CORNICES, MOULDINGS, PILASTERS, ENTABLATURES, DOOR AND WINDOW CASES, PEDIMENTS AND PARAPETS



Figure 14- View of existing house as viewed from the entrance driveway to the garage in the rear.



Figure 15 - View of existing primary outbuilding/ancillary unit from the steps of the house

Being a listed building also precludes the site from being fully developed for flats as could otherwise be permitted in terms of the General Residential 2 zoning and which imposes hardship on the owner.





Figure 16 - View northwards along Percy Osborn Road – application site on the left. The Department of Transport Motor Licensing site is located on right (see fence) between street garage and the then under construction boutique hotel. Note 9 metre wide road carriageway.



Figure 17 - View down south along Percy Osborn Road to Smiso Nkwanyana (Goble) Road from opposite the site



Figure 18 - Benny Bunny Pre-school at 276 Percy Osborn Road opposite the application site.



Figure 19 - Woodleigh flats at 273 Percy Osborn Road immediately adjacent and to the south of the application site.



Figure 20 - Soulhouse guesthouse at 269 Percy Osborn Road to the south and adjacent to the Woodleigh flats.



Figure 21 - Santhos Manilall Forensics (SMF) offices at 52 Smiso Nkwanyana (Goble) Road on the corner of Percy Osborn Road.

The site now, contrary to the zoning, falls in an area in transition from pure residential and which includes offices, guest houses for temporary accommodation, and restaurants. The use of the property for office purposes would therefore not be inconsistent with these changes. The property was previously partially (illegally) used for office purposes without any apparent dis-amenity in the area. The site falls in an area which largely dominated by the diagonally opposite Department of Transport Motor Licensing Offices, a large scale non-residential land use which generates at times a not inconsiderable amount of passing traffic which is viewed as inconsistent with a purely residential area. As a listed Important Building within the scheme, provision is made to allow its use for office purposes, which is considered more than an appropriate use in these circumstances.

## 11. ZONE CONTROLS

The controls applicable to the Central Scheme General Residential 2 zone are as follows:-

Zone	General Residential 2
Scheme Intention: To provide, preserve, use land or buildings:	The provision of Higher densities for all types of residential accommodation and; A wide range of ancillary uses which service the day to day needs of a residential community.
FAR	1.20
Coverage	50%
Height	NA unless indicated on the Map
Units per Hectare	Permissible floor area divided by 55 m <sup>2</sup> [218 units per hectare]
Minimum erf area	1800 m <sup>2</sup>
Primary Land Uses (free entry)	<ul style="list-style-type: none"> <li>• Boarding House</li> <li>• Dwelling House</li> <li>• *Flat</li> <li>• Hostel</li> <li>• Multiple Unit Development</li> <li>• Retirement Centre</li> </ul>
Special Consent Land Uses	<ul style="list-style-type: none"> <li>• Agricultural Land</li> <li>• Base Telecommunications Transmission station</li> <li>• Crèche</li> <li>• Chalet Development</li> <li>• Educational Establishment</li> <li>• Hotel</li> <li>• Parkade</li> <li>• Place of Public Worship</li> <li>• Institution</li> <li>• Laundry</li> <li>• Reform School</li> <li>• Special Building</li> <li>• Uses authorised in terms of Sub-section s (1.13.3 – 1.13.8)</li> <li>• Any other use authorised in terms of sub-section 9.4 [Important Buildings &amp; Objects]</li> </ul>
Prohibited Land Uses	All other land uses
Building Line	7.5 metres
Side Space	3.0 metres
Rear Space	3.0 metres
Parking – See Section 8 as per applicable land uses.	

## SUB-SECTIONS 1.13.3 TO 13.8 LAND USES

The following additional land uses are possible by special consent in a General Residential 2 Zone:

- Bed and Breakfast Establishment
- Home Business (not to exceed the greater of 30% of the existing area of the dwelling house or a maximum of 40 m<sup>2</sup>)
- Tuck Shop/ Spaza Shop
- Offices in the Vicinity of Commercial Zones – (situated contiguous to a site zoned commercial or where the major portion of the site is opposite such a site and separated there from by only a street).
- Medical Offices
- Home Care Facility

### 9.4 IMPORTANT BUILDINGS AND OBJECTS– LISTED BUILDINGS (Annexure B of Scheme)

Recognizing the unique value of the architectural and historical heritage of the city, the Municipality has prepared a comprehensive list of places and buildings which are important for their architectural, historical or artistic contribution to the general environment. The Municipality wishes to control the demolition and development of the identified items to ensure their proper conservation, and is desirous of providing encouragement and incentives through the relaxation of any provisions of the town planning scheme by Special Consent, where such relaxations are in keeping with the conservation objectives.

9.4.1 (a) No person shall demolish all or part of an Important Building without the prior written approval of the Municipality.

(b) No person shall alter or redecorate any Important Object which is listed in Annexure B without the prior written approval of the Municipality.

9.4.2 Notwithstanding any other provision of this scheme, the Municipality may, by Special Consent, relax any provision of this scheme in respect of the site upon which an Important Building or Object stands and the Important Building or Object itself provided that it can be shown to the Municipality's satisfaction that such relaxation is necessary and will :-

- (a) ensure the conservation of either the architectural, historic or artistic value of the Important Building or Object.
- (b) not reduce the architectural, historic or artistic value of the Important Building or Object; and
- (c) not unduly interfere with the amenities of the neighbourhood existing or as contemplated by the scheme,

Provided further, that the Municipality's authority and not its Special Consent shall be required where the proposed relaxation does not involve a change in use and will affect the adjoining property only and the written consent of the registered owner of such adjoining property has been obtained.

## 12. ENGINEERING SERVICES

Special Consent for the site to be used for office will not alter in any way the current *status quo* in respect of services currently available nor will it require any additional services not already provided for in the area or planned by the municipality. There is water, sewage and electricity available and which is used by the existing development on the site – see figure 17.

## 13. TRAFFIC IMPACT STATEMENT

A traffic impact assessment or statement has been prepared by Bis Consulting Traffic Engineers to ensure the feasibility of the current proposal, and which concludes that the proposed rezoning is fully acceptable from a traffic perspective – See Annexure 3.

The conclusions as taken from the traffic report read as follows:-

*Based on the Proposed Application as well and the associated number of trips generated, a Traffic Impact Assessment **will not** be required.*

*The impact that the Proposed Development will have on the road network is deemed negligible. The development traffic will therefore not exacerbate the current delays and will consequently have minimal impact on the surrounding road network.*

## 14. PARKING REQUIREMENTS

The following are the parking requirements as imposed by Section 8 of the Central Scheme for the proposed land use. The area of the combined house and ancillary unit is approximately 200 m<sup>2</sup>. Of this area approximately 20 per cent is comprised of the kitchen, storage and ablution facilities, i.e. the area which may be converted to offices is limited 160 m<sup>2</sup>.

Land Use	Approx Nett Area m <sup>2</sup>	Parking Requirement – Clause 8	Parking bays required
Offices	160	5 bays per 100 m <sup>2</sup> plus a loading bay	8

These bays may be accommodated on the application site as indicated in Section 10 above.

## 15. CONCLUSION

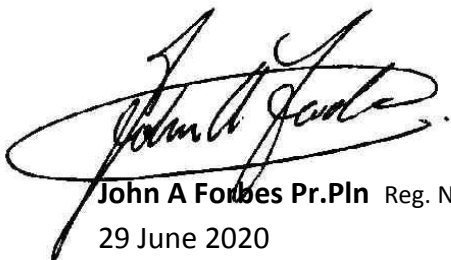
The application site, comprised of Portions 12 and 18 of 125 Durban, occurs in an area which has transformed considerably from when the Berea North Scheme map was first conceived and adopted in the 1960s. The recommendation of the Berea Urban Core Extension Plan of 2012 with respect to alternative “LUMS” style zones has not been implemented and is itself now outdated. While a new Central Scheme has now been adopted, updating of the scheme maps consistent with the latest SDF, the Central SDP and associated local area plans has as understood not as yet been initiated by the Municipality.

The site now falls in an area in transition from pure residential and the proposed use of the property for office purposes would not be inconsistent with these changes. The proximity of the diagonally opposite Department of Transport Motor Licensing Offices, a large scale non-residential land use, yet further demonstrates the inappropriateness of insisting on a purely residential land use on the application site, which should perhaps be more logically compared to the flexibility normally given to sites opposite or near commercially developed sites by the allowing of transitional offices on them. The property was previously partially used (without any planning authority?) for office purposes without any apparent dis-amenity caused in the area. As a listed Important Building within the scheme, provision is made to allow its use for office purposes, which is considered more than an appropriate use in these circumstances.

The special consent process proposed is in terms of the provisions of Sub-section 9.4 [Important Buildings & Objects] read with Chapter 7 of the eThekweni Municipality Planning and Land Use Management By-law, 2016 and read with Chapter 6 of the Spatial Planning and Land Use Management Act No 16 of 2013.

## 16. PUBLIC NOTIFICATION

The applicant will, on notification to proceed, carry out the necessary public notification and advertising as required in Section 34 of the eThekweni Municipality: Planning and Land Use Management By-law, 2016.



**John A Forbes Pr.Pl** Reg. No.A/457/1986  
29 June 2020

## **ANNEXURES**

Annexure 1 – Surveyor General Plan Sub Vol 418 Fol 53 and Sub Vol 418 Fol 48

Annexure 2 – Title Deeds – T 000027196/2014

Annexure 3 – Traffic Impact Statement – Bis Consulting

Annexure 4 – Special Power of Attorney

Annexure 5 – Bondholders Consent