

**MEMORANDUM IN SUPPORT OF AN APPLICATION
FOR SPECIAL CONSENT IN TERMS OF CLAUSE
6bis OF THE DURBAN TOWN PLANNING SCHEME
TO PROPOSED CONVERSION OF EXISTING LISTED
BUILDINGS TO OFFICES, SHOP, ART GALLERY,
RESTAURANT AND PLACE OF AMUSEMENT AND
PROPOSED NEW MUSEUMS, DWELLINGS, WORK
HOUSES AND RESIDENTIAL BUILDING WITH A
RELAXED SIDE SPACE TO THE NORTH
BOUNDARY AND RELAXED BUILDING LINE TO
CORUMBENE ROAD : ON ERF 565 BELLAIR AT 258
WAKESLEIGH ROAD AND ZONED SPECIAL
RESIDENTIAL 650M²**

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04 July 2013

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MEMORANDUM IN SUPPORT OF AN APPLICATION FOR SPECIAL CONSENT IN TERMS OF CLAUSE 6bis OF THE DURBAN TOWN PLANNING SCHEME TO PROPOSED CONVERSION OF EXISTING LISTED BUILDINGS TO OFFICES, SHOP, ART GALLERY, RESTAURANT AND PLACE OF AMUSEMENT AND PROPOSED NEW MUSEUMS, DWELLINGS, WORK HOUSES AND RESIDENTIAL BUILDING WITH A RELAXED SIDE SPACE TO THE NORTH BOUNDARY AND RELAXED BUILDING LINE TO CORUMBENE ROAD : ON ERF 565 BELLAIR AT 258 WAKESLEIGH ROAD AND ZONED SPECIAL RESIDENTIAL 650M².

1. INTRODUCTION

Erf 565 Bellair is situated at 258 Wakesleigh Road in the Part Bellair suburb of central Durban. (Figure 1). The property is 1,2376ha in extent and is registered to the ownership of Bryan Howard Lee and Maria Ester Lee and is improved with an historical dwelling house erected in the 1880's and ancillary buildings comprising a billiard room, horse stables and staff accommodation.

The existing dwelling, known as "Trevean" is listed in Appendix 7 of the Durban Scheme and consequently the provisions of clause 6bis of the scheme are available for the proposed development and use of erf 565 Bellair in order to preserve the historically important buildings on the property. Not only is Trevean listed in Appendix 7 of the Durban Scheme as an important building, but the existing dwelling house and the entire 1,2376ha property were declared a national monument in July 1981 by proclamation No. 1593 of 31 July 1981 in terms of the then National Monuments Act, No. 28 of 1969. A copy of the proclamation is included with the title deed for the property in the attached Annex B and the condition lettered B in the title deed prescribes that erf 565 Bellair is subject to having been declared a National Monument.

Mr. and Mrs. Lee have owned Trevean for more than 40 years and it goes without saying that a dwelling house that is now about 132 years old necessitates continual expenditure on maintenance. In addition to the dwelling house the other historical buildings such as the billiard room and the horse stables as well as the expansive garden areas place an additional maintenance burden on the owners. (Refer to the detailed site plan attached at Annex C).

Having saved the original dwelling on the property from demolition in the late 1960's Mr. and Mrs. Lee have spent many years carefully restoring the building, a task that has become increasingly burdensome on the owners, who in order to sustain the restoration process have recently reached an agreement with the Bartel Arts Trust to sell the property to the Trustees. The latter are intent on developing and using erf 565 Bellair for what has been termed "Musart Park", a collage of museum, music, culture and art facilities and activities within a park-like setting. The Musart Park proposal will ensure the total restoration and future conservation of the existing historical buildings on the property. The proposal will also further develop the 1,2376ha site so as to provide a sustainable cultural destination that will be of provincial if not national significance.

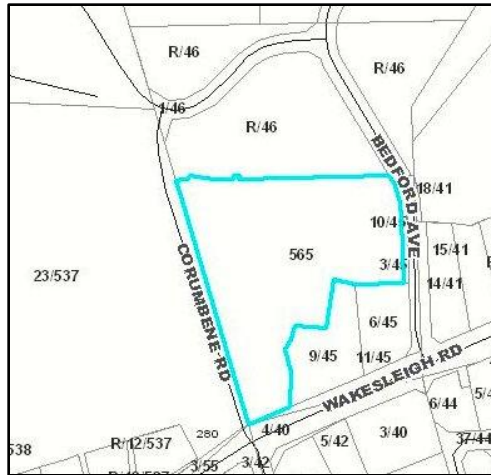
To that end the Bartel Arts Trust have been authorised by Mr. and Mrs. Lee to make an application to the eThekweni Municipality for special consent to the proposed Musart Park in terms of the provisions of clause 6bis of the Durban Town Planning Scheme and section 67bis of Ordinance No.27 of 1949. The authority of the property owners to that effect is attached at Annex A. The Trustees of the Bartel Arts Trust have in turn authorised Elliot Duckworth Associates cc to act as the Trust's agent in all matters pertaining to the special consent application process. (Annex A). The details of the proposed development are set out in section 8 of this application memorandum and the attached Annexes E, F and G.

2. APPLICATION SITE DESCRIPTION, LOCATION, SIZE AND OWNERSHIP

The property that forms the subject of this special consent application is described as erf 565 Bellair which is hereinafter referred to as **"the site"** and which is situated at 258 Wakesleigh Road in the Durban suburb of Part Bellair. Figure 1 is a locality plan that shows the site positioned approximately 1km from the intersection of Wakesleigh Road (M10) with Solomon Mahlangu Drive (M7) at the southern end of the Umkumbaan precinct of Cato Manor. Figure 2 is an aerial photograph that depicts the site in the context of its local built environment. Erf 565 Bellair measures 1,2376ha in extent and is registered to the joint ownership of Mr. Bryan Howard Lee and Mrs. Maria Ester Lee vide certificate of consolidated title number T5356 / 1997 dated 27 February 1997. A copy of the title deed is attached at Annex B

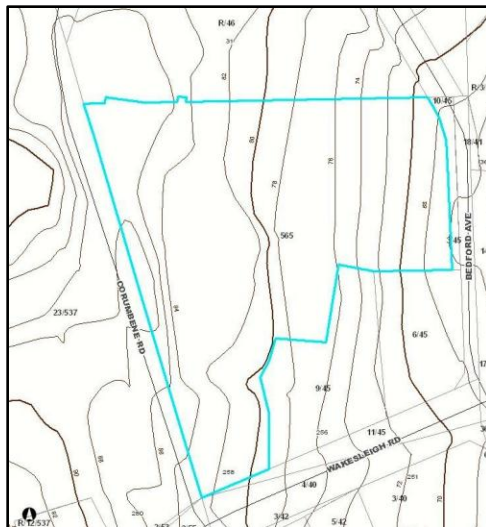
3. PHYSICAL CHARACTERISTICS OF THE SITE

3.1 Configuration



The original site of Trevean House was a regular rectangular shape, bounded by Wakesleigh Road in the south, Bedford Avenue on the east and Corumbene Road on the west, as per the accompanying illustration (Ref. eThekweni Municipality GIS). The north boundary is now formed by an adjacent multiple unit development site, as shown in Figure 2. Two subdivisions were excised in the 1940's from the south-eastern corner of the original property, resulting in an irregular shaped boundary as depicted here and on the survey diagram of erf 565 Bellair, which is consolidation diagram SG No. 3415 / 1996, a copy of which is included at Annex B. The consolidation diagram shows that some minor adjustments were made on the north boundary in 1996 so as to include the existing horse stables into erf 565 Bellair.

3.2 Physiography (Annex C)



Trevean House is situated on the high point of a landscape that slopes from west to east. The accompanying illustration (Ref eThekweni Municipality GIS) shows the general topographical form of the site and its surrounds. The platformed area for the main dwelling, the outbuildings and immediate surrounds is flat. The balance of the site below the existing house slopes at an average grade of about 1 vertical to 12 horizontal. The natural slopes were terraced many years ago in the establishment of an exotic garden surrounds for the main dwelling.

A fairly large terrace below the main house was constructed at some point in time for a tennis court, which is no longer in existence. Attached at Annex C is a detailed site survey undertaken by L.D. Baker, professional land surveyors.

The site's topography does not in any way impede the proposed development and use of the property as will be detailed in section 8 of this memorandum. The physical form of the site will in fact be used to enhance the aesthetics of a park-like setting for the proposal and facilitate differentiating between the various components and activities. The additional developments on the site will also occur on the eastern facing slopes and will therefore be orientated away from the existing multi unit residential developments on the western boundary, thus ensuring there is no potential interference with the amenity of those existing developments. Land to the east of the site is currently undeveloped.

3.3 Existing Land Cover



The detailed survey attached at Annex C shows the position and extent of the existing buildings on the site, as well the driveways and other site improvements. The accompanying aerial illustration shows that the site is well covered by existing vegetation with a number of mature trees evident. (Ref eThekweni Municipality GIS). The existing land cover is again a feature of the site that can be

capitalised on to create the park setting that will be the theme that integrates the various proposed developments and activities. Due to the existing vegetation cover on the site the applicant commissioned an expert to provide an assessment of the status quo to ensure that any important flora and fauna could be preserved. The complete vegetation assessment prepared by Mr. Johan Bodenstein of IndiFlora is attached at Annex D.

The vegetation report identifies that the historical development and use of the site over an extended period of time has completely transformed the natural vegetation cover and little if any of the original natural grassland and bush clumps remains. The natural land cover has been replaced by mainly exotic garden plants. However, the assessment does note that there are some plant specimens that are of value and which have been identified and will be incorporated into the development proposal, most notably the very old and large Camphor Trees at the rear of the dwelling house and the well established Queen Palms that line the driveway and occur around the immediate garden area. Refer to Annex D for more detail.

Section 12 of the IndiFlora report which is attached at Annex D confirms that the proposed development and use of the site does not require any form of environmental authorisation in terms of the EIA regulations under the National Environmental Management Act, No. 107 of 1998. It is also confirmed in section 6 of the report that the site does not fall within the municipality's identified D'Moss area.

4. SITE ENCUMBRANCES

The detailed site survey and the SG Diagram attached at Annexes C and B respectively confirm that the property is not subject to any service or other infrastructure servitudes. The vegetation assessment attached at Annex D confirms that the existing vegetation cover does not prevent the site from being further developed or utilized in the manner proposed in this application.

What has been noted in the traffic impact assessment (TIA) report submitted in support of this application and attached at Annex H to this memorandum, is that the municipality has for many years planned to upgrade Wakesleigh Road to a dual carriageway Class 3 urban arterial route which would necessitate a significant widening of the existing road reserve. Section 5 of the attached TIA identifies that in accordance with the existing plans for the road upgrade a portion along the south boundary of the site would have to be expropriated in order to widen the existing Wakesleigh Road reservation. An illustration of the portion of the site that would be

required in terms of the current road upgrade plans is shown on Figures 2 and 3 in the traffic report. However, the TIA also notes that the road upgrade has been part of the metro's planning for many years and there is no guarantee as to when the actual implementation of that plan will come to fruition, if ever. Nevertheless the site development proposals have taken into account the possibility that a portion of the site may be required in the future for road widening. (Annex G).

4.1 Heritage Constraints

It has already been recognised that the site is a proclaimed national monument, as per the condition of title lettered B in the attached title deed (Annex B). Consequently, the use and development of the site is protected by the provisions of the KZN Heritage Act, No. 4 of 2008 and as well as the National Heritages Resource Act, No. 25 of 1999. The provisions of the aforementioned legislation require that any alterations, demolitions or developments on the site are approved of by Amafa AkwaZulu-Natali, the provincial heritage custodian established in terms of Act No. 4 of 2008.

Section 38(1) of Act No. 25 of 1999 prescribes that any person intending to undertake a development that will change the character of a site that is more than 5 000m² in extent must notify the relevant heritage resources authority of such intention. In this instance the responsible authority is Amafa. Section 38 (2) (a) of the Act then enables Amafa to request a heritage impact assessment in respect of the development proposal, should it be deemed necessary. Amafa has already been notified of the development proposal and given the status of the site, Amafa has requested a heritage impact report in order to consider consenting to the proposal.

The applicant has commissioned the required heritage impact assessment report to be prepared by architects Robert Brusse and Dr Debbie Whelan. The report is currently work in progress and will be submitted to Amafa as well as the municipality to supplement this application as soon as it is completed. Amafa's consideration of the heritage impact assessment report and the site development proposals is a lengthy process and one which necessitates a

public participation phase. As this special consent application must also be publicised for comment / representations by interested and affected parties, Amafa have agreed to the special consent public notification process satisfying the requirements of Amafa.

Consequently this application is made for the special consent of the municipality in parallel to the application process to Amafa for approval of the development proposal in terms of the KZN Heritage Act, No. 4 of 2008. A single public notification process can then be undertaken to satisfy both the Amafa and Town Planning Ordinance requirements. The final decision of the municipality on the special consent application would of course be subject to a positive outcome on the application to Amfa AkwaZulu-Natali.

5. EXISTING ZONING AND USE OF THE SITE

Erf 565 Bellair is situated within the Durban Town Planning Scheme (Old Line Suburbs Area) in terms of which it is zoned special residential 650m² (Refer Figure 3). The following development controls apply in terms of the provisions of the scheme :

- Minimum lot size = 650m²
- FAR = N / A (effectively 0,8)
- Site coverage = 40%
- Height restriction = 2 storeys
- Building line = 6m
- Rear space = 5m
- Side space = aggregate of 5m with minimum 2m
- Parking = 2 bays per dwelling house and 1 per ancillary unit
- Freely permitted land uses : Dwelling house, ancillary unit, domestic staff accommodation, multiple unit development.
- Land use permitted by special consent : Agricultural, places of instruction and worship, social hall, crèche, special building or use, offices (clause 7), institution, bed and breakfast, guest house, any other use authorised in terms of clause 6bis. (emphasis added).

The site is currently used as a private dwelling house, occupied by the registered owners. The outbuildings are occupied as domestic staff accommodation whilst the existing billiard room is vacant and in a poor state of repair. The old stables are used for storage. Access is via the original driveway and gate, directly onto Wakesleigh Road right next to the Corumbene Road intersection. (Refer to Annex C).

6. PROVISIONS OF CLAUSE 6bis OF THE SCHEME

Section 5 herein identified that in terms of the site's existing special residential 650m² zoning, by special consent the municipality may allow *"any other use authorised in terms of clause 6bis."*

Clause 6bis of the Durban scheme relates to the conservation of important buildings and objects, whereby 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 relaxation of any provisions of the town planning scheme by special consent, where such relaxations are in keeping with the conservation objectives."*

Therefore in terms of the provisions of clause 6bis (2) in particular, the municipality may relax any of the provisions of the scheme provided it can be demonstrated that any relaxations sought will ;

- (a) Ensure the conservation and not reduce the value of the architectural, historical or artistic value of an important building ;
- (b) Not unduly interfere with the amenities of the area, as contemplated by the scheme.

Clause 6bis (2) states that relaxations to the provisions of the scheme may be granted in respect of any specific important building or object or in respect of the entire site upon which such important buildings stand. In order to invoke the provisions of clause 6bis the important building for which special consent is sought to any relaxation of the scheme must appear on the list provided at Appendix 7 of the scheme. In that regard it is noted that 258 Wakesleigh Road is listed on page 18 of Appendix 7.

7. HISTORICAL CONTEXT OF THE SITE

Attached at Annex E to this memorandum is an architectural restoration report prepared by Mr. Bryan Lee. The report identifies and details the restoration work that is necessary to restore Trevean to its former splendour, as well as the associated billiard room and provides many illustrations of the existing structures. Mr. Lee's report begins with an outline of the historical context for Trevean, identifying the architect and owner of the original house which was constructed in the 1880's. The interesting and unique architectural features are identified and illustrated in Mr. Lee's report. Refer further to Annex E.

8. THE DEVELOPMENT PROPOSAL

The Trustees of the Bartel Arts Trust have identified the potential of the site, with its important monument status and outstanding historical buildings, to provide a location for a unique conglomeration of museum, music, culture and art facilities. Attached at Annex F is an illustrated synopsis of the Bartel Arts Trust's vision for the Trevean site which provides a clear insight into objectives behind the proposal. Attached at Annex G are site development plans prepared by architects Mikula Wilson Associates together with Lee Sanders Architects which provide the spatial translation of the Bartel Arts Trustees' visions. The architects' plans included at Annex G hereto comprise the following illustrations:

- (i) Drawing No. 1 : A site development plan showing the position of all existing and proposed buildings within a heavily landscaped environment.
- (ii) Drawing No. 2 : A site plan showing the general layout of land uses on the property, viz; driveways, parking areas, existing and proposed new buildings and landscaping areas.
- (iii) Drawing No. 3 : A site plan showing the footprint of all existing and proposed buildings and the provision of parking and access arrangements. The buildings have been numbered to relate to the schedule of proposed uses and areas included in Annex G.

- (iv) Drawing Nos. 4 to 10 : A set of sketch plans for each of the buildings showing usage, general layout with relevant sections through the buildings and areas.

The following identifies and describes each of the components of the proposed development:

8.1 Building 1 – Existing Trevean House (Drawing No. 4)

Proposed restoration and conversion of existing historical dwelling house to: Reception foyer (80m²); art gallery (110m²); bookshop (60m²) and restaurant / coffee shop (50m²) with retained residential component comprising 1 en-suite bedroom and living area and kitchen (100m²); existing covered veranda (200m²). Refer to drawing No. 4 at Annex G.

Building 1 is the existing dwelling house which dates back to the 1880's and which is to be fully restored to the classic Victorian verandah house that it was some 130 years ago. Please refer to the architect's restoration report attached at Annex E.

The restaurant is intended as no more than a coffee shop serving light meals on the covered verandah and consequently is just some 50m² of floor area. The kitchen is shown on drawing 4 which is to service the coffee shop and the retained residential component. There are proposed art galleries and a small book shop, all of which are integral with and complimentary to the proposed Phansi Museum, refer further to sub-section 8.4 below.

8.2 Building 1A – Existing Ancillary Unit (Drawing No. 4)

Proposed renovation of existing ancillary unit of 65m² to provide caretaker's accommodation. Refer to drawing No.4 at Annex G.

8.3 Building 1B – Existing Billiard Room (Drawing No. 4)

Proposed restoration and conversion of existing billiard room of 125m² to place of amusement. This unique structure is proposed to become an intimate music and theatre venue for small productions and recitals as well as special exhibitions and artistic launches. The scheme defines a place of amusement as

a building “.....designed or adapted to be used as a place of entertainment and includes an exhibition hall, theatre.....” and is thus an appropriate definition for the proposed use of the existing billiard room. Note that a place of amusement no longer includes land uses or activities such as a night club or action sports bar and so on, the scheme now defines those land uses separately.

8.4 Buildings 2, 3 & 3A – Existing Stables and New Museum (Drawing No. 5)

Proposed restoration and conversion of existing horse stables of 185m² (Building 2) to new administration offices, store rooms and caretakers’s flat, all being ancillary to proposed new ground floor and mezzanine level museum and first floor dwelling unit, on relaxed north boundary side space from 2m to nil and relaxed building line to Corumbene Road from 6m to 3m. (Buildings 3 and 3A).

Drawing No. 5 depicts the floor plan for the conversion of the existing stable buildings to provide: 4 administration offices totalling 60m²; a museum storage room of 70m² and an administration office storeroom of 10m²; a residential flat of approximately 40m² for security / caretaker. The existing stables building is already positioned on the north boundary line of the site, but the proposed change of use will necessitate the municipality granting a relaxation to the site’s north boundary side space from a minimum of 2m to nil.

The proposed new museum building of 485m² (Buildings 3 and 3A) will re-house the Phansi Museum that is presently located in Roberts House, a restored Victorian national monument located at 500 Esther Roberts Road in Glenwood. The following is an extract from the Phansi Museum website (www.phansi.com), which succinctly describes the existing museum:

“Phansi is pronounced ‘punzi’, meaning ‘below’ or ‘beneath’ in IsiZulu, after the basement location where it began. ‘Phansi’ is also known as the place beneath, where the ancestral spirits dwell. The museum was started in 2000 as a small private museum, and has since expanded to host one of the biggest and most spectacular collections of African arts and crafts in the world. The collection is held in Roberts House, a fully restored Victorian national monument, in Glenwood, Durban. Three floors of the

Victorian mansion are packed with Zulu beadwork, earplugs, wire baskets, milk-pails, beer-pots and fertility dolls; Ndebele blankets and ceremonial items, and artefacts from the eastern Cape, Namibia and Kenya. The most popular exhibit is the life-size marionette room, where thirty life-size puppets are adorned with ceremonial dress from all over Southern Africa. This collection was exhibited at ABC Home, in Manhattan, New York, over the festive season 2008/2009, to great acclaim.

The museum hosts cultural workshops and functions. Regular live music evenings provide a platform for local and visiting artists to showcase original material. The publishing division, Phansi Publishing, publishes short runs of specialist-interest arts, crafts and cultural literature. It has for the last 10 years produced an annual calendar which has become an iconic collectors item, adorning the walls of rural schools and boardrooms alike. The museum has a partnership with the Amazwi Abesifazane (Voices of Women) memory cloth project, and houses an archive of over 2000 memory cloths, exhibiting groups of these on a rotating basis.”

The existing Phansi museum has outgrown its present location in Glenwood and the increasing number of school visits to the museum have highlighted that the location cannot accommodate the buses that transport the school children as well as the tourist buses which are becoming more frequent with the museum’s growing reputation. The application site is able to provide for a much needed larger museum space as well as providing adequate on site parking for cars and buses. Refer also to sub-section 8.10 and the traffic report attached at Annex H. The first floor level of the proposed new Phansi Museum building is a 2 bedroom residential unit for the museum’s caretaker / tour guide and to retain a strong residential presence on the site.

The restoration and conversion of Trevean House and the existing billiard room together with the construction of the new Phansi Museum building and the re-location of the latter to the site from its current Glenwood position will be the initial development phases of the Musart Park proposal. These activities are all complimentary and there are synergies between them that will provide the impetus for the planned further development of the site.

8.5 Buildings 4 and 4A – Proposed New Art House (Drawing No. 6)

Proposed new 375m² work house for ground floor artist's studio of 245m² and first floor 2 bedroom dwelling unit. (Drawing No. 6). The proposed building will provide a ground level work space for short term visiting artists, research students and academics from all around the world or locally from South Africa. Such visitors would be able to enjoy short term accommodation in the first floor residential unit.

"A work house" is defined in the town planning scheme as; *".....premises used.....for a combination of residential and labour intensive purposes, which can be carried on without causing nuisance to other properties or to the general public....."* A work house is the only land use definition in the scheme which adequately accommodates the mixed use nature of the proposed "art house", which combines residential occupation with artistic endeavours of an academic, research or creative nature.

8.6 Building No. 5 – Proposed New Digital Innovation Centre (Drawing No. 7)

Proposed new 450m² work house for digital innovation in the world of art and science comprising; 325m² ground floor and part first floor digital innovation workshops and display area, lower ground floor storerooms (122m²) and first floor 2 bedroom residential unit. As with buildings 4 and 4A described in sub-section 8.5 supra, the proposed usage fits the scheme's definition of a work house.

8.7 Building No. 6 – Proposed New Residential Building (Drawing No. 8)

Proposed new residential building of approximately 288m² of floor area, comprising a total of 6 residential units as shown on drawing No.8 at Annex G. The ground floor level comprises two by 3 bedroom units and the first floor level has 4 by one bedroom apartments. The proposed residential units are to provide short term accommodation for visiting artists, musicians, academics and researchers or for artists, sculptors and other talents that might be exhibiting in the museums or studios proposed within the site.

8.8 Building No. 7 – Proposed New Sculptor House (Drawing No. 9)

Proposed new 375m² work house for ground floor sculptors' studio of 245m² and first floor 2 bedroom dwelling unit (Drawing No. 9). The intention is the same as for buildings No. 4 and 4A as described in sub-section 8.5 but building No. 7 is for sculptors and related artistic endeavours, whereas buildings 4 and 4A are for various art works.

8.9 Building No. 8 – Proposed New Islamic Museum (Drawing No. 10)

Proposed new 155m² museum for Islamic culture with first floor research and study area of 125m² and a caretaker's flat of 75m². As noted in the vision statements of the Bartel Arts Trustees (Annex F), the existing sunken gardens situated below the main dwelling house is seen as an ideal quiet and peaceful location for a new Islamic Museum. The concept is a unique one and there is no existing trove of such cultural treasures in the eThekweni Metro.

8.10 Access, Driveways and Parking (Annex H)

To support this special consent application Dave McFarlane and Associates, professional traffic engineering consultants, have produced a traffic impact assessment report which has dealt with the access and parking issues associated with the development proposal. A copy of the complete traffic study is attached at Annex H to this application memorandum.

- **Access** – Access to Trevean is currently directly off Wakesleigh Road next to the intersection with Corumbene Road. From a traffic and safety aspect the TIA has recommended an alternative access to the site off Corumbene Road, which the SDP attached at Annex G has shown. However, the main access for the site is to be from Bedford Avenue, which has a safer intersection with Wakesleigh Road, with an existing right turn refuge lane in Wakesleigh Road. Refer section 6 of the TIA.

If the municipality's upgrade of Wakesleigh Road does ever come to fruition, as per section 5 of the TIA, then the Corumbene Road access to the site may have a left-in-left-out access to Wakesleigh Road. In the event that the Corumbene Road intersection with Wakesleigh Road is closed altogether in the road upgrade, then the Corumbene access will have to be via Bedford Avenue.

The SDP drawings attached at Annex G show that there is connectivity between the Corumbene Road and the Bedford Avenue points of access to the site. The connection is only 3m in width and so would be restricted to one-way traffic from Bedford Avenue towards Corumbene Road.

- **Parking** – On-site parking for the development would need to be provided in terms of the provisions of clause 12 of the scheme. However, in terms of the requirements of clause 12, with specific reference to the proposed museums at 20 bays per 100m², the amount of parking needed on the site would necessitate substantial earthworks that would essentially obliterate the existing gardens and turn the site into a gigantic car park, totally negating the whole park-like setting that is such an integral and principle component of the whole Musart Park proposal.

Section 7 of the attached TIA (Annex H) has dealt with the parking issue in some detail and has provided solid reasoning and motivation for the parking proposed on the site. Clause 12 of the scheme enables the municipality to grant a relaxation of up to 10% of the parking requirements by special consent. However, in this instance because of the proposed museums the proposed parking is more than 10% less than the scheme's requirements. This application is however not reliant on the relaxation provisions of clause 12 because this is an application in terms of clause 6bis of the scheme. Clause 6bis (2) specifically enables the municipality to relax any of the provisions of the scheme by special consent and that includes the parking provisions of clause 12 of the scheme.

In that regard this application does not seek to simply dispense with the parking norms. In fact the TIA shows in section 7 of that report that the scheme's parking requirements for all the proposed activities on the site have been complied with, except for the proposed museums. To that end the TIA has provided sound reasoning for the proposed parking for the museums and has shown that no other museums in the eThekweni Metro area can claim to provide any dedicated parking at all. The TIA has also included the recorded visitors to the existing Phansi Museum over the period of a typical month and has translated that visitation into a parking requirement which has been met by the development proposed herein.

8.11 Landscaping and Garden Spaces

This development proposal is heavily reliant upon the fact that the site presents such a huge potential to realise the Musart Park vision as presented by the Bartel Arts Trustees in Appendix F. Drawing Nos. 1 and 2 in the attached Annex G show that there is a substantial landscaped component to the proposal. Historically the original dwelling house was situated within a manicured exotic garden setting that was befitting of a dwelling house of such elaborate design and stature. The gardens comprised terraced areas accessed through a series of pathways cut into the natural slopes which were secured by hand cut stone retaining walls. The Musart Park proposal will rejuvenate the historical garden setting and build on the findings of the vegetation assessment report undertaken by IndiFlora (Annex D).

8.12 Provision of Services & Storm Water Drainage

Included at the end of the architect's restoration report which is attached at Annex E to this memorandum is a summary of the existing provision of bulk services to the site as well as confirmation that a water borne sewage connection has been designed and approved. The site is very large and thus on-site stormwater management can be implemented in accordance with the municipality's policies and guidelines.

9. SUMMARY OF ACTIVITIES AND SCHEME COMPLIANCE

The preceding section 8 and sub-sections thereof have identified all of the components of the proposed Musart development on erf 565 Bellair. The following table summarises the development proposal as depicted on the architectural plans attached at Annex G:

TABLE 1 : Summary of The Musart Park Development Proposal

| BUILDING No | DRAWING No. | PROPOSED DEVELOPMENT | AREA Sq m | PARKING RATIO | PARKING PROVIDED |
|--------------|-------------|----------------------------|--------------|------------------------|------------------|
| 1 | 4 | Reception / Foyer | 80 | 5 / 100m ² | 5 |
| | | Art Gallery | 110 | 3 / 100m ² | 3 |
| | | Book shop | 60 | 6 / 100m ² | 4 |
| | | Restaurant | 50 | 10 / 100m ² | 5 |
| | | Residential (Flat) | 100 | 1 / Du | 1 |
| | | Verandah | 200 | n / a | - |
| 1A | 4 | Ancillary Unit | 65 | 1 / Du | 1 |
| 1B | 4 | Place of Amusement | 125 | 1 / 4 seats | 20 |
| 2 | 5 | Offices | 60 | 5 / 100m ² | 3 |
| | | Storage | 85 | n / a | - |
| | | Caretaker's Flat | 40 | 1 / Du | 1 |
| 3 + 3A | 5 | Phansi Museum | 485 | 3 / 100m ² | 15 |
| | | Caretaker Flat | 95 | 1 / Du | 1 |
| 4 + 4A | 6 | Art Studio | 245 | 3 / 100m ² | 7 |
| | | Residential | 130 | 1 / Du | 1 |
| 5 | 7 | Technology Studios | 325 | 3 / 100m ² | 10 |
| | | Residential | 125 | 1 / Du | 1 |
| 6 | 8 | Residential Bldg (6 units) | 288 | 1 / Du | 6 |
| 7 | 9 | Sculpture Studio | 245 | 3 / 100m ² | 7 |
| | | Residential | 130 | 1 / Du | 1 |
| 8 | 10 | Islamic Museum | 155 | 3 / 100m ² | 5 |
| | | Research & Study | 125 | 3 / 100m ² | 4 |
| | | Caretaker's Flat | 75 | 1 / Du | 1 |
| TOTAL | = | = | 3,428 | | 102 |

The site is zoned special residential 650 and most of the activities applied for are not freely permitted in the special residential zone in terms of Appendix 1 of the scheme, neither are they all permitted by special consent. However, this application for special consent to the development proposal is submitted in terms of the provisions of clause 6bis of the scheme, which provisions allow the municipality to grant authority to any land use or activity and to relax any provisions of the scheme, by special consent.

Consent is thus sought in this application to the land uses and buildings identified in section 8 and Table 1 above, which also requires the minor relaxation of the north boundary side space of the site for the existing buildings already in advance of that space, as well as a relaxation of the Corumbene Road building line from 6m to 3m. Please refer further to section 12. It has also been identified in sub-section 8.10 on page 15 that the proposed museums will not be able to meet the parking requirements of clause 12 of the scheme and consequently a relaxation of those requirements is sought. The traffic report attached at Annex H has provided a solid motivation for the proposed parking ratio suggested for the museums. Parking for the other activities can be provided in accordance with the scheme regulations.

The special residential zone does not have a FAR control but the total proposed floor area of 3 428m² as per the above table represents a FAR of just 0,27. All of the proposed new buildings are 2 storeys in height which complies with the height restriction of the existing zoning and that of the surrounding zones. The total covered area is some 2 575m² which is only 21% of the site whereas the special residential 650 zone permits a site coverage of 40%.

10. TOWN PLANNING AND DEVELOPMENT CONSIDERATIONS

This is an application for special consent in terms of the provisions of clause 6bis of the Durban Scheme as provided for by Appendix 1 to the regulations pertaining to the special residential 650m² zone. That Appendix 1 prescribes that within the special residential zone the municipality may allow by special consent “.....*any other use authorised in terms of clause 6bis.*” Refer further to section 5 of this memorandum. In considering any application in terms of clause 6bis of the scheme, clause 6bis (2) states that the municipality must be satisfied that the development proposal will:

- (a) Ensure the conservation of the historical, architectural or artistic value of the important building or object;
- (b) Not reduce the architectural, historic or artistic value of the important building or object;

- (c) Not unduly interfere with the amenities of the neighbourhood existing or as contemplated by the scheme.

10.1 Conservation of Important Buildings

Already noted in this application is the historical value of the existing dwelling house on the site. However, being over 130 years old the dwelling house and the existing billiard room are now consuming far more than what is reasonably affordable for occupation as a private dwelling. The architect's restoration report attached at Annex E has detailed the extensive nature of the work to be undertaken to restore and preserve the existing buildings. That restoration work has been estimated by the architect to come to a cost of at least R1,83 million.

The estimated restoration costs cannot be justified or sustained for the continued occupation of the property as a private dwelling house. Furthermore, the location and value of the surrounding residential area does not dictate that a private residential property such as the site can substantiate a market value that would justify the expenditure necessary to restore the existing building on the site. On the other hand, the Bartel Arts Trust has the resources to undertake the required restoration to the historical buildings and thus ensure their continued and sustained existence. The existing usage will unfortunately just perpetuate the slow decline and eventual demise of the buildings. The Trust has been involved in several other conservation ventures and thus has the relevant experience as well as the ability to source further funding and investment into the development proposal from arts related interest groups locally and internationally.

The conversion of many of the buildings listed in Appendix 7 of the scheme to non-residential usage has been authorised by the municipality over many years in order to enable the preservation of those buildings. That was after all the very purpose of clause 6bis of the scheme. However, the common alternative use for historically important former dwellings has been offices and thus the development proposals advanced in this application are a fresh and innovative divergence from the norm. Most importantly, not only will this proposal ensure

the restoration and conservation of the historical buildings, it will also ensure that the buildings are made open to the public so that people that have an interest are able to enjoy and celebrate the history and majesty of this site, which is a proclaimed national monument. Refer further to sub-section 10.2 which follows.

10.2 Retaining the Architectural and Historic Value

The historically important buildings on the site comprise the existing dwelling house, billiard room and horse stables. The main dwelling and the billiard room are splendid structures with intricate architectural detail and will be fully restored to be the dominant focus of the overall Musart Park development proposal.

The complete restoration of these buildings can only be justified in terms of economic feasibility if the usage is able to substantiate and sustain the expenditure necessary, currently estimated to be at least R1,83 million. The residential suburb of Part Bellair does not substantiate that sort of expenditure on a 130 year old dwelling house. Furthermore, the existing billiard room and the horse stables are not structures that lend themselves to conversion to residential occupation and have very little added value to the main dwelling. One simply cannot justify expenditure of almost R1 million on restoring a billiard room or R140 000 on refurbishing old horse stables unless these structures are purposefully used.

This application proposes a future for the site which is centred around its national monument status and the presence of the majestic historical buildings. The important buildings are thus central to the implementation of the Musart Park development proposal and consequently the value of the historic buildings will be preserved and sustained through the future occupation and use of the site.

Sub-section 10.1 supra noted that the conversion of many of the buildings listed in Appendix 7 of the scheme have been converted to offices to justify their conservation. The office conversions may add or retain the value of those buildings but rarely does the office use contribute to the public value of the

historical building. Most office conversions are for private purposes, which precludes access by the public and thus such historical buildings cannot readily be enjoyed or fully appreciated by anyone who may have an interest. The proposed use of the buildings on the application site will make them open and available to the public and thus the historical and architectural value of these buildings can be fully appreciated by the public.

The existing zoning of the site freely permits the property to be developed with a multiple unit residential scheme at a density of 1 dwelling per 650m². The potential yield of the 1,2376ha site is therefore 20 dwelling units. The alternative use of the property in order to try and substantiate the restoration expenditure on the old building would therefore be a 20 unit housing scheme. To develop the property with one dwelling unit every 650m² of the site would totally destroy the historical garden setting of the Victorian verandah house and the architectural, historic and artistic value inherent in the site would be eradicated. It is therefore submitted that the further development of the site for residential use in terms of the existing zoning would not in fact preserve or sustain the architectural and historical value of the property and existing monument buildings.

Furthermore, whilst the development of some residential units on the site could possibly provide the owners an income to restore the old buildings, the main dwelling would still be used as a private home and thus sustaining the investment into its restoration is questionable. The alternative would be to use the main dwelling and the billiard rooms as communal facilities for a home owners association or body corporate of a housing scheme. However, once in the hands of a body corporate the likelihood of the sustained preservation of the old buildings must again be questionable.

Another alternative that could be considered to retain or preserve the value of the historic buildings might be to subdivide the property, so that the existing buildings stand alone on one erf. The balance of the property could be developed for residential purposes and the old buildings restored and converted to offices. That scenario is also questionable as the site is not well located for

office use, and again the large grounds and garden setting would be destroyed and thus the historic value of the monument would not be preserved, as is the objective of clause 6bis of the scheme.

One should not lose sight of the fact that the entire erf 565 Bellair was declared a national monument in 1981, not just the existing buildings. As a result any further development of the site must give consideration to the whole because the expansive gardens around the Victorian dwelling house are an integral feature of the site's historical value. It is submitted that the further development of the site for residential purposes at a density of 1 dwelling per 650m² would not be capable of preserving that element of the site's history.

The proposed Musart Park development as portrayed in the drawings attached at Annex G places a strong emphasis on the entire development and the envisaged activities taking place within a park-like setting. Driveways and vehicle parking areas have been kept to a minimum and confined to the site's peripheries and the building foot print is minimal. In fact the covered area proposed in the overall development, inclusive of the existing buildings is just 21% of the site area. The development proposal therefore includes the rehabilitation of most of the original garden area on the site, complete with the contoured pathways and the stone retaining walls. The resultant development thus retains the value of not only the important buildings, but also their historical setting.

10.3 Impact on Amenities of the Area

Clause 6bis (2) (c) requires the municipality to consider the impact of the proposal on the amenities of the neighbourhood, existing or as contemplated by the town planning scheme. The amenities of the neighbourhood as contemplated by the scheme must be inherent in the zoning of land. Figure 3 herein presents the existing zoning of land in the area around the site and shows that the area is predominantly zoned for medium density residential purposes as either special residential 650 or duplex zones. Figure 4 shows the general nature of land uses in the area.

Figure 2 shows the state of the built environment in the vicinity of the site and the extent of vacant / undeveloped land in the area. Evident from Figures 2 and 4 is that on the western and northern boundaries of the site there are multiple unit developments. To the east of the site the land is mostly undeveloped and is predominantly in the ownership of the state, following historical land expropriations in the Cato Manor area. South of Wakesleigh Road the dominant land use zone is special residential 650m² and most properties are improved with modest dwellings in accordance with that zoning.

The question therefore is would the proposed Musart Park have any negative impact on the surrounding residential developments? Impact on residential amenity would have to be attributed to noise, pollution, extraneous or excessive traffic generation, unsightly or obtrusive buildings or any nature of activity that would conflict with the residential enjoyment of the surrounding properties.

It must be noted that the residential developments on the boundaries of the site are quite substantial multiple unit developments. Thus the immediate neighbours are not single residential erven with which one traditionally associates a high level of privacy and a more intimate enjoyment of a private garden and entertainment area. Multiple unit developments such as those bordering the site have lower levels of privacy, no private garden areas, close encounters with neighbours and other residents of the complex. Consequently there is a greater degree of resilience to activities outside of the boundaries of the multi-unit developments.

It is submitted that the proposed Musart Park cannot be construed as a noise generator or a source of pollution. Museums, galleries and artist studios are rather activities that are associated with an overbearing quiet. The site itself is also more than 1,2ha in extent and thus the proposed activities and any possible associated impacts are not concentrated within a minimal space.

There is a substantial residential component to be retained on the site, thus there will always be activity on the property. A common criticism of consent uses granted on residential properties is that the alternative land use, such as

offices, usually leaves the property unoccupied for long periods, particularly night time and weekends. To the contrary, the Musart Park development proposal has some 14 residential units as an integral component of the development and also the site will be “alive” over weekends as the museums and other exhibitions will be open. Weekends are also when the public visitations to the site will peak.

As regards traffic generation, the main access to the site is off Bedford Avenue, and thus site generated traffic does not have to venture through any residential areas. There is no development to the east of Bedford Avenue, where the state-owned land is steep and not sewered. The cadastral make up of the land to the east of the site comprises very large parcels of land which are state owned and thus any future development can adequately take into account the site’s access and parking area off Bedford Avenue. The traffic impact assessment report attached at Annex H has confirmed that site generated traffic will predominantly be outside of peak hour traffic on Wakesleigh Road and thus will not present an interference of negative impact upon the surrounding residential amenity.

Wakesleigh Road is a metropolitan arterial route (M10) and carries high volumes of traffic. The municipality intend to upgrade the roadway to a dual carriageway and thus access to the site by extraneous traffic or traffic not generated locally, will be via metropolitan arterials (N2, M7 and M10) and not residential access roads. Therefore visitors to the site from any part of the metro area will be able to travel to the site by private car or bus without having to pass through any residential neighbourhood streets. The residential access roads around the site are a closed system and thus there are no short-cuts for site generated traffic.

It is thus submitted that the proposed development and use of the site will not only enhance the property with the restoration of the historical buildings but also through the rejuvenation of the garden areas. The site is large at more than 1,2ha in extent and the intensity of activity proposed thereon is very low. There is a strong residential presence retained in the development and thus the site

remains a safe, secure and policed area at all times of the day and throughout the week. The activities are by their very artistic and cultural nature associated with peace, quiet and tranquillity, enhanced by the park-themed setting proposed. There are consequently, no noise, pollution or unsavoury activities associated with the proposal that could be construed as having a potentially negative or derogatory impact on the surrounding residential properties.

11. BUILDING LINE RELAXATIONS

The site plan included at Annex G and sub-section 8.4 herein identified that the proposed Phansi Museum building and the proposed conversion of the existing stables (Buildings 2, 3 and 3A) require the relaxation of the building line to Corumbene Road from 6m to 3m and the relaxation of the site's north boundary side space from 2m to nil.

Whilst clause 6bis (2) of the scheme enables the municipality to relax by special consent any of the provisions of the scheme, clauses 18 (8) and 19 (7) also allow the municipality to grant its consent to the relaxation of the building line and side space requirements of the scheme. In all instances the key criteria to be given consideration to in getting such relaxations is that the proposal must not unduly interfere with the amenity of the surrounding properties.



In that regard it is submitted that in respect of the building line relaxation to Corumbene Road for the Phansi Museum, there is no road constructed in the area of the required relaxation, as shown on the accompanying aerial illustration. The multi unit housing development to

the west of Corumbene Road at this northern corner of the site is set well back from the road reserve with only the development's swimming pool and the club house near to Corumbene Road. The nearest dwelling unit is more than 45m from the site's western boundary. The fact that there is still a 3m building line proposed to Corumbene Road means that the proposed Museum is adequately distanced from the nearest residential improvements to the west of the site so as to not impinge on any residential amenity enjoyed by that multi unit development.

The existing horse stables are already situated on the north boundary of the site, as shown on the detailed site survey at Annex C. The proposed development of the site does not suggest any additions to the existing structures but only the renovation of the buildings and the internal conversion thereof to provide small administration offices that are ancillary to the Phansi Museum building. A caretaker's one room flat is also to be included in the existing structures. (Refer Annex G). The existing residential units to the north of the site will be unaffected by the proposed use of the buildings and will in fact benefit from the upgrading and occupation of those existing structures.

12. CONCLUSION

The proposed museum, music, culture and art park as described and illustrated in this application is a unique development proposed on a unique historical site. The proposal will ultimately be of national if not international artistic and cultural significance and will no doubt contribute substantially in that respect to the eThekweni Metro region's tourism portfolio.

The Bartel Arts Trust possesses the resources and expertise to bring this proposal to reality. The Trustees also have access to many art and culture interest groups locally and internationally that will contribute further to the implementation of this unique development. The site itself has renowned historical and architectural significance, as recognised in it being declared a national monument. The development proposal will ensure the restoration and future maintenance of the historically important buildings and ensure their future

architectural value. Consequently this proposal will satisfy the conservation objectives of clause 6bis of the Durban Town Planning Scheme, in terms of which the municipality's special consent is hereby sought to the development proposal.

Sub-section 4.1 of this application memorandum identified that the proposed development and use of the site necessitates the consent of Amafa AkwaZulu-Natali in terms of the provincial and national heritage conservation legislation. The application procedures for obtaining the consent of Amafa require a public participation process, which Amafa has agreed can be conducted jointly with this application for the municipality's special consent. The properties surrounding the site therefore need only receive one notice for the proposed development and use of the site which will simplify the procedures and make it less confusing for interested and affected parties.

As a result, the final approval of Amafa can only be obtained once the public participation process has been completed. A heritage impact assessment report is being prepared for Amafa and will be completed prior to the public participation procedures and will thus be available to supplement the special consent application document once this application is advertised in the prescribed manner. The special consent of the municipality can therefore only be granted for this proposal conditional to the favourable decision of Amafa.

ELLIOTT DUCKWORTH ASSOCIATES

July 2013