

MICHAEL BESTER ARCHITECTS C.C.
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9/2/11/105

64(01)

**ST. PAUL'S CHURCH
RONDEBOSCH**

**REPORT ON
PROPOSALS TO DEVELOP
CHURCH GROUNDS**

prepared for

THE PARISH COUNCIL

October 2001

C.C. no. 1996/044890/23
Member: M.A.M. Bester, ARCH.(S.A.), BAS, BArch(Cape Town), MIArch
In association with J. V. Halkett and A.F. Shewan.

A. INTRODUCTION

This report is submitted to the Parish Council in respect of a variety of proposals and suggestions over some years concerning the potential for commercial or other development of the grounds and graveyard of St. Paul's (Anglican) Church, Rondebosch. It arises out of a meeting held between the Rector, Dr. Luke Stubbs, and a Churchwarden, Mr. Richard Reed, at the offices of Michael Bester Architects CC on 19 September 2001. The report explores the following constraints on the property in question:

1. clauses of the 1832 grant of land, which forms the principal deed of title to the site;
2. the April 1980 proclamation of the Church as a "National Monument" by the (then) National Monuments Commission;
3. the municipal zoning scheme and related regulations, and, in particular, the City of Cape Town's urban conservation site/building gradings;
4. the issue of the exhumation of human remains interred in the cemetery section of the property.

Where possible, further professional opinion has been obtained on a *pro bono* basis to supplement this firm's comments.

B. REPORT

1. GRANT OF LAND

Copies of the 1832 grant of land by Sir Galbraith Lowry Cole, the cadastral diagram of the property, the National Monuments Proclamation, and related documents are included in this report under "**Appendix A**" for ease of reference.

A specific provision of the Deed of Grant explicitly states that

" ... withhold however giving to the grantees any right of authority to dispose of or appropriate the land in question ..."

Legal opinion on the significance of this provision has been obtained from Dr. H.T. Ramsden (of H.T. Ramsden & Associates Attorneys, Notaries & Conveyancers) and is attached hereto as "**Appendix B**". The salient points of this opinion may be summarised as follows:

- 1.1 The grant's beneficiaries are **not** entitled to dispose of or otherwise alienate the land without amendment of the Deed's provisions.
- 1.2 Only the grantor may amend the Deed's provisions.
- 1.3 The grantor was Sir G.L. Cole, representing the State in his (autocratic) capacity of Governor and Commander of the Colonial Settlement. This capacity is now, arguably, represented by the Parliament of the Republic of South Africa.
- 1.4 In order to amend the Deed, therefore, it may be necessary to proceed by way of obtaining the passage of a private bill in Parliament.
- 1.5 Such a process would in any case require the support of a wide range of interested parties, including the majority of parishioners, the Rondebosch community, the local Councillor and municipality.

It seems hardly necessary to point out that such a process would be hugely expensive and involve very significant delays, with no guaranteed chance of success, or even of benefit to the Parish itself.

2. HERITAGE RESOURCES AGENCY (SAHRA)

Scrutiny of file no. 9/2/111/105 of the South African Heritage Resources Agency (certain contents of which are appended under '**Appendix C**') indicates that, although the original 1978 recommendation of the (then) National Monuments Council was that the whole of the property should be included in the monument proclamation,

"the church authorities [were], however, not in favour [of this] and [have] only granted permission for the church to be declared. The Director has accepted this position"

(letter to Director of National Archives, 1979-12-03). The matter caused some confusion at the time, and the file contains a series of correspondences on the matter, including an extraordinary attempt by a previous Rector to obtain financial support for churchyard maintenance (18 April 1980), and a later (5 January 1993) proposal by a private individual to have the declaration extended over the erf as a whole (which appears not to have been followed through, in spite of support for this by the NMC).

Nonetheless, the documentation makes it clear that the church building **alone** is a declared "National Monument", or (in the new terminology) "National Heritage Site": at least in any formal sense, and for the time being.

Modern conservation practice (however) eschews the older habit of declaring isolated museum-like "monuments" without reference to their physical context - as this new terminology suggests. It seems probable that the future will hold a *de facto* extension of the proclamation over the erf which forms St. Paul's Church's context, along with any routine amendment of the local authority's planning scheme (as anticipated by Section 31 of Act 25 of 1999). This process would certainly be precipitated by any development, alienation, or sub-division application, as all structures (or "resources") of age greater than 60 years require permits for alteration or demolition under this Act.

It is to be noted that, under the new Act **any** person may submit a motivated nomination to SAHRA for declaration of a heritage site and the "permission" of the owners of sites classified under this process is **not** required (and may not be withheld) under the new legislation (as it partly was in 1979 in the case of St. Paul's). Some allowance is made, however, for representations and the proposal (only) of conditions (Section 27).

The above observations should be clarified by the legal opinion of an attorney if further information or confirmation thereof is required by the Parish Council or other interested parties.

3. CITY OF CAPE TOWN (CAPE TOWN ADMINISTRATION)

Documents obtained from the City of Cape Town in relation to the property are appended hereto as **Appendix D**. There are two primary and relevant aspects which need to be recorded:

3.1 Zoning and Land Use Ordinances

The property carries a "Community Facilities" zoning under the town planning scheme of the Cape Town Administration. This zoning carries **no absolute right of development of any nature**, but allows, under restricted circumstances and "only with the consent of Council" (sic), the erection of certain buildings as listed in the appended document (extracted from the Zoning Scheme Regulations). Commercial and/or non-"community residential" usage would necessarily involve sub-division and re-zoning of portion(s) of the site. The City of Cape Town, under these circumstances, is entitled (under Section 10(01) of the Scheme Regulations of 1990, amended) to impose whatsoever restrictions it may deem appropriate in respect of Coverage, Building Lines, Setbacks, Floor Area, Height, and so forth. There are no such general constraints currently applicable to the property under the Zoning Scheme as it is now classified.

3.2 Urban Conservation

Included in the appendix is a letter received by the undersigned from Ms. Melanie Attwell of the City's Heritage Resources Section (formerly the Urban Conservation Unit). The municipal department operates under delegated authority from the SAHRC (discussed, *supra*, item 2). The writer is advised further that:

- a) both the church itself and the site on which it stands are listed as "grade 1" (outstanding historical and architectural significance);
- b) the church, graveyard and site as a whole is considered a city landmark and "green lung";

- c) the property is regarded as one which "by its presence contributes to a fine urban setting or lends character to a locality" (to borrow the words of Louw, 1983);
- d) the Heritage Resources Section would strenuously oppose any commercial, residential or sub-divisional application for the property.

There is clearly no simple process involved in assessing the suitability of the St. Paul's site for development (of an uncertain nature), which would carry a financial feasibility return likely to interest a developer under the above circumstances.

4. EXHUMATION

Burials commenced in the St. Paul's Churchyard soon after its consecration in 1832. Although records date from 1838, the earliest extant dated headstone indicates a burial in 1839, and the churchyard continued in use until 1888 when the Vestry resolved that it would be closed for further inhumation (St. Paul's Record, June 1928; p. 9). Subsequent to that date, and continuing until the present, cremation ashes have however been interred in the area. As the undersigned's "Initial Report on St. Paul's Church and Churchyard, Rondebosch" (November 1996) indicates, portions of the cemetery were laid out for purchased plots, free graves, and childrens' graves respectively. There are only a few grave markers remaining in the latter two areas, but there is no reason to suppose other than that most burial plots and graves were put into use, surface evidence notwithstanding (Bennet, 1999). The survival of skeletal remains in the case of children is likely to be relatively low, but the 1998 St. Peter's Cemetery redevelopment in Mowbray disproves the common assumption that the passage of between 169 to 103 years would ensure that "nothing is left" to disturb elsewhere. Notwithstanding, the exhumation process is formally necessary and would involve:

- 4.1 the obtaining of a faculty (or licence) from the Archbishop for the exhumation;
 - 4.2 advertising within the parish for objections or claims by relatives;
- (It is to be noted that the above process took place without dissent in 1917 when the widening of Main Road disturbed the perimeters of the churchyard: see **Appendix A: memorandum**)
- 4.3 a 60 day period of advertisement in the press and various stipulated community consultations;
 - 4.4 the preparation of suitable proposals for the treatment of exhumed remains and other archaeological artifacts to the satisfaction of SAHRA (Section 36 (4) of the Act);
 - 4.5 preparation of an impact assessment report, including a variety of stipulated information and research;
 - 4.6 application to and the obtaining of a permit from SAHRA, (in terms of Section 36(3)(b)) as above;
 - 4.7 actual exhumation by archeologists to archaeological and physical anthropological standards (the new Act precludes this process being handled merely by undertakers in the case of burials older than 60 years).

Given the uniqueness of the St. Paul's Churchyard and its age (the destruction of the St. George's Burial Ground in Somerset Road in *circa* 1909 makes it arguably the oldest Anglican place of burial in Cape Town, if not South Africa), and the high quality and indisputably unique character of several of the monuments, it is certain that the above process would receive significantly more opposition than past similar developments in Cape Town have attracted.

C. CONCLUSIONS

In summary, the four listed issues pertaining to titular constraints on the property's ownership, heritage site status, town planning principles, and exhumation processes (which are each related and interconnected) provide a set of real and unavoidable obstacles to the property's development or alienation by sale.

While it certainly goes too far to state that such an undertaking would be impossible, the process would be extremely questionable from the perspective of financial and development feasibility:

1. The cost and time involved would be very considerable, as it is certain that such an application would not pass without challenge from very many layers of interested parties, both individual and institutional, as well as governmental;
2. Although the property is highly central in the context of Rondebosch, it is also strangely isolated from an urban planning perspective. The actual value of the land to a commercial development is considered by the undersigned to be more doubtful than is often assumed, and it is probably impossible to determine this value accurately or objectively at this stage.
3. Since the property now vests in the ownership of the Diocesan Board of Trustees (see **Appendix A: Transfer, 1909**) it is also arguable to what extent funds generated by actual alienation of portion(s) of the existing erf would really accrue to the Parish of St. Paul's Rondebosch, itself. It would be advisable for the Parish Council to explore this issue further before any decisions are made.

It seems improbable (in the opinion of the undersigned) that the financial rewards to the Parish of alienation and/or development would justify the cost and effort of the processes outlined above.

The conclusion of this report is, therefore, that there can be no reasonable possibility for development and/or sale of the remaining "vacant" portions of St. Paul's Church property, and that no benefits can be envisaged in pursuing any further investigations into these occasionally arising proposals.

D. RECOMMENDATIONS

On the basis of the conclusions of this report, there remain only two basic options for the Parish's usage of St. Paul's Church lands, and in particular the area occupied by the cemetery.

1. Abandonment

With the exception of minor interventions in the recent past (which have been limited to garden maintenance, and the cutting back of grass and overgrowth), the practice of the Parish has been to neglect or abandon the land on which the Church and Hall stands. Certain recent inappropriate development has served to exacerbate the problem of the cemetery area, which, for a long time, has been associated with vagrancy, filth and litter, petty crime and vandalism. What is essentially an asset to the local community has become, as a result, both an eyesore and a security risk. The basis of this neglect has been justified in the past by:

- 1.1 a claimed lack of funds for maintenance;
- 1.2 the persistence of the idea that the site is a developable asset;
- 1.3 the apparent expectation that neglect to the point of dereliction will eventually efface the historical value of the site, thereby precipitating item 1.2 *supra*.

All of these points are implicit (where not explicitly stated) in correspondence received by the SAHRA in the past, and referred to above.

It is submitted by the author of this report that the latter two justifications are neither correct, nor achievable, as has already been demonstrated: to go further, however, this approach is simply not justifiable on the grounds of either the Church's mission to its community, or its ethical duty to uphold secular laws where reflective of the interests of broader society, as is expected of all participants in that society.

2. Restoration

The Church, catholic, manifests itself in this world not merely by its spiritual praxis but also by its performance in society. Beyond the people who propound its faith, the Church is visible to those outside its community in its representation of itself in the built environment. It is true that the Church does not consist of historical monuments and church buildings, and that its mission is not to be an archaeological storehouse or preserver of history for history's sake; nonetheless, the witness to the Church's faith that those assets do allow is, in fact, profound. In Rondebosch, St. Paul's Church rising over the trees and dominating "the village's" commercial centre and Main Road, has been a witness to the faith and the dedication of its people for 167 unbroken years of service. Just as the church building witnesses to the "church militant", the churchyard witnesses to the "church triumphant", and is a reminder of that great, innumerable, and continuously propounded conviction: the property with its existing structures is truly a Parish resource which underscores both the Church's message and continuity.

It is the undersigned's opinion that the task of restoration, upgrading and enhancement of church property in Rondebosch, for the good not only of the parish but the greater community too, is one both complementary and integral with the mission of St. Paul's to that community.

The Parish Council is urged, in accepting that the fixed property assets it administers can never be expected to be used for any other purpose, to embrace the opportunities that those assets do present, and to accept that task's challenges.

Michael Bestier

MICHAEL BESTIER

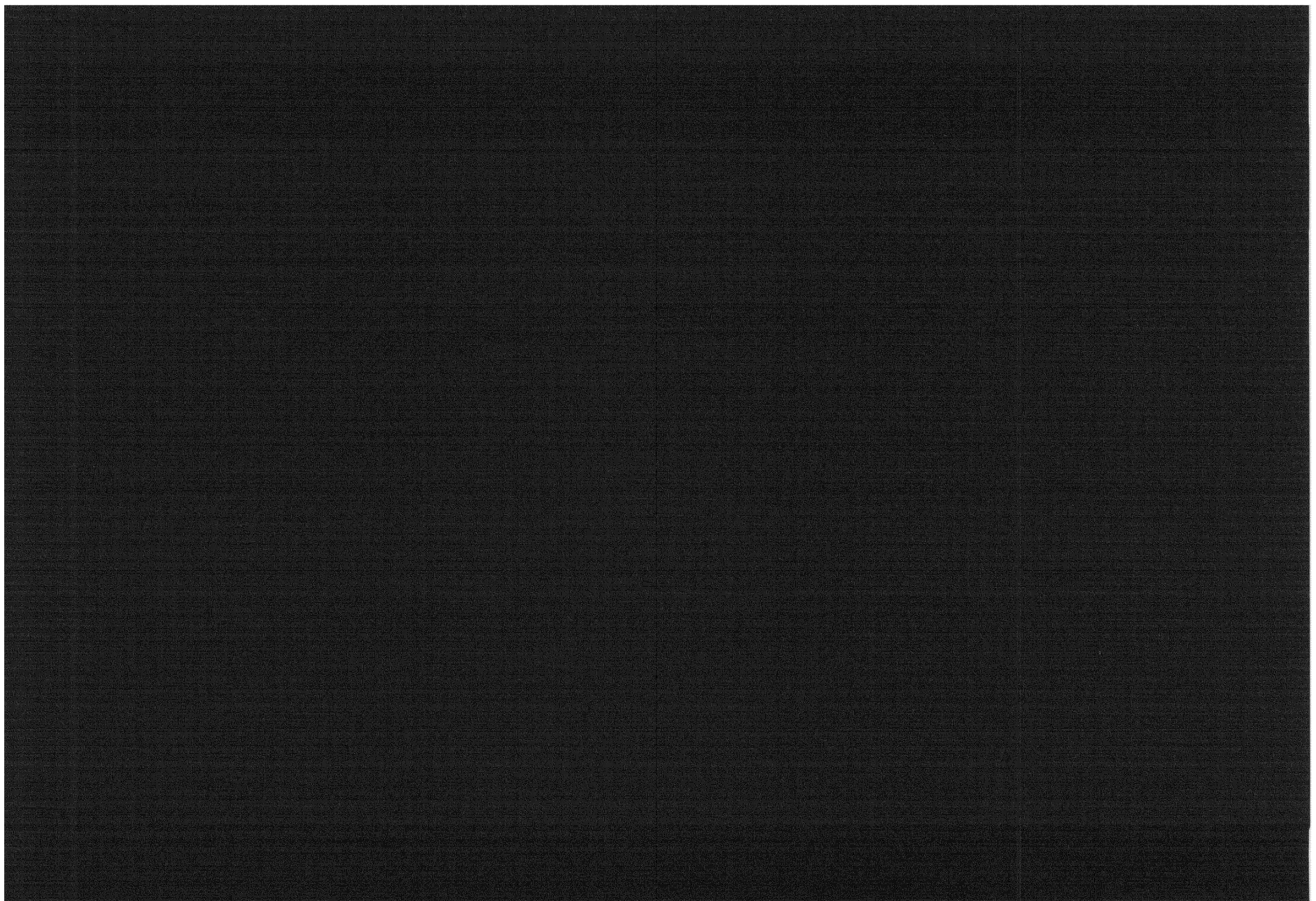
Pr. Arch, BAS, BArch (Cape Town),
CEA, MIArch (Cape)

31 October 2001

(The Parish Council is advised that an additional copy of this report will be lodged with the Library of the South African Heritage Resources Agency, and it is requested that the Council's Executive ensures that this original is kept preserved amongst the Parish's records for future reference purposes).

E. REFERENCES

1. National Heritage Resources Act (No. 25 of 1999)
Statutes of the Republic of South Africa - Cultural Institutions (Date of Commencement: 1 April 2000).
2. BENNET, D. *et al.*: "1999 Record of St. Paul's Cemetery, Rondebosch" University of Cape Town Historical Archaeology; unpublished 3rd Year Assignment 1999.
3. BESTER, M.A.M.: "St. Paul's Church and Churchyard, Rondebosch"
unpublished report, November 1996.
4. LOUW, T., *et al.*: The Buildings of Cape Town: Phase Two
Cape Town: Cape Provincial Institute of Architects, 1983.
5. MUNICIPALITY OF THE CITY OF CAPE TOWN: Zoning Scheme: Scheme Regulations.
General Amendment dated 29 June 1990, Official Gazette 4649. (Last amended 9 October 1998).
6. TROLLIP, W.L.: "St. Paul's Churchyard", S. Paul's Record
June 1928, pp 9 - 14; Cape Town.



APPENDIX A

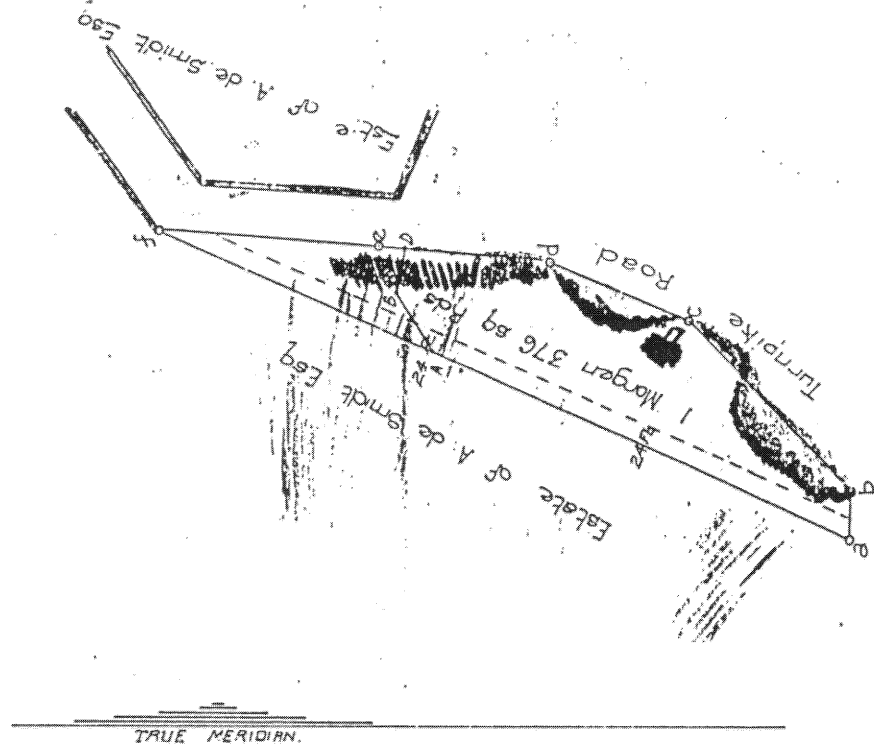
Legal Constraints

- 1832 Grant of Land
- Cadastral diagram
- Transcript of Deed of Grant
- National Monuments Proclamation
- Deed of transfer to Diocesan Board of Trustees and memorandums

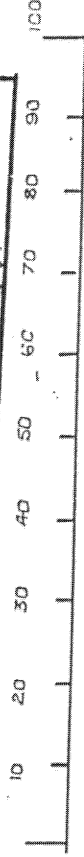
Surveyor-General
and
Registrar of Deeds,
Cape Town

S.O. No. 174. 1832.

S.G. Dgn. No. 174/1832



ERF 46143 CAPE TOWN
at Rondebosch



The above Diagram a b c d e represents a piece of Government Ground situated at Rondebosch in the Cape District measuring One Morgen 376 Sq. Roads.

Bounded on the West by the Property of A. de Smidt and on the East by the Great Road to Cape Town which it passes opposite Cloetes Bridge.

Surveyed for the purpose of erecting thereon a Chapel in connection with the Church of England.

By me
(Sgd) Chas. Michell,
Surveyor General

August 1832

Copied from the diagram relating to
 Title Deed No. C.F. 3-1
 dated 20th, August, 1832, in favour of
 Trustees of the Diocese of Rondebosch
 J. H. A. C.

9 JUL 1951

For Certificate Being
 ERF 46143
 the Back of Diagram.
 Comp. M12
 Ref.

DEED TRANSCRIPT

By His Excellency General the Hon. Sir GALBRAITH LOWRY COLE, G.C.B. Colonel of H.M. 27th Regiment of Foot, Governor and Commander in Chief of His Majesty's Castle, Town, and Settlement of the Cape of Good Hope, in South Africa, and of the Territories and Dependencies thereof, and Ordinary and Vice Admiral of the same, Commander of the Forces, &c. &c. &c.

I do hereby grand in Freehold, unto the Trustees for the time being the piece of land represented in the annexed diagram situated at Rondebosch in the Cape District and measuring One Morgen three hundred and seventy six Sq. Roods for the purpose of erecting thereon a Chapel in connection with the Church of England; withhold however giving to the grantees any right or authority to dispose of or appropriate the land in question for any other purpose; and also on condition that the(illegible).... between the line af and the dotted one running parallel to it at a distance of 24 feet(illegible).... shall be reserved for the use of Abraham de Smidt Esq. or whosoever may succeed to him as proprietor of the Quitrent land above (that is West of) said line af as a road to the said quitrent land, and also for the free passage of the Government Carts to and from the quarry situated thereon.

The land hereby granted is bounded on the West by the property of A. de Smidt Esq. And on the east by the Gt. Road to Cape Town

as will further appear by the Diagram framed by the Surveyor, and with full power and authority to possess the same in Perpetuity, ~~with permission to dispose of or alienate the same with the approbation of Government, in such manner as he may think proper,~~ subject, however to all such Duties and Regulations, as are either already, or shall be in future established with regard to such Lands.

Granted at the Cape of Good Hope; this 30th day of August 1832

(signed: G. Lowry Cole)

[at His] Excellency's command

(signed: Chas e. Michell)
Surveyor- General

(seal)

ENDORSEMENTS (*inter alia*)

...(illegible)... of Servitude

By Deed of ...(illegible)... 11th June 1917 a certain strip of Land 1117 yards in extent has been leased to the Council of the City of Cape Town for a period of 99 years subject to conditions as will more fully appear on reference to the copy annexed hereto.

Deeds Registry,
Cape Town,
27/7/17

(signed)
Asst. Registrar

In terms of Ex. Co. Mins. No. 558 of 23.2.1917 the condition re disposal or appropriation to any other purpose has been waived in respect of a certain strip of land (vide Min. no. 9275 dd: 7.3.1917 from Lands Pretoria (D8).

Palmyra
2011/1

BLADSY/PAGE 3
ENDOSSEMENT OF *Cape Province Vol 3 fol 1*
ENDORSEMENT ON
EIENDOM/PROPERTY *FFE 46.14.3*
Cape Town A.S. Roox & Bosch

Endossement kragtens Artikel 13(3) van Wet 28/1969 (Wet op Nasionale Gedenkwaardighede). I 1209/80 I

Endorsement in terms of Section 13(3) of Act 28/1969 (National Monuments Act).

Kragtens Artikel 10(1) van Wet 28/1969 is die
In terms of Section 10(1) of Act 28/1969, ~~the~~
ST. PAUL'S ANGLICAN CHURCH IN
CHURCH STREET, ROOX & BOSCH

geproklameer as n gedenkwaardigheid in gevolge Proklamasie
has been proclaimed a monument by Proclamation

Nr. 362 gedateer 29.2.1980
No. dated

soos aangekondig in die Staatskoerant Nr. 6866...129.2.1980
As published in Government Gazette No.

Vir verdere besonderhede sien gemelde Proklamasie en diensbrief
For further particulars refer to said Proclamation and Minute

Nr. Rsg 10/2/74 gedateer 20.3.1980 van die
No. dated from the

Direkteur van Argiewe, Pretori_, in Lêer 24/4/6/16
Director of Archives, Pretoria on File 24/4/6/16

AKTEKANTOOR, KAAPSTAD
DEEDS OFFICE, CAPE TOWN

DATUM/DATE: 8-04-1980

[Signature]
ASST. REGISTRATEUR VAN AKTES
ASST. REGISTRAR OF DEEDS
[Signature]

DEED OF TRANSFER
BY VIRTUE OF A POWER OF ATTORNEY.

Prepared by

Conveyancer.

KNOW ALL MEN WHOM IT MAY CONCERN

THAT ANDRIS BRINK GALLOWAY
appeared before me Registrar of Deeds, he being duly
authorised thereto by a Power of Attorney dated the
----Sixth---- day of July 1909 drawn up at Cape Town
and granted to him by

OSBORN HAMBROOK BATE

duly authorised thereto by a Resolution passed by the
Vestry of St. Paul's Church at Rondebosch at a meeting
held on 21st June 1909, which Power of Attorney has
this day been exhibited to me, and the said Appearer
declared THAT WHEREAS the undermentioned property was
granted in the name of the Trustees for the time being
for the purpose of building thereon a chapel in connec-
tion with the Church of England. AND WHEREAS there
is erected on the said property a Church known as St.
Paul's Church, Rondebosch, AND WHEREAS the Vestry of
St. Paul's aforesaid, are the Trustees for the time be-
ing of the said property, AND WHEREAS under the provi-
sions of the English Church Ordinance Repeal Act No. 10
of 1891 the Ordinance No. 5 of 1845 known as "The Ronde-
bosch English Church Ordinance" has been duly repealed
as will more fully appear upon reference to the Pro-

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ALLEEN VIR INFORMASIEDDELEINDES UITGEREN

the 2nd October 1906. AND WHEREAS it is necessary and expedient that the said property should now be transferred to the Trustees of the Diocese of Capetown in trust for St. Paul's Church Rondebosch, aforesaid.

NOW THEREFORE in order to give effect thereto, he, the said Apparer in his capacity of Attorney aforesaid, did, by these Presents, Cede and transfer, in full and free property to and on behalf of the Trustees of the Diocese of Cape Town in trust for St. Paul's Church Rondebosch in the Parish of Rondebosch, their administrators or Assigns, /

Certain piece of land situate at Rondebosch in the Cape Division with the buildings thereon.

Measuring One morgen three hundred and seventy six square roods.

Extending as the Deed of Grant with diagram thereon dated 30th day of August 1832 made in favour of the Trustee for the time being for the purpose of building on said land a Chapel in connection with the Church of England, will more fully point out and further subject to such conditions, as are therein mentioned or referred to.

Wherefore the Apparer, in his said capacity, renouncing all the Right and Title the said Trustee heretofore had to the Premises, acknowledged and declared the said Trustee to be entirely dispossessed of, and disentitled to the same; and that, by virtue of these presents, the said Trustees of the Diocese of Capetown in trust as aforesaid, their Administrators or Assigns now are and henceforth shall be entitled thereto, conformably to local custom; moreover promising to free and warrant the Property thus sold and transferred, as also to

clear

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ALL INFORMATION CONCERNING INTEREST

28

clear it from all Encumbrances and Hypothecations, according to Law;— Government, however reserving its Right;—

III WITNESS WHEREOF, I, the said Registrar, together with the Appearer q.q. have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE and executed at the Office of the Registrar of Deeds, in Cape Town, Cape of Good hope, on the Day of the Month of in the year of our Lord One Thousand Nine Hundred and nine.

q.q. his Constituent

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ALLEN VIR INFORMASIEDELENSES KUISEREN

In my presence

[Signature]

OFFICE
REGISTRAR

① Date of PPA incorporated in Act.
② Place of execution of PPA embodied from deeds

③ Facts described in PPA embodied in PPA of Deeds to

④ Transcribed in PPA of Deeds to be produced. T AND

[Handwritten notes at the top of the page, partially obscured]

L a t t e r i o r a t D j A c T y o r c o t h i s C h p a

MEMORANDUM BY THE DIOCESAN REGISTRAR on the notes made by the Registrar of Deeds in connection with the Agreement of lease between the Diocesan Trustees and the Corporation of the City of Cape Town, in re St. Paul's Church Lands at Rondebosch.

Note 2. (a) It will be noticed that the original title vests the land in "The Trustee for the time being". That is the Vestry, constituted under Ord. 5 of 1845 p. 9. This Ord. was repealed by Act 10 1891, and the vestry availed themselves of §. 2, of above Act, and by Proclamation, No. 445 of 1908, the Ord. 5, 1845, was accordingly repealed. The Parish and Vestry of Rondebosch have for a number of years recognised both the Provincial Synod, and the Synod of Cape Town, and this fact was confirmed by a resolution of the Vestry passed in 1909 annexed hereto marked "A".

(b) The Vestry and Parish contend that it is not necessary for them to apply for relief under Act 3 of 1873, as they, whilst retaining, under the Acts of the Diocese, the right to be consulted in all matters connected with the disposal of Parish Church lands, recognise the Diocesan Trustees in the first instance, as representing their interests, and in support of this contention they point out, that, in face of the strong opposition directed against the above Contention, Parliament recognised the Diocesan Trustees in passing the "Rondebosch Church Lands Act", 27 of 1909, and that neither the Vestry, nor Diocesan Trustees, are acting contrary to the conditions of the original title, or of lands held by them under similar conditions, in as much as that under the Constitution of the Church, the "Church of the Province of South Africa", is also known as "the Church of England", or, the "English Church", or, "Church of the Anglican Communion in these parts".

(c) That the Parish and Vestry in Meeting duly assembled for that purpose have approved of the terms of the lease, vide certified extract of Minutes of the meeting marked "B".

(d) That the consent of Government has been obtained recognising the Diocesan Trustees in the matter, vide Executive Minute No. 558, of 23rd February 1917, forwarded by Government to the Registrar of Deeds.

(e) That under any circumstances the Corporation would have the right to expropriate, or lease, the land for Municipal purposes, and for the benefit of the General Public.

With regard to the question of removing the bodies found necessary for the carrying out of the work, the Vestry say that the Cemetery is a very old one and has been closed for many years, that there are few graves to be disturbed, that no tombstones or vaults will be removed, as the graves to be disturbed, with the exception of one, very old headstone, have no ^{head} stones, and the names of the persons buried are unknown that the graves have been left in a state of disrepair. That due notice was given to the General Public, by notice in the "Cape Times" of the 3rd May 1917, as per copy notice marked "C", and that no objections have been raised.

That a faculty, or licence, has been obtained from His Grace the Archbishop to the terms of the lease, including the removal of the bodies. That under the circumstances there can be no claim by relatives as to the ownership, if any, of the graves in question.

That if it is necessary to meet the Registrar's requirements, for insertion of the words, interlienated in pencil on page 2, line 25, after the word "Trustees", it can be done.

13 FEB 1917

Revised
Registrar of Deeds

ISSUED FOR INFORMATION ONLY

PROPOSED BY

Mrs. G. G. Lourenson

SECONDED BY

That the Vestry of St. Pauls Church Rondebosch, in meeting duly assembled for that purpose, do hereby declare that the Ordinance No. 5 of 1845, known as the Rondebosch English Church Ordinance has been duly repealed under the provisions of Act 10 of 1891; and do hereby acknowledge the Trustees of the Diocese of Cape Town, as the Trustees to hold the property, conveyed under the Grant of the 30th August 1832, in favour of the Trustees for the time being - being the piece of land situated at Rondebosch in the Cape Division with the buildings thereon and measuring 1 morgen 376 square rods.

The above is a true extract from the Minutes of the Meeting of the Vestry of St. Pauls Church, Rondebosch, held at Rondebosch on Thursday the 2nd September 1909.

Chairman of Meeting.

R. G. Douglas

Sept 12.

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 ALLEEN VIR INFORMASIEDELENDES UITGERA

a notice having been given, a meeting of Parishioners of St. Paul's Church, Rondebosch held at St. Thomas' Church, Rondebosch Monday Evening 20th November 1916 to consider the proposed lease to the Cape Town Corporation of a strip of ground, measuring about 7 square yards and situated on the Main Road boundary of that part of the land granted to the Church on 30th August 1832. The principal features and conditions of the said Agreement of Lease (which is being granted to the Corporation to enable them to widen and effect certain improvements to the Main Road) having been duly read and explained to the meeting, it was thereafter unanimously agreed that the Church Council and Parishioners give their assent to the proposed Agreement.

Certified that the above is a true extract from the Minutes of the Meeting held as aforesaid.

Nov. 21, 1916

J. C. H. H. H. H.

J. C. H. H. H. H.
Rector &
Chairman
Parochial Church Council

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- 4-5-1953
INGEDIEN We,

APPLICATION FOR CHANGE OF NAME.

the undersigned, GERALD DESMOND ABERNETHY and WILFRED BRINTON

in our capacity as Secretary and one of

the Trustees of the BOARD OF TRUSTEES OF THE DIOCESE OF CAPE

TOWN, authorised by Resolution dated 8th September 1930 (filed

as G.P.A. No. 359/1930) do hereby apply in terms of Section

93 of Act 47/1937 for the amendment of Deed of Grant dated

30th August 1832, Cape Freeholds Volume 3 No. 1, to disclose.

the change of name of the Grantee from "Trustee for the time

being" to "Board of Trustees of the Diocese of Cape Town".

There is no change of persona in law and the amendment

is required by reason of the fact that all immovable property

is vested in the Board of Trustees of the Diocese of Cape Town

in terms of the Constitution and Canons 1939 of the Church

of the Province of South Africa.

The aforementioned Deed of Grant is the only deed in which

the owner's name requires to be changed and there are no other

documents affected by the change of name.

DATED at CAPE TOWN this 9th day of March 1953.

G. Abernethy

W. Brinton

name of Secretary vide C.B. 311.

This matter was discussed with Mr. Birch

who agreed to the principle of the

proposed application

Platt

Lawyer

ISSUED FOR INFORMATION ONLY

ALLEN VIR INFORMASIEDDE FINDES INLEEFM

APPENDIX B

Legal opinion on the
Inalienability Clause
of the Deed of Grant
of Church Lands,
Rondebosch.

Dr. H.T. Ramsden,
Attorney, Notary, Conveyancer.

H T RAMSDEN & ASSOCIATES

ATTORNEYS, NOTARIES and CONVEYANCERS

HORACE TOM RAMSDEN B.A LL.B Ph.D

P O BOX 30753, TOKAI, 7966
9 Farnsedge, 17 Pelahny Road, BERGVLIET, 7945

TEL: (021) 715-4500
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Michael Bester Architects cc,
24 Loader Street,
De Waterkant
Cape Toawn, 8001.

Dear Mr. Bester,

Ex parte the Board of Trustees of the Diocese of Cape Town in re Sub-division and Disposal of a Portion of Erf 46143 Rondebosch at Cape Town.

My opinion has been sought on the prospects of success of an application by Consultant to subdivide and dispose of that portion of the abovementioned Erf 46143 presently set aside as a graveyard.

Background

- By Deed of Grant dated 30th August 1832, the Commander in Chief of His Majesty's Castle, Town and Settlement of the Cape of Good Hope made a gratuitous grant in freehold to that body which has since become known as the Board of Trustees of the Diocese of Cape Town of a piece of land that is currently described as Erf 46143 Rondebosch at Cape Town for the purpose of erecting thereon "a Chapel in connection with the Church of England". It was an express condition of the Deed of Grant that no "right or authority to dispose of or appropriate the land in question for any other purpose" was conferred upon what would now be the Trustees of the Diocese of Cape Town.
- In addition on 8th April 1980, the Title Deed was endorsed pursuant to section 13(3) of the *National Monuments Act*, Act 28 Of 1969 to the effect that in terms of section 10(1) of that Act, "St. Paul's Anglican Church in Church Street, Rondebosch" was on 29th February 1980 proclaimed a monument by Proclamation number 362. This Proclamation and Minute may be found in the Archives at Pretoria in file 24/4/6/16.
- An Anglican Church, a Church Hall that incorporates a Montessori Pre-primary school, and a graveyard have been erected and/or installed on the aforesaid Erf 46143, none of which has been regarded as adverse user of the property by the controlling authority on account of the fact that the word "Chapel" has been interpreted to include purposes incidental to the erection and conducting of a Chapel. Whether this interpretation is a permissible interpretation or not falls outside of the scope of this opinion and is therefore not examined in any detail. It seems *prima facie* that the establishment there of a pre-primary school in custom-built premises could contravene the conditions of the grant. If one can provide custom-built premises for a pre-primary school, what is there to prevent St. Paul's from providing secondary education facilities and even tertiary education facilities on other parts of Erf 46143? Nevertheless one thing is certain and that is that the primary use of the Erf must be for the purposes of an Anglican Church.
- I am instructed that the Parish Council of St. Paul's Church have considered turning some

of the land to account by selling it off to a developer. There is a vacant piece of land on the northern side of the Church, roughly in the vicinity of the figure A,f,e,D,B,A on S.G. Diagram No. 174/1832. There is also the graveyard on the southern side behind the Church hall.

- In the past a few applications have been made successfully to have bodies exhumed from graveyards and re-interred elsewhere and the land used for other purposes. The most notable example of this was the so-called St Peter's graveyard on the eastern side of the Groote Schuur hospital.

It is against this background that my opinion has been sought.

The Status of the Grant.

- In accordance with our law as expressed in the Old Authorities, a condition conferred in a gratuitous grant that the Grantee had no authority to "dispose of or appropriate the land in question for any" purpose other than the purpose specified in the Deed of Grant would have bound the Grantee and would not have been alterable at the instance of the Grantee except with the consent of the Grantor. Had the Grantor ceased to exist, then the condition would be unalterable at the instance of the Grantee. It could only be revoked by the Grantor on the ground of the gross ingratitude of the Grantee.
- The Grant in the instant case was made by Galbraith Lowry Cole in his capacity as the representative of the State. As the State has perpetual life, it could agree to alter the restrictive condition in a number of ways. It could, for example, enter into a Notarial Agreement of Amendment to remove the restriction against alienating a portion of the property. There are, however rights of others that would be affected by the removal of the restriction and the State may wish to proceed by way of a bill to Parliament as was done in the case of the *Rhodes Will Amendment Acts*. Kilpin, *Parliamentary Procedure*, Juta & Co, Cape Town 1946, points out at page 19, note 8 that in certain cases a special procedure is prescribed for Parliamentary bills "not because they seek to benefit particular individuals but because in conferring these benefits they may detrimentally affect, the rights of others". The *Edward Berry and Doris Ward (Marriage Enabling) Act, 1930* and the *Mealey Will Act, 1900*, Act 3 of. 1900 (C) are other rare modern examples of private Acts of a personal character.

- Whatever way the State may decide to accede to the Diocesan request to withdraw the title condition prohibiting alienation, it is clear that both the controlling authority and the Diocese must be *ad idem* regarding the need and desirability for the removal of the condition otherwise the application will fail. Moreover the proposal will have to have the support of the majority of the Parishioners some of whom have a vested interest in preserving the graves where they are. Lastly, the Diocese will have to proceed in the manner directed by the State and this may involve the Diocese in a lot of expense if it should be obliged to proceed by way of a private member's motion. There would inevitably be lengthy delays if a bill were to be required.

Recommendations.

Before proceeding further the Parish Council should employ the services of an able Land Developer to draw up a comprehensive Memorandum giving reasons in support of the removal of the restriction. The next step would be to obtain the written approval of the majority of the Parishioners to the proposed amendment of Title.. Thereafter the Diocesan Council should be requested to assent to the proposal and to carry the Application forward to the Controlling Authority to obtain support for the application with or without amendment. The final step would be to approach the Member of Parliament for Rondebosch with the request that he pilot

the application through its various stages in interaction with the relevant State officials.

In conclusion the Parish Council will have to outlay a substantial amount of money *ab initio* before they even reach the stage of speaking with the Diocesan Trustees. It would be as well for the Parish Council to have more than a superficial opinion of what the value to the Diocese will be should the sale of the land eventuate and what portion of that value the Parish would be likely to receive

FARMSEGGEE
BERGVLIET
1st October 2001



H T RAMSDEN

HT RAMSDEN & ASSOCIATES

ATTORNEYS, NOTARIES and CONVEYANCERS

HORACE TOM RAMSDEN B.A LL.B Ph.D

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9 Farmsedge, 17 Pekahmy Road, BERGVLIET, 7945

TEL: (021) 715-4500
FAX: (021) 715-4500

Michael Bester Architects cc,
24 Loader Street,
De Waterkant,
CAPE TOWN, 8001.

Dear Mr. Bester,

Ex parte the Board of Trustees of the Diocese of Cape Town, in re Value to be ascribed to Land Known as Erf 46143 Rondebosch at Cape Town and the Buildings situated thereon.

My opinion has been sought on the acceptable principles to be applied in arriving at a value of the above-mentioned land and buildings. The background to the matter has been fully set out in an earlier opinion that I gave (dated 1 October 2001) *in re* the sub-division and disposal of a portion of the above-mentioned Erf and for the sake of brevity it will not be repeated here.

Qualifications

- I hold the degrees of Bachelor of Arts, Bachelor of Laws and Doctor of Philosophy in Law. My University reserves the Degree of Doctor of Laws to honour benefactors of the University. I am a qualified Attorney, Notary and Conveyancer, having been first admitted to practice on the 21st April, 1955. I am a Communicant member of St Paul's Church, Rondebosch.
- From September 1968 to February 1971 I was employed by the Johannesburg City Council. After one year and four months service I was promoted from Legal Assistant to Senior Legal Adviser. After ten months service as a Senior Legal Adviser, I was appointed Chief Estates Officer (the post is now known as Deputy City Secretary, Estates). My next promotion would have been to City Secretary and then Town Clerk. The whole of my service was spent in the property section conducting negotiations and transactions for the acquisition of land and rights in land, appearing at commissions of enquiry into the propriety of schemes that entailed expropriation of land and at arbitrations over the amounts of compensation arising out of expropriations of land and buildings.
- From March 1971 to July 1994 I was employed by Rand Water, the water supply organisation that delivers water within the largest geographical area served by any water authority in the world and that entailed conducting negotiations and transactions for the acquisition of land and rights in land throughout this large geographical area. I employed six legal assistants whose acquisitions I had to approve and justify to the board members as being fair and reasonable compensation for the land or rights acquired. I had other duties as well.
- To summarise, I have had more than twenty-five years in the property acquisition field which not only entailed the valuation of properties and rights in properties but went beyond to the justification of those valuations at a hearing before a tribunal
- I am a casual member of the Council for the Environment and the author or part author of eight published works that champion the preservation and wise management of the environment.

I have other qualifications that are not relevant to the present enquiry.

The principles of valuation.

There are a number of values that may be attributed to a thing. There is its intrinsic value, its sentimental value, its replacement value, its insurance value, its municipal value, its market value. There will be no correspondence between the amounts of these values. When the average man speaks about the value of something he usually has in mind its market value. Market value is regarded as the price that a willing buyer will pay to a willing seller on the open market. When a recent sale of an article takes place on the open market the value of that particular article is established. This does not mean that the particular article will sell for the same price in the future. The only thing that one can say with any certainty is that the buyer paid RX for the article at a given time.

In addition there are opinions regarding value and it should be remembered that so-called valuations are nothing more than opinions and rely extensively for their accuracy on the breadth of data available at the time of the valuation from which comparisons were drawn. In expropriation matters one is confronted with an artificial set of circumstances on account of the fact that there is no willing seller. The compensation for the property expropriated is fixed by using the best available opinion of what the market value of the property might be to which is added a *solatium* for the fact of expropriation. As will appear later, none of these principles can be applied to either Erf 46143 Rondebosch nor to the buildings erected thereon. It is my considered view that some clarity regarding the removal of the restriction imposed in the title deed to Erf 46143 Rondebosch **must** be obtained before theoretical exercises about what the value of the property might be if the restrictions are removed are embarked upon.

Valuation principles relating to the land and buildings in their restricted state.

As has already been premised, opinions of value are based upon relevant sales of similar properties in the neighbourhood. This opinion of the market value of a property is formulated by comparing that property with other properties that have been recently sold and by making adjustments for the variations between that individual property and the ones compared with it. This opinion is dependent in the first place on whether there are other recent sales of property against which a fair comparison can be made. The opinion is enhanced if there have been a multitude of relevant sales in a similar price range in the vicinity of the property valued; the more recent sales that have taken place the more reliable the data base upon which the opinion is formed.

In the case of Erf 46143 there cannot be any recent comparable sales upon which an opinion of value can be formed because there have been no recent sales of Anglican church properties with comparable structures erected thereon and that have a restriction upon them against alienation and yet have been sold in spite of this limitation. Recent instances of expropriation of Church properties in Cape Town, if any, do not afford a valid comparison either. Such a comparison would be open to question since in the case of Erf 46143 Rondebosch the State has imposed a prohibition against alienation in the title deed and the wishes of the State would override any expropriation by a subordinate legislature. In short as there is a prohibition against alienation there is no market for the property and therefore it is futile to extrapolate a market value for the property.

In the event of an expropriation one would be looking towards establishing a replacement value for the Erf. This will give poor guidance to the Diocesan Trustees in deciding what to sell a sub-divided portion of Erf 46143 Rondebosch for since the valuation of a portion of an Erf will seldom equate *pro rata* to the value of the whole. I understand that Mr Roy Horrell's 'valuation' is founded on the premise that Erf 46143 Rondebosch has a unique location, not to be found anywhere else in Rondebosch and this in itself presents an obstacle to a dependable opinion of value. In addition the *solatium* that would be payable on expropriation would be considerable having in mind the dislocation of the congregation of Saint Paul's.

A Valuation of the Buildings on Erf 46143 Rondebosch

Any sale of the buildings would entail a sale of the land (*qui in solo plantatur, solo cedit*) and for the reasons set out above there would be no market for the buildings, since there is a prohibition against alienation of the land. One can formulate a number of values for the buildings for insurance and other purposes. As I have already premised these values will not correspond with the market value of the buildings. The matter of the declaration of the Church building as an historical monument does not,

per se, prohibit its sale.

The framing of an opinion of value for insurance purposes should be left to a quantity surveyor and ought to be revised regularly, particularly if one is insuring against replacement costs; this on account of the rapid escalation of building costs.

FARMSEDGE
BERGVLIJET

24 October 2001



H T RAMSDEN

ADDENDUM TO OPINION DATED 24 OCTOBER 2001

I have separated my comment on the expropriation of the Rosebank Union Church (a matter in which I acted *pro deo* on behalf of the Church Council) from the main body of the opinion as the circumstances of an expropriation are in no way comparable to a sale on the open market and I have included a review of this expropriation simply to illustrate why an instance of an expropriation cannot be cited as a relevant sale to establish a market value.

Expropriation of the Rosebank Union Church.

In or about the late 1980s the City Council of Johannesburg expropriated the whole of the property on which the Rosebank Union Church was situated for the purpose of road improvement. Before I was consulted in the matter the Church Council had tried to resist the expropriation and their representations had been dismissed. I was consulted in the matter of the negotiations for compensation. I advised that there were three elements on which a claim for compensation could be based. They were :-

The replacement value of the Church

This entailed the Church Council in purchasing another site in Rosebank where the congregation was mainly located. At that time there were no vacant sites in Rosebank large enough on which to establish a Church complex and as a result the Church Council would have to purchase a number of erven with buildings on them. Added to this would be the costs of demolition of the unusable structures presently on the sites. Next to be considered was the cost of rebuilding the Church and its associated buildings on the new site. This included Architects fees as well as building costs and the costs of acquisition and transfer of the sites into the name of the Church Council. On account of the fact that this was a forced sale, it was decided that the replacement costs of the Church premises would not be calculated on the then present day costs of rebuilding the same premises on the new stands to be acquired. Council's own building regulations had changed and for a number of reasons, including the desire on the part of the Council to impose new aesthetic standard on Rosebank buildings, the Architects were allowed quite a bit of latitude when designing the new Church and associated buildings to the specifications of the Council's aesthetics committee. Already one may perceive the incrementation over and above the market value of the original Rosebank Union Church.

Injurious affection

The compensation paid by the City Council included quite a tidy sum under this heading. It was pointed out that the Church was solely dependent upon the generosity of its member for its subsistence. By reason of the forced relocation it was estimated that the Church would lose a certain percentage of the congregation because of sentimental attachment to the old buildings and because the new locality would not be as convenient to some as the old situation. An actuarial calculation of the revenue likely to be lost as a result of the forced sale was agreed and included in the compensation paid. Something was also paid to compensate the Church counsellors for their working hours that would have to be curtailed to enable them to plan and to re-establish the Rosebank Union Church on its new site.

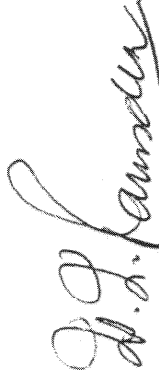
The solacium

Ten per cent was added to the compensation figure as compensation for the disruption

and inconvenience caused to the members of the Rosebank Union Church by the forced sale of their Church.

In the circumstances it will be readily appreciated why forced sales can only be included in valuation data with the utmost caution and circumspection. The edifice that the Rosebank Union Church could afford to raise on their new stands in Rosebank put the old church to shame,

FARMSEDGE
bERGVLiet
25 OCTOBER 2001



H T Ramsden

APPENDIX C

South African
Heritage Resources Agency

File no. 9/2/11/105
(partial contents only)

No. 362

29 Februarie 1980
WET OP NASIONALE GEDENKWAARDIGHEDE,
No. 28 VAN 1969

VERKLARING VAN DIE ST. PAULUS ANGLI-
KAANSE KERK, RONDEBOSCH

Kragtens die bevoegdheid my verleen by artikel 10 (1) van die Wet op Nasionale Gedenkwaardighede, 1969 (Wet 28 van 1969), verklaar ek, Teunis Nicolaas Hendrik Janson, Minister van Nasionale Opvoeding, hierby die historiese St. Paulus Anglikaanse kerk, geleë in Kerkstraat, Rondebosch, tot nasionale gedenkwaardigheid.

Beskrywing

Die historiese St. Paulus Anglikaanse kerkgebou te Rondebosch, geleë op Erf 46143, Kaapstad.
Kaapse Vrypagte Vol. 3, Folio 1, gedateer 30 Augustus 1832.

Historiese en argitektoniese belang

Die grond waarop hierdie kerkgebou opgerig is, is op 30 Augustus 1832 deur goeweneur sir Lowry Cole toegeken. Die oorspronklike negotiese kerk is op 16 Februarie 1834 geopen. In 1845 is 'n galery aangebring. Die kerk is daarna heelwat vergroot, en die oorspronklike kerkie is geïnkorporeer in 'n nuwe gebou, wat in Oktober 1854 voltooi is. Verdere toevoegings is in 1857, 1858 en 1909 gemaak. 10/2/754.

T. N. H. JANSON, Minister van Nasionale Opvoeding.

No. 362

29 February 1980
NATIONAL MONUMENTS ACT, No. 28 OF 1969

DECLARATION OF ST PAUL'S ANGLICAN
CHURCH, RONDEBOSCH

By virtue of the powers vested in me by section 10 (1) of the National Monuments Act, 1969 (Act 28 of 1969), I, Teunis Nicolaas Hendrik Janson, Minister of National Education, hereby declare St Paul's Anglican Church in Church Street, Rondebosch, to be a national monument.

Description

The historic St Paul's Anglican church building at Rondebosch, situate on Erf 46143, Cape Town.
Cape Freeholds Vol. 2, Folio 1, dated 30 August 1832.

Historical and architectural interest

The land on which this church building was erected was granted by Governor Sir Lowry Cole on 30 August 1832. The original neo-Gothic church was opened on 16 February 1834. In 1845 a gallery was added. Thereafter the church was considerably enlarged and the original church incorporated into a new building which was completed in October 1854. Further additions were made in 1857, 1858 and 1909. 10/2/754.

T. N. H. JANSON, Minister of National Education.

ST PAUL'S CHURCH, RONDEBOSCH

The site occupied by St Paul's Church was consecrated by Bishop Daniel Wilson on 5 September 1832. Bishop Wilson was en route to India at the time and the local church took the opportunity to have several clergymen ordained. Among these was the first Rector of St Paul's, Rev. E. Judge, whose appointment was confirmed by the Bishop of London. Rev Judge was a Cambridge-trained cleric who, before becoming Rector of St Paul's, was chaplain at Wynberg.

It is interesting to note that before being used as a church site, the ground on which St Paul's is situated was used as a squatter camp.

The land for the church was granted by Governor Sir Lowry Cole on 30 August 1832 and is one of the earliest land grants to an Anglican Parish in South Africa.

Trustees were appointed and funds were collected for the erection of the church, the Governor himself giving £10-0-0 towards the project. Like St George's Cathedral, parishioners were also requested to purchase shares in the building, ~~to end in its construction.~~ The completed church was, therefore, partly owned by the congregationalists.

The original church was designed by Major Michell R.E. in the Gothic Style. It has a thatched roof and could accommodate 150 people. The Church was opened on Sunday 16 February 1834. The South African Commercial Advertiser of 19 February 1834 reports the opening as follows:

"... a large and highly-respectable congregation was assembled soon after 11 o'clock. His Excellency the Governor, accompanied by Lady D'Urban, Miss D'Urban and the officers of His Excellency's Staff, arrived at about half-past 11, and was received at the door by the Trustees, whose judicious arrangements prevented the occurrence of the least confusion".

The first service was conducted by the Senior Colonial Chaplain, assisted by Mr Judge and the service was apparently "... similar ... to those observed at the opening of the new churches at Islington a few years ago, when the present pious and excellent Bishop of Calcutta(1) was vicar of that parish(2).

The church building was obviously not yet paid for as the Senior Colonial Chaplain made a "...brief but emphatic appeal to his hearers on behalf of church funds"(3).

The Rev Judge stayed at Rondebosch until 1840 and was succeeded by Rev J.L. Fry, who had previously been a naval chaplain. Fry was also shared responsibility with Dr Holt Oaks for the Wynberg Parish for part of his ministry. Fry remained at Rondebosch until 1861 and was then, appropriately enough for an ex-naval chaplain, made Rector of Simonstown, where he remained until his death in 1872.

- (1) Bishop Daniel Wilson
- (2) S.A. Commercial Advertiser of 19.2.1834
- (3) Op. Cit.

The original Rondebosch church cost £769-0-0, but was soon too small to accommodate its congregation. In 1843 a school was erected behind the church and provided accommodation for 100 pupils. The school building remained behind the church until the middle 1950's when it was demolished and replaced by a hall.

The original church building soon grew too small and in 1847 an Ordinance was passed (No. 3 of 1847) to empower the church to raise £2000-00 for a new building. As a result of this meeting a Vestry of eight members was elected and auditors appointed. A fund-raising programme was commenced with the assistance of John Barwell Ebdon and a deputation visited the Governor to request a donation.

In the meanwhile pressure on church accommodation had increased and in 1845 a gallery was added. The gallery could accommodate 100 people and, together with a wall for the churchyard, an amount of £307-0-0 was expended.

The fundraising drive for the new church went well. An amount of £1950-00 was raised in the Parish, £620 in England and £1500-0-0 was borrowed. Bishop Gray also donated £500-0-0 on behalf of the Diocese. To cover the cost of the loan for work on the building, pew rents were raised to £1-0-0. In October 1854 the enlargement scheme for the church was completed. The original church had been accommodated into the chancel of the enlarged church, which could now seat 450 people.

Further alterations were done in 1857 when £58-0-0 was spent in the erection of new windows and in 1858 an organ of simple design by Bevington was installed at a cost of £356-10-3.

St Paul's Church had, since its establishment, played a role in education in the Rondebosch area. In the 1850's this role was expanded and in 1864 two ^{schools} were in operation at a cost of £200-0-0 per annum to the Parish. Both schools also receive Government grants and these grants allowed 150 children to be instructed.

The Rev J.L. Fry died in 1861 and was succeeded in 1863 by the Ven J.H. Thomas, who stayed until 1868. During Thomas' ministry the Mission Chapel (now St Thomas') was opened (1864). The Parish collected £350-0-0 and plans were obtained from Sophy Gray. The first purpose of the chapel was to take of the ~~Rondebosch~~ Road School, which also housed a chapel. The Mission Chapel would also be used as a mission centre for work on the Cape Flats. It was opened by Bishop Gray in July 1865 and was extensively used once the Rondebosch Parish became responsible for services in the Black River area after 1865.

St Paul's Church as we know it today was completed during the incumbency of the Ven Hopkins Badnall, minister from 1869 to 1885. Already on his return from a holiday abroad Badnall had returned with some fine stained glass for the church (still there today) and a gift of £250-0-0 with which to commence the rebuilding. The work commenced in 1880 and was completed in 1884. A new chancel was added. The nave was extended and a new chapel added. The cost was roughly £10 000. The bell turret, which was also erected at this time, was presented by the children of J.B. Ebdon. A number of memorial windows were also presented to the above church, these included names for Lady Wodehouse and Ellen Mary Prince. The ornamental oak reredos was presented in 1883 by Archdeacon Badnall in memory of his daughter.

The organ, which is still in use, was the gift of Mr T.J. Anderson in 1884, in memory of his first wife. It is by Willis of London and is considered to be one of the finest church organs in the Province.

Archdeacon Badnall resigned in 1885 and died, in England, in 1892. He was succeeded by Canon Ogilvie who served until 1902. Ogilvie had for many years been head of the Diocesan College and Vice Chancellor of the University of the Cape of Good Hope.

After 1885 the church remained largely as it appears today. However, in 1909, the beautiful east window was erected at a cost of £500-0-0. Without doubt this is one of the finest stained glass windows in South Africa. A fine brass lectern was also given to the church at about this time.

St Paul's Church, with its fine, historic graveyard is a landmark in Rondebosch. It is a good example of the neo-Gothic style as it occurs in South Africa, and the history of the church is intimately linked with that of Rondebosch, as well as with that of the Anglican Church in South Africa. Its grounds also contribute to the environmental quality of the Main Road and it is recommended that St Paul's Church, as well as the erf on which it stands be declared.

B.W. BASSETT
Chief Professional Officer

Sources : Standard Encyclopaedia of S.A.
Peter Hinchliff, The Anglican Church in S.A.
St Paul's Rondebosch, Centenary 1834 - 1934
T.J. Wagener(ed), Rondebosch Down the Years.

Reference : 5/K/C-T/16

Tel. : 435747 & 431505

Official: Mrs. R. Houghton

National Monuments Council,
P.O.Box 4637, Cape Town, 8000

1979-12-03

The Director of Archives,
Private Bag X236,
Union Buildings,
PRETORIA.

0001

Dear Sir,

DECLARATION OF NATIONAL MONUMENT : ST PAUL'S ANGLICAN CHURCH, SITUATED IN CHURCH STREET, RONDEBOSCH.

1. I append, for your further attention please, the necessary documents in connection with the proposed declaration of the abovementioned object as a national monument.
2. The decision of the Council is recorded on page 8, no. 2 of the minutes of the meeting held on 14 April 1978 in Cape Town. The draft Government Notice was originally in English.
3. The decision of the Council was to include the erf in the declaration. The church authorities are, however, not in favour of the whole property being declared and has only granted permission for the church to be declared. The Director has accepted this position. The Director has the necessary authority to adjust defined areas for declaration (See Minutes of meeting dated 13.10.19; page 7, no. 21).

Yours faithfully,


DIRECTOR.

Enclosures:

/rh

Handwritten notes:
I made H.O. 3 made
13.10.78
12.79

K.M.C.

THE SECRETARY
THE MINISTER

S/K/C-7/16

DECLARATION OF NATIONAL MONUMENT : ST PAUL'S ANGLICAN CHURCH, IN CHURCH STREET, RONDENBOSCH.

1. The National Monuments Council decided at its meeting of 14 April 1976 in Cape Town to recommend to you that the erf with the St Paul's church thereon at Rondenbosch, be declared as a national monument. The church authorities, however, are not in favour of the whole erf being declared and have only given their consent for the church to be declared on its own. The Director has the necessary authority to adjust the defined areas for declaration (See Minutes of meeting dated 13.10.1978, page 7, No. 21) and has accepted this decision.
2. The land on which St Paul's church was erected, was granted by Governor Sir Leary Cole on 30 August 1832 and is one of the earliest land grants to an Anglican Parish in South Africa. The site was consecrated by Bishop Daniel Wilson on 5 September 1832. Bishop Wilson was en route to India at the time and the local church took the opportunity to have several clergymen ordained. Among these was the first Rector of St Paul's, Rev. E. Judge, whose appointment was confirmed by the Bishop of London.

Trustees were soon afterwards appointed and funds collected for the erection of a new church. Like St George's Cathedral, parishioners were also requested to purchase shares in the building. The completed church was, therefore, partly owned by the congregation.

The original church was designed by Major Mitchell R.E. in the Gothic style. It had a thatched roof and could accommodate 150 people. The church was opened on 16 February 1834. Among those present on this occasion was Sir Benjamin D'Uri and his family. The building which cost £769, soon grew too small and in 1847 an Ordinance was passed to empower the church to raise £2000 for a new building. As a result of this meeting a Vestry of eight members was elected and auditors appointed. A fund-raising was commenced with the assistance of John Barwell Ebdon and a deputation visited the Governor to request a donation. In the meanwhile pressure on church accommodation had increased and in 1845 a gallery was added. The gallery could accommodate 100 people and, together with a wall for the church yard, an amount of £307-0-0 was expended.

The fund-raising drive for the new church in the meantime went exceedingly well and an amount of £1950 was raised in the Parish, 1620 in England and £1500 was borrowed. Bishop Gray also donated £500-0-0 on behalf of the Diocese. In October 1854 the enlargement scheme for the church was completed. The original church had been accommodated into the chancel of the enlarged church, which could now seat 450 people. Further alterations were done in 1857 when £38 was spent in the erection of new windows and in 1858 an organ of simple design by Bevington was installed at a cost of £356-10-3.

St Paul's as it is today, was completed during the incumbency of the Rev. Hopkins Bednall, minister from 1869 to 1885. On his way back from a holiday abroad Bednall had returned with some fine stained glass for the church and a gift of £250 with which to commence the rebuilding. The work commenced in 1880 and was completed in 1884. A new chancel was then added, the nave extended and a new chapel added. The cost was about £10 000. The bell turret, which was also erected at this time, was presented by the children of J.E. Ebdon. A number of memorial windows were also presented to the church; these include one for Lady Wodehouse and Ellen Mary Princes. The ornamental oak reredos was presented in 1883 by Archdeacon Bednall in memory of his daughter. The organ, which is still in use, was the gift of Mr. F.J. Anderson in 1884, in memory of his first wife.

After 1885 the church remained largely as it appears today. However, in 1909, the beautiful east window was erected at a cost of £500-0-0. Without doubt this is one of the finest stained glass windows in South Africa. A fine brass lectern was also given to the church at about this time.

St Paul's church, with its fine, historic graveyard is a landmark in Rondebosch. It is a good example of the neo-Gothic style as it occurs in South Africa and the history of the church is intimately linked with that of Rondebosch, as well as with that of the Anglican Church in South Africa. Its grounds also contribute to the environmental quality of the Main Road.

The St. Paul's church was declared a national monument in February 1980.

3. The building belongs to the Church of the Province of South Africa. The owners have no objection to the proposed declaration of their property as a national monument. See folio .

4. If you are in agreement with the recommendation of the Council as referred to in paragraph 1 above, a draft Government Notice, in both official languages, and checked by Language Services Bureau, is enclosed herewith for your information and signature.
5. Your decision on the recommendation of the Council, referred to in paragraph 1 is awaited.

DIRECTOR OF ARCHIVES

SECRETARY FOR NATIONAL EDUCATION

Paragraph 1 approved and draft Government Notice signed.

MINISTER OF NATIONAL EDUCATION

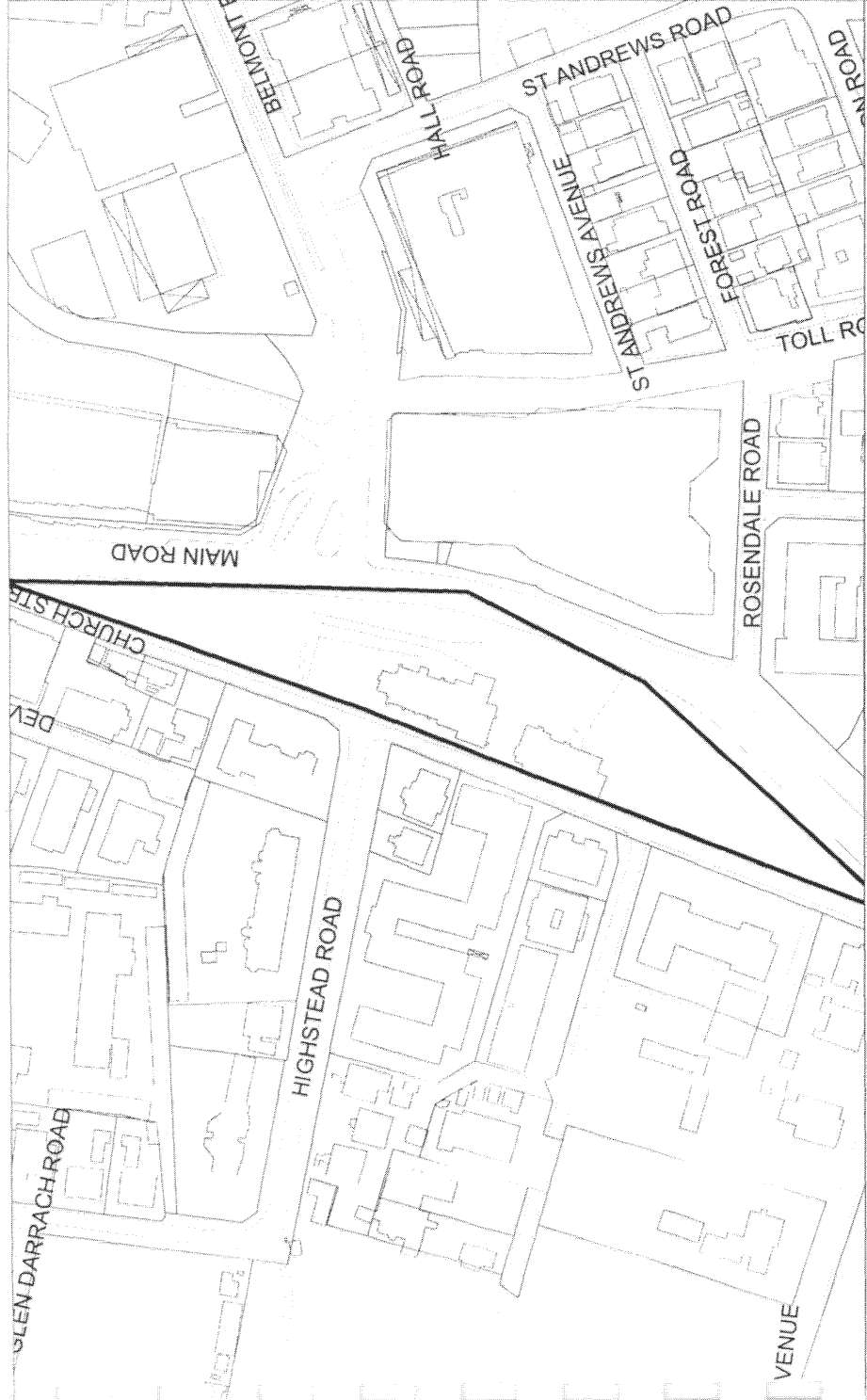
Date : _____

APPENDIX D

Municipal Regulations

- Area Plan & Current Details
- Zoning Certificate
- Extract from Section 15(3) of Zoning Scheme:
Scheme Regulations
- Heritage Resources Section:
letter dated 22/10/2001

Planning & Economic Development
City of Cape Town Administration
12 Hertzog Boulevard
Cape Town



Prop id: 33271
 Gis tag: 00-46143
 Allotment: CAPE TOWN
 Erf number: 46143
 Prop ref: EI 035B020
 Street no: MAIN ROAD
 Street: MAIN ROAD
 Estate: RONDEBOSCH
 Suburb: CAPE TOWN
 Municipality: CAPE TOWN
 Land value: 24240
 Building: 144760
 Roll: 028
 Owner: CHURCH OF THE PROVINCE OF SOUTHERN AFRICA-CAPE TOWN
 Title deed: CPF3-1/1932
 Registered: 19320830
 Sale: 0
 Purchase:
 Acquisition:
 Pre owner:
 Pre title:
 Pre regist:
 Ratepayer:
 Post add r:
 Deed area:
 Scheme: DIOCESE OF CAPE TOWN
 Ward: P O BOX 1932, CAPE TOWN 8000
 59
 Y
 1
 Y
 Cape Town
 CF
 PSP
 Printed on: 24-Oct-2001
 Usage 1: SCHOOLS
 Usage 2: RELIGIOUS ACTIVITIES
 Usage_3:

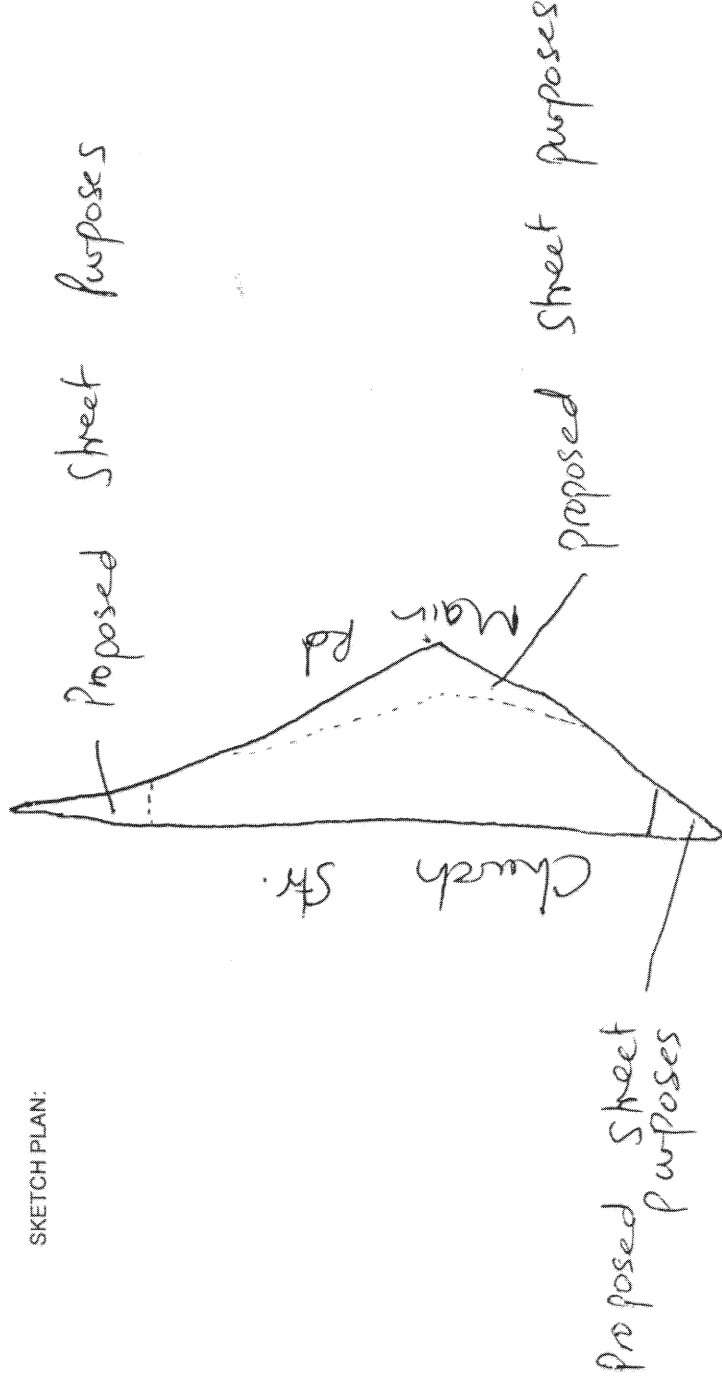
CITY OF CAPE TOWN
 ISIXEKO SASEKAPA
 STAD KAAPSTAD

CAPE TOWN ADMINISTRATION
 LAND USE MANAGEMENT

INFORMAL ENQUIRY CONCERNING ZONING SCHEME & ZONING SCHEME REGULATIONS

LOCATION OF PROPERTY: <i>Rondebosch</i>	ERF NUMBER: <i>46143</i>
NAME OF APPLICANT:	SIGNATURE:

SKETCH PLAN:



APPLICABLE ZONING SCHEME:	<i>Cape Town</i>
USE ZONE: <i>Community facilities</i>	SUB ZONE: <i>-</i>
PERMITTED USES:	<i>see attached</i>
SECTIONS (SCHEME REGS):	<i>-</i>
CONDITIONS/DEPARTURES:	<i>-</i>
SETBACK:	<i>-</i>
COVERAGE:	<i>-</i>
HABITABLE ROOM FACTOR:	<i>-</i>
REZONING:	<i>-</i>
ROAD WIDENING/NEW ROAD SCHEME:	<i>Yes</i>
PROCLAIMED MAIN ROAD:	<i>Yes</i>
BULK FACTOR (FAR):	<i>-</i>
HEIGHT RESTRICTION:	<i>-</i>

- Notwithstanding the abovementioned information, you are required to check the Title Deed Restrictions (if any) and possible departures granted from the Zoning Scheme provisions.
- This advice is to be considered informal and without prejudice unless officially confirmed in writing by the Executive Director: Planning & Economic Development.

INFO PROVIDED BY: *Stilander*
 TELEPHONE NO: *400 3918*
 DATE: *2001.10.24*

Use Zone	Buildings Permitted	Buildings permitted only with the consent of Council
1	2	3
Noxious Industrial	Special Industrial Buildings	Business Premises Industrial Buildings Off-Course Totalisator Public Garages Service Stations Workshops
Show and Exhibition	Show and Exhibition Buildings	Any
Public Open Space	None	Any
Street Purposes	None	Any
Community Facilities	None	Community Residential Building Institutions Places of Assembly Places of Instruction Places of Worship and any building intended to be used for a purpose which is ancillary or incidental to the purpose for which any of the aforesaid buildings may be erected or used.
Undetermined	None	Double Dwelling Houses Dwelling Houses

(4) Except with the consent of the Council, no building which is or is used as a Workshop in which panel beating, sheet metal working, sand blasting, joinery, fitting of exhaust systems to motor vehicles, mechanical engineering, forging, fibreglassing, galvanising or vulcanising activities take place, shall be permitted in a Special or General Business Use Zone.

(5) Where an area is depicted on the Map as being zoned or reserved for governmental, municipal, educational, ecclesiastical or other specified purposes, such area shall be deemed to fall into a Use Zone in which buildings may, with the consent of Council, be erected and used for such purposes only.

Civic Centre
12 Hertzog Boulevard
P O Box 4518, Cape Town 8000
Ask for: **Mrs M Attwell**
Tel: 400-3088
Fax: 425-4448
E-Mail: mattwell@cct.org.za
URL: <http://www.capetown.gov.za/>
Ref.

Iziko loLuntu
12 Hertzog Boulevard
P O Box 4518, Cape Town 8000
Call: **Nksk M Attwell**
Umnxeba: 400-3088
Ifeksi: 425-4448
IE-Mail: mattwell@cct.org.za
URL: <http://www.capetown.gov.za/>
Ref.

~~Cape~~ Town Administration: WPD0CSSTPAUL WPD

PLANNING & ECONOMIC DEVELOPMENT

Planning & Development — Environmental Planning

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Burgersentrum
Hertzog-boulevard 12
Posbus 4518, Kaapstad 8000
Vra vir: **Mev M Attwell**
Tel: 400-3088
Faks: 425-4448
E-pos: mattwell@cct.org.za
URL: <http://www.capetown.gov.za/>
Verw.

2001-10-22

Mr Michael Bester
24 Loader Street
Cape Town
8001

Dear Mr Bester

St Paul's Church, Main Road, Rondebosch

Your request for information regarding the conservation worthiness of St Paul's Church and environs refers.

The Church of St Pauls and the erf on which it stands are listed as grade 1 in terms of the City Council Heritage Resources Section's consolidated grading system. In terms of this system a grade 1 refers to a building or site of outstanding historical and architectural significance. Proposals affecting the site are afforded careful attention. Any proposals affecting a grade one site are referred to the South African Heritage Resources Agency for their comments.

The site falls outside the Rondebosch Urban Conservation Area and as a result is not subject to Section 108 of the Zoning Scheme. The City however has the delegated authority to review proposals to this site in terms of the 60 year clause of the South African Heritage Resources Act.

The Church of St Pauls is also a National Monument (now known as a heritage site) and as a result is further subject to the conditions of the South African Heritage Resources Act.

The Church of St Pauls and the whole site (including the cemetery) is a landmark in Rondebosch. As a result in addition to its historic qualities it is also has a strong place-making quality which adds value to the area as a whole.

I hope this explanation will be of some assistance to you.

Melanie Attwell



Heritage Resources Section
Environmental Management Branch

