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| <b>CoCT REF</b> | 70610516  |
| <b>BSTP REF</b> | 1845 B – Erf 1163, Constantia,<br>2 Welgelegen Avenue |
| <b>DATE</b>     | 17 May 2023   |



**Building Development Management  
City of Cape Town  
Southern District  
Cape Town  
8000**

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**Attention: M Slamati**

Dear Sir / Madam,

**APPLICATION FOR SUBDIVISION, PERMANENT DEPARTURE AND CITY APPROVAL IN TERMS OF SECTION 42 OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015, AMENDED 2019: ERF 1163, CONSTATIA, 2 WELGELEGEN AVENUE**

**1. INTRODUCTION**

Kindly note that this application has been transferred from Andrew Pratt Town Planning to Black Square Town Planning.

**1.1. Planning Application and Proposal**

Application is hereby made for subdivision of Erf 1163, Constantia (hereafter referred to as the subject property) into two properties of extents 1857 m<sup>2</sup> and 1842 m<sup>2</sup>, respectively.

It is the intention to subdivide the property into 2 portions. No development or demolition is proposed at this stage. The garage is to be demolished at a later stage.

The proposed subdivision deviates from the requirements of the Constantia - Tokai Local Area Overlay Zone Map (LAO/3) which states that "no further subdivision" is permitted on the property. Vehicular access to the two properties will be taken via Welgelegen Avenue.

While the proposed development is substantially in accordance with the relevant SR1 development rules, the proposal includes departures from the Development Management Scheme (DMS).

## 1.2. Planning Applications Required in terms of the Municipal Planning By-Law (MPBL), 2015, Amended 2019

Application is hereby made in terms of Section 42 of the MPBL for the following land use approvals:

- **Section 42(d)** - to permit for the subdivision of Erf 1163, Constantia, into two portions: Portion 1 (1857m<sup>2</sup>) and Remainder (1842m<sup>2</sup>).
- **Section 42(b)** - Permanent Departures:
  - Item 177: To permit for the subdivision of a property which allows for “no further subdivision”.

## 1.3. Subject Property Description

The subject property is currently 3699m<sup>2</sup> in extent and zoned Single Residential Subzone 1 (SR1). The property is currently developed with a dwelling house, swimming pool and a tennis court.

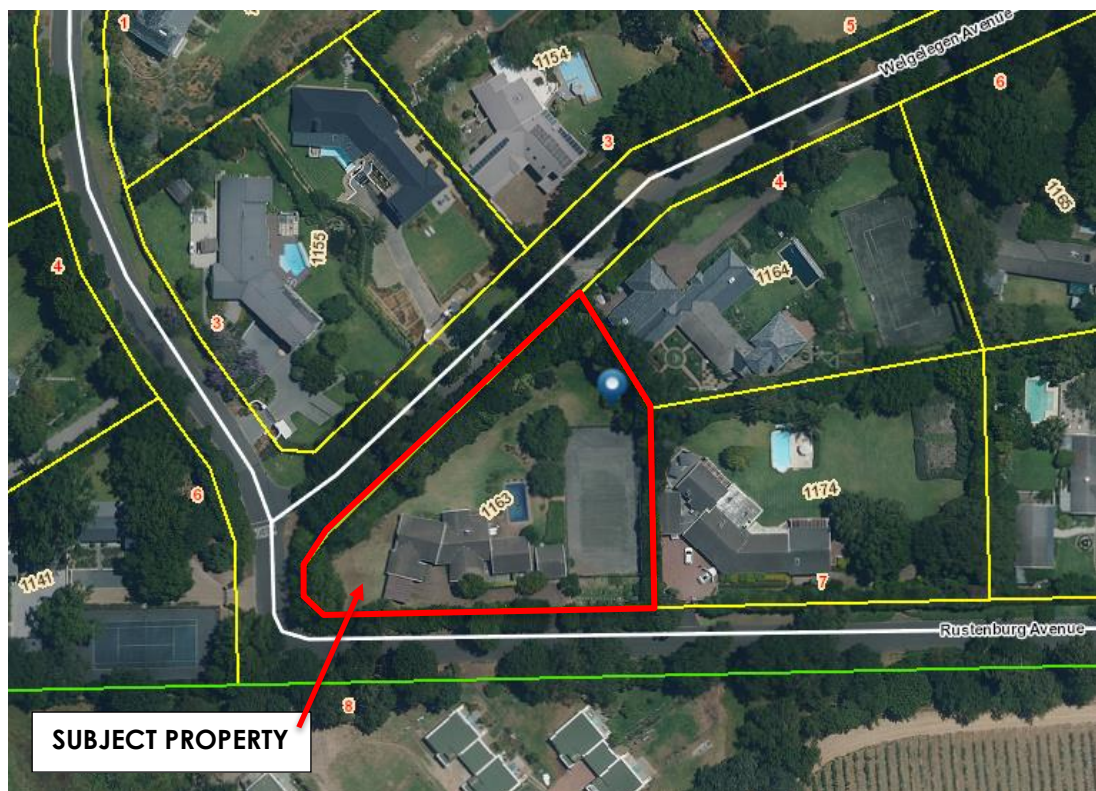


Figure 1: Aerial view of subject property.

In terms of Title Deed T31164/1979, the property is described as Erf 1163, Constantia in the City of Cape Town, Cape Division, Province of the Western Cape, in extent 3699m<sup>2</sup>. As the title deed does not contain

conditions restricting development, the proposal must be evaluated only in terms of the development rules as contained in the DMS as well as the Southern District Plan.

#### 1.4.Character of the Area

The subject property is located at 2 Welgelegen Avenue, Constantia in a medium-density residential neighbourhood. The majority of erven in the area are large in extent and zoned SR1. However, there are a few erven zoned UT are present in the area. All the erven in the immediate vicinity of the subject property are zoned SR1.

The majority of properties in the neighbourhood are developed with multi-level dwelling houses and second dwellings, and a few guest houses and bed-and-breakfast establishments are found in the area. Welgelegen Avenue links the subject property directly via Schoenstatt Avenue to Constantia Main Road and the metropolitan road network and, as a result, the subject property enjoys a high level of accessibility in the metropolitan context.



Figure 2: Subject property zoning extract.

## 2. FURTHER INFORMATION

### 2.1. Applicant / Mandate

The registered owner of the property, Trevor Michael Borchers, authorised Black Square Town Planning to make application to the City of Cape Town for the applications referred to in Section 1.2 above, and to act as the applicant in this and all other related matters.

### 2.2. Development Management Scheme and Zoning

It is the intention to subdivide the property into 2 portions. Proposed Portion 1 is 1857 m<sup>2</sup> in extent and the proposed Remainder 1842 m<sup>2</sup> in extent. No new building work is proposed as part of this application. The garage in portion one will be demolished at a later stage, as shown on the subdivision plan submitted herewith. Accordingly, all future development would be subject to the below provisions as contained in Section 22 the DMS.

*Table 1: Development rules applicable to SR1 properties >1000m<sup>2</sup> up to 2000m<sup>2</sup> in extent*

| <b>Development Rule</b> | <b>Permitted Required</b>  |
|-------------------------|--|
| Primary uses            | Dwelling house, private road and additional use rights.  |
| Additional use rights   | Second dwelling, third dwelling, home occupation or bed and breakfast establishment or home childcare.   |
| Consent uses            | Utility services, place of instruction, place of worship, house shop, institution, guest house, minor rooftop base telecommunication station, rooftop base telecommunication station, wind turbine infrastructure, open space, urban agriculture, halfway house and veterinary practice. |
| Max. floor space        | 1500m <sup>2</sup>   |

|                            |                                  |
|----------------------------|----------------------------------|
| Max. height above EGL      | Wallplate: 9m                    |
|                            | Top of roof: 11m                 |
| Building lines             | Street: 4.5m                     |
|                            | Common: 3m                       |
| Parking (standard PT zone) | Dwelling house: 2 bays           |
| Number of cwcs             | 1 per boundary per public street |
| Cwc width                  | 2.4m – 8m                        |

### 3. PLANNING MOTVATION

It is essential that this proposal / application be considered in the light of the rights applicable to the subject property; and, when considering these rights, it is evident that the nature of the approval required is minor.

The subdivision will not have any adverse impact on the adjacent properties. In this regard it is pointed out that the subdivision will result to properties that are similar in extent to those in close proximity to the subject property. For example, Erven 1170, 13081, 13078 and 13077 amongst others. The proposal to subdivide the property to portions with extents 1857m<sup>2</sup> and 1842m<sup>2</sup> will therefore be in keeping with the character of the area. As will also be discussed below, the proposed subdivision is a form of incremental densification and is considered desirable.

Approval of the application will not compromise the ability of surrounding property owners to exercise their development rights in terms of the Municipal Planning By-Law or any other property-related legislation. Clearly, therefore, approval of the application under consideration will not have any negative impact on existing rights. This statement is further elaborated on in the below sections.

Section 99 of the Municipal Planning By-law, 2015 prescribes the criteria for evaluating applications. In motivating an application, these criteria should be addressed.

#### 3.1. Applicable Planning Policy

- **Municipal Spatial Development Framework (MSDF, 2022) and the Southern District Plan (2023)**

The MSDF is a strategic planning instrument which informs the spatial growth and development of the city and operates horizontally with the IDP. In terms of this document, the property is located in an area where the City is committed to servicing existing communities and where new development is encouraged subject to the availability of services. According to the MSDF, the emphasis should be on diversification of mono-use residential areas and incremental intensification via, inter alia, third dwellings and rezoning, subject to engineering services capacities being available.

As the proposal entails that of subdivision, it is considered a form of incremental densification which may result in an additional dwelling being proposed on Portion 1 at a later stage. This further enhances the current residential use of the property in a sought-after area where residential development is encouraged. It can therefore be concluded that the proposal supports the objectives of the MSDF.

The property is located within the scope of the Southern District Plan which is a component of the MSDF. The District Plan provides conceptual proposals for the future development of the City's Southern District as well as guidelines for the assessment of development applications.

Both the MSDF and the Southern District Plan supports the principle of incremental intensification via subdivision. One of the specified objectives of the District Plan is also to ensure appropriate built form and land-use in order to achieve a quality environment. Furthermore, the District Plan earmarks Constantia for conventional urban development. The District Plan also states that any subdivision or consolidation applications must take surrounding property extents into account. In this regard, it is pointed out that there are various properties to the East of the subject properties with extents smaller than is proposed by this subdivision. Furthermore, the District Plan also encourages small-scale, low impact densification within the urban edge, which this application clearly supports since the proposed extents aligns with surrounding property extents, is within the urban edge and, as will be elaborated on below, the subdivision will have no negative effect on surrounding properties and the area. In this regard the proposal clearly complies with the proposals of the plan.

- **Integrated Development Plan (IDP)**

The Integrated Development Plan (IDP) is a strategic planning instrument which informs planning and development. Efficient

resource utilisation is one of the priorities in support of achieving the Opportunity City, which is one of five strategic focus areas of the IDP.

As the proposal essentially is for a more intensive utilization of land, which is a scarce resource, it can be concluded that approval will support the objectives of the IDP. Furthermore, by encouraging subdivision where appropriate, as is the case with this application, valuable agricultural land is protected.

- **Densification Policy**

The City's Densification Policy addresses the issue of rapid and continuous low-density development and its negative impact on the sustainable development of Cape Town. In terms of the policy, densification is viewed as "a necessary step to promote the longer-term sustainability of Cape Town's valuable natural, urban and rural environments". The purpose of the policy is to guide decision-making with respect to density-related applications.

The proposal under consideration is to enable an increase in residential density and -capacity in accordance with the zoning of the property. As the property is located in an area with good amenities, close to public transportation, and as it will support the viability of the public transport system and a more efficient use of land, it can therefore be stated that the proposed subdivision supports the objectives of the Densification Policy.

Furthermore, noting that subdivision is generally encouraged in urban contexts, the proposed subdivided portions are still generous in extent and will not appear out of sort in the area since there are various properties with subdivision possibility and various properties to the East which are smaller than the portions proposed. Furthermore, by encouraging subdivision where appropriate, as is the case with this application, valuable agricultural land is protected, especially in Constantia where agricultural land bears great heritage significance and must be protected at all costs. Although, it must be noted that the subject property bears no similarities with surrounding agricultural land.

### **3.2. SPLUMA and LUPA**

In terms of the provisions of LUPA and SPLUMA, land development must be consistent with the principles of spatial sustainability, spatial efficiency and spatial justice.

All the City's spatial development frameworks and policies are premised on the principles of spatial sustainability and spatial efficiency. It is argued that the proposal complies with these spatial frameworks and policies, insofar as it supports densification and compaction, a more efficient use of land, urban integration and viable communities. Consequently, it is the opinion that the proposed development is consistent with the principles of spatial sustainability and efficiency.

The principle of spatial justice requires spatial planning mechanisms such as the Municipal Planning By-law and the Development Management Scheme to contain provisions which would enable access to land by disadvantaged communities and persons. In this regard, it is pointed out that neither the By-law nor the Development Management Scheme currently contains any such provisions. Similarly, no policy framework for the provision of affordable housing by the private sector currently exists.

### **3.3. Development Management Scheme**

With the exception of the departure listed in Section 1.2, the proposal substantially complies with the development rules applicable to SR1 zoning. It must also be noted that no new building work is proposed with this application. Accordingly, the application merely includes a change in cadastre. Should new building work occur in future, it will adhere to DMS restrictions applicable to SR1 properties with an extent of >1000 up to 2000. These restrictions will only be slightly less restrictive than that currently applicable to the property, however, will hold no inconvenience to neighbouring properties – see section below.

### **3.4. Impact on Existing Rights**

The request for Council to allow for the subdivision of the subject property only applies to the property at hand and the approval thereof can in no way compromise the ability of surrounding property owners to exercise their rights. Each property is governed by its applicable title deed, the DMS, the applicable District Plan; and the circumstances relating to the property should a land use application be lodged.

By allowing the subdivision of this property, an additional property can be created in a very sought after area. Considering surrounding properties, there are many which also has the possibility of subdivision, should the owners wish to do so – see below image. There are also various properties to the East of the subject property which are

approximately half the size of the property in question – see below image.



Figure 3: Properties further East with extents smaller than proposed.

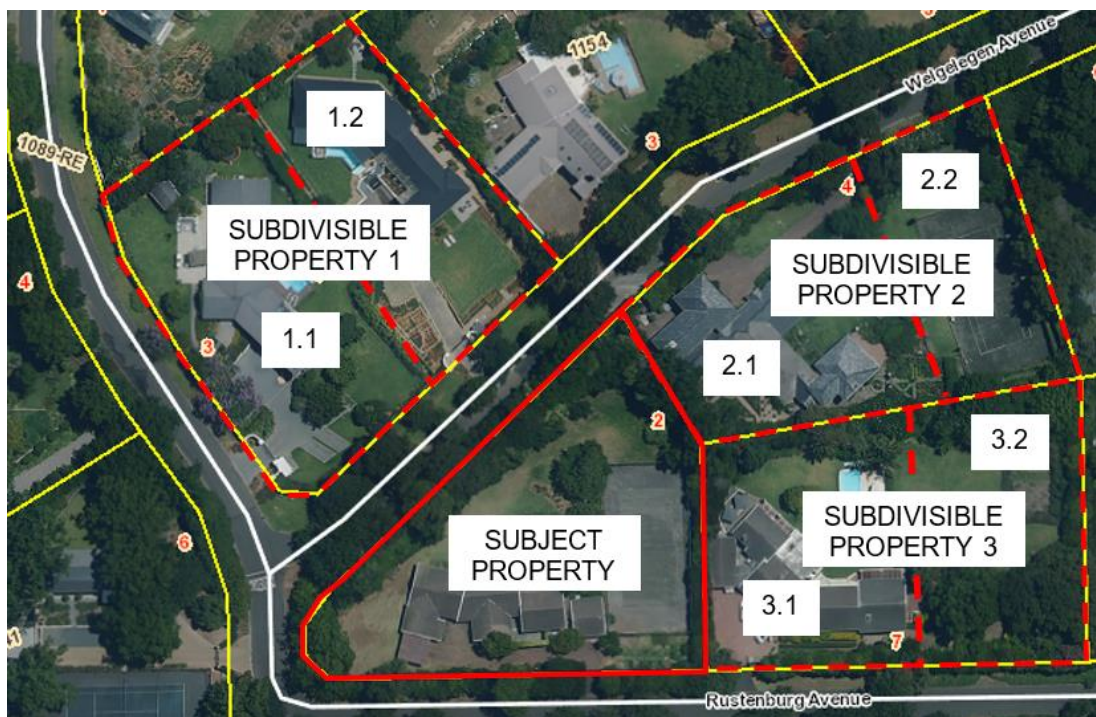


Figure 4: Subdivisible properties in close vicinity.

Furthermore, as argued in the below sections, the proposal is considered compatible with existing development in the area and will not have any negative impact on the health, safety or wellbeing of the surrounding community.

Lastly, the proposed subdivision sizes of the subject property will require different development rules to be applicable to the subdivided portions. However, this will only include slightly reduced street- and common boundary building lines. As also can be seen from the images above, the erven directly adjacent to the subject property all have extensive treelines on common boundaries. The privacy of surrounding properties is therefore maintained, even when slightly less restrictive development rules apply to the smaller subdivided portions. The impact on surrounding properties is therefore considered minimal, if any.

### **3.5. Desirability**

- **Socio-Economic Impact**

Approval of the application under consideration resulting to more than one property and future construction will result in a significant increase in the value of the subject property and a concomitant increase in property values in the area. This will result in a substantial increase in property rates and taxes collected by the City, which funds will be spent across the City to the benefit of all residents. Furthermore, future construction work will result in the creation of temporary employment opportunities and income generation. The proposal will therefore have a positive impact on economic growth and poverty alleviation.

The MSDF, District Plan and Densification Policy reflect the City's official vision with regard to densification. As these policies were formulated in consultation with all the relevant stakeholders, including the residents of Constantia, implementation of said policies is considered to be in the interest of the City as a whole.

The application under consideration, which is a form of incremental densification to permit more than one property, and possibly dwellings in the future, clearly supports the aforementioned spatial vision and is considered to be in the public interest.

Furthermore, as approval of the application will result in the creation of at least 1 additional housing opportunity, 1 additional family will have access to the urban opportunities and amenities present in the area. In view of the above it can be concluded that the proposal will have a positive social impact.

- **Compatibility**

The property will remain SR1 in terms of zoning and will thus remain compatible with the prevalent zoning in the area.

It is the opinion that the subdivision of the property is compatible with the character of the area, especially considering that there are numerous smaller erven located to the East – refer to Figure 4.

- **Impact on Safety, Health and Wellbeing**

As argued above, with regard to land-use, erf size and zoning, the proposal is compatible with surrounding development and can therefore not impact negatively on the safety, health or wellbeing of the surrounding community. Privacy of neighbours will be maintained as long as any building work adheres to the applicable development rules as contained in the DMS. Furthermore, as previously mentioned, surrounding properties all have significant trees along property boundaries which further eliminates any privacy concerns.

In view of the above it can be concluded that the proposal will not have any negative impact on adjacent properties, the streetscape or the general amenity of the neighbourhood, and that it will not impact negatively on the safety, health or wellbeing of the surrounding community.

- **Traffic Impact and Parking**

Considering that the subject property (now Portion A and Remainder) shall maintain its SR1 zoning, no severe traffic / parking implications are foreseen. Furthermore, should a dwelling be erected on Portion 1 in future, the effect of any traffic implications, if any, resulting from an additional family is considered insignificant. Thus, no issues relating to traffic and parking are expected to result from the approval of this application.

- **Impact on Engineering Services**

All engineering service connections are available. All upgrades and separate sewer and electrical connections will be done at the owner's costs. Capacity of the services will also be confirmed by the relevant City service departments. The existing servitudes will not be adversely affected.

- **Impact on Bio-Physical Environment and Heritage**

The proposal, as it stands, does not require any authorisations in terms of environmental or heritage legislation. The subject property is not graded, does not fall in an HPOZ and the building is not older than 60 years. Constantia does, however, have various properties under formal NHRA protection and various properties which are grade IIIA classified; and many of these properties are in close vicinity to the subject property. However, this does not directly influence the proposed subdivision.

Furthermore, despite Constantia having heritage importance, as also mentioned in the Southern District Plan, this mostly relates to agricultural land and the Porter Estate Area. Although, this does not apply directly to the SR1 zoned property as the subject of this application. The proposed subdivision will therefore not have any impact on surrounding conservation-worthy areas / properties.

Noting the proximity of the subject property to Groot Constantia, we enquired from a heritage consultant (J Cornelius) on the heritage significance of the property in question. The consultant's response was as follows: *"Your enquiry about the interest which HWC might have with regards to the subdivision of Erf 1163 and 1174 refers. The land-use application to subdivide the two properties does not trigger any section of the National Heritage Resources Act. None of the buildings are more than 60 years old and even if the combined area of the two properties are more than 5000m<sup>2</sup>, the character of the site will not change. The City might include HWC as a curtesy during the advertising process but they have no obligation to respond"*. Kindly find the email correspondence attached. We have also attached a heritage impact statement report from the mentioned consultant where it is confirmed that no impact on heritage factors is envisaged.

#### **4. CONDITIONS OF APPROVAL**

In order to ensure that no negative impact is created after approval and that the approval is exercised as proposed, it is hereby submitted that a condition of approval may be imposed for the existing garage to be demolished upon registration of the subdivision.

## **5. REASONS FOR SUPPORT**

In terms of Section 99(1) of the MPBL, the following should be noted:

- Given the application made and legislation specified in paragraph 1.3 above, it is clear that the application complies with the requirements of the MPBL.
- The proposal is substantially in accordance with the criteria of the Development Management Scheme.
- As argued above, the proposal complies with the relevant Council spatial development frameworks, i.e. the MSDF and the Southern District Plan. Although subdivision is not recommended, the properties hold sufficient capacity for subdivision and resulting subdivided erven will have ample space available for large dwellings, as is generally found in the area.
- As argued above, the proposal complies with the relevant Council policies.
- Given the assessment above and for the reasons provided, it is the opinion that the proposal is desirable in terms of the relevant consideration criteria of Section 99(3) of the MPBL.
- The proposal adheres to the overarching principles relating to efficiency and densification as contained in the relevant national and provincial planning legislation.
- As demonstrated in this report, the proposal will not have any negative impact on existing rights of surrounding properties and property owners.
- The proposal will not negatively influence the aesthetics of the area and will have no impact on surrounding properties.
- The proposal has no impact on the heritage value and significance of surrounding properties, including those that are graded and declared as heritage areas.

## **6. CONCLUSION**

It is herewith respectfully submitted that the application be approved in terms of Section 99 of the MPBL since it will have no negative effect on surrounding properties, heritage or the general amenity of the area.

We trust that this application will receive your favourable consideration. Please do not hesitate to contact us should you have any queries.

**Kind regards,**  
**Jacolene Bothma | BSTP**

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