

**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, DURBAN**

Case No: 7068/20D

In the matter between:

**CLAIRWOOD RATEPAYERS &  
RESIDENTS ASSOCIATION**

*Applicant*

and

**ETHEKWINI MUNICIPALITY**

*First Respondent*

**MUNICIPAL PLANNING TRIBUNAL**

*Second Respondent*

**EXECUTIVE MAYOR, ETHEKWINI MUNICIPALITY**

*Third Respondent*

**EXECUTIVE COMMITTEE APPEALS AUTHORITY**

*Fourth Respondent*

**ETHEKWINI TRANSPORT AUTHORITY**

*Fifth Respondent*

**AJAY SHAH**

*Sixth Respondent*

**URESHKA SHAH**

*Seventh Respondent*

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**PRAGASAN REDDY**

do hereby make oath and state that:

## I INTRODUCTION

1. I am an adult, procurement officer. I am the chairman of the applicant, the **CLAIRWOOD RATEPAYERS & RESIDENTS ASSOCIATION** (the Association). The offices of the Association are located at care of YAS Hall, 142 Cherry Road, Clairwood, Durban.
2. The facts deposed to in this affidavit are, except where the context indicates otherwise, within my personal knowledge and I believe to be true and correct. Where I set out the legal position, I do so on the advice of my legal representatives.
3. At one level, this is an ordinary application to review and set aside the decision of the First to Fifth Respondents (**the Municipality**) to grant a zoning change to the Sixth and Seventh Respondents (**the Owners**) for their property at 140 Houghton Road, Clairwood, Durban.
4. But in truth, it is about much more. It is about ensuring that local government does not allow criminality to dictate policy. It is about the lives and safety of the residents of Clairwood. It is about upholding the rule of law and ensuring rational planning decisions.
5. Clairwood is an old part of Durban, traditionally inhabited by Indian families. It has a deep and rich history and culture. But Clairwood is also located near the Durban port. As a result, over the years, it has been increasingly attractive to logistics companies that move cargo to and from the port, and to the range of

businesses that support those companies. Its original character as a vibrant, residential community has changed to one of mixed use where residents, schools and churches exist side-by-side with warehouses, scrap yards and repair shops.

6. The Municipality has recognised this change and planned to turn Clairwood into a mixed-use, and ultimately a light industrial area. In 2014 it published the Back of Port Local Area Plan (**the LAP**), which envisaged that Clairwood would cease to be a residential area and be turned into a logistics hub.
7. However, the LAP recognised that the roads in Clairwood were designed for residential use, and would not support logistical and industrial use. The LAP therefore required that the roads in Clairwood would need to be upgraded before Clairwood could move from residential to logistic use.
8. No road upgrades have occurred and as will be seen in the remaining parts of this affidavit, the Municipality has not adhered to the LAP when advised to by its own internal departments. But that has not slowed development:

- 8.1. Although the roads remain unsuited to the increasing industrial creep, the Municipality has approved multiple zoning requests to convert plots in Clairwood from residential to light industrial. It has done so over the objection of its own transport authority (Fifth Respondent) that opposes rezoning to industrial use unless and until there is a plan to upgrade the roads.

8.2. Our members have noted that many landowners do not bother to wait for rezoning. There is a trend of many properties – including 140 Houghton Road – being illegally used for industrial purposes, despite still being zoned for residential use. The owners – having operated unlawfully – approach the Municipality claiming that the area has changed, and their unlawful use should be condoned through a new zoning. Instead of responding to complaints and enforcing existing zoning restrictions, the Municipality obliges.

9. The Municipality's conduct in not upgrading roads has, literally, had life and death consequences for the residents of Clairwood. The streets and pavements are no longer safe, and no longer suitable to walk on or to drive on. Residents and others have been injured or killed as a result of the high volume of trucks on the inadequate road network.
10. Because the shift from residential to industrial use is not being done in a planned or orderly fashion, Clairwood has become hostile to its residents, while much of it remains zoned for residential use.
11. While the applicant is displeased about Clairwood becoming a logistics area, it submits that the transition must happen in a planned and ordered fashion that respects the rights of residents. It must also be done in accordance with the law and be implemented in terms of the Municipality's own plan of action. The current pattern prejudices not only the current residents, but current and future businesses as well. Without an upgrade to the roads and a proper plan

for the transition, Clairwood will not fulfil its potential as a future logistics hub as envisaged in municipal documents such as the LAP.

12. This application seeks to set that to right. It seeks to review and set aside the rezoning of 140 Houghton Road. But it also seeks broader relief to ensure that the City does not permit future industrial use in Clairwood unless and until it upgrades the area's roads.
13. The remainder of this affidavit is structured as follows:
  - 13.1. **Part II** describes the parties;
  - 13.2. **Part III** sets out the relevant factual background;
  - 13.3. **Part IV** summarises the legal framework;
  - 13.4. **Part V** explains why the 140 Houghton Road decision must be reviewed and set aside;
  - 13.5. **Part VI** addresses the systemic relief;
  - 13.6. **Part VII** deals with condonation; and
  - 13.7. **Part VIII** concludes and deals with costs.



## II THE PARTIES

14. The Association is a membership based voluntary association that was established in 1946 by the ratepayers and residents of Clairwood – a suburb of Durban. The Association's constitution is attached hereto, marked **FA1**.
15. Its aims and objectives are, amongst other things, to foster civic consciousness among residents; to protect and promote their interests; to make representations and enter into arrangements with spheres of government and to do anything else that is incidental to the attainment of these aims and objectives.
16. The Association has the power to institute and defend legal proceedings to advance its aims and objectives. In these proceedings, the Association seeks to protect the rights and interests of its residential members, and visitors to Clairwood, by bringing to an end the distress and hardship that is being perpetrated or facilitated by the actions and omissions of the Municipality.
17. Consequently, the Association has the requisite standing in terms of section 38(a), (c), (d) and (e) of the Constitution to bring this application.
18. The First Respondent is the **ETHEKWINI MUNICIPALITY (the Municipality)**, care of the Municipal Manager, City Hall, Dr Pixley kaSeme St, Durban. The Municipality was established in terms of KwaZulu-Natal *Provincial Gazette* PN343, 2000 of 19 September 2000 and that it is a level of government within the local sphere as contemplated in Chapter 7 of the Constitution.

19. The Second Respondent is the **MUNICIPAL PLANNING TRIBUNAL (the MPT)**. It is located at first floor, 166 K E Masinga Rd, Durban. The MPT is established in terms of s 35 of the Spatial Planning & Land Use Management Act 16 of 2013 (**SPLUMA**) to determine land use and development applications (including applications for rezoning).
20. The Third Respondent is the **EXECUTIVE MAYOR OF ETHEKWINI MUNICIPALITY**, Cllr Thomas Mxolisi Kaunda (the Mayor), in his capacity as chairperson of the executive authority of the Ethekwin Municipality and of the **Appeals Authority** (Fourth Respondent), established in terms of section 51 of SPLUMA, read with s 55 of the Ethekwin Metropolitan Municipality Planning and Land Use Management By-law published under MN 114 in the *KwaZulu-Natal Provincial Gazette* 1871 on 31 August 2017 (**the By-law**). The Mayor is empowered to decide appeals from decisions of the MPT. The Mayor's office is situated at the City Hall, Dr Pixley kaSeme St, Durban.
21. The Fourth Respondent is the **EXECUTIVE COMMITTEE APPEALS AUTHORITY** of the Municipality. It took the appeal decision with regard to 140 Houghton Road, and the other appeals that have upheld the rezoning of residential properties for industrial use in Clairwood. Its offices are located at the same address as the second respondent.
22. The Fifth Respondent is the **ETHEKWINI TRANSPORT AUTHORITY (the ETA)** of the Municipality. It is responsible for the planning of road upgrades. It will be responsible for conducting any future planning for the upgrading of

roads in Clairwood. Its offices are located at 30 Archie Gumede Place, Durban.

23. The Sixth and Seventh Respondents are respectively **AJAY & URESHKA SHAH (the Owners)**. Both persons are adults, and are the owners of immovable property with cadastral description Erf 309 Dunns Grant with street address being 140 Houghton Road, Clairwood, Durban (**the Property**).

### III FACTUAL BACKGROUND

24. This Part sets out the relevant factual framework for this application. It does so under the following headings:

24.1. The history and character of Clairwood;

24.2. The Back of Port Local Area Plan; and

24.3. The rezoning of Clairwood.

#### THE HISTORY AND CHARACTER OF CLAIRWOOD

25. The Clairwood community was established over 135 years ago during a period of colonial rule by poor Indian indentured labourers after they had completed their servitude in the Natal Colony sugar plantations. They

transformed a mosquito infested swamp close to the Durban Bay into a thriving and bustling garden suburb of over 40 000 residents. All this was achieved without the assistance of the predecessor of the Municipality – which was for the most part hostile to them and their interests. Freedom fighters, judges, musicians, sportspersons, and leaders in commerce, industry, education and medicine have emerged from this community. It retains its residential character to this day.

#### THE BACK OF PORT LOCAL AREA PLAN

26. Over a decade ago, the Municipality commissioned a study into the development, or more correctly, redevelopment of the South Durban Basin, which included Clairwood. The study culminated in the Back of Port Local Area Plan (**the LAP**). This was adopted by the Municipality without qualification or reservation in October 2014.
27. The full title of the LAP is the “*Back of Port Concept, Framework, Precinct Plans and Zoning Framework Report*.” I deal with the legal effect of a Local Area Plan in **Part IV** below.
28. The LAP consists of 376 pages with more than 1038 pages of supporting documents. To avoid burdening the record, I attach (marked **FA2**) a copy of the cover of the LAP alone, without the supporting documents. All the documents are in the custody of the Municipality. If the Respondents or this Honourable Court so desires, these and other annexures will be made

available in their entirety. However, I attach the relevant pages referred to in the paragraphs below.

29. The LAP embraces the areas surrounding the Port of Durban within the South Durban Basin, including Congella, Umbilo industrial, Rossburgh, Clairwood, Jacobs and Mobeni. These proceedings relate only to the central portion of Clairwood where immovable properties remain zoned "special residential 400" to this day. I attach hereto marked **FA3** a map obtained from the Municipality on 30 July 2020. (The relevant area is shaded orange.)
30. The LAP proposed to amend, amongst other things, the zoning of Clairwood (including the central portion) so that it is used as a logistics hub. This was motivated by two considerations: firstly, Clairwood's proximity to the Port of Durban; and secondly, the rezoning would facilitate the movement of cargo and freight into and out of the Port.
31. For purposes of this matter, the term "logistics" embraces the large scale movement of large and heavy road vehicles (including articulated, multi-axle; and interlinked vehicles); and the storage and movement of shipping containers and other types of cargo and freight, and the provision of warehousing.
32. The LAP considered various options, but ultimately holds that "*the Clairwood central core be rezoned for logistics use. Logistics within this area would be permitted to have open storage*" (page 164 of the LAP, attached hereto marked **FA2.1**).

33. For the purposes of this application, the Applicant does not challenge that conclusion. What the Applicant challenges is how Clairwood will change from residential, to logistics and whether the Municipality has fulfilled its constitutional obligations in doing so.
34. The LAP is crystal clear about how that process must happen. There are two key requirements that the LAP identifies.
35. **First**, it recognised that the existing road network was inadequate – for both Clairwood’s present and its future. For example, the LAP states:

35.1. *“South Coast Road within the Clairwood area operates beyond its capacity and represents the most “stressed” part of the system”; (pages 65, 66, 95 & 130 of the LAP attached hereto marked **FA2.2**, **FA2.3**, **FA2.4** and **FA2.5** respectively).*

35.2. It also found that the most common mode of transport in Clairwood is by foot; that pedestrian access to schools is unsafe; and that the quality of the road network is exacerbated by the presence of a significant number of heavy vehicles in the residential areas. (page 54 of the *Back of Port Social Impact Assessment*, attached hereto marked **FA2.6**).

36. The following passage explains the extent of the problem:

*“Planning interventions for the area as a whole needs to consider that: the sites are small; the blocks are small; roads are too narrow for*

*commercial / logistics traffic; the road system lacks clarity and convenient ingress and egress to and from the major access roads; a mix of residential and incompatible industrial / logistics uses currently exist; a large number of worship sites and 'listed' buildings need to be accommodated" (page 161 of the LAP attached hereto marked **FA2.7**).)*

37. As a result, a central element of the LAP is accepts that the *"ultimate goal for Clairwood, is to create a coherent road network system that facilitates easy movement into and through the area, as well as creating clear but separate access for different user groups."* As the Plan acknowledges, that means *"[a] new road network will be required"* (page 165 of the LAP attached hereto marked **FA2.8** ). The passage below sets out the Plan's recommendations in more detail:

*"It is recommended that in order to work efficiently and effectively a totally new layout is required with wider roads and improved access from truck freight routes. Due to the land use changes in the area the movement structure would need to be upgraded to allow and accommodate a local logistics circulation system. This would require that some of the major through routes be widened, and other roads eliminated or down-graded to internal service roads within larger lots. ... The preconditions for this solution suggests that there is a complete redevelopment of the Clairwood residential core with consolidated lots as well as a new larger sub divisional layout to allow for a core better structured for the circulation of large trucks. The development of new infrastructure would need to be addressed to support the logistics uses within the core including the new local road network. In order to achieve this the Municipality would need to encourage and support the removal of all existing residential and non-logistics related industrial*

uses from the core;" (FA2.1, and page 212 of the LAP attached hereto marked FA2.9).

38. As demonstrated below the Municipality has – contrary to the recommendation of its own transport authority (Fifth Respondent) – ignored this part of the LAP.
39. **Second**, the LAP recognises that residents have a strong connection to Clairwood and will not leave willingly: *"There are a number of Clairwood residents (owners/tenants and informal settlements) that want to remain in Clairwood and will defend this position very strongly"* (pages 84 and 122 of the LAP attached hereto marked FA2.10 and FA2.11 respectively). In this regard, the LAP recommends against *"forced removals of residents or other legal occupiers of sites"* (FA2.1).
40. It recognises that in order for Clairwood to morph to a logistics hub, residential properties will have to be purchased or expropriated by the Municipality:
  - "2. *Fair negotiated outcomes to be sought with individual landowners on acquisition principles.*
  3. *Appropriate responses to be sought in order to manage the concern of the needs of existing landowners, and informal residents.*
  4. *The rates status quo (as residential or the zoning currently in use and applicable) will remain in place until the proposed rezoning is completed and the development takes effect in terms of the new zoning.*



5. *Expropriation will only be pursued as a means of achieving maximum legal compensation to existing landowners. The Expropriation Act allows for an added amount over and above fair market value of 10% on the first R100 000, and 5% on the value up to R500 000, 3% between R500 000 and R1,0 million, and 1% of the value exceeding R1,0 million, but not more than an additional R10 000.” (FA2.1)*

41. As I set out in more detail below, what the LAP envisaged a planned and orderly sequence whereby the Municipality would rezone the relevant parts of Clairwood of its own accord, and then work to relocate the residents – either by purchasing or expropriating their property – and then convert the area for logistics use. Instead, what has occurred, is redevelopment by default. The Municipality has taken no active steps to manage the transition, and has allowed it to occur illegally, and then ratified that illegal conduct because it suits its long-term goals. The residents of Clairwood have borne the brunt of this strategy.

42. The LAP must be read together with the Municipality’s 2010/11 Central Spatial Development Plan (extract annexed hereto marked **FA4**) which emphasised the importance of Clairwood due to its proximity to “Africa’s busiest port.” Similar sentiments were expressed in the 2013/14 Spatial Development Framework which exalted the Plan by referring to it as a priority “catalytic project” (extract annexed hereto marked **FA5**).

### The Rezoning of Clairwood

43. The adoption of the LAP in 2014 heralded an intensification of the influx of logistics businesses to lease or acquire residential properties in Clairwood. Businesses saw the future potential of Clairwood, but were not willing to wait for the upgrading of the roads, and the formal rezoning to begin before taking advantage of the location, and the bright commercial possibilities.
44. These plans and Spatial Development Frameworks, over the months and years, created a carefully calibrated momentum for the rezoning of the residential areas of Clairwood, and the gradual breaking down of resistance to the rezoning. By 2020, that momentum has now become relentless.
45. The Municipality has processed multiple rezoning applications in Clairwood in recent years. Many of these applications are made by landowners who are already using their property for industrial purposes and seek rezoning after the fact, to “regularise” their illegal use.
46. One of these applications to rezone forms the substance of this application. As the application for 140 Houghton Road demonstrates below, the Municipality treats these applications as a foregone conclusion – as the property is already being used for industrial purposes, any negative impact it is having on the residents is taken as inevitable, *not avoidable*.
47. Before dealing with 140 Houghton, I deal with the legal framework.

#### IV LEGAL FRAMEWORK

48. This Part sets out the legal framework that governs the determination of re-zoning applications in the Municipality. I address the following issues:

48.1. The objects of zoning under SPLUMA and the By-Law; and

48.2. The scheme for zoning and land use planning.

#### OBJECTS OF ZONING

49. Briefly, the **objects** of both SPLUMA and the By-law include the following:

49.1. Recognising the State's obligation in terms of s 24 of the Constitution, to have the environment protected for the benefit of present and future generations through reasonable and legislative measures, which include a land use planning system that is protective of the environment (SPLUMA, Preamble);

49.2. That a uniform, effective and comprehensive system of spatial planning and land use management be employed (SPLUMA s 3(a); By-law s 3(b));

49.3. That spatial planning promote social and economic inclusion (SPLUMA s 3(b));

- 49.4. That spatial development provide for the sustainable and efficient use of land (SPLUMA s 3(d));
- 49.5. That spatial development be coherent and planned (By-law s 9(1)(f)); and
- 49.6. That policies and strategies be devised for the mitigation of risks (By-law s 9(1)(j)).

#### THE SCHEME OF ZONING

50. Briefly, the **scheme** devised by SPLUMA read with the By-law is as follows:
51. **First**, all three spheres of government are required to prepare spatial development frameworks (SDFs) (SPLUMA s 12). The municipal SDF must assist in integrating, co-ordinating, aligning and expressing development policies and plans emanating from the various sectors of the government as they apply within the municipal area (SPLUMA s 12(5));
52. **Second**, a municipality must prepare a land use scheme (**LUS**) (this is new terminology for what was previously known as the *town planning scheme*) that is consistent with the municipal SDF. The LUS determines the use and development of land within the municipal area to which it relates in order to promote economic growth, social inclusion, efficient land development and cause minimal impact on public health, the environment and natural resources (SPLUMA s 25(1); By-law ss 14 and 15);

53. Once adopted and approved, a LUS has the force of law, and all landowners and users of land – including the Municipality, state owned enterprises, and organs of state – are bound by the provisions of the LUS. The LUS replaces all existing schemes within the area to which it applies and provides for land use and development rights (SPLUMA s 26(1)(a), (b) & (c); By-law s 16);
54. The LUS adopted by the Municipality for the area in question is contained in the “Central Scheme of Ethekewini Municipality.” Page 108 thereof (attached hereto marked **FA6** provides that the intention of Special Residential 400 is to provide, preserve, use land and buildings for –
- 54.1. Single residential and multiple unit development and various building typologies.
- 54.2. Protection of the quality and character of residential neighbourhood and the well-being of its residents.
- 54.3. Limiting multiple uses of buildings to minimise adverse impact on the residential environment.
- 54.4. Businesses that comply with residential amenity shall be at the discretion of the eThekewini Municipality.
55. The zoning also precludes “all other uses not indicated in the Primary and Special Consent columns.” An examination of those columns shows that special consent is needed for uses such as crèche, clinic, educational establishment, place of worship and other similar uses.

56. The applicant has no difficulty with institutions of this nature. Indeed, they already exist in Clairwood.
57. An examination of the Central Scheme does not contain any reference to the LAP.
58. The Municipality has the power to amend its LUS on an annual basis (By-law s 19(1); and to resolve land use conflicts (SPLUMA s 26(6)). That it has not yet done so, after adopting the LAP in 2014, is remarkable and consequential.
59. An examination of the map (annexure **FA3**) shows that the vast majority of the properties in central Clairwood remain zoned special residential 400.
60. Despite that, the MPT and the Appeal Authority have, through a pattern of planning and zoning decisions, caused the LAP to be given effect as if it had been incorporated into the Central Scheme.
61. One such decision is 140 Houghton Road.

#### IV 140 HOUGHTON ROAD

62. Houghton Road is one of the main roads in Clairwood. It used to be a quiet residential area. It has been infiltrated by logistics and industrial businesses.

63. 140 Houghton Road is 1302m<sup>2</sup> and consists of an open yard and an office. It has, for several years, been illegally operating as a business selling spares, scrapyard and offering repairs for small vehicles.
64. In that respect, the 140 Houghton Road application is typical of other similar applications. The manner in which the Municipality dealt with it was also typical.
65. In this Part I:
- 65.1. Describe the application;
  - 65.2. Deal with the appeal; and
  - 65.3. Set out the grounds of review.
66. The next Part explains why broader systemic relief is necessary.

#### THE APPLICATION

67. This section:
- 67.1. Summarises the application;
  - 67.2. Sets out the responses of the municipal departments;
  - 67.3. Covers the objections and the owners' response; and

67.4. Describes the MPT's decision.

68. On 31 July 2018, the Owners applied to rezone the Property from special residential 400 to light industrial. I attach a copy of the application marked **FA7**.

69. The application acknowledges that the property was already being used contrary to the special residential zoning. They ask for "*formalization of the current light industrial use*". It argues that the rezoning should be granted



Figure 6: Land Use Map

#### LEGEND

|  |                  |  |                            |  |              |
|--|------------------|--|----------------------------|--|--------------|
|  | THE SITE         |  | INDUSTRIAL                 |  | MIXED USE    |
|  | RESIDENTIAL      |  | OPEN SPACE                 |  | COMMERCIAL   |
|  | PLACE OF WORSHIP |  | MOTOR WORKSHOP             |  | PANEL BEATER |
|  | TRUCK DEPOT      |  | TRUCKING SERVICES/MECHANIC |  |              |



because the area *"is replete with commercial, industrial and residential land uses"*. It includes this graphic indicating the land use of the surrounding areas.

70. The application claimed there would be no impact on traffic, and that it would not affect the use in the surrounding area because it is already largely industrial.
71. It also contended there would be no adverse environmental impacts.
72. The traffic impact assessment (**TIA**) (annexure E to **FA7**) that the owners submitted with the application (page 5 of the TIA) is premised in the upgrading envisaged by the LAP: *"As per the change in the primary land use of the area from residential, the existing roads that do not meet the minimum road width requirement and do not consist of road pavement layers that would support the loading of vehicles in an industrial area therefore the existing roads will be subjected to upgrades on a large scale. The roads will need to be upgraded to a minimum width of 7.5m and will be subject to a redesign of the road pavement layers for industrial use."*
73. Page 6 of the TIA also notes the following: *"Road widths could not be determined accurately due to over grown vegetation along roadside. The sidewalks that are on either side of the road are broken or missing sections along the road. The roads show extremely deteriorated conditions."* Notwithstanding these poor conditions, the page 7 of the TIA observes that *"the area is constantly utilised by pedestrians throughout the day such as children that are attending schools in the neighbourhood, workers and residents."*

74. A reasonable person perusing the above submissions (ie someone **not** having the knowledge and expertise of the MPT or Appeal Authority) would have concluded that –

74.1. The road infrastructure is unsuitable for the proposed land use;

74.2. The road surface is degraded;

74.3. There are facilities in the precinct that are patronized by large numbers of people, including children;

74.4. There are a large number of people frequenting the area on foot;  
and

74.5. Pedestrian sidewalks are damaged or non-existent.

#### **Response of Municipal Departments**

75. The Application was submitted to a number of municipal departments for their approval. The following departments approved the application without any relevant comment:

75.1. Water and sanitation;

75.2. Coastal, storm-water and catchment management; and

75.3. Metro Waste Water.

76. The Strategic Spatial Planning Branch supported the application, but subject to an important concern: *"the limited road infrastructure; as the area was originally designed for residential use. In this regard a Technical Task Team, which is chaired by the eThekweni Transport Authority (ETA), was constituted in order to phase the BOP-LAP land use/road infrastructure recommendations. In view thereof, please liaise with eThekweni Transport Authority (ETA) in order to ascertain their comments with regards to the traffic implications.*

77. The eThekweni Transport Authority (ETA) "refused" the application. It gave the following reasons which I repeat in full (see annexure **FA8**):

1. *As per Section 14: Conclusion, on page 212 of the "BACK OF PORT CONCEPT, FRAMEWORK, PRECINCT PLANS AND ZONING FRAMEWORK REPORT", in order to consider the rezoning within the area from Special Residential to a logistics use, a totally new layout is required with wider roads and improved access from truck freight routes. (underlining added)*
2. *A new road hierarchy and layout will be required for the area. This entails wider roads for industrial/logistics use and consolidation of existing land parcels to appropriate sizes for said use. In addition, the "BACK OF PORT CONCEPT, FRAMEWORK, PRECINCT PLANS AND ZONING FRAMEWORK REPORT requires that access to the Clairwood area be linked for truck freight routes. A freight route study has been carried out by ETA which show that the freight route is not feasible for implementation.*
3. *In order to achieve the above (i.e. A new road hierarchy and layout), a traffic study is required.*

4. *ETA does not have funds in the current financial year nor in future financial years to carry out this study, alternatively, given that the application is lodged ahead of the ETA's plan, the applicant could carry out the study in consultation with the ETA.*
5. *It must be noted that the Traffic Impact Assessment submitted in support of the application fails to address the above requirements and is therefore incorrect.*
6. *Further to the above, if rezoning applications within the area are allowed to proceed without undertaking the above study, the risk to council is as follows:*
  - a) *Vehicle-Vehicle accidents, Vehicle-Pedestrian accidents due to the existing residential roads not being upgraded to industrial road standards i.e. adequate road widths / geometric standards and pavement structure.*
  - b) *Additional cost for the expropriation of industrial land for establishing an appropriate industrial/logistic road network, as opposed to the expropriation of residential land.*

78. The Municipality's Environmental and Climate Protection Department approved the application (**FA9**). The report was prepared by Ms Michelle Lotz, the Regional Co-ordinator: Biodiversity Impact Assessment. Her reasons are telling:

78.1. She stated that *"the site is not of biodiversity importance to this Department"*; and

78.2. The site is located outside the Durban Metropolitan Open Space System and *"there are no additional environmental or water legislation requirements"*.

79. As I detail below, the first reason may be true, but is only a partial answer to the environmental impact of rezoning. The second reason is simply inaccurate.

### **Objections and Response**

80. I lodged an objection to the application on behalf of the Association (**FA10.1**). The South Durban Community Environmental Alliance, (SDCEA), a NGO, also lodged an objection (**FA10.2**). In summary, the objections were made on the following grounds:

80.1. That the property is zoned special residential 400;

80.2. That it will adversely affect the religious and cultural institutions in the vicinity;

80.3. That the area is not conducive to industrial development due to its design;

80.4. The health and safety risks to residents and visitors; and

80.5. The concerns relating to environmental pollution and degradation.

81. The Owners responded to the objections on 14 November 2018 (**FA11**). The document is remarkably candid:

81.1. *"Clairwood was once recognised as an area with rich culture and heritage, however this has been lost due to the area being transformed through the infiltration of mixed activities. A few stubborn sporadic residential pockets exist but will also be swallowed up for mixed uses in the near future. The area which once housed the pioneers of KZN has simply lost its identity due to the overwhelming illegal uses."*

81.2. Answering a complaint by the SDCEA about the impact of illegal use on residents, the Owners state: *"The impacts are staring you in the face on a daily basis. This is not new to the area. As mentioned previously, the area has seen a drastic transformation and owners have taken this opportunity to cash in on properties by selling or renting. This has resulted in an influx of illegal uses which has plagued the area. The area which was once rich in residential has changed."*

### **The MPT's Decision**

82. Notwithstanding the ETA's refusal, on 30 April 2019, the rezoning application was approved for the property described as Erf 309 Dunns Grant and bearing postal address 140 Houghton Road, Clairwood, Durban (**the Property**). This rezoning was granted by the Municipal Planning Tribunal (Second Respondent). This decision is annexed hereto and marked **FA12**.

83. The reasons given by the Municipal Planning Tribunal (**MPT**) when approving the rezoning were as follows:

*The proposed rezoning forms a logical extension to the existing industrial zones and promotes the gradation of the industrial land uses at a prime location;*

*The industrial activity proposed is consistent with the existing uses within the area and compatible with the Back of Port Local Area Plan and vision for the area;*

*The application is in keeping with the intentions of, and addresses the requirements of the Spatial Development Plan and SPLUMA principles; and*

*The residential nature of the area has long been diminished as Houghton Road is predominantly industrial in nature.*

84. The Property was thus rezoned from Special Residential 400 to Light Industrial.

#### **THE APPEAL**

#### **The Appeal and the Municipality's Response**

85. On 30 May 2019, the Applicant lodged an appeal in terms of section 51 of SPLUMA read with Chap 12 of the By-law, against the decision of the Municipal Planning Tribunal. The appeal is attached hereto marked **FA13**.

(The annexures to the appeal have been omitted in order to avoid duplication.)

86. The appeal was brought on the following grounds:

86.1. The MPT failed to take heed of the concession made in the application that the existing road infrastructure does not meet the minimum road width requirements;

86.2. The Tribunal failed to take heed of the ETA's refusal of the application;

86.3. The Tribunal ought to have questioned the report by the Environmental Planning & Climate Protection Unit that there are no environmental concerns;

86.4. The Tribunal failed to consider the historical, cultural and religious significance of the area and the importance of preserving it; and

86.5. The Tribunal failed to consider that Houghton Road remains predominantly a residential area.

87. On 11 July 2019, the Municipality filed a responding memorandum explaining why it supported the MPT's original decision (**FA14**). The memorandum acknowledges that:

87.1. In terms of the LAP, *"the internal road network is in need of upgrading"*;



87.2. There is a *"feud between the obvious need to change Clairwood to industrial versus the need to retain this as a residential suburb"*;

87.3. The current use of the property as a spare shop/scrapyard is *"illegal"*; and

87.4. The LAP required upgrading to Clairwood's roads as part of the plan to move it towards industrial use, and that the ETA has not conducted the study that would permit that upgrading.

88. But, the Municipality advanced four reasons to defend the MPT's decision.

89. **First**, it argued, *"[w]aiting for studies is not a way to solve the immediate problems encountered which is the current conflict between trucks and residential uses."* It is difficult to understand why that is the case. If the LAP is the justification for moving Clairwood away from a residential area, and it is premised on upgrading the roads, waiting for studies is the only way to solve the *"current conflict"*. The Municipality's attitude appears to be to surrender to illegality, and abandon reasoned, coherent, and lawful planning decisions in order to achieve its ultimate goal. This attitude is licencing those seeking chaos.

90. **Second**, the Municipality argued that if *"one or two properties in any residential street change to industrial, there are already a strong indication the area is under pressure to change or is in the process of transition. This street has passed the point of no return a long time ago. The issue is not how to stop the change, but rather how to manage the transition from residential to*

*industrial.*" This obviously puts the decision before the plan. The Municipality's job is to plan for how land should be used, and not to manage changes in land use that are supposedly outside its control.

91. **Third**, the Municipality sought to defend the MPT's decision by reference to previous, similar decisions. It argued that since 13 previous rezoning decisions had been approved and upheld on appeal, this one should too. But, as I argue below, the opposite is true – the Municipality's failure to counter rampant illegality cannot justify condoning further illegality.
92. **Fourth**, and bizarrely, the Municipality attempted to argue that the terrible conditions for residents in Clairwood justified its decision: "*The residential amenity of Clairwood is very poor. Forcing families to remain in Clairwood (sic) requires ignoring the poor conditions such as pollution and noise that makes the area unsuited to residential use and is irresponsible.*" (I show below, that the Municipality has deliberately allowed Clairwood to degrade to its present state.)

### **The Decision**

93. On 29 October 2019, the Appeals Authority decided the appeal. However, the decision was only communicated to the Applicant's attorney on 11 February 2020. It did so without a hearing. I attach a copy of the appeal decision marked **FA15**. The Appeal Authority dismissed the appeal. The reasons for the dismissal was as follows:

*"The decision to grant the rezoning was the result of careful consideration of all pertinent planning factors, including the guiding strategic documents such as the IDP, SDF, CSDP and BOP LAP; and*

*The decision reached is considered to be in the best interest of the city and is in no way unreasonable within the context of the competing interests at hand."*

94. It is remarkable that the "reasons" repeat verbatim the concluding paragraph of the Municipality's responding memorandum.

#### GROUND OF REVIEW

95. The decisions of the MPT and the Appeal Authority constituted administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA).
96. The Applicant reviews the decisions on the following bases:
- 96.1. The property should not have been rezoned before roads were upgraded;
- 96.2. The MPT and the Appeal Authority wrongly ignored environmental concerns;
- 96.3. The Municipality relied on illegal conduct to justify its decision;
- 96.4. The Municipality's "reasons" do not support its decisions.

97. The Applicant reserves the right to supplement these grounds of review on receipt of the Rule 53 Record.

### The Roads

98. Both the MPT and the Appeal Authority failed to properly consider the LAP, the TIA, and the objection of the ETA (Fifth Respondent). To summarise:

98.1. The LAP recognises that the roads in Clairwood need to be upgraded before it can be converted to full logistics use;

98.2. The Owners' own TIA recognised the appalling conditions of the road;

98.3. The Municipality's own ETA refused to consent to the application before it had prepared a plan to upgrade the roads. The ETA's concerns –informed by its special expertise – emphasises the risk of injury and death to persons. In other words, while Clairwood remains unfit for purpose, approving further industrial use will probably cause further fatalities; and

98.4. The Applicant and the SDCEA objected to the decision, and appealed against it, because of the failure to consider the need for road upgrading.

99. In addition to the information on the record before the MPT and the Appeal Authority, there was additional historical context that appears to have been ignored by the decision-makers.
100. This was not the first time the ETA has refused to approve an application for industrial rezoning in Clairwood. The ETA has consistently refused rezoning applications. For example, in 2019 the ETA refused to approve an application to rezone 110 Sirdar Road. It repeated the concerns expressed in this matter concerning the LAP. But it then said the following:
- "2. A meeting was held between LUMS and ETA where it was agreed that planning applications received for changes in land uses (eg industrial, logistics etc) in the Clairwood Precinct will not be accepted until a consolidated Precinct and Transport Plan has been developed for this area (this would be in alignment with the recommendations of the LAP). To date the ETA have been engaging with LUMS with regard to the transport and precinct land use plan layout."*
101. A copy of the ETA's report is attached marked **FA16**. (It is in almost identical terms to **FA8**). This indicates that, not only does the ETA oppose land use changes in Clairwood without a plan, LUMS has too. Yet, in this application, LUMS approved the application contrary to its agreement with the ETA. And it failed to inform the MPT or the Appeal Authority why it approved the application in the absence of a road upgrading plan.
102. In the face of these compelling concerns expressed by all the parties involved – the Owners, the Municipality's ETA, and the objectors – the MPT and the Appeal Authority responded with complete silence. There is not a single

reason in either decision that explains why the rezoning was granted in the face of these concerns.

103. Nor is there a rational or reasonable reason:

103.1. It is no answer to the complaint to say that approval will make no difference because 140 Houghton Road was already being used for industrial use. As I expand on this issue below, the Municipality is not powerless in the face of unlawful land use. It cannot use existing illegality as a basis to grant a rezoning application. The choice available to the MPT and the Appeal Authority was either to enforce the existing zoning which would have reduced traffic, or approve the rezoning which would have continued the degradation, and caused risk to life and limb. It chose the latter.

103.2. Nor is it an answer to say – as the Municipality did to the Appeal Authority – that it cannot wait for a new transport plan/study. It is inherently irrational to take zoning decisions that will worsen existing road infrastructure in the absence of a plan on how that will be remedied. The only way to resolve existing tensions between industrial and residential uses is to do what the LAP and the ETA insist must be done – fix the road infrastructure to fit Clairwood's new role of a logistics hub. The Municipality seeks to place the cart before the horse – or, more accurately, the truck before the road.

104. The Applicant's position is not that Clairwood properties can never be rezoned to industrial – the position is that they can be rezoned only after the roads are upgraded, or at least a plan is developed to provide for that upgrading.
105. The Municipality seems to consider the redesign and upgrading of the road infrastructure as an "optional extra." That position is unreasonable, irrational and unlawful. Even if one disregards the needs of the residents of Clairwood, it cannot be disputed that the logistics service providers need proper infrastructure to operate their businesses safely, efficiently and effectively. Yet the Municipality is happy to legalise those uses without first requiring even a plan to make the roads in the area suitable for that purpose.
106. The MPT's and the Appeal Authority's decisions are, therefore, reviewable on the following grounds:
- 106.1. Relevant considerations – namely the views of the ETA, and the need for development in the LAP – were not considered (PAJA s 6(2)(e)(iii)). While those concerns were placed before the MPT and the Appeal Authority, we know they were not considered because they are not mentioned in the reasons given by the MPT or the Appeal Authority. This was not a peripheral or unimportant issue. It was fundamental. Yet it was completely ignored.
- 106.2. The decision was not rationally connected to the information before the administrator (PAJA s 6(2)(f)(ii)(cc)). It was not rational for the MPT or the Appeal Authority to approve the rezoning in light of the concerns of

the ETA. It was certainly not rational to fail to explain why the decision could be supported.

106.3. The decision was not rationally connected to the reasons given for it by the administrator (PAJA s 6(2)(f)(ii)(dd)). The MPT and the Appeal Authority had to provide a reason for over-ruling the objection of the ETA. Yet there is no justification at all. That cannot be rational.

106.4. The decision was so unreasonable that no reasonable decision-maker could have taken it (PAJA s 6(2)(h)). In light of the serious concerns – including the real risk of injury and death – no reasonable MPT or Appeal Authority would have granted the application. It cannot grant new land use rights when the existing road network plainly is ill-suited to support those uses, and it does not know what a future road network will look like. It cannot legalise land use that its own officials have determined is incompatible with the existing infrastructure. That is plainly unreasonable.

107. In essence – as the LAP, the ETA and LUMS – have all recognised, rezoning applications in Clairwood are all premature. The correct and appropriate time to have invited rezoning applications was after the road infrastructure had been upgraded, or at the very earliest after a plan for the upgrading had been finalised.



## The Environment

108. To repeat, the Municipality's Environmental and Climate Protection Department approved (FA9) the application because:

108.1. The site was not "*of biodiversity importance*";

108.2. It is located outside the D'MOSS; and

108.3. There are no additional requirements under National Environment Management: Air Quality Act 39 of 2004 (NEMA).

109. In its response to the Appeal (FA14), the Municipality argued:

109.1. That the Environmental Management Branch has the "*skills and capacity to see whether further authorisation is required*" and they had not objected;

109.2. That the MPT includes a member from the Environmental Department, and no environmental issues were raised "*because there are no natural environmental features that need protection in Clairwood*";

109.3. Noise and air pollution should be expected because the area is surrounded by the harbour and industrial areas; and

109.4. "*the increase in logistics facilities will have the benefit that truck idling is reduced, which is one of the main sources of pollution. In other words*

*the rezoning could contribute to reducing the accumulative truck pollution load in the South Durban Basin.”*

110. The MPT's reasons and the Appeal Authority's reasons do not mention the environment at all.
111. The approach of the Municipality – and particularly the MPT and the Appeal Authority – do not support a rational and reasonable decision.
112. **First**, biodiversity importance is only one of the multiple environmental concerns the Municipality is required by SPLUMA and NEMA to consider. While the absence of biodiversity concerns was relevant, it was not determinative. Similarly, the fact that there are no “*natural environmental features*” that required protection is not determinative. Section 24 of the Constitution does not just protect natural features – it protects the right of people to live in a healthy environment. So do NEMA and SPLUMA. The MPT and the Appeal Authority were required to consider the impact of the decision on the environment, and the people who continue to live in that environment.
113. **Second**, the MPT's and Appeal Authority's obligation to consider environmental impact is not limited to properties within the D'MOSS.
114. **Third**, there are self-evidently other environmental concerns that were relevant to the decision. SPLUMA prescribes multiple environmental requirements to be satisfied when spatial planning, land development or land use is being considered:

- 114.1. Land use measures must be in accordance with environmental management instruments (s 6(b)(iii));
- 114.2. Decision making procedures must be designed to minimise negative environmental impacts (s 6(c)(ii));
- 114.3. The principle of spatial resilience must be respected so that communities do not suffer the impact of environmental shocks (s 6(d)).
115. The Municipality neglected to consider and apply the following environmental management instruments:
- 115.1. Section 2(4)(vii) of the National Environmental Management Act 107 of 1998 states that *"Sustainable development requires the consideration of all relevant factors including ... a risk-averse and cautious approach ..., which takes into account the limits of current knowledge about the consequences of decisions and actions;"*
- 115.2. The National Environmental Management: Air Quality Act 39 of 2004 defines air pollution to mean *"any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances."* The following have been enacted in terms of this Act:
- 115.2.1. The *National Framework for Air Quality Management in the Republic of South Africa* (GG1996 dated 26 October 2018). The framework in para 5.3.1 (annexed hereto marked **FA17**) specifies that *"vehicle*

*emissions from trucks and private vehicles exacerbates the air pollution problem;"*

- 115.2.2. The National Dust Control Regulations (GNR287 in GG36974 dated 1 November 2013). Its purpose is to prescribe general measures for the control of dust in all areas – including residential areas.
116. Both the application and the Municipality misconceived or ignored the requirements of NEMA and SPLUMA. The Acts specifically require that activities that may damage or harm the health of people are regulated or eliminated.
117. It was clear that granting the application – as opposed to enforcing the existing special residential 400 zoning – would result in increased traffic of vehicles and trucks in the area. It is not clear why the Municipality ignored the impact of these industrial activities within a residential community.
118. The decision of the Tribunal will contribute to the following:
- 118.1. Increase in noise pollution;
- 118.2. Increase in levels of smoke and dust; and
- 118.3. Increase in the levels of chest related illnesses.
119. Further, the Municipality is required to ensure that the health, safety and well-being of the public are safeguarded and to take steps in this regard (By-law s 77(1)).

120. In addition, the LAP explicitly anticipates that the redevelopment of Clairwood will have environmental and air-quality impacts and that the mitigation plans identified in the LAP must be actively committed to and pursued (**FA2.12** and **FA2.13**).
121. This is evidence that the EPCPU is not adequately performing its task of informing the MPT about the environmental consequences of rezoning, so that the MPT can make a proper, reasonable and lawful decision. In this case in particular, and in the many similar cases, the EPCPU has failed to provide a reasonable account of the environmental consequences of rezoning for the residents of Clairwood.
122. The 140 Houghton Road application – and all the similar applications – ought to have been refused for their failure to deal properly and adequately with the environmental impacts. *Alternatively*, the EPCPU (and by extension the MPT and Appeal Authority) ought to have requested additional information (By-law s 56(f) & (h)) to allow them to assess whether the rezoning would have environmental impacts. Their failure to perform their duties has already rendered the environment intolerable for the residents of Clairwood.
123. It appears that the Municipality is either negligently failing to consider environmental consequences, or is intentionally creating an environment that is unsafe and unhealthy in order to force residents out of Clairwood.
124. In either event, the decisions of the MPT and the Appeal Authority are reviewable on the following grounds:

124.1. The failure to consider relevant considerations (PAJA s 6(2)(e)(iii)). The MPT and the Appeal Authority did not consider the environmental impact of rezoning on the residents of Clairwood.

124.2. It was taken for an ulterior purpose or motive (PAJA s 6(2)(e)(ii)). The decision was taken to render Clairwood uninhabitable and ungovernable, thereby forcing force people to leave, to free it up for use as a logistics hub.

### **Reliance on Prior Decisions and Existing Unlawful Conduct**

125. A large part of the justification for the decision advanced by the Applicant, the Municipality and by the MPT is that the character of Clairwood and Houghton Road has already changed. They rely on the existing illegal land use in the area, and prior decisions to permit rezoning.

126. But that can never justify a rezoning decision. As set out above, using land for a purpose contrary to its zoning is an offence. The Municipality has the power and the duty to enforce existing zoning schemes.

127. A reasonable Municipality would enforce its existing laws, and change its zoning scheme according to its properly adopted land use plans. It cannot allow the tail to wag the dog and permit unlawful usage to drive planning decisions. That creates an incentive for people to contravene existing zoning schemes, and then rely on their own unlawful conduct to justify applying for

the property to be rezoned. It is an invitation to anarchy, not the implementation of reasoned land use planning.

128. Similarly, previous decisions to grant rezoning applications cannot justify a decision in this case. Those decisions were made on their own facts. They may or may not have justified rezoning. The MPT and the Appeal Authority did not have any of those applications before them.

129. Admittedly, it is impossible to tell whether any of these concerns affected the Appeal Authority's decision because its "reasons" are conclusions, not explanations. But they supported the MPT's decision, and the Municipality's objection to the appeal.

130. Accordingly, the decisions of the MPT and the Appeal Authority are reviewable on the following grounds:

130.1. Considering irrelevant considerations (PAJA s 6(2)(e)(iii)). The existing illegal use of land for industrial purposes, and the granting of other, prior rezoning applications in Clairwood, was irrelevant to the determination of this rezoning application.

130.2. So unreasonable that no reasonable decision-maker could have made it (s 6(2)(h)).

### Inadequate Reasons

131. The reasons given by both the MPT and the Appeal Authority are insufficient to rationally justify the decisions. They are conclusions that do not engage at all with the objections the Applicant and the SDCEA advanced.
132. The decisions are reviewable under PAJA s 6(2)(f)(ii)(dd) because the decision is not rationally connected to the reasons.

### REMEDY

133. If the review is upheld, the Applicant asks that the decision should be set aside.
134. In addition, this Court has the power to substitute its decision for that of the Municipality under s 8(1)(c)(ii)(aa) of PAJA. If this Court holds that it was unlawful for the Municipality to grant the rezoning prior to the upgrading of roads in Clairwood, or prior to the development of a plan to upgrade roads, then substitution is justified:
- 134.1. The outcome of the application would be a foregone conclusion. No purpose would be served by remitting it to the Municipality for a new decision.



134.2. The Court is in as good a position as the administrator to take the decision: it has the facts to enable it to determine that rezoning at this time is unlawful.

134.3. In addition, for the reasons elaborated on below, the Municipality has demonstrated that it does not have an open mind concerning applications to rezone properties in Clairwood.

### **CONCLUSION**

135. The decision to approve the rezoning for 140 Houghton Road was patently unlawful. It was taken contrary to the Municipality's own LAP, and the position of the ETA. It ignored environmental impact. It relied on past unlawful conduct. It ignored the character of Clairwood. And it was based on patently inadequate reasons. It must be reviewed and set aside.

136. But setting aside this one decision will not prevent future unlawful conduct in Clairwood. That is why the Applicant also seeks systemic relief.

### **VI SYSTEMIC RELIEF**

137. While the Applicant seeks to review and set aside the specific decision concerning 140 Houghton Road, its primary concern is the pattern of

behaviour by the Municipality that has had grave consequences for the residents of Clairwood.

138. While the Applicant accepts that Clairwood is moving to a future as a logistics area, that does not mean that residents can be forced out of the area by unlawful zoning decisions that make their continued residence in the area intolerable. If Clairwood will no longer be a residential area in the future, the process for moving to that future must still be lawful and reasonable. It must respect the rights of the residents of Clairwood.

139. In this part of the affidavit, I summarise the pattern of conduct by the Municipality that has compelled the Applicant to seek additional, systemic relief. I then explain and justify the systemic relief the Applicant seeks.

140. The Municipality's responding memorandum (**FA14**) in the appeal concerning 140 Houghton Road lists 13 such applications between 2013 and 2018. The table below is extracted from that report:

|    |                 |           |              |         |           |                                                                                    |          |           |                                                                  |
|----|-----------------|-----------|--------------|---------|-----------|------------------------------------------------------------------------------------|----------|-----------|------------------------------------------------------------------|
| 1  | 101             | Archary   | REZ005021018 | Shabnam | 05-Feb-18 | Rezoning from Noxious Industrial and Special Residential 400 to General Business 2 | Approved | 31-Jul-18 |                                                                  |
| 2  | 278, 84, 88, 92 | Archary   | REZ055122014 | Les     | 19-Feb-15 | Rezoning from Special Residential 15400 to General Industrial                      | Approved | 09-Feb-16 | Objectors appeal overturned by Exco Appeal Comm                  |
| 3  | 48              | Archary   | REZ014022017 | Pravesh | 09-Feb-17 | Rezoning from Special Residential 17400 to Light Industrial                        | Approved | 27-Sep-18 |                                                                  |
| 4  | 11              | Dayal     | CU003092010  | Brett   | 01-Sep-10 | Special consent for a 3 storey warehouse                                           | Approved | 04-Jul-13 | Council refused application but Appeal Board overturned decision |
| 5  | 143             | Flower    | CU013062014  | Patrick | 24-Jun-14 | Special consent for 3 bedroom guesthouse                                           | Approved | 11-Nov-14 |                                                                  |
| 6  | 312, 316, 324   | Flower    | REZ035092016 | Des     | 22-Sep-16 | Rezoning from Special Residential 16400 to Light Industrial                        | Approved | 20-Apr-18 |                                                                  |
| 7  | 26              | Ganesh    | REZ006032013 | Nadia   | 13-Mar-13 | Rezoning from Special Residential 13400 to General Industrial                      | Approved | 05-May-13 |                                                                  |
| 8  | 286, 290, 296   | Sirdar    | REZ010032014 | Mogie   | 19-Mar-14 | Rezoning from Special Residential 14400 to General Industrial                      | Approved | 29-Jul-14 |                                                                  |
| 9  | 224             | Sirdar    | REZ028062015 | Des     | 25-Jun-15 | Rezoning from Special Residential 15400 to General Industrial                      | Approved | 22-Sep-15 |                                                                  |
| 10 | 248, 252, 254   | Sirdar    | COM008072013 | Nadia   | 15-Jul-13 | Rezoning from Special Residential 13400 to Light Industrial                        | Approved | 21-Jun-13 | Approval subject to 2 conditions re access and roads             |
| 11 | 271             | Sirdar    | REZ033082016 | Shabnam | 25-Aug-16 | Rezoning from Special Residential 16400 to General Industrial                      | Approved | 23-Feb-18 |                                                                  |
| 12 | 258             | Sirdar    | CU           | Mogie   | 01-Jun-09 | Special consent for trucking depot                                                 | Approved | 09-Mar-16 | Refused by Council approved on appeal                            |
| 13 | Solomon 266     | Mahlanacu | CU007062017  | Shabnam | 07-Jun-17 | Special Consent for relocation of Diesel Browsers on petrol service station        | Approved | 11-Jul-17 |                                                                  |

141. The table details the road number; road name; reference number; objector; date of objection; nature of rezoning application; status of application; date of status granted; and further comments in each of the above columns respectively.

142. The Applicant, other organisations and residents in Clairwood have objected to, or appealed against many of these rezoning decisions. To the best of our ability, we have taken steps to access all these objections. I attach six samples thereof:

142.1. The rezoning decision notice and subsequent objections of the Applicant and the Clairwood Shree Siva Soobramoniar Temple in respect of 48 Archary Rd, Clairwood, marked **FA18.1** and **FA18.2**;

142.2. The rezoning decision notice and objection of resident D Ramkylas in respect of 312, 316 and 324A Flower Rd, Clairwood, marked **FA18.3**;

142.3. The objection of the Applicant in respect of 248, 252, 254 Sirdar Rd, Clairwood, marked **FA18.4**;

142.4. The objection of the Applicant and the Clairwood Shree Siva Soobramoniar Temple in respect of 110 Sirdar Rd, Clairwood, marked **FA18.5** and **FA18.6**;

142.5. The objection of the Applicant in respect of 235 Sirdar Rd, Clairwood, marked **FA18.7**;

142.6. The objection of the Applicant in respect of 78, 84, 88 and 92 Archary Rd, Clairwood, marked **FA18.8**; and the approval thereof marked **FA18.9**. I also attach herewith the outcome of the unsuccessful appeal marked **FA18.10**.

143. The Court will note that the reasons for dismissing the appeal in 78, 84, 88 and 92 Archary Rd, Clairwood were that:

143.1. The Clairwood area has for many years been under pressure to transition into an industrial area and the rezoning of the sites facilitates this transition;

143.2. The adopted LAP identifies the area for industrial and logistics and the rezoning is thus seen to be in compliance with the strategic vision of the city;

- 143.3. The rezoning of the site will contribute to economic growth.
144. The Applicant attempted to compile a more comprehensive list of all the rezoning applications from residential to industrial that have occurred in Clairwood since 2014. In furtherance of that project, early in 2019 our attorneys requested, and were granted access to a few rezoning files in the possession of the Development Planning, Environment and Management Unit. Copies were made of the documents by laboriously photographing each page. These documents were then scrutinised in order to determine whether the decisions had been made in accordance with law.
145. It was deemed necessary, out of a sense of caution, to examine more files to determine whether the initial suspicions of routine irregularities could be validated. A request was then made to have access to files going back 6 months. At that stage the Unit decided not to grant any further access, and advised that such request must be made with "City Hall."
146. "City Hall", from my experience and understanding (and that of the Applicant's attorneys), is the terminology used when one is expected to file an application in terms of the Promotion of Access to Information Act 2 of 2000. Experience has shown that this is merely a tactic to delay matters and even if there is compliance, it occurs literally on the last day permissible by the Act, that is, 180 days.
147. However, I submit that the above is sufficient, on the probabilities, to establish a pattern. Indeed, the Municipality relied on its own pattern of irregularly

granting rezoning applications to convince the Appeal Authority in the 140 Houghton Road application to approve the rezoning.

148. I invite the Municipality when it answers this application to put up the evidence from other rezoning applications which reached a different outcome. I also invite the Municipality to put up details of those applications if it believes it does not establish a pattern that the applications are nearly always granted.
149. In addition, in all the applications of which the Applicant is aware, the Ethekweni Transport Authority (ETA) has also refused to consent to the application. It has, commendably, stated that the applications should be refused because it has not developed a plan for the new road network that the LAP requires. I return to the details of the ETA's objections below.
150. Despite the objections by the Applicant and others, and over the dissent of the ETA, the Municipality has approved all but one of these rezoning applications. The Municipality itself notes that from 2006 to 2011, logistics use in Clairwood rose from 27% to 39%. Residential use shrunk from 45% to 40%. Again, I invite the Municipality which is in possession of this information to provide the Court with the appropriate figures.
151. In sum, although Clairwood remains a residential area, and although the precondition for moving to a logistic area set out in the LAP have not been met, the Municipality has granted rezoning applications to make Clairwood increasingly uninhabitable. It seeks to do informally, casually and haphazardly what it cannot do formally.

REQUESTS TO ENFORCE THE LAW

152. Like 140 Houghton, many of the properties were already being, I submit, illegally used for industrial purposes when the rezoning applications were made.

153. The Applicant and other concerned NGOs have repeatedly asked the Municipality to enforce its existing laws. I attach a sample of such correspondence –

153.1. In respect of 145 Pine Rd, Clairwood, marked **FA19.1**, dated 6 October 2014;

153.2. In respect of 47 Sastri Rd, Clairwood, marked **FA19.2**, dated 4 April 2017;

153.3. The demand of the Applicant's attorneys on behalf of the Applicant in respect of 265 Flower Rd; 50 Richborough Rd; and 230 Pine Rd, Clairwood, marked **FA19.3**, dated 10 December 2018.

154. The Applicant is not aware of any illegal business having been prosecuted to conviction for any zoning contravention ((By-law s 84(1)(h) & (j) read with s 84(2)): it lends credence to my belief that "enforcement" is questionable.

155. The Municipality does nothing beyond issuing contravention notices. This is taken by the offender as an invitation to apply to the MPT to have the property rezoned "light industrial."

#### THE CONSEQUENCES OF REZONING

156. The effect of these rezonings is that logistics businesses established their operations and yards in the residential precincts of Clairwood. That has caused the residents of Clairwood immense prejudice and hardship.
157. Most seriously, it has caused a host of accidents, with injuries and fatalities being suffered by motorists and pedestrians. I attach herewith a sample of pictures taken of various incidents over the past few years marked **FA20**.
158. The most recent fatality was a pedestrian who was killed on 29 July 2020 by a truck. Shortly after the incident, the Public Relations Officer of the Applicant Ravin Brijlal arrived on the scene at the corner of Sirdar and Horsham Road where he witnessed the lifeless body of the victim. I attach herewith two pictures taken by Brijlal marked **FA21.1** (the offending truck) and **FA21.2** (the victim).
159. Many of these deaths and injuries would have been avoided if the narrow roads of Clairwood had not been invaded by trucks and other heavy vehicles and if the LAP was properly implemented. As I explain in more detail below,



the ETA itself recognises that permitting increased industrial use without upgrading the roads creates an increased risk of fatalities.

160. In addition to injury and death, the residents of Clairwood face the following prejudice:

160.1. Environmental concerns such as dust and air pollution;

160.2. Continuous noise – during both day and night. Examples of these are the rumbling of loud engines, squeals of brakes, exhausts backfiring, hooting, loading and off-loading of freight, and the constant hubbub, chatter and shouting of crew. Residents have no respite to engage in normal activities such as conversation, thinking, reading or sleep;

160.3. Large trucks mounting the sidewalks due to the narrowness of the roads – forcing pedestrians to run for cover. The sidewalks on many roads are damaged beyond repair. In this regard the LAP makes the point (**FA2.7**) that the block and street pattern of the residential portion of Clairwood was originally designed for low scale residential development with small lots and narrow road reserves;

160.4. Roads blocked or impassable on a regular basis. The Metro Police is invisible in such instances;

160.5. Forcing residents and their children to remain indoors and not venture outside. As I understand it, roads are built to serve two functions: firstly, to provide mobility, and secondly to access to properties. Over

time however, roads all over the world in residential areas have become “liveable” spaces – where people can park, walk, run, cycle, for children to play (football, cricket), walk dogs, meet neighbours and even have street parties. These activities were routine in days gone by: they are now inconceivable. We are resigned to being prisoners in our own homes;

160.6. Due to the narrow configuration of the roads and intersections, the behemoths find it impossible to turn around corners. Yet, they do, regardless, and flatten street furniture (such as light poles and traffic lights) in the process;

160.7. Fatalities caused by speeding trucks. Attempts to get the Municipality to install speed humps were considered by it to be “abortive and wasteful expenditure.” I refer in this regard to annexure **FA21.3**.

160.8. Boundary walls being crashed into and damaged or demolished; and

160.9. Vehicles laden with dangerous substances enter Clairwood. I am advised that it is a legislative requirement to have dedicated routes for the transportation of “Hazchem.” I am quite certain that Clairwood is not on that route.

161. In furtherance of its plan to render the precinct ungoverned and unbearable the Municipality has allowed the vicinity to degrade through neglect. The result of the Municipality’s neglect has been—

161.1. Rubbish removal being neglected;

161.2. Rodent infestations;

161.3. Waste water and sewage flowing down the streets;

161.4. Road markings having rubbed off;

161.5. Hedges not being cut or maintained;

161.6. Street sweeping is sporadic;

161.7. Potholes remain unrepaired; and

161.8. Roads flood after rains because the storm-water drains are clogged with debris.

162. Two of these problems are depicted in the photographs marked **FA22.1** and **FA22.2** attached hereto. Besides laying siege to the formal and informal residents, the offensive activities also pose a danger to unsuspecting patrons of the following religious, educational, social and cultural institutions, with many having been established over a century ago:

162.1. Clairwood Primary School and Clairwood Secondary School;

162.2. Flower Road Masjid – a well patronised religious facility;

162.3. Clairwood Shree Siva Soobramoniar Temple in Sirdar Road. This temple was established 130 years ago. It attracts huge crowds at its prayer and devotional activities. The meetings of the Clairwood Community Police Forum are held at these premises;

- 162.4. South Coast Madressa School in Pine Road. This school hosts learners from pre-school to Grade 9 and holds vernacular classes in the afternoons and weekends;
- 162.5. Clairwood Hindu Cemetery in Flower Road;
- 162.6. Clairwood Madras Cemetery in Flower Road. The cemetery has a temple where the Clairwood Namashivaya Prathinay prayer group assembles on a regular basis;
- 162.7. Muslim Cemetery in Dayal Road;
- 162.8. MICA Church in Dayal Road;
- 162.9. Clairwood Methodist Church in Persad Road;
- 162.10. Clairwood Tamil Institute Community Hall in Sir Kurma Reddi Road.  
This body was established 92 years ago. It hosts daily vernacular classes for small children together with karate instruction. Events are organised regularly for senior citizens and women's groups.
- 162.11. Horeb Temple at corner Sirdar and Shabally Roads;

162.12. Yuvak Arya Samaj in Cherry Road. This institution holds daily activities and vernacular classes. The Applicant holds its regular meetings at its premises;

162.13. St Louis Church in Jacobs Road;

162.14. Shree Muruga Alayam in Jacobs Road holds regular prayer and festival gatherings;

162.15. Khalid Shah Community Hall in Sir Kurma Reddi Road holds weekly programs; and

162.16. Seventh Day Adventist Church in Cherry Road.

163. Confirmatory affidavits from most of these institutions will be filed together with this application.

164. Besides those attending at the above institutions, Clairwood attracts multitudes to its various shops.

165. These conditions are intolerable. And it is wrong for the Municipality to permit, and indeed propagate, these conditions while Clairwood remains a largely residential area.

166. Clairwood was originally a thriving Indian community. Initially blessed by its proximity to the Port, that blessing has become a curse. It means that the future of Clairwood is as a logistics hub with a few scattered social institutions remaining.
167. Accepting that fate, the Municipality is still required to manage that change lawfully. Most importantly, it must upgrade the roads before inviting in more and more industry to the area. That is vital to both for the residents, and for the companies who are also hamstrung by the absence of a proper road network.
168. Instead, the Municipality has adopted a haphazard approach that rewards illegal use of land instead of punishing it, and has made Clairwood increasingly intolerable for the remaining, lawful residents.

#### THE MUNICIPALITY'S PATTERN OF CONDUCT

169. The Applicant submits that, if Clairwood is to be developed as envisaged in the LAP, the development must –
- 169.1. Occur in a coherent and planned manner (By-law s 9(1)(f));
- 169.2. Promote social and economic inclusion (SPLUMA s 3(b)); and
- 169.3. Take place in a manner that mitigates risks (By-law s 9(1)(j)).

170. The Municipality has chosen to and is determined to advance the LAP in a manner that is –

170.1. Not anticipated in the LAP;

170.2. Incoherent and chaotic;

170.3. Advances social and economic exclusion and upheaval; and

170.4. Intensifies and elevates the risks of injury, death and illness.

171. The approval of the rezoning for industrial use for 140 Houghton Road is not an isolated incident. Many similar applications have been approved since 2014 when the LAP was adopted (and some even before then). The Municipality lists 13 in the table set out above.

172. The format of approval of these applications by the MPT is almost always the same. The approval for 140 Houghton Road (annexure **FA12**) reads:

*"In terms of section 46 of the eThekweni Municipality Planning and Land Use Management By-law 2016 (Municipal Notice 114 of 2017) the application for the amendment of the Durban Scheme by the Rezoning of Erf ... from Special Residential 400 to Light Industrial Zone is APPROVED for the following reasons:*

- *The proposed rezoning forms a logical extension to the existing industrial zones and promotes the gradation of industrial land uses at a prime location.*

- *The industrial activity proposed is consistent with the existing uses within the area and compatible with the Back of Port Local Area Plan and vision for the area.*
- *The application is in keeping with the intentions of, and addresses the requirements of the SDF and SPLUMA principles.*
- *The residential nature of the area has long been diminished as Houghton Road is predominantly industrial in nature."*

173. I attach marked **FA23** an example of a similar approval granted by the MPT – in respect of 48 Archary Road – that reproduces, virtually verbatim, the same reasons.

174. In most, if not all of these applications, the ETA objected on the same basis that it did with regard to 140 Houghton Road – there is no plan to upgrade the roads in Clairwood to accommodate increased industrial use. I attach herewith marked **FA24** an example of the ETA's objection in respect of 110 Sirdar Road.

175. It bears repeating that the LUS for the relevant portion of Clairwood is zoned and remains zoned "special residential 400." None of the rezoning applications have shown any special or exceptional reasons for departing from the LUS that presently applies in law.

176. All the appeals lodged by the Association have been refused. The reasons given by the Appeal Authority are virtually identical. The following example (from the appeal related to 78 Archary Road (**FA25**) is typical:





*"2.1 The Clairwood area has for many years been under pressure to transition into an industrial area and the rezoning of the site facilitates this transition.*

*2.2 The adopted Back of Port Local Area Plan identifies the area for industrial and logistics and the rezoning is thus seen to be in compliance with the strategic vision of the city.*

*2.3 The rezoning of the site will contribute to economic growth."*

177. **Firstly**, in the case of 140 Houghton Road, the "reasons" were not reasons at all. They were conclusions unsupported by reasons.

178. It is not clear whether the Appeal Authority actually performs appeal functions. The pattern seems to be that it rubber-stamps without qualification the decisions made by the MPT without applying its mind to the facts of the case and objections made by associations like ours. The Applicant has lost faith in the appeal process – hence this litigation.

179. I am aware of only one instance of a rezoning application being refused. It concerned 265 Flower Road and was decided in January 2020. I annex a copy of the MPT's decision marked **FA26**. The reasons given were:

*"Planning merits are supported however the application is premature as the current available road infrastructure cannot support the proposal;*

*The road services will not sustain the cumulative traffic impact."*

180. This refusal was correct. The mystery is why identical decisions are not being made for other identical rezoning applications, when exactly the same considerations apply.
181. **Secondly**, combined with the irrational and unlawful approval of all but one of the applications for industrial rezoning, the Municipality has failed to enforce its existing zoning. The Applicant has made numerous complaints to the Municipality to enforce existing zoning restrictions. I have set out those requests and complaints in above paragraphs.
182. Instead, of enforcing its laws, the Municipality has chosen to ignore complaints from the Applicant and others that land is being used contrary to its zoning. And then it relies on that illegal use to justify future rezoning decisions that "regularise" the illegality.
183. **In sum**, instead of carefully giving effect to the LAP, the Municipality is using rezoning to force residents out of Clairwood by making it so unpleasant to live there, that people have no choice but to leave.
184. The Municipality does not even hide from this fact, it embraces it. In supporting the decision of the MPT, the Municipality said (FA14): *"The residential amenity of Clairwood is very poor. Forcing families to remain in Clairwood (sic) requires ignoring the poor conditions such as pollution and noise that makes the area unsuited to residential use and is irresponsible."* The Municipality's plan is to approve every rezoning application until there are no residents left. That is reprehensible behaviour by an organ of state.

## CONSEQUENCES

185. This pattern of behaviour – granting virtually all applications, refusing to respond to complaints, and then using illegal land use to justify rezoning – has two serious consequences.
186. **First**, it has had drastic consequences for the residents of Clairwood. While Clairwood is transitioning to a logistics area, thousands of people continue to live there. Whether we move remains to be seen in the years and decades to come. While we continue to lawfully live in an area that remains residential, we have the right to do so in an environment having regard to our safety, dignity and health. The Municipality's conduct undermines these rights. We daily run the gauntlet of injury and death. We must endure dilapidated roads, non-existent sidewalks and an unhealthy and degraded environment. The alternative of leaving Clairwood is not available to many of our residents for various reasons.
187. **Second**, the Municipality's conduct undermines the LAP. While the plan is to convert Clairwood into a logistics area, the LAP requires that it be done in an orderly and effective way. It requires, as a precondition, for conversion to a logistics area that the roads are upgraded. At present, the Municipality cannot even afford to fund a study to determine how to upgrade the roads, yet it is proceeding to rezone Clairwood as if the upgrading is inevitable.

188. Unless and until the roads are upgraded, Clairwood is not suited for logistic operations. That is the position in the LAP and the position of the ETA. Allowing logistic to creep in before there is even a plan for upgrading is likely to set back the orderly development of Clairwood by years or decades. For example, it will be difficult if not impossible to retrofit the infrastructural upgrades once Clairwood is operational as a logistics hub.
189. Section 3(d) of SPLUMA provides for sustainable and efficient use of land. It is submitted that the approach of the Municipality is sowing the seeds of the destruction of the Plan itself: the time cannot be far off when Clairwood will become a chaotic and desolate wasteland because the Municipality would have lost control, administration and management of the roads in the area. That will make future planning even more difficult and costly, if not impossible.

#### THE FAILURE TO DEVELOP A ROADS PLAN

190. At the heart of the Municipality's conduct is its failure / or decision not to fund a study to upgrade the roads in Clairwood.
191. The LAP requires a new road layout. And the ETA stipulates:

*A new road hierarchy and layout will be required for the area. This entails wider roads for industrial/logistics use and consolidation of existing land parcels to appropriate sizes for said use. ...*

*In order to achieve the above (i.e. A new road hierarchy and layout), a traffic study is required.*

*ETA does not have funds in the current financial year nor in future financial years to carry out this study, alternatively, given that the application is lodged ahead of the ETA's plan, the applicant could carry out the study in consultation with the ETA.*

192. The Municipality has either failed to conduct the necessary study to implement the LAP or has decided not to.

193. This is unlawful.

194. The Municipality has adopted the LAP and must give effect to it. But it cannot do so without conducting a study to determine how to upgrade the roads. Its decision not to conduct the study, or its failure to conduct the study constitutes administrative action. Alternatively, it is executive action reviewable under the principle of legality.

195. In either case, the decision or the failure to decide falls to be reviewed and set aside on at least the following grounds:

195.1. The delay in conducting the study since 2014 is unreasonable in the circumstances (PAJA s 6(2)(g) read with s 6(3)(a)).

195.2. A decision not to conduct a study is irrational (PAJA s 6(2)(e)(vi)) and unreasonable (s 6(2)(h)).

195.3. The decision was influenced by a material error of law (PAJA s 6(2)(d)) – namely that it can proceed to permit logistics use without planning how to upgrade Clairwood's roads.

196. As part of the structural relief, the Municipality and the logistics development in the Clairwood area ought to be interdicted until this study is finalised. Such relief is predicated on the following:

196.1. The residents and ratepayers of Clairwood seek to protect their rights to just administrative action and decision-making; and to an environment that is safe and liveable. These rights have been detailed in the above paragraphs.

196.2. The residents and ratepayers of Clairwood have suffered harm and are legitimately apprehensive of future harm occurring should such relief not be granted.

196.3. The Municipality would not be prejudiced by such a remedy. Its own plan and its own ETA support it. Whereas, if such relief is not granted, the members of the Association, and the general body of ratepayers and residents in the Clairwood area would continue to suffer harm and prejudice.

196.4. As seen in the correspondence annexed above, there lies no other alternative relief but to interdict such conduct by the Municipality.

197. The Applicant reserves the right to supplement these grounds of review when it receives the Rule 53 record.

#### REMEDY

198. This is a constitutional matter. This Court can, in terms of s 172(1)(b) of the Constitution and s 8 of PAJA, grant any relief that is "*just and equitable*". To ensure that the Municipality acts rationally and lawfully in future planning decisions in Clairwood, the Applicant seeks just and equitable relief:

198.1. Reviewing and setting aside the decision not to conduct a roads study, alternatively the failure to conduct a roads study; and

198.2. An interdict preventing the Municipality from rezoning any more properties in Clairwood unless and until it conducts the roads study.

199. First, the review follows necessarily if the Applicant is correct that the Municipality's failure to conduct the study is unlawful.

200. Second, it flows naturally that the Municipality may not continue to permit the rezoning of properties in Clairwood unless and until it conducts the study. The Applicant therefore seeks an interdict preventing the Municipality from rezoning any properties in Clairwood from residential to industrial use unless and until it conducts the study, and adopts a plan for upgrading Clairwood's roads. This relief is justified for the following reasons:

200.1. The Municipality's flawed and illegal approach to rezoning in Clairwood has already been repeated in respect of multiple rezoning applications. The probabilities are overwhelming that the MPT and Appeal Authority will continue on their reckless path unless this Court intervenes.

200.2. The Applicant has a clear right to lawful action by the Municipality. It is unlawful to approve rezoning to industrial use in Clairwood until the roads are upgraded to accommodate that use. It is also unlawful to rely on pervasive illegality to justify land use decisions that are contrary to the Municipality's own plans.

200.3. In addition, the residents of and visitors to Clairwood have a clear right to use and enjoy their properties in peace and quiet; in safety; and in a non-hazardous environment. The existing logistics businesses are also entitled to conduct their businesses in safety;

200.4. The evidence establishes that the Municipality has previously approved rezoning applications unlawfully. The evidence indicates that it will continue to do so. The Municipality has created an environment where logistics businesses can inflict injury, death and damage because the infrastructure is ill-suited. There is no reason to believe that these dangerous activities will abate unless the Municipality is directed to act lawfully.

201. There is no other way for the Applicant to protect its rights:

201.1. It does not have the resources to review each and every rezoning decision.



201.2. Instituting an appeal for each rezoning application is impractical, costly (R5000 fee for each appeal), time consuming and cumbersome. Appeals appear, in any event, to be pointless.

201.3. The Applicant has attempted to convince the Municipality to enforce its laws to prevent unlawful use of land, to not avail.

202. With the passage of time more and more applications are being made, and granted. The only way to prevent further illegality is by an interdict preventing the City from taking further unlawful decisions.

203. To be clear:

203.1. The Applicant does not seek to halt any existing business from operating. Businesses in Clairwood are also victims of the Municipality's unlawful conduct. They are being compelled to share inadequate road infrastructure with more and more competing traffic, with no plan to remedy the situation.

203.2. The Applicant does not seek to prevent the conversion of Clairwood to a logistic-based area. What it does seek to do is to ensure that the conversion happens lawfully, and only when the necessary infrastructure has been developed to accommodate it – or at least when there is a plan to develop that infrastructure.

204. It simply seeks an interdict to stop further illegalities from being perpetrated: ie to stop the Municipality from processing any further applications in the

Clairwood area – including those lodged before the institution of these proceedings – unless and until the roads in Clairwood are redesigned and upgraded to accommodate the logistics traffic.

205. A further order is sought to declare that the Municipality has a constitutional obligation to ensure the safety of pedestrians and motorists in Clairwood, and that it has failed to fulfil that obligation.
206. The members of the applicant are residents of the Clairwood precinct and they are entitled to live in a healthy environment. They have the right to be free from public and private violence. They have the right to life and to dignity. That includes the right to planning decisions that do not place their health, safety and lives in jeopardy. As detailed above, the Municipality, through both its conduct and omissions, has infringed on these rights.
207. The Municipality has a constitutional duty to meet its obligations to fulfil these rights. Furthermore, the above legislation in detail explains how these obligations are to be fulfilled.
208. Section 172(1)(b) of the Constitution gives this Court the power to make any order that is just and equitable. Such order should direct the Municipality to compile a report on how it will fulfil its constitutional obligations to provide a safe and healthy environment in the Clairwood, provided that the applicant is consulted in that process, and given the right to reply to such a report.
209. This order will hold the Municipality accountable to the LAP and will measure the steps it takes to fulfil the applicant member's environmental rights. This

structural remedy cannot prejudice the Municipality. It merely requires the Municipality to report to the Court on its progress in complying with the order. I am advised that this type of structural remedy is commonplace in situations such as these where the government has failed to fulfil a constitutional or statutory obligation. In any event the emergency or disaster that is unfolding in Clairwood is of its own making.

210. The applicant asks for the costs of two counsel to be paid by any respondent opposing these proceedings.

## VII CONDONATION

211. Section 7(1) of PAJA requires that review applications be instituted without unreasonable delay and not later than 180 after information is received of the administrative action.
212. The date when information was received that the Appeal Authority had taken the administrative action was 11 February 2020. The 180<sup>th</sup> day after that date is 9 August 2020. These proceedings will be instituted towards the end of September 2020. This is approximately six weeks after 9 August 2020.
213. While it is true that the proceedings have been instituted after 180 days, I submit that there has not been any unreasonable delay. In the event that it is contended that there has been unreasonable delay, I make the following submissions in support of an order for condonation:

213.1. The degree of lateness is insignificant – it is a matter of a few weeks;

213.2. The Applicant always intended to bring this application, both for systemic relief and to review the decision concerning 140 Houghton Road if the application was granted. It had instructed its attorneys at the Legal Resources Centre to begin work on the systemic application in 2019.

213.3. The delay was caused as a result of the following:

213.3.1. The decision with regard to 140 Houghton Road was taken on 11 February 2020. The Applicant immediately instructed its attorneys to prepare papers to challenge the decision. Our attorneys instructed counsel to begin preparing the application.

213.3.2. The lockdown that came about as a result of the declaration of a state of national disaster in late March 2020. For over a month, movement of persons, except for essential purposes, was prohibited by law. This prohibition made it impossible to have access to the documents in the file which was located at the applicant's attorney's office, and extremely difficult for attorneys or counsel to work on this or any other matter. Even after the Level 5 restrictions were lifted, work was difficult. For example, the lead counsel who had been briefed was only able to work half days as he has two young children, schools were closed and he was unable to hire childcare.

213.3.3. During this period, I had two bereavements in my family which limited my ability to respond to inquiries from the Applicant's attorneys, slowing down the process.

213.3.4. One of the advocates briefed to settle these papers himself fell ill as a result of the coronavirus in July 2020. This rendered it impossible for him to work on this matter for several weeks and limited his availability thereafter.

213.3.5. Once the papers were finalised, it was then necessary to obtain the attached confirmatory affidavits from the other organisations affected by the Municipality's inaction in Clairwood.

213.4. The applicant has clearly demonstrated that the actions of the Municipality are irregular and unlawful. It therefore submits that its prospects of success are good.

213.5. Neither the Municipality nor the other respondents will suffer any prejudice if condonation is granted. The use of the 140 Houghton Road property has not changed as a result of the application – it merely regularised the prevailing unlawful position. For the respondents it is business as usual. On the other hand, if condonation is not granted, the Applicant and the residents that it serves will continue to suffer the irreparable prejudice they are already suffering.

213.6. This matter is of immense importance to the residents of Clairwood. It is literally a matter of life and death.

214. I emphasise that condonation is only required with regard to the 140 Houghton Road decision, not with regard to the systemic relief which concerns ongoing failures by the Municipality.

## IX DEMAND

215. On 17 July 2020 the attorneys for the Association, the Legal Resources Centre, issued a notice of intention to commence legal proceedings to the Municipality. In this notice, a demand was placed on the Municipality to immediately suspend rezoning applications pending the re-design and upgrading of road infrastructure in the Clairwood precinct. This demand is annexed hereto and marked **FA27**.

216. On 1 July 2020, the Municipality replied to this notice acknowledging receipt and advising that the request is under consideration by the City's Legal department and that the Legal Resources centre would be notified as soon as the outcome has been reached. This reply is annexed hereto and marked **FA28**.

217. To date, there has been no decision or notification from the Municipality.

**X CONCLUSION**

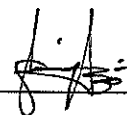
218. At a recent meeting of the Association the residents again expressed dismay at the state of affairs in Clairwood. They complained that they have been robbed of its health, wealth and happiness by the unlawful conduct of the Municipality. We appeal to this Honourable Court to bring us solace from this ongoing and irreparable oppression.

**WHEREFORE** I ask for an Order as contained in the NOTICE OF MOTION to which this affidavit is attached.



**DEPONENT**

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at Durban on this the 29<sup>th</sup> day of September 2020, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.



**COMMISSIONER OF OATHS**

.....  
**COMMISSIONER OF OATHS (RSA)**  
**Sadiksha Singh**  
 Non-Practicing Attorney  
 147 Pine Road, Flat 3, PineMews  
 Clairwood, Durban 4052

## 11

## PRECINCT PLANS

## 11.3. CLAIRWOOD

It is recommended that the Clairwood central core be rezoned for logistics uses. Logistics within this area would be permitted to have open storage. For the logistics zoning to work efficiently and effectively a totally new layout is required.

Due to the land use changes in the area the movement structure would need to be upgraded to allow and accommodate a local logistics circulation system. This would require that some of the major through routes be widened, and other roads eliminated or down-graded to internal service roads within larger lots. On-site parking and handling should be accommodated in all developments in the precinct.

The preconditions for this solution suggests that there is a complete redevelopment of the Clairwood core and outer area or frame with consolidated lots as well as a new sub divisional layout to allow for a better structured core. The development of new infrastructure would need to be addressed to support the logistics uses within the core including the new local road network. In order to achieve this the Municipality would need to encourage and support the removal of all existing residential and non-logistics related industrial uses from the core.

Listed buildings, places of worship and cognate institutional uses would be retained. Redevelopment will enable the drainage and flooding problems in the north-west of the precinct to be addressed.

The logistics proposal presents a number of advantages and disadvantages for a range of reasons. A few advantages can be highlighted as follows:

- This option presents the maximum economic and job creation within the South Durban Basin area;
- It provides for the creation of a optimally located logistics area close to the port entrance;
- This option maximises the land value in terms of providing the suggested logistics uses within the Clairwood area, at the port entrance; and
- The threats of flooding will be addressed through the redevelopment of the vulnerable area from a mixed use precinct to a logistics platform.

The social issues report identify a series of disadvantages and heritages and community losses with the proposal to rezone to Logistics (refer to Annexure F)

Notwithstanding these recommendations it is explicitly recommended the principles underpinning the conversion of land use from residential to Logistics must consider the following:

1. There should be no forced removals of residents or other legal occupiers of sites
2. Fair negotiated outcomes to be sought with individual landowners on acquisition principles
3. Appropriate responses to be sought in order to manage the concern of the needs of existing landowners, and informal residents.
4. The rates *status quo* (as residential or the zoning currently in use and applicable) will remain in place until the proposed rezoning is completed and the development takes effect in terms of the new zoning.
5. Expropriation will only be pursued as a means of achieving maximum legal compensation to existing landowners. The Expropriation Act allows for an added amount over and above fair market value of 10% on the first R100 000, and 5% on the value up to R500 000, 3% between R500 000 and R1,0 million, and 1% of the value exceeding R1,0 million, but not more than an additional R10 000.



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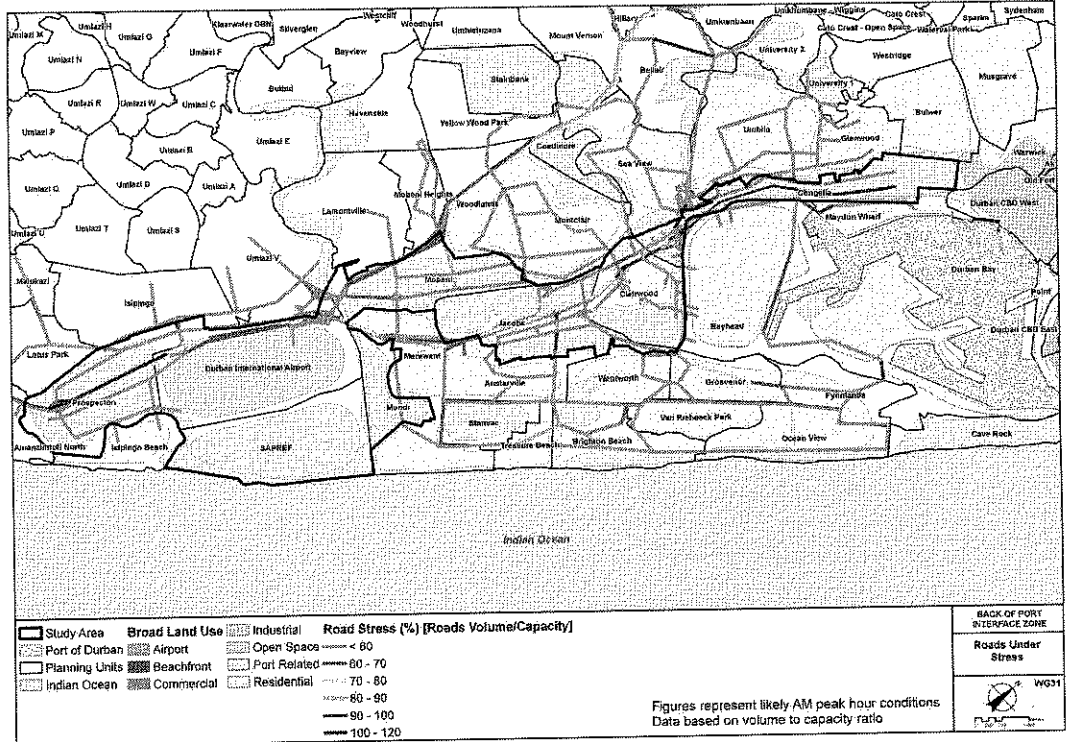
# DISTRICT SCALE ANALYSIS

## 4.2 DISTRICT STRUCTURE AND COMPOSITION

### ROUTES UNDER STRESS

In investigating volume and capacity of the primary routes, the following is evidenced:

- South Coast Road within the Clairwood area operates beyond its capacity and represents the most "stressed" part of the system
- High levels of stress are evidenced along the Southern Freeway and particularly closer to the CBD.
- The southern portions of the N2, in the Prospecton area operates at capacity which can be attributed to this portion of the national routes serving a local function as well.
- It is interesting to note that varying levels of capacity along South Coast Road, where in the Mobeni area, greater capacity exists.



STUDY AREA EXTENDED BY ADDITION OF THE DIA SITE PLUS ADJOINING AREAS OF INFLUENCE. NOTE: THESE ADDITIONAL AREAS DO NOT FORM PART OF A REVISED LAND USE FRAMEWORK PLAN AS A DELIVERABLE OF THIS PROJECT

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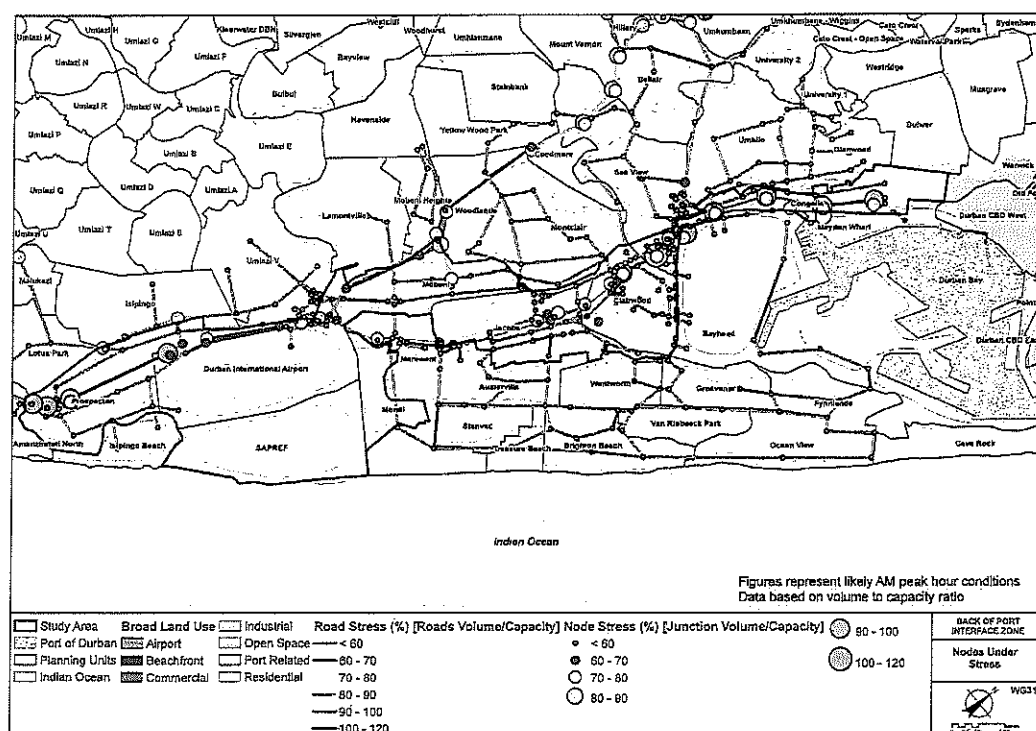
## DISTRICT SCALE ANALYSIS

## 4.2 DISTRICT STRUCTURE AND COMPOSITION

## ROAD INTERSECTIONS UNDER STRESS

In overlaying interchange and intersection capacity, again measuring volume versus capacity, over the routes under stress, the following is evidenced:

- The Intersections along South Coast Road in the Clairwood area operate beyond capacity and are major points of stress within the system.
- The Congella area also contains intersections operating at high capacity.
- In southern portions of the study area, the interchanges with the N2 within the Prospecton area also under stress.



STUDY AREA EXTENDED BY ADDITION OF THE DIA SITE PLUS ADJOINING AREAS OF INFLUENCE. NOTE: THESE ADDITIONAL AREAS DO NOT FORM PART OF A REVISED LAND USE FRAMEWORK PLAN AS A DELIVERABLE OF THIS PROJECT

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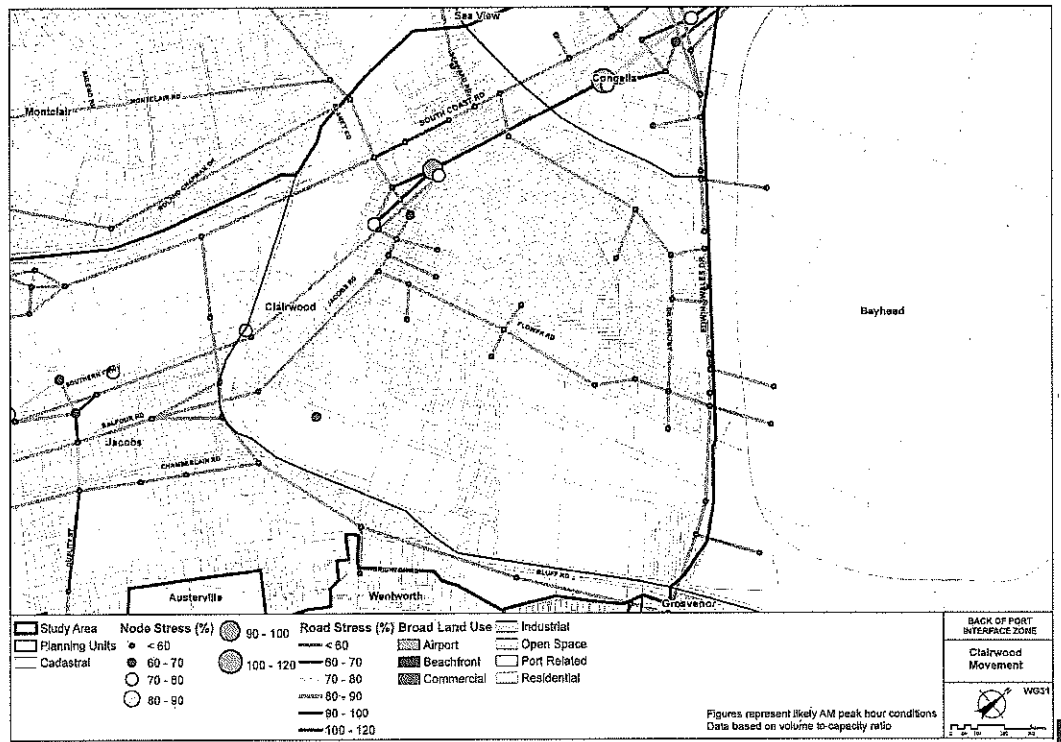
# 06 LOCAL SCALE ANALYSIS

## 6.3 CLAIRWOOD

### MOVEMENT

#### CLAIRWOOD

The portion of the Southern Freeway that transverse the Clairwood area is characterised by 100 to 120% road stress. This indicates hampered vehicular movement along this portion. This situation is further exacerbated by the vehicular and pedestrian conflict at the intersection of South Coast Road and Blamey Road



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## SUMMARY OF TRENDS AND ISSUES

## 8.2 TRENDS AND ISSUES IN THE PLANNING AREA

Many old underground fuel storage tanks exist in the Back of Port area, some of these are known to be located in close proximity to the harbour and to water courses running into the harbour. These are causing water quality problems that extend into Durban Bay and out to sea. Intensification of development due to port expansion could exacerbate this issue.

Surface water drainage from bulk goods handling operations associated with the port extends directly into local water courses. Breakages and spillage of goods that can include bulk chemicals such as fertilizers is washed directly through the drainage system and into water courses. This is causing water quality problems that extend into the Bay of Natal and out to sea. Intensification of development due to port expansion could exacerbate this issue.

The risks over the entire study area are suitably low to allow for industrial type developments that would typically be associated with Back of Port activities. There may however be some restrictions on the population density at these facilities if they are located within 0.1 – 0.2 km of small Major Hazard Installations (MHI's) (e.g. Valspar, Durban Fresh Produce Market etc) and 0.5 – 1 km of large MHI's (e.g. SAPREF, ENGEL). In this regard the area of the current airport would require the most attention to ensure minimization of risks emanating from possible future activities.

There are likely to be numerous areas of contamination within the study area, which may constrain re-development in the short-term.

## SPATIAL PLANNING PERSPECTIVE

## Roads and rail

There are a number of stressed intersections (along South Coast Road and at the M4 intersection in the Clairwood area, as well as in the Congella area and along Edwin Swales VC Drive). Several key roads such as Tara Road and Edwin Swales VC Drive are shared by both residential and heavy vehicle traffic. Access between the existing port and the proposed new dig-out port is non-existent, as is access from Moleni to the new dig-out port. Perhaps most importantly, however, is the fact that none of the industrial areas near the port have adequate access to the Port of Durban and the container terminals, in particular.

Rail infrastructure is limited and generally underutilized, and non-existent in most of Jacobs.

## Zoning

Zoning is generally inappropriate (particularly large areas zoned but not used by for noxious industry), as are many of the development controls applicable across the area. It is considered appropriate that explicit "logistics" orientated zones be created.

## Land Use

Land use change over the years is evidenced by a general growth in logistics use throughout the study area as well as by a high degree of invasion in Jacobs and Congella by service industries.

## Land ownership

The majority of land holdings are under private ownership, inhibiting the possibility of inducing directed change. However, the municipal owned Fresh Produce Market site, the Transnet Diesel Depot and the military stores sites offer an opportunity for government to induce change (most likely in the form of catalyst type developments).

## Land value

Land values are extremely high in Jacobs, relative to other parts of the study area. The South Coast Road portion of Clairwood, Rossburgh, Umbilo Industrial and Congella by contrast, land values in the remainder of Clairwood (east of the M4 Southern Freeway) are low.

## TRANSPORTATION PERSPECTIVE

There is severe congestion at a number of critical intersections along major routes within the area:

- South Coast / Edwin Swales VC Drive;
- Bayhead Road / Edwin Swales VC Drive;
- Langeberg Road / Bayhead Road;

As well as on certain sections of road network:

- South Coast Road in the Clairwood CBD area (west of the M4 Southern Freeway);
- South Coast Road between Edwin Swales VC Drive and Bayhead Road;
- Edwin Swales VC Drive between Bluff and South Coast Road.

  
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Children from Clairwood go to school in South Durban (71%) and the adjacent suburbs (18%). The majority of children walk to school which indicates that they go to school reasonably close to home.

Table 184: Area where children are at school

| Area                                      | Frequency | Percentage |
|-------------------------------------------|-----------|------------|
| South Durban                              | 12/39     | 30.8%      |
| Close to South Durban in adjacent suburbs | 3/39      | 10.3%      |
| More distant suburbs                      | 1/39      | 2.6%       |
| No answer                                 | 19/39     | 48.7%      |
| No children                               | 3/39      | 7.7%       |

Table 185: Mode of transport to school

| Means of travel | Percentage |
|-----------------|------------|
| Foot            | 30%        |
| Bicycle         | 0          |
| Taxi            | 2.5%       |
| Bus             | 2.5%       |
| Train           | 0          |
| Own car         | 15%        |
| Lift club       | 0          |
| Other           | 50%        |

The most common mode of transport in Clairwood is by foot (20 percent); followed by private car (8 percent); mini-bus / taxi (7 percent); and bus (6 percent). When compared to the other SDB precincts, Clairwood is ranked lowest with Jacobs / Moleni in terms of private car ownership. However, it is third highest when looking at people moving by foot and is third to Prospecton and Jacobs/Moleni. This may reveal that people live close to their place of work as they are able to travel their by foot.

Bus-transport and minibus taxi is the main form of Public Transport in the vicinity and is provided for on Edwin Swales Drive, Bluff and South Coast Road (Arup, 2004). In order to use public transport, passengers often have to problematically cross busy arterial roads (Arup, 2004). An issue associated with public transport in Clairwood is that there are no designated drop-off or pick-up areas in Clairwood, with the exception of South Coast Road (Arup, 2004).

Due to Clairwood's central location in the SDB, the majority of traffic generated within Clairwood originates from the Port of Durban and Jacobs Industrial area (Arup, 2004). Concentrated traffic flows along Edwin Swales Drive and South Coast Road are a result of the poor access roads to the Southern Industrial Basin area (SDB), especially the Bluff, Wentworth and Fynnland (Arup, 2004). It is believed that improving the road network within the greater SDB area would result in improved traffic flow within the Clairwood area (Arup, 2004).

The Clairwood town centre is more accessible than the residential component (Arup, 2004). There is limited accessibility to Clairwood during peak morning and evening periods (Arup, 2004). This is because Edwin Swales Drive provides access for all areas which are directly south of the Port of Durban and there are also very high traffic volumes on Edwin Swales Drive (Arup, 2004). There is also a lack of appropriate north-south mobility routes east of the M4 (Arup, 2004). A further accessibility issue pertains to the single access point to the commercial area adjacent to Teakwood Road (Arup, 2004). Pedestrian access to schools in Clairwood is also problematic and considered unsafe, due to the high traffic volumes on South Coast Road (Arup, 2004).

The presence of a number of heavy vehicles on South Coast Road and the lack of capacity of the intersections on Edwin Swales Drive and South Coast Road result in high levels of congestion (Arup, 2004). The reason heavy vehicles are in this vicinity are because of the proximity to the Port of Durban, the adjacent container terminal and the various industrial areas (Arup, 2004). The intersections of South Coast Road & Blamey Road and Edwin Swales Drive & South Coast Road are poor in terms of congestion in the morning and in the afternoon peak periods (Arup, 2004). Overall, South Coast Road has the highest level of congestion within the Clairwood vicinity (Arup, 2004).

Congestion problems experienced in Clairwood can be attributed to the wider road network, as Clairwood does not contribute to the significant number of vehicles on the road network (Arup, 2004). For example, vehicles attempting to access areas east of Clairwood are forced to use Bluff Road, as there is no alternative route, which results in congestion in the Clairwood vicinity (Arup, 2004). Alternative or additional access roads to the east of Clairwood are required to reduce congestion within Clairwood (Arup, 2004).

Accessibility to Clairwood for local residents is hampered due to the poorly structured lower order network, particularly in the residential area (Arup, 2004). The poor quality of the road network is exacerbated by the presence of a significant number of heavy vehicles in the residential component (Arup, 2004). It is estimated that on average over 450 heavy vehicles stay overnight within the Clairwood residential area (76 % are single axle, 21 % are double axle, 3 % are more than 5 axles) (Arup, 2004).

#### h) Travel and activities outside of the area

Residents were asked which areas they visited to meet needs that they could not meet within their area. They were also asked what activities they participated in outside of their residential area. This reveals the extent to which people travel outside their area and whether their needs are being met within their own residential area. Residents provided a range of answers to this question, but the key reasons they travel outside of the area is to visit family and friends and to access general facilities and things that are not provided in the area. Most residents travel to other areas in South Durban to meet their needs and to Central Durban and suburbs adjacent to South Durban. Clairwood residents do not travel far from their area of residence and so conduct the majority of their business and activities within the South Durban Basin and surrounding suburbs.

Table 186: Areas residents go to outside of their residential area for activities not supplied in their area

| Area                                                     | Frequency | Percentage |
|----------------------------------------------------------|-----------|------------|
| South Durban                                             | 41/97     | 42.3%      |
| Durban Central                                           | 18/97     | 18.6%      |
| Westville/Meyville                                       | 5/97      | 5.2%       |
| Chatsworth, Montclair, Yellowwood Park, Umlazi, Isipingo | 19/97     | 19.6%      |
| No answer                                                | 5/97      | 5.2%       |
| Berea, Glenwood, Morningside, Umbilo, Davenport          | 6/97      | 6.2%       |

Table 187: Reasons for travelling outside of the area

| Area                         | Frequency | Percentage |
|------------------------------|-----------|------------|
| General facilities           | 22/75     | 29.3%      |
| Visit family and friends     | 29/75     | 38.7%      |
| Work, business, clients      | 4/75      | 5.3%       |
| Things are not provided here | 6/75      | 8%         |

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## PRECINCT PLANS

### 11.3. CLAIRWOOD

#### 11.3.1 DEFINITION OF THE PLANNING PRECINCT

The Clairwood precinct comprises, the South Coast Road commercial strip and the industrial areas behind it; the industrial and commercial zone that is adjacent to the Clairwood residential core along Edwin Swales VC Drive; the central area of Clairwood, and the Fresh Produce Market and Transnet Diesel Depot area.

#### 11.3.2 ROLE OF LOCAL AREA

The area comprises a "frame" that includes -

- The South Coast Road area that remains commercial and light industrial;
- The Fresh Produce Market and Diesel Depot area that becomes logistics;
- The area parallel to Edwin Swales VC Drive that remains commercial and general industrial.

#### 11.3.3 SUMMARY OF CORE ISSUES

The Clairwood precinct presents a number of unique challenges in terms of the social and historical concerns, as well as the problems the current layout presents for redevelopment.

Planning interventions for the area as a whole needs to consider that:

- The sites are small;
- The blocks are small;
- Roads are too narrow for commercial / logistics traffic;
- The road system lacks clarity and convenient ingress and egress to and from the major access roads;
- A mix of residential and incompatible industrial / logistics uses currently exist.
- A large number of workshop sites and "listed" buildings need to be accommodated

Three options were considered for this precinct by the planning team:

- a) Residential Dominant Option: Retention of the residential core
- b) Logistics Dominant Option: Conversion to logistics use throughout the precinct
- c) Cluster Precinct Option: Retention of a smaller heritage and residential heart surrounded by large logistics industry sites

Notwithstanding the considerable social issues involved, the Logistics Dominant Option: Conversion to logistics use throughout the precinct, is recommended.

For more detailed social analysis see Annexure F.

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## PRECINCT PLANS

### 11.3. CLAIRWOOD

#### 11.3.4 SUMMARY OF PLANNING INTERVENTIONS

##### ROADS AND INFRASTRUCTURE:

In particular roads and then other infrastructure will require major redevelopment, especially with a new and appropriate logistics layout.

The transformation of the existing canal system into a parkway as a recreational and improved amenity is another intervention which should be implemented regardless of the Clairwood resolution. Benefits of this system will far outweigh the existing situation with the introduction of recreational space and upgrade of the open space system.

##### LAND USE

The redevelopment of Fresh Produce Market and the Transnet Diesel Depot is suggested as the site of the initial logistics platform. In parallel, the access to land in the Clairwood residential core should be pursued.

#### 11.3.5 KEY PROPOSALS

##### MOVEMENT SYSTEM

The ultimate goal for Clairwood, is to create a coherent road network system that facilitates easy movement into and through the area, as well as creating clear but separate access for the different user groups. A new road network will be required.

##### UMHLATUZANA ARTERIAL

The Clairwood area is mainly affected by the introduction of the Umhlathuzana Valley Truck Route. The introduction of this link results in the diversion of port bound traffic away from the already congested Edwin Swales VC Drive onto the Umhlathuzana Truck Freight Route.

The Umhlathuzana Truck Freight Route allows for a direct link between the port and the N2 freeway. As mentioned earlier the Umhlathuzana Truck Freight Route has been coded as a two lane / direction link between the Port of Durban and the N2. All movements have been allowed at the new N2 'interchange' to allow vehicles from and to the south to access the port. The Umhlathuzana Truck Freight Route allows for a dedicated freight route to and from the Port. The ultimate Umhlathuzana Truck Freight Route flows are approximately 1,600 vehicles per hour inbound and 1,200 outbound during the AM peak period.

#### 11.3.6 OPEN SPACE SYSTEM

- Beneficiate the parkway system; and
- Retain playing fields and cemeteries.

#### 11.3.7 BUILT FORM CONSIDERATIONS

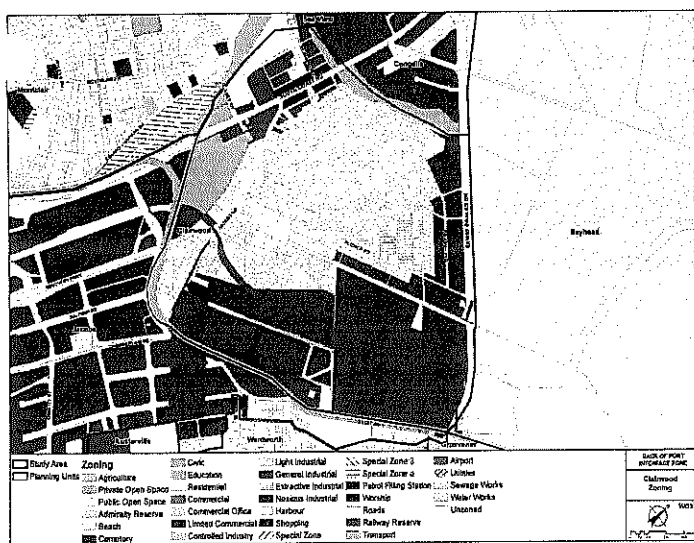
- o Assemble large blocks showing indicative mid-block lines;
- o Preserve and protect the character and historic elements of the area;
- o Redevelopment within the area should adhere to consistent low-scale built form;
- o Encourage logistics land use properties to use the street edge for office space with other activities behind. The alignment with the street will allow continuity in the built fabric along street edges providing visual connections as well as a security element for pedestrians; and
- o Building restrictions need to be enforced.

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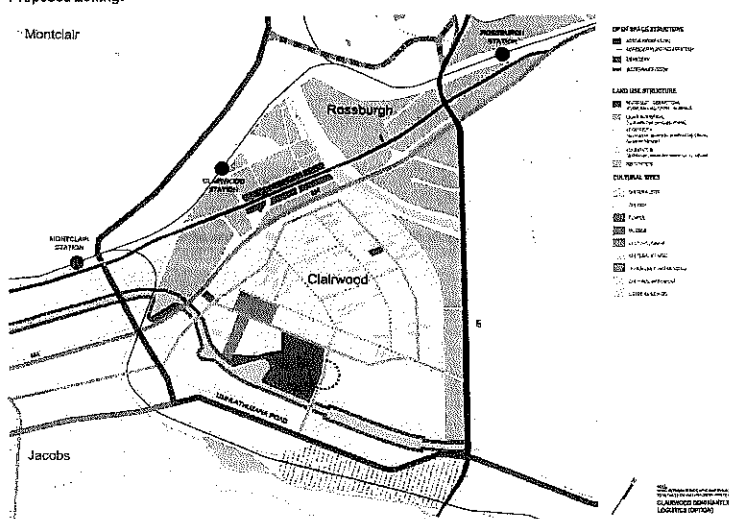
## 14

CONCLUSION  
CLAIRWOOD

Existing Zoning:



Proposed Zoning:



It is recommended that the Clairwood central residential core be rezoned from special residential to a logistics uses. Logistics within this area would be permitted to have open storage. In order to work efficiently and effectively a totally new layout is required. With wider roads and improved access from truck freight routes. Due to the land use changes in the area the movement structure would need to be upgraded to allow and accommodate a local logistics circulation system. This would require at some of the major through routes be widened, and other roads eliminated or down-graded to internal service roads within larger lots. On-site parking and handling should be accommodated in all developments in the precinct.

The preconditions for this solution suggests that there is a complete redevelopment of the Clairwood residential core with consolidated lots as well as a new larger sub divisional layout to allow for a core better structured for the circulation of large trucks. The development of new infrastructure would need to be addressed to support the logistics uses within the core including the new local road network. In order to achieve this the Municipality would need to encourage and support the removal of all existing residential and non-logistics related industrial uses from the core. The redevelopment of Fresh Produce Market and the Transnet Diesel Depot is suggested as the site of the initial logistics platform

Listed buildings, places of worship and cognate institutional uses would be retained. Redevelopment will enable the drainage and flooding problems in the north-west of the precinct to be addressed.

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## STUDY AREA ANALYSIS

## 5.8 SOCIAL SYSTEMS

There are a number of stable communities that live in South Durban, where residents have lived for a long time, have strong social connections with friends and family in these communities. They value the places that they live in. There are also strong work-residential linkages in the South Durban Basin, where people live close to work for convenience, cost and quality of life reasons. The lives of residents in the South Durban Basin are well contained within this area; residents indicate that almost all of their needs are met in this area - they live, work and play in this area or in areas immediately adjacent to it and this has a significant impact on their quality of life and social connections in the area. There are a large number of functioning social organizations operating throughout South Durban in these communities that add value and contribute to the social capital of the communities and neighbourhoods. Religious and sporting organizations are the most important social organizations in the area and residents want these organizations to be supported and further developed (especially sport) to provide healthy activities for the youth in the area, which are at risk of becoming deviant.

Social value: Status Quo (Existing social dimensions of the residential community)

1. The South Durban Basin is a residential space
2. Existence of stable communities
3. Strong sense of place/belonging
4. There are a number of Clairwood residents (owners/tenants and informal settlements) that want to remain in Clairwood and will defend this position very strongly. It is important that the BOP plan provides sufficient clarity of preferred proposal and equal and respectful spaces for all stakeholders to address their specific preferences.
5. Heritage values
6. Strong social connections within communities with friends and family
7. Ability to live, work and access services in South Durban
8. Wide range of social organizations
9. Parks, sports grounds and open spaces are widely used by the youth for recreation

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## LOCAL SCALE ANALYSIS

### 6.7 LOCAL AREA SCALE FINDINGS

#### SOCIAL ENVIRONMENT

There are a number of impacts on the social environment which need to be managed in the study area. The impact of industry and commercial activities on residential communities needs to be reduced where possible.

In addition the impact of trucks on the residential environment must be reduced by controlling movement through residential areas. Noise impacts of trucks which operate 24 hours a day must be mediated.

There is an overall need to have stricter control of land use zoning in the study area, given the infiltration of industrial and business uses in such areas.

Social amenity such as parks and recreational facilities also require good management and provision for the study area.

Specific concerns are raised with social issues affecting the Clairwood residential community and this needs a negotiated settlement on how the BoP are and in particular emerging zoning options for Clairwood is articulated and implemented.

The creation of phased interface zones in Jacobs, with some re-zoning closer to residential areas should aim to reduce residential-industrial conflict. In re-orientating Mobeni-East to a logistics orientated zone, vulnerable residential communities living in Jacobs and Mobeni need to be considered. The displacement of work opportunities through industrial transformation will have severe impacts on highly vulnerable groups who live and work in this area.

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## 16 IMPLEMENTATION

### Environmental Protection and Mitigation:

The re-development of this area will also have environmental impacts and therefore the environmental mitigation plans tied in this project to be actively committed to and pursued. In particular the commitment protection, rehabilitation, expansion and enhancement, to mitigation and offsets are important for the current Back of Port Zone re-development and future major economic infrastructure installation within the study and beyond (the freight route and dig out ports).

The protection of the environmental sensitive components of the Clairwood Racecourse and the integration and linkages of the open space system within the area and the wider system. The clean up, greening and maintenance of the canal systems serving both as an environment and social asset are important environmental interventions required to balance support and balance the economic aspects and re-development of the area.

### Wider Social -Environmental Systems :

Noting that this project is framed within the context of major port expansion and freight route infrastructure installation, it is therefore important for the City and other spheres of government (government agencies and parastatals) to safeguard social and environmental certainty and quality in order to sustain sustainable growth within the EThekweni region.

### Changes in Town Planning Schemes for Current Industrial Zoning within the Study Area:

Town Planning Scheme changes proposed for current industrial areas and in particular Mobeni would also need to be coupled with the principle that ensure that current business can and should remain in the area. And new zoning changes only considered when re-development on a site by site basis happens.

### Back of Port Zone RE-development to be Coupled with Other Strategic Development Areas within EThekweni and Beyond:

It is clearly evident that the Port and port expansion in EThekweni area drives the demand for land close to the port. Given limited supply of land within the Back of Port zone and the South Durban Basin in general, coupled with the shortage of serviced industrial land within EThekweni, release of new industrial land is urgent to accommodate non-port related industry that will be impacted with the Back of Port Zone Re-development.

### Detailed Implementation Framework:

Coupled with the final decision of the Back of Port Plan (this plan), it is recommended that an urgent and core function of the implementing institutional vehicle be mandated to develop and update an implementation framework for future Council consideration.

  
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# ENVIRONMENTAL PLANNING SYNOPSIS REPORT

## BEST PRACTICE

The Best Practice Report researched the methods that have been employed to address similar issues in other port developments around the world. Appendix II details the best practice case studies used as well as their relevance to Durban.

Research indicated that legal requirements for development in a port environment are likely to be stringent. This is due to the fact that these are generally areas with significant social and natural environmental pressures in addition to being important areas of economic activity. The case studies have indicated that development approvals can take long periods of time and are likely to require commitment to extensive mitigation.

Particular concerns including air quality, noise and protection of natural assets will need to be addressed in moving forward planning for Durban's Back of Port.

Research into existing ports provides a clear indication that due to development pressures, port and port related development around the world is becoming more integrated with both social and natural environments as it can no longer afford to exist within historic boundaries. Whilst management detail may differ there are major areas of common approach to the environmental challenges that arise from development pressures. These include;

- There is a realisation of the importance of natural elements within port areas and the fact that management of areas needs to be linked. In the case of San Diego (USA) the port authority undertake work outside their designated boundary in order to ensure that key natural areas not only survive but flourish alongside port operations. Numerous port authorities undertake monitoring of key assets in order that the impacts of their operations can be understood and if necessary adjusted.
- The Port of Bristol (UK) appears to have gone further than most other ports in that it has actively developed natural corridors, created habitats and reintroduced endangered species into the port area.
- Pressure for development is another common feature. This has been addressed by both extension as well as by relocation of facilities. Where relocation has been the approach such as in Sydney (AUS), the reclaiming and reuse of waterside property has had major benefits for the city.
- Where extension has been the strategy, the need to compensate for loss of habitat areas due to port related development is a common concept. In many areas this has tied port authorities to long term management commitments and has safeguarded extensive areas from future development.
- The need for transparency and in some areas encouraging positive public interaction with the port environment has been a common approach in many major ports. Strategies range from encouraging public access for recreation and education to undertaking regular consultation over key issues and circulation of newsletters. In addition to making use of an important public asset, this approach appears to help to avoid misunderstanding and in the some cases enables minor modifications to operations to be made in order to provide major improvement in conditions for neighbours.
- Another common feature seems to be port authorities working with Municipalities and other key stakeholders to address development related impacts. This has been done Kachisung (Taiwan) to retro-fit a public waterfront area to the port, there are also numerous examples of traffic congestion and noise issues being addressed in this manner.
- Port authorities are proactive in helping operators and tenants achieve desired environmental standards and objectives. This is achieved through specific advice as well as issuing publications to address specific issues.
- Minimising and creating efficiencies in use of resources also appears to be a common theme amongst major port operations. A variety of methods are being used including the generation of power through wind turbines, offsetting through carbon credits, encouraging efficiencies through publications and extensive recycling.

## RESPONSE TO ISSUES

### AIR QUALITY

#### AIR POLLUTION FROM INDUSTRY

Research has indicated that air pollutant levels, particularly SO<sub>2</sub>, generated by industry in South Durban have reduced significantly over the last ten years. This can be attributed to pressure exerted by local communities and management initiatives by both local industries and the Municipality. Whilst there may be occasional short term exceedences, research indicates that annual averages are consistently below National Guideline Levels.

BoP planning proposals see industrial activity reducing over time to be replaced by logistics operations. It is therefore likely that the number of coal and oil fired boilers that emit SO<sub>2</sub> will reduce. It is also not envisaged that BoP operations will attract additional heavy industry to the area. It is therefore likely that BoP development will not exacerbate industrial air pollution.

It is likely that the development of the Old Airport site as a port extension will introduce an additional SO<sub>2</sub> source in the form of ships boilers. Ships boilers are in constant operation to produce steam to run generators and engines. Bunker fuel is also high in sulfur content. This new source may be significant given its proximity to industry. It will need to be monitored and managed in conjunction with other sources.

#### AIR POLLUTION FROM VEHICULAR TRAFFIC

Levels of Particulates, Lead, Benzene and NO<sub>x</sub> have remained relatively constant in South Durban since 2004 with annual average levels either close to or exceeding National Guideline Levels.

BoP activities particularly the growth in logistics operations which will increase heavy vehicular traffic in the area is likely to result in an increase in emissions.

BoP development could therefore exacerbate an already difficult situation. The problem relates to both a likely increase in levels of traffic and an increase in levels of traffic congestion; slow moving and idling vehicles tend to create significantly greater levels of pollution than fast moving vehicles. Pollution levels from vehicle emissions tends to be concentrated beside roads and at intersections.

Best Practice focuses on getting port related traffic into and out of the port as rapidly as possible. Measures include the construction of dedicated, high capacity routes to ensure that heavy vehicles can access the National Road network as quickly as possible.

Best Practice also sees separation of local and port related traffic to minimize heavier vehicles accessing residential and commercial areas. This not only requires development of suitable alternative infrastructure but also needs strict enforcement to be effective.

Relevant BoP planning proposals include;

- Ensuring that logistics related companies which will include container handling operations are located close to and within easy access to both port areas. This will help to rationalize container movements through the area
- Developing high capacity links that are dedicated to port related traffic between the two port areas, between port areas and the N2 / N3 and between the port areas and logistics operators.

These proposals will help to reduce the impact of vehicular emissions within the BoP area.

Ongoing monitoring will be necessary to ensure that emissions levels remain within acceptable limits particularly close to and within residential areas. Should emissions levels prove excessive particularly within sensitive residential areas, a level of enforcement is likely to be necessary.

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**ETHEKWINI MUNICIPALITY  
CENTRAL OPERATIONAL  
ENTITY**



**REZONING APPLICATION OF ERF 300  
DUNNS GRANT, DURBAN FROM SPECIAL  
RESIDENTIAL 400 TO LIGHT INDUSTRIAL**



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APPLICATION FOR REZONING IS HEREBY MADE:

IN TERMS OF PLANNING AND LAND USE MANAGEMENT BY-LAW 2016, CATEGORY 3 OF SECTION 28

**APPLICATION FOR THE REZONING OF ERF 309 DUNNS  
GRANT, DURBAN  
140 HOUGHTON ROAD  
FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL**

SUBMITTED TO:  
ETHEKWINI MUNICIPALITY  
CENTRAL OPERATIONAL ENTITY  
DEVELOPMENT AND PLANNING UNIT  
REZONING DIVISION

APPLICANT DETAILS:  
Mr N.A Shah

AGENTS DETAILS:  
ZIMANGA URBAN AND RURAL DESIGN PTY LTD  
SUITE 304, STRAUSS DALY PLACE  
41 RICHEFOND CIRCLE  
UMHLANGA  
4319  
TEL: 031 566 3935

APRIL 2018

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ETHEKWINI MUNICIPALITY

CENTRAL OPERATIONAL ENTITY

**SPLUMA CHECKLIST**

|     |                                                                                                                                                                                                                   | Yes | No | Not Applicable |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|----------------|
| 1.  | Land Owners Consent                                                                                                                                                                                               | X   |    |                |
| 2.  | A locality plan of the township                                                                                                                                                                                   | X   |    |                |
| 3.  | A layout plan identifying the boundaries of the proposed development and the physical and natural characteristics of the site/property (including landforms, appropriate contours and floodline where applicable) | X   |    |                |
| 4.  | Planning Report explaining the concept and planning rationale                                                                                                                                                     | X   |    |                |
| 5.  | Copies of Planning Report and Layout Plans                                                                                                                                                                        | X   |    |                |
| 6.  | 1 Electronic copy of the sector reports and plans                                                                                                                                                                 |     | X  |                |
| 7.  | Surveyor - General Diagram                                                                                                                                                                                        | X   |    |                |
| 8.  | Form of densification                                                                                                                                                                                             |     | X  |                |
| 9.  | Copy of Title Deeds                                                                                                                                                                                               | X   |    |                |
| 10. | Typical House Plan/Design                                                                                                                                                                                         |     | X  |                |
| 11. | Conditions of Establishment                                                                                                                                                                                       |     | X  |                |
| 12. | Land Use Controls                                                                                                                                                                                                 | X   |    |                |
| 13. | A copy of the mortgage bond(s) relating to the land                                                                                                                                                               |     |    | X              |
| 14. | The owners or applicants power of attorney, if applicable                                                                                                                                                         | X   |    |                |
| 15. | A certified copy of the applicants board, council or company resolution, if applicable                                                                                                                            |     | X  |                |
| 16. | A copy of the mortgage's consent, if applicable                                                                                                                                                                   |     |    | X              |
| 17. | Community & Social Facility Assessment, including surrounding capacity assessment.                                                                                                                                |     |    | X              |
| 18. | Proof of Funding                                                                                                                                                                                                  |     |    | X              |
| 19. | Zoning Certificates                                                                                                                                                                                               | X   |    |                |
| 20. | Compliance with Parking Requirements                                                                                                                                                                              | X   |    |                |
| 21. | Deed of Servitude                                                                                                                                                                                                 |     |    | X              |
| 22. | Floodline Certificate                                                                                                                                                                                             |     |    | X              |
| 23. | 100 floodline (if applicable)                                                                                                                                                                                     |     |    | X              |
| 24. | Wetland Delineation (if applicable)                                                                                                                                                                               |     |    | X              |
| 25. | Mineral Rights approval                                                                                                                                                                                           |     |    | X              |
| 26. | Conveyancer Certificate                                                                                                                                                                                           |     |    | X              |
| 27. | Land Legal Report including Restrictive Conditions of Title to be removed                                                                                                                                         |     |    | X              |
| 28. | A copy of a geotechnical report                                                                                                                                                                                   |     | X  |                |
| 29. | Comments from Services Providers                                                                                                                                                                                  |     | X  |                |
| 30. | Service Level Agreement (if applicable)                                                                                                                                                                           |     |    | X              |
| 31. | Community Participation                                                                                                                                                                                           |     |    | X              |
| 32. | Allocation of land                                                                                                                                                                                                |     |    | X              |
| 33. | Copy of Environmental Authorisation or ROD (if applicable)                                                                                                                                                        |     |    | X              |
| 34. | Land Claims Clearance, Land Claims Commission letter                                                                                                                                                              |     |    | X              |
| 35. | DOT / SANRAL Approval (if applicable)                                                                                                                                                                             |     |    | X              |
| 36. | Traffic Impact Assessment/ Traffic Study (if applicable)                                                                                                                                                          | X   |    |                |
| 37. | Approval from Department of Education                                                                                                                                                                             |     |    | X              |
| 38. | Approval from Spoornet/PRASA (if applicable)                                                                                                                                                                      |     |    | X              |
| 39. | Clearance from Dept. Of Agriculture (Release of land to Act 70 of 70)                                                                                                                                             |     |    | X              |
| 40. | Water Use Licence Authorisation (if applicable)                                                                                                                                                                   |     |    | X              |
| 41. | Stormwater Management Plan                                                                                                                                                                                        |     |    | X              |
| 42. | Clearance from other External Service Providers (Telkom, Eskom etc.)                                                                                                                                              |     |    | X              |

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309, DUNNS GRANT, DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMHLANGA, 4319, TEL: 031 566 3935

HOUGHTON ROAD

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## EXECUTIVE SUMMARY

This report provides motivation and background to enable the rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to Light Industrial. The site is located at 140 Houghton Road, Clairwood.

The site is characterised by two structures which in essence relates to light industry usage. The area in which the development is situated has a rich history and is relatively small and almost unique. The purpose of the application is to motivate for the rezoning of the site to Light Industrial. The applicant site is located in an area that is replete with commercial, industrial and residential land uses. Among the industrial activities in the area, the Unitrans Fuel and Chemical (Pty) Ltd forms the largest entity and has, amongst other things – logistic services, petroleum, fast moving consumer goods, general freight, and specialised warehousing. The area was once predominantly a residential area, however, over the years light industry, trucking, commercial and other developments have infiltrated the area gradually turning the area into a Mixed Use area. It is evident that the area has a mixed usage where different but congruent land uses exist in close proximity to each other.

The motivation for the rezoning is underpinned by several themes. The overarching and motivating factor is that the rezoning would allow for development which is consistent with its context and that does not impinge on the rights and privileges of the adjoining sites. The rezoning also promotes the Clairwood area as an area that can congruently accommodate residential, industrial and commercial land uses without interference. The proposed development will further enhance the area in which it finds itself - it being located within a residential area with industrial on the outskirts and hosting a range of land uses and activities.

The first pillar that underpins the motivation is that key trends at a broader level support and inform the motivation for rezoning. These are:

- **The Demand for the proposed Industrial zone:** In a safe environment, and in an area that has the threshold to support the proposed business venture. Furthermore, the demand for developments and land uses that generate employment and economic growth, but that do not conflict with the existing residential development, and that are in close proximity to transportation routes.

The second pillar that underpins the motivation for rezoning is the potential use of the site to contribute to, and be mindful of, the local context. Key issues for consideration here include the following:

- **The Scale and Intensity of the Development:** The proposed zone would allow for the development of a light industry entity that recognises the existing scale and intensity of the surrounding developments and land uses. The proposed development, although located close to residential areas, is minor in nature and will not impinge upon the rights and privileges of the surrounding residential development. Furthermore, precedent exists whereby light industrial properties adjoin residential properties. The proposal takes cognisance of the residential development within the vicinity.
- **To Consider the Impact on the Amenity:** The proposed rezoning allows for the development of a light industry entity that does not detract from the local amenity. The area in which the site finds itself is transforming rapidly. This is evidenced by the conversion of residential houses into industrial, place of worship, warehousing, mixed use, and commercial land uses. The proposed development, amongst its other inherent advantages, will enhance the amenity and complement the location within which it is located.

Due to the nature of the rezoning and proposed use, no additional impact is foreseen. In addition, the development is proposed in an already established context and as such, no negative environmental impacts are envisaged.

## ETHEKWINI MUNICIPALITY

## CENTRAL OPERATIONAL ENTITY

The proposal encompasses the rezoning of Erf 309 Dunns Grant, Durban from **Special Residential 400** to **Light Industrial**.

The proposed zone is **Light Industrial** the controls of which are as follows:

- Plot Area Ratio: N/A
- Coverage: N/A
- Min. Rear Space: N/A
- Min. Building Line: 7.5 to all roads
- Min. Side Space: N/A
- Parking Requirements: 1 bay for every 150m<sup>2</sup> of gross floor area
- Height: Dependant on location: either 15.0m or 25.0m see cl.22(4)

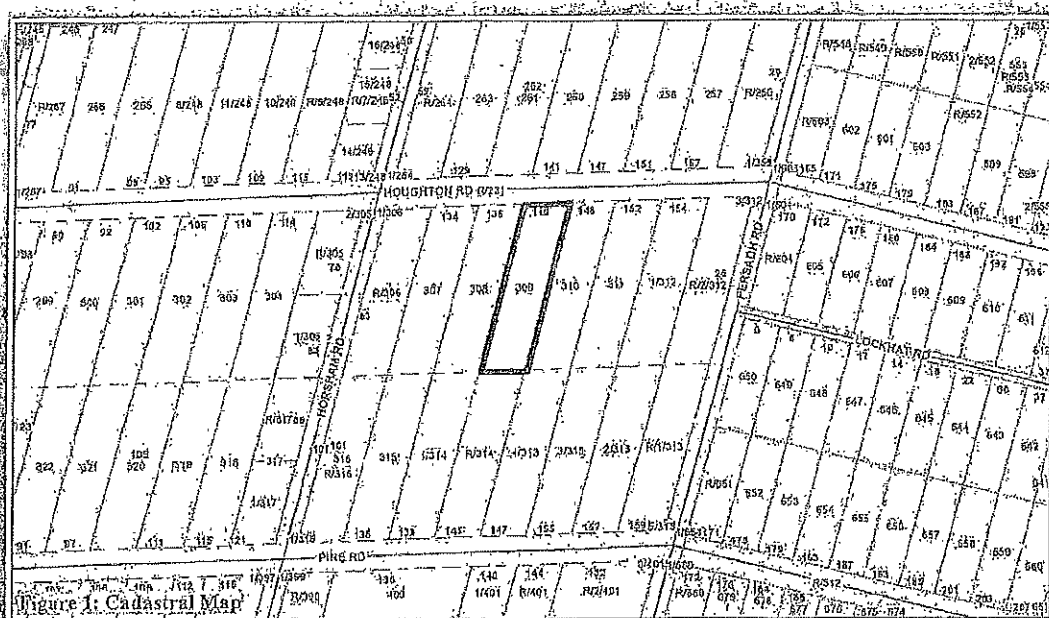
Refer to Annexure D: Proposed Controls.

The existing zone is **Special Residential 400** the controls of which are as follows:

- Plot Area Ratio: N/A
- Coverage: 50%
- Min. Rear Space: 5.0m, Swimming Pool, 1.0m
- Min. Building Line: 7.5m to all road frontages, Swimming Pool 1.0m
- Min. Side Space: Aggregate of 5.0m - one side not less than 2.0m - Multiple Unit: 3.0m's on each side, S/Pool, 1.0m. Non Res. 5.0m
- Parking Requirements: 1 bay per dwelling unit (2 bays if ancillary unit is proposed)
- Height: Double Storey

Refer to Annexure C: Existing Controls.

HOUGHTON ROAD



REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMLILANGA, 4319, TEL: 031 566 3935

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## 1.0 INTRODUCTION

### 1.1 PURPOSE OF REPORT

This report has been submitted to the eThekwinI Municipality - Central Operational Entity - for the purpose of motivating and providing adequate background to enable the rezoning of Erf 309 Dunns Grant, Durban situated at 140 Houghton Road, Clairwood from Special Residential 400 to Light Industrial.

The site is located in a fully developed and established context accommodating predominantly Mixed Use Usage as the surrounding zones, and is subject to an existing Town Planning Scheme within which it is currently zoned Special Residential 400. The proposed zone and subsequent development is envisaged to blend into the existing urban fabric, whilst serving as an anchor to the Houghton Road. Furthermore, the proposed Light Industrial zone will not conflict with its context, but rather will enhance the overall character of the area. Furthermore, the proposed development will afford the community opportunities for employment.

The proposal therefore aims at rezoning the site to Light Industry. The proposed zone and the proposed land use will blend in well with its context in that the area is earmarked for *Future Industry*, hosting a range of activities (*Spatial Development Framework 2017-2018*). Other land uses in the area include bus and truck depot, panel beating, medical practices, motor workshop, and residential development (in the form of freestanding and multiple storey residential flats). The development is proposed in an area that is abundant with commercial and mixed use activity, each feeding off each other in a positive manner. The proposed development offers an enhancement of this and does not take away from the area's overall character.

### 1.2 BACKGROUND

The property is located in Clairwood which is approximately  $\pm 9.2\text{km}$  from the Durban Central Business District. The site is owned by Mr. Shah, who intends to use it for Light Industrial purposes and covers an extent of  $1302\text{m}^2$ . The intention is to regularize the current footprint with no further expansion.

The site is situated along Houghton Road, forming its northern boundary. The property is situated in an area that hosts a mix of land uses including residential, industrial, mixed use and commercial. The residential land uses consist of single to double storey houses and walk-up residential flats. Other land uses in the area include noxious industrial and their ancillary uses, and the harbour located in the broader context of the area. The site is situated within a residential area which is earmarked for future industry and as such, the land uses in the area share a unique interconnectedness. The formal and informal commercial activity share backward and forward linkages which can be described as channels of information, money, material, goods and services that flow between companies and their suppliers culminating in a network of economic interdependence (backward linkages). Forward Linkages are distribution chains that connect the producer or supplier with the consumer. Developments such as the proposed, being located in a residential node, flourish by creating economic growth and development in the area.

The site is currently zoned **Special Residential 400** and is envisaged to be developed to accommodate light industry. The proposed use will allow the site to be utilized to its full potential. The application would allow for development that is consistent with its context, promoting light industrial land uses (with their intrinsic benefits) in Clairwood that will not diminish the local amenity. Development such as the one proposed will contribute positively in promoting Clairwood as a light industrial area which will culminate in the generation of more economic and employment opportunities. The aim is to accommodate sustainable community development that meets with the community's needs and aspirations as well as providing additional light industrial development that will meet the demands of the local residents in the area.

**REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT DURBAN**

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HOUGHTON ROAD

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In order to ensure the development fits into the town planning regulations, this report therefore presents the motivation for such rezoning and attempts to provide adequate background and motivation to facilitate the process of rezoning.

### 1.3 STRUCTURE OF THE REPORT

Following the Executive Summary, this rezoning application is structured in the following manner:

**Section 1** presents the introduction, and provides an overview of the purpose of the report and the background to the project.

**Section 2 - 4** presents the site analysis, proposed rezoning use, accessibility and analysis of important considerations.

**Section 5** presents the consideration, context, and the need and desirability motivation for the site.

**Section 6** provides a conclusion for the rezoning application.



Above is an aerial photo depicting the site in relation to its broader context. As can be seen, the site is strategically located in terms of the road network and land uses thereof.

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## LEGISLATIVE CONTEXT

### *Alignment with the Central Spatial Development Plan Report and Spatial Development Framework*

#### THE FUNCTION OF THE CENTRAL SPATIAL REGION

- ↓ Urban core of Metro (commercial, retail, financial & administrative hub)
- ↓ Major trading port
- ↓ Transport & logistics hub
- ↓ Contributes 56% of the EMA's total GDP,
- ↓ *Key Industrial centre*
- ↓ *Largest employment generator*
- ↓ Major economic sectors: *Industrial*, logistics, warehousing, business, commercial, retail and financial services and tourism,
- ↓ Events & Tourism Hub Logistics Support Largest employment generator
- ↓ Significant Coastal Resources
- ↓ Range of lifestyle options
- ↓ *Range of service nodes*

(Central Spatial Development Annual Plan Review 2012/2013: 45)

### *Alignment with the Integrated Development Framework*

#### EThekweni Industrial Spatial Strategy

The aim of the strategy is to guide the spatial redevelopment of industrial activities within the Municipality. The objective of such redevelopment is to optimize the location benefits for key sectors and to enable them to maximize advantages inherent in clustering. In this manner the Municipality can facilitate a business environment where efficiency and productivity in all spheres is maintained at internationally competitive levels.

(eThekweni Municipality Final 2017/2018 IDP: 293).

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REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

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**ETHEKWINI MUNICIPALITY**

**CENTRAL OPERATIONAL ENTITY**

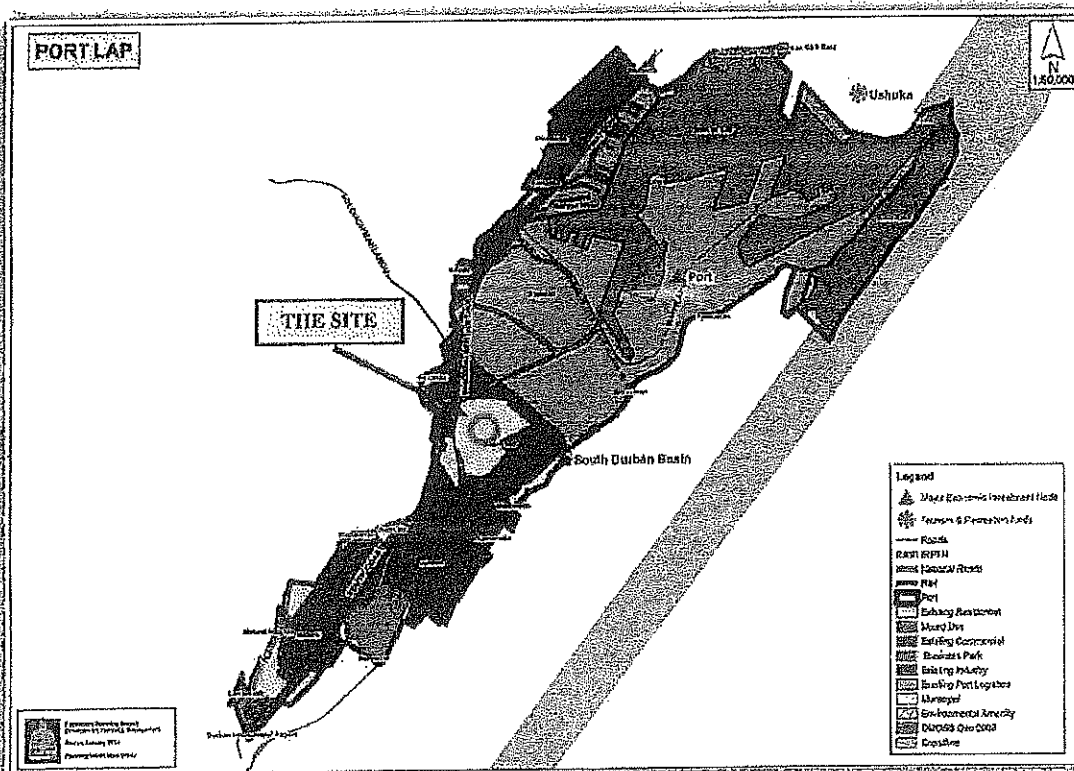
**LOCAL AREA: PORT & BACK OF PORT**

**Key characteristics**

**Back of port**

The South Durban Basin (SDB) extends south from Durban's port to encompass the industrial areas of Congella, Clairwood, Jacobs and Moleni. The local area is predominantly industrial with the exception of the Clairwood and Merewent residential areas. This key industrial zone has a unique locational advantage, based on:

- It's proximity to Africa's busiest port.
- It's proximity to the airport, as well as national road, rail and pipeline networks.
- Many of the industrial areas are contiguous and collectively support a considerable amount of infrastructure and services.
- The fact that the length of the SDB is served by arterial routes.
- Its proximity to the financial and commercial services of Durban's CBD.



**Role of the Local Area**

The SDB is a significant economic driver in the national and regional contexts, being the engine of the EMA's economy whilst containing South Africa's leading port and Durban's most established industrial areas. Many of the country's leading firms, operating in nationally important sectors, are located in this area and account for approximately more than 60% of employment in the EMA. The district also plays a dominant logistics role and can be considered as a multi-modal transportation hub.

**REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN**

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*[Handwritten signature]*

**Alignment with the Back of Port – Planning Assessment****LAND USE****Land Use Composition**

Each of the industrial areas currently accommodates a mix of land uses, viz.

- Large and small scale manufacturing industries;
- Wholesaling and warehouses;
- Freight-forwarding and transport services
- Light and Service Industries;
- Retail/distribution outlets of different types.

Previous studies of the SDB have tended to make two basic statements, viz. that the SDB is the "heartland" of industrial development and that it provides substantial employment opportunities. Implicit in these two statements is the implication that most of the industrial uses occur in the form of manufacturing activities and that these activities possess high densities of labour.

The older areas of Umbilo, Congella, Maydon Wharf, Clairwood, Jacobs and Mobeni are indicating a slow but relentless change of uses. Some of the uses reflect the demand for newer and growing demands of logistics and transport activities in relation to the port; and others, such as much of the service industrial and retail activities reflect the opportunities for accessible and low rent facilities, rather than any forward- or back-ward linkages to the port.

There is clear demand for a range of different types of industrial facilities. The various areas that comprise the study area, and beyond, are facing a number of trends, viz.

- Expansion (via invasion) of port related uses;
- Growth of logistics related activities;
- Growth of small scale service industries

It is also clear that the various industrial areas cannot absorb and provide appropriate space for all of these demands, i.e. there is a limited supply of industrial land and accommodation. Consequently, *there is a need to create further and alternative industrial development in relation to these existing areas, as well as further afield.*

This analysis indicates that the "manufacturing" form of industrial activities, including service industries, in all areas that comprise the SDB, are all less than 50% of activities. Wholesaling and warehousing also form relatively small proportions of the activities. There is a clear indication that most of these areas have experienced an increase of logistics and transport uses, and an increase in service industrial activities. It is interesting to note a surprising proportion of professional activities.

It becomes clear that these areas have altered over time from primarily manufacturing activity areas to a much more mixed range of activities. Some of these activities, such as logistics, warehousing and transport, possess relatively low intensities of labour when compared to manufacturing industry.

**HOUGHTON ROAD**

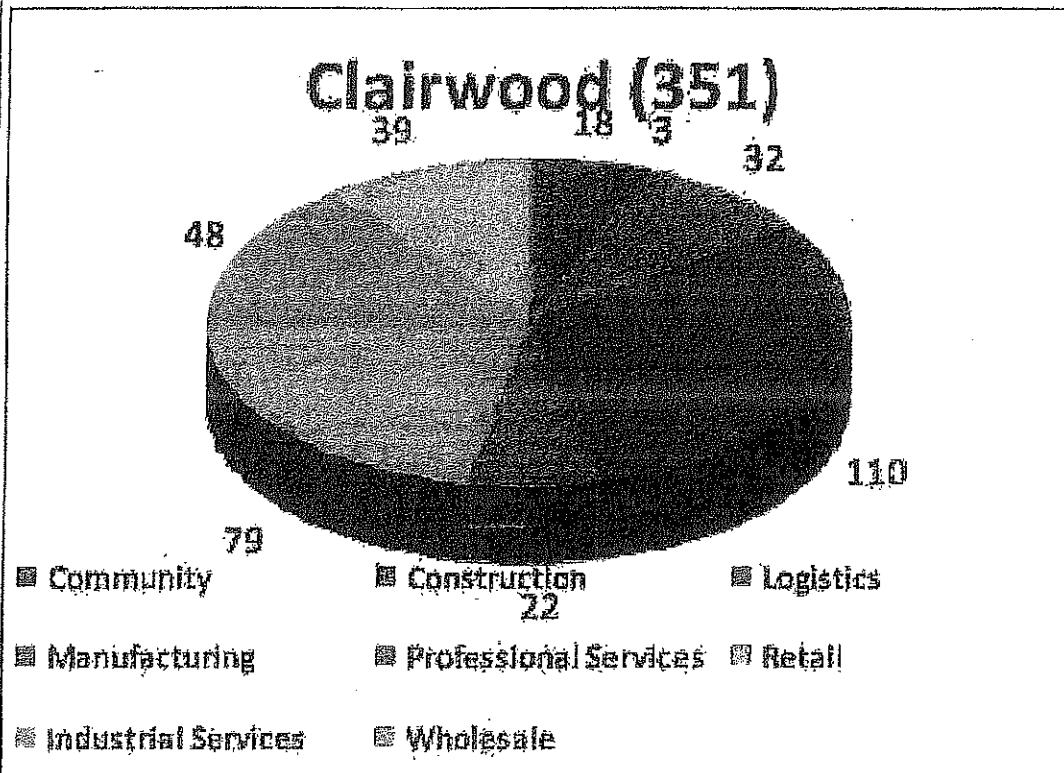


## NUMBER OF TYPES OF FIRMS

The following pie-chart identifies broad categories of types of industrial firms in the Clairwood area which comprise the SDB. This land use grouping analysis is derived from a listing of the types of firms in the components of the study area. It is only partially spatial.

It serves to substantiate the spatial land use analysis, as it indicates categories of industrial activities in the area.

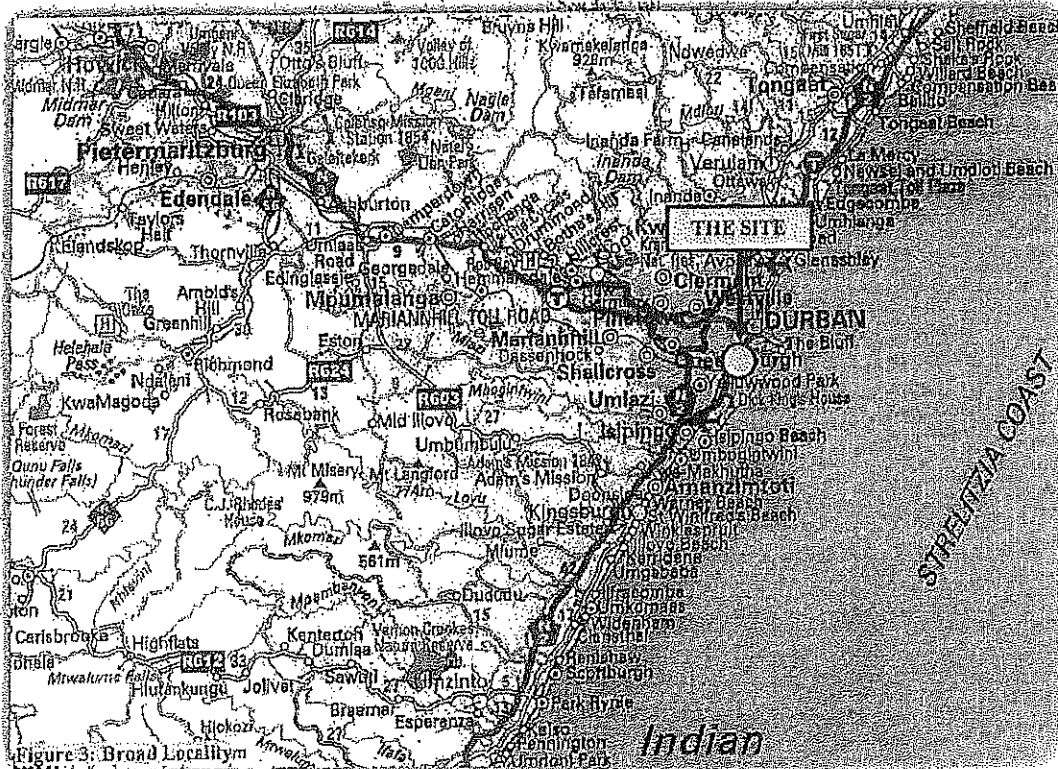
## CLAIRWOOD



The pie chart distribution of Clairwood is for the area as a whole and is difficult to interpret as a whole as the various activities occur around its edges, with each sub-area possessing a different composition. Nevertheless, it becomes clear that only some 25% of firms are of the Manufacturing type, with Retail activities and Industrial Services comprising some 30% of firms in the area. Logistics is a relatively small proportion of activities (*Back of Port - Concept, Framework, Precinct Plans and Zoning Framework Report: 73-78*).



## SITE LOCALITY – Metropolitan and Local Context



The site is situated approximately  $\pm 9.2\text{km}$  south west of the Durban CBD within the suburb of Clairwood.

The site gains access via Houghton Road.

The site is in close proximity to the M4, which is classified as a metropolitan route. The M4 also serves as a route that connects to the R102 (regional route) and thus enabling connection to the broader eThekweni area.

The M7 (metropolitan route) is a major public transport route connected to the site and thus the site enjoys easy access to public transport.

The site is in close proximity to major facilities and amenities such as the Builders Trade Depot, and industrial facilities.

The surrounding context blends well with the current development which is residential in nature.

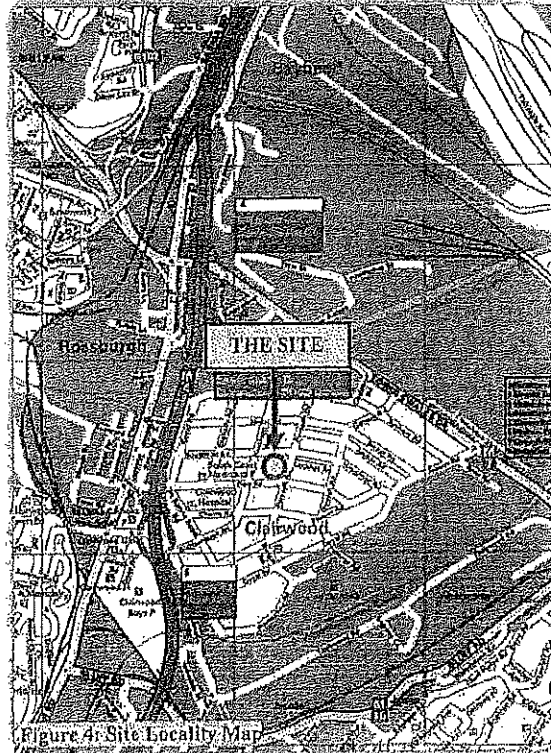


Figure 4: Site Locality Map

**REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309, DUNNS GRANT, DURBAN.**

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## SITE LOCALITY CONTINUED

- The site is located at No. 140 Houghton Road, Clairwood, Durban. It is afforded good access from Houghton Road forming the northern boundary of the applicant site. Ingress and egress will be from this road.
- Houghton Road is a class 5 access road which is considered to be highly valued by commuters and residents as it provides access to a range of commercial, residential and other major land uses and developments located in and around the area.
- The existing road structure allows for good permeability in and around the area.
- The site is situated in close proximity to major bus and taxi routes within the area of Clairwood. This allows for high visibility for the proposed development.
- Houghton Road connects to Horsham Road which is joined to Richborough Road. Richborough Road is a class 5 Road which further intersects with the M4 provincial road which also gives a north-south linkage
- The property is located in close proximity to other industrial land uses such as the Hi-Tap Bolt and Tool, which forms the anchor of the industrial node within the vicinity of the applicant site.
- The site is located within a fully developed residential and light industrial context hosting a range of development typologies.
- The site is adequately serviced in terms of infrastructure development; therefore the proposed development will connect to existing infrastructural services. This contributes to the efficiency and sustainability of the proposed development.
- The site is strategically located in terms of the surrounding land use activities.

## 2.0 THE SITE

### 2.1 CADASTRAL DESCRIPTION

The subject property is described as Erf 309 Dunns Grant, Clairwood situated in the Durban district within the regions of the Central Operational Entity of EThekweni Municipal Area, Registration Division FU, Province of KwaZulu-Natal. Access to the site is gained from Houghton Road.

### 2.2 OWNERSHIP AND EXTENT

The property is owned by Mr A. Shah and covers approximately 1 302m<sup>2</sup> in extent. Title Deed No. T 000030289/2011. Refer to Annexure B: Title Deed and SG Diagram.



REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

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## 2.3 EXISTING ZONING



- The site is zoned **Special Residential 400**.
- The zone in the immediate context of the site is **Special Residential 400**, forming the extreme boundary of the site.
- **General Industry** is demarcated on the eastern edge.
- At a broader context, the following zones can be found: **Light Industrial**, **General Industrial**, **Extractive Industrial**, **Harbour**, **Noxious Industrial**, **Government and Municipal**, and **General Shopping**.
- The site is a local node and therefore it adds to the mixed use context in which it is located.
- The proposed development will not be "sore thumb" or a "spot zone" as the area is transforming and the proposed zone is congruent with its surroundings.
- The applicant site is currently zoned **Special Residential 400**, which is not suitable for the existing development on-site, hence the proposed rezoning to **Light Industrial**.
- The predominant zone within the immediate surroundings and broader context is **Special Residential 400** as the area is primarily residential in nature, and **Noxious Industrial** on the outskirts.
- As it can be seen, the proposed zone is not in conflict with other zones.

ETHEKWINI MUNICIPALITY

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## 2.4 EXISTING LAND USE (BASED ON A 200m RADIUS)



Figure 6: Land Use Map

## LEGEND

|  |                  |  |                            |  |              |
|--|------------------|--|----------------------------|--|--------------|
|  | THE SITE         |  | INDUSTRIAL                 |  | MIXED USE    |
|  | RESIDENTIAL      |  | OPEN SPACE                 |  | COMMERCIAL   |
|  | PLACE OF WORSHIP |  | MOTOR WORKSHOP             |  | PANEL BEATER |
|  | TRUCK DEPOT      |  | TRUCKING SERVICES/MECHANIC |  |              |

HOUGHTON ROAD

- o The area in which the site finds itself is an area that hosts a mix of land uses within close proximity.
- o The site is currently being utilised for light industrial purposes.
- o Across the road from the site, are commercial land uses in the form of the Cosmopolitan Hauliers and Golden Sewer Removals.
- o The uses in the area are predominantly mixed use and residential. Commercial land uses form the northern boundary of the site. Abutting the site towards the west and east are residential and more commercial land uses.
- o North of the site across Houghton Road is a Truck depot.

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309, DUNN'S GRANT, DURBAN

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- On Pine Road south-bound, the land uses are bus depots and industrial in the form of Modern Joinery Works.
- On Sirdar Road towards the north are truck depot uses and more mixed uses.
- Overall, the area hosts a mix of uses namely panel beaters, place of worship, motor workshop and open space.
- It is therefore evident that the proposed development will blend in well with the surrounding context.
- The proposed development is perfectly positioned in terms of its intended land use and therefore will not be intrusive to the surrounding development and land uses.
- The area was once predominantly a residential area however over the years light industrial, trucking, commercial and other developments have infiltrated the area gradually turning the area into a Mixed Use area.
- The area in which the site is located in is transforming rapidly. This can be seen with the many residential land uses and buildings being converted in the commercial and industrial land uses.
- In light of the above, it can be seen that the proposed land use blends well with the existing context. The industrial land uses in the area are indicative of the area's need for industrial activity. The industrial and commercial land uses are not onerous and do not encroach on the land use rights of the surrounding residential development. Therefore, the proposed zone is suitable from a town planning perspective.

## 2.5 THE SITE CONTEXT

- The site is characterized by two single-storey buildings, and is situated within a well-established and developed context.
- The property gains direct access from Houghton Road, which connects to Flower Road and further links to the M7. The M7 is integral to the site gaining access to the surrounding major road networks, like the M4 and the R102. These roads can be classified as major transportation routes.
- Houghton Road connects to Ganesh Road which further links to the M7 metropolitan route. The M7 metropolitan route is interlinked to the M4 municipal route and the R102 provincial route. Both these roads link the north to the south and vice versa. The R102 also links Clairwood to the Durban CBD and the northern suburbs of Durban North, Newlands and Phoenix.
- The surrounding area is predominantly residential in nature, with the site being situated within a well-developed area in terms of services and facilities. The site is in close proximity to industrial facilities such as Unitrans Fuel and Chemical Transport and Hi-Tap Bolt and Tool, and various commercial activities along Pine Road, South of the site.
- However, at a much broader scale the area is characterized by various motor vehicle workshops such as Nisson Spares, One Stop Fiat Uno Shop, Opel City, Mr Benz - Mercedes Car Parts Durban; and social facilities such as the Clairwood Shree Siva Soobramonior Temple; and Shopping facilities such as the AK Khan Wholesale, and Housewives Market and those along Flower Road.
- As evidenced, the proposed zone blends in well with the current context of the area, and will not conflict with the existing context but rather enhance the integrity and overall nature of the area.

HOUGHTON ROAD

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### 3.0 THE PROPOSAL

#### 3.1 ZONING PROPOSAL

The proposed application encompasses the rezoning of the site from **Special Residential 400** to **Light Industrial** in order to accommodate light industry development. The proposal is based on an existing development which has been operating for a number of years. Based on the rapid transformation of the area, the client saw an opportunity to house light industrial development which benefits the local community in terms of employment and provision of basic needs.

Approval is for the change in usage to light industrial at a small scale. The owner appreciates the residential context the area has to offer and in no way wants to encroach or develop any further.

It is anticipated that a greater degree of compatibility and market relevance can be obtained through the above rezoning.

#### 3.2 GENERALISED IMPRESSION OF FUTURE USES

The proposal is based on rezoning a property from Special Residential 400 to Light Industrial. The proposed use of the site is to provide light industrial development. The proposed use / zone will be a benefit to the area as the site is located in a fully transformed area, surrounded by industrial, commercial and residential land uses. Therefore, the proposed development will blend in well in that regard and enhance the context of the area as a whole.

The proposed use will blend in well with the surrounding activities, as the proposal is firmly focused on providing light industry within a residential area with different types of uses that has connection and importance to the proposed use of land. The need for change is based on current trends and aligns with studies conducted.

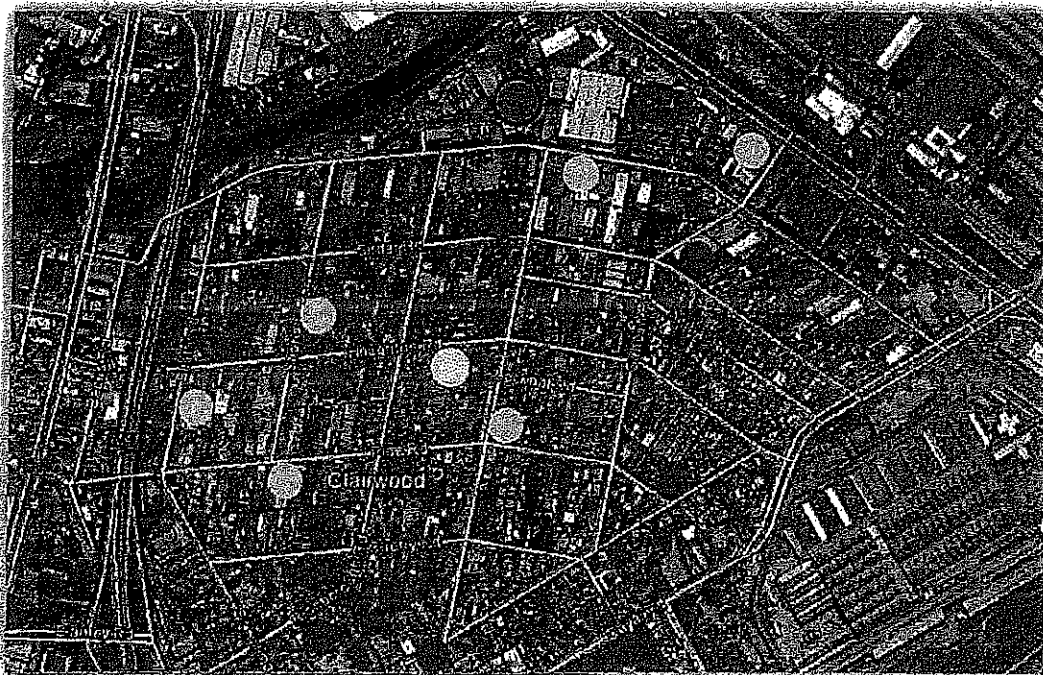


Figure 7: Map showing Light Industrial development in Clairwood

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**LEGEND:**

-  THE SITE
-  UNITRANS FUEL AND CHEMICAL TRANSPORT - INDUSTRIAL PRECINCT
-  LIGHT INDUSTRIAL
-  PANEL BEATERS

Unitrans Fuels and Chemical Transport form the heartbeat of the area - it being located relatively in the north - attracts other smaller industrial developments and gives "life and vibrancy" to the ones currently situated therein. This phenomenon is of major economic importance as it promotes economic growth in the area, generates employment and makes the Clairwood area a logistical and industrial "destination".

**3.3 ACCESSIBILITY**

The Proposed Access Arrangement is illustrated on the Table below.

| Access | Road          | Access Control                     | Min. Access Width (m) |
|--------|---------------|------------------------------------|-----------------------|
| 1      | Houghton Road | Full Directional Entrance and Exit | 6.0m                  |

Access is an important aspect to consider with any development, as good access makes a successful business / development. In terms of permeability, the site is situated within an area that is easily accessible in terms of road network. Access to the applicant site will be from Houghton Road and will be full directional. The access will be 6m wide in order to accommodate 2-way traffic. Ingress and egress from the site is feasible as the area enjoys the benefits of a good road network. No improvements are required for the proposed development. (Refer to Annexure E: Traffic Impact Assessment Report).

**3.4 ENVIRONMENTAL CONSIDERATIONS**

The applicant property is located in an already developed area. There are no rivers or streams on the site neither in the broader context. The site does not form part of D'MOSS and as such, there is no need for an environmental assessment.

**3.5 TRAFFIC CONSIDERATIONS**

Based on the town planning controls for the proposed zone the maximum developable area of 900m<sup>2</sup> is achievable. For an industrial area the parking ratio is 1 bay/100m<sup>2</sup> therefore 9 parking bays will be required. Using a parking bay and aisle width area of 22m<sup>2</sup>, the area required for parking is 198m<sup>2</sup>.

Ample parking is a significant factor for any successful development. Parking should be adequate in number and design to facilitate easy manoeuvrability.

HOUGHTON ROAD

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The parking requirements for the proposed development is illustrated on the Table below.

| Site Access           | Development Area/ No. Rooms | Parking Standard        | Parking Required |
|-----------------------|-----------------------------|-------------------------|------------------|
| Industrial Area       | 900m <sup>2</sup>           | 1 bay/100m <sup>2</sup> | 9                |
| Loading Bay           |                             | 1 X (9.0m x 3.0m) SU    | 1                |
| <b>Total Required</b> |                             |                         | <b>10</b>        |

Based on the worst-case scenario, the development requires 9 parking bays and 1 Single Unit (9.0m x 3.0m) loading bay.

The proposed development accommodates light industry with sufficient on-site parking, which minimizes parking on the road. As there is very little traffic on the existing road network there will be no negative impact. Employees are from the local community areas surrounding the site and majority walk to work (Refer to Annexure E: Traffic Impact Assessment).

### 3.6 ENGINEERING CONSIDERATIONS

As the subject site is located in a fully developed context, it enjoys the benefits of the existing infrastructural services in terms of roads, sewer, electricity and stormwater reticulation. As such, no further upgrading or provision of new engineering services is anticipated. The new development will connect into the existing infrastructure.

HOUGHTON ROAD

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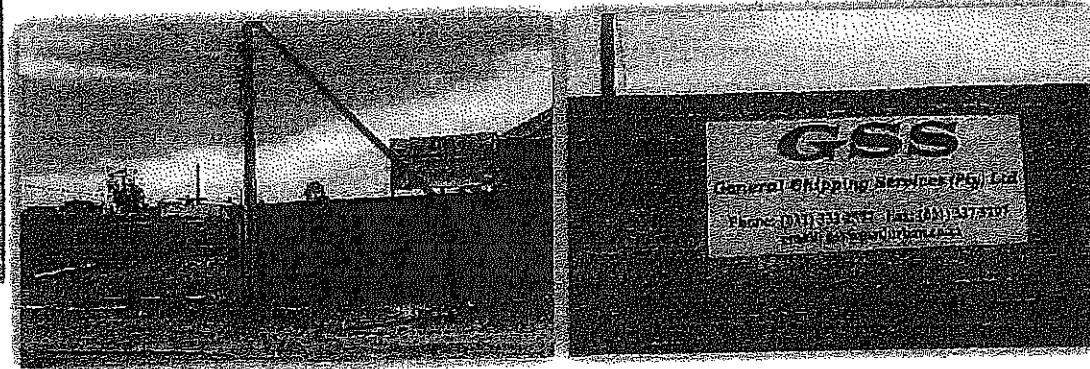
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## 3.7 SITE PHOTOS



These are pictures of the applicant and adjacent site respectively taken from Houghton Road. The applicant site (left) has precedent, which benefits the proposed application and ensures good visibility, as well as access. Toyo World (left) is the applicant site, and New South Africa Trucks (right) is the site situated adjacent to it.



The above pictures show the mix of land uses and developments located on Houghton Road, and which consist of sewer removals, truck depots, and shipping services. They include the Golden Saver Removals etc. (yellow), Blessings Tyres & F.B.M. Trucking (blue), and General Shipping Services Pty Ltd (red) respectively. The land uses on this road are indicative of the transformation happening in the area. The area has a mix of land uses and developments in close proximity. The proposed development therefore will fit in well with its context.

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

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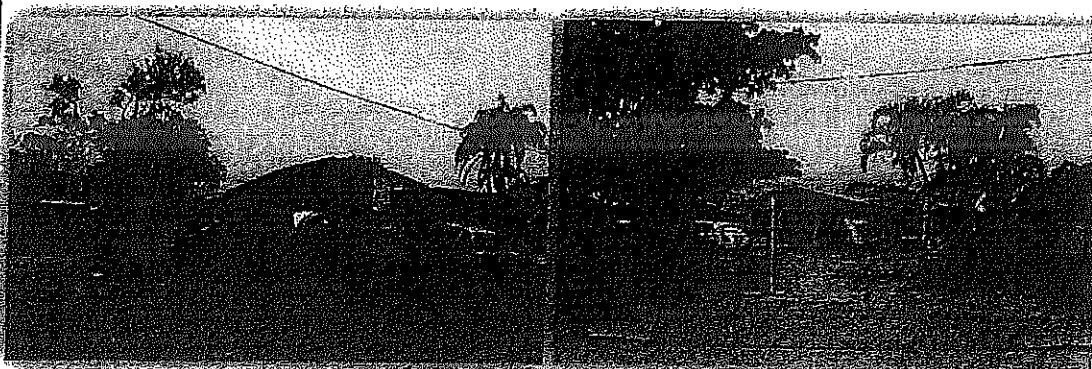
HOUGHTON ROAD

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Within the area (along Houghton Road) the land uses consist of commercial and industrial developments. Residential property is being used to accommodate motor mechanical uses and a truck shop (left). Furthermore, the area is also being used as a vehicle (right).



The above pictures show the 1 Stop Uno Shop (left) situated on Houghton. Directly next to the shop, along Houghton Road, is City Used Spares and Iron Man Scrap Metals (right), which adds to the industrial setting of the area. The applicant site is located in close proximity to these developments which is a spatial advantage to the proposal. The proposal will therefore enhance and add to the industrial setting of the area.



These pictures show the residential developments in the area, as well as the variety of building typologies. These residential developments are located along Houghton Road. Furthermore, these properties include the shops and motor workshops and as such, they benefit from the convenience of having a mix of uses that offers a wide range of goods and services in close proximity to their homes. The proposed rezoning adds to this context providing a variety of use.

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HOUGHTON ROAD

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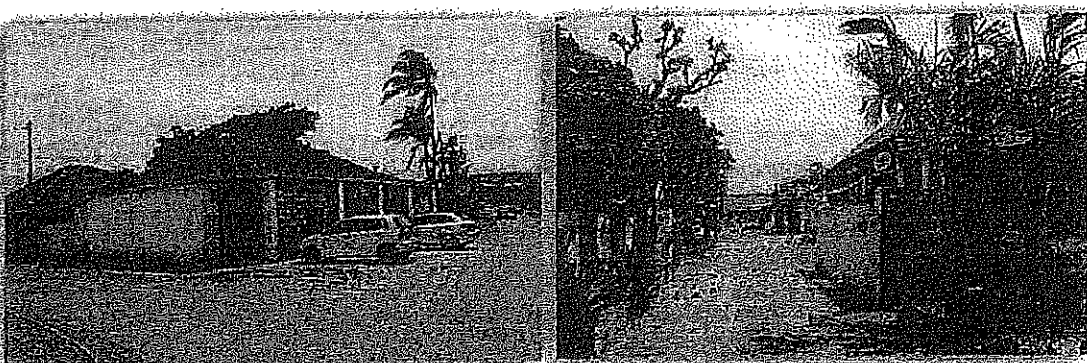
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These are pictures taken from Houghton Road. To the left, the picture shows the Auto City. To the right, the picture shows commercial development, being Palletizer, adjacent to the Auto City. This area is a mix of industrial and commercial land uses such as formal and informal.



The above pictures were taken from Houghton Road. Depicted herein are commercial buildings in the form of transportation services, namely Cosmopolitan Haulers (left) and Africa Trans Carriers (right). Given that the proposed use is for industrial purposes, therefore the proposal will blend in with the current land use along Houghton Road.



To the left, the picture shows the Naheems Take Away and Salon Zara, taken from the intersection of Houghton Road and Horsham Road. To the right, the picture shows residential developments along Houghton Road. Three families can be accommodated on one site subdivided therein, as the Clairwood sites are predominantly rectangular shaped. The area houses a mixture of commercial land uses such as formal and informal.

HOUGHTON ROAD

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The above photos depict the truck depots (top pictures) and truck service/mechanic areas (bottom pictures) along Sirdar Road and Houghton Road within vicinity of the subject property. They form most of the existing features in the study area and also relate to light industry.

HOUGHTON ROAD

#### SUMMARY OF FINDINGS:

- As per zone uses are illegal;
- Area transformed;
- Illegal uses operating in harmony;
- Area begging for change;
- Residential fabric is lost;
- Owners have recognised the need for change and are converting their development to suit;
- Economic hive;
- Residential appearance lost;
- Overall appearance leans towards industrial / mixed use; and
- Residential is somewhat spotty.

**REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309, DUNNS GRANT, DURBAN**

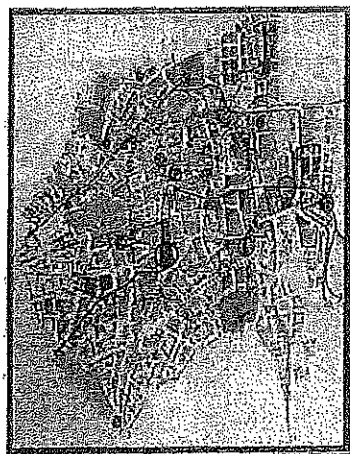
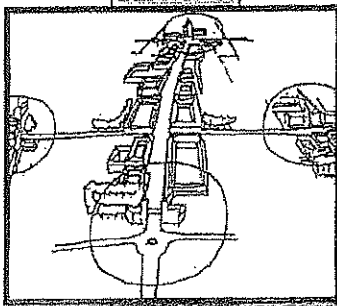
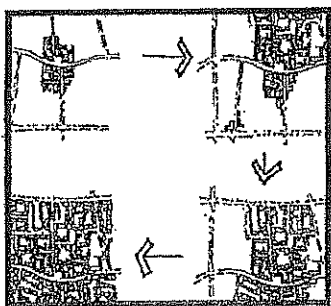
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#### 4.0. PLANNING DESIGN PRINCIPLES AND APPROACHES

- **ESTABLISHING A DEVELOPMENT STRUCTURE**, i.e. identifying basic structuring elements which provide development guidance, certainty, growth opportunities and flexibility,
- **FACILITATING INTEGRATION**, i.e. ensuring appropriate vertical and horizontal linkage of policies, intentions and development,
- **CREATING GENERATIVE SYSTEMS**, i.e. encouraging the establishment of development which generates additional activities, variety and growth,
- **PROMOTING INCREMENTALISM**, i.e. acknowledging development as a continuous process and facilitating an ongoing development process,
- **CREATING A SENSE OF PLACE**, i.e. building on the specific opportunities of each location and encouraging the creation of unique environments,
- **CLUSTERING DEVELOPMENT AND ESTABLISHING A CENTRE STRATEGY**, i.e. discouraging development sprawl, encouraging the clustering of compatible development and establishing a hierarchy,
- **IDENTIFYING ACCESS ROUTES AS INVESTMENT LINES**, i.e. utilizing levels of accessibility as guidance for the location of development components,
- **RECOGNISING NATURAL RESOURCES AS PRIMARY ASSETS**, i.e. positively integrating natural elements in the creation of a human and sustainable environment,



HOUGHTON ROAD

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

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## 5.0 THE MOTIVATION FOR REZONING

### 5.1 OVERVIEW

The proposed development is desirable from a contextual point of view for the following reasons:

- The proposed development utilises the site in an appropriate and sustainable manner.
- The proposed development does not impact negatively on the visual quality of the surrounding development in that its surrounding interfaces are mostly residential and industrial. The properties abutting the site are mainly commercial and industrial. There are properties in proximity to the site that are also used for light industrial purposes.
- It is unlikely that the proposed development will have a significant impact on the existing road network and that it will not contribute to any delays or congestion that may occur on the adjacent roads and broader road network in the vicinity of the area. Due to the location of the property it is highly unlikely that there will be any impact on traffic flows or any cause of congestion. As mentioned there exists many Light Industrial properties which are situated in close proximity to each other and which in essence should lead to traffic congestion, but due to the area being permeable, there are no traffic related issues.
- The proposed development will not only provide light industry, but also add value and enhance the immediate and surrounding area. It will also be convenient to the residents for their employment needs, as it is close to their homes and no travel is needed for them to get to work. The need to rezone is based on the existing use on the site, which has been in operation for a while.
- The proposed development is strategically located in terms of being away from large amounts of traffic. The proposed development finds itself nestled in an area hosting a range of mixed use development.

### 5.2 TO CONSIDER CONTEXT

A key feature that underpins the motivation for rezoning is the potential use of the site to contribute to, and be mindful of, the local context. Key issues for consideration here include:

#### ▪ Scale and Intensity of Development

The rezoning allows for a greater compatibility of use in terms of acknowledging the local context of the area. Therefore, the Light Industrial zone would allow for an activity that recognises the residential scale and intensity of the surrounding development.

#### ▪ Increasing Amenity

The proposed rezoning allows for the creation of an activity that would enhance the livelihoods of the residents in terms of employment and enhance the economy of the Clairwood area as a whole. Thereby, contributing and improving towards the local services provided.

### 5.3 NEED AND DESIRABILITY

The main purpose of establishing *need and desirability* is to ensure that land use development proposals are *necessary* for development purposes and *desirable* in the public interest, resulting in sustainable land utilization which is publicly acceptable and relevant in terms of overall economic growth and development, convenience, and benefit at

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all levels. The central question relating to development applications of this kind is whether or not it satisfies the twin criteria of "need and desirability". That is, whether there is a need for the proposals and whether they're desirable.

The term "need" and "desirability" is primarily assessed from the perspective of the common or public good. That is, the primary issue is not whether the rezoning proposals are in the interests of the applicant, but whether it is in the interests of the broader community. This in turn, needs to be examined from two perspectives: the degree to which the proposals make a positive input into the lives of affected people, and the degree to which their impact may impinge upon, or negatively affect, other people's rights.

Need and desirability has always been a fundamental principle of most Planning and Development Acts (the recent legislation being the Spatial Planning and Land Use Management Act), and is used as a yardstick to formulate and assess development proposals. Moreover, it shall apply specifically to areas which fall under local development plans, where the proposal may not accord with adopted policies or plans.

### 5.3.1 Need

1. As mentioned before in the report, the zoning is for Light Industry, the need of which contributes to the development of the local economy. Local economies reap distinct benefits from the activities of local businesses. Businesses, in turn, can have competitive advantages by employing a local focus in their service and marketing activities. Some of the major benefits of light industrial development to the local economy include a boost in employment rates and income in the community, tax income increase for governments and loyal customer's base for businesses. The standard of living improves for the local as well. Intrinsic in light industrial development is that they bring a wider range of services and amenities in the local area. Light industrial land uses such as the proposed development play an integral role on the development of the local economy which has a ripple effect that impacts the community positively.
2. The proposal is to seek approval for the operation of an already flourishing light industrial use. The opening and running of the warehouse will generate employment opportunities for the people living in and around the area. As the residents of the area are mostly impoverished, the proposed development will assist them in feeding their children and taking care of their families. This will assist in the reduction in unemployment rate in the region and the country as a whole.
3. Location and accessibility is one of the most important issues that have to be addressed and the determining factors of the success of a business. Hence, in this case the proposed light industrial will be located in an area where it has good accessibility, which will not have any negative impact with the existing traffic network. The land uses surrounding the development can use and serve the use of the site in question. The proposed land use will not have any negative impact on the surrounding land uses.
4. Recent studies have shown that light industrial activities are key to rapid economic growth in developing countries such as ours. In recent decades, particularly in Asia and Africa, low skill, labour intensive light industry, for instance, sewing clothes has been the key to fast economic growth in these developing countries.
5. Because there is little capital investment in the light industry sector it is relatively easy for a light industry owner to earn back his money fast. This is important because if the economy is growing rapidly the wages for the workers are most likely to grow at the same rate. The light industrial owner's business plan is essentially based on cheap labour, but in a rapidly growing economy such as ours, cheap wages are temporary and are likely to double in as little as a decade, and recently even more quickly than that.
6. So the advantage of operating low key activities is crystal clear. Therefore, the need to rezone to Light Industrial. The success of these industries is directly proportional to the rate of economic growth. As the economy grows, they are more benefitted than any other industry. Therefore, many people with little or no skills can be employed and learn the skills they need to be able to support their families and be empowered.

7. Establishment of light industrial capacity in this area will help SMME's expand and provide an opportunity for others to join this sector of the market.
8. One of the major benefits of light industrial development such as the proposed development is that the residential properties increase in value. Residential properties located in close proximity to such land uses have the convenience of having access to places of employment. This convenience increases the value of such properties.

### 5.3.2 Desirability

In terms of desirability, the rezoning has a number of features to its benefit. These are as follows:

#### 1. Local Benefits

The site identified for development occupies a desirable and accessible location in Clairwood. The site enjoys easy access to a number of key roads which are highly valued by residents and consumers as it means quick and convenient access to the proposed development.

#### 2. Spatial relationship to residential areas

The proposed development is for light industry, therefore the local residents will benefit from this development in that they have a variety of goods and services within walking distance from their residences. Surrounding residents will not have to travel long distances to access places of employment. Therefore, the proposal can be seen as a benefit to the local residents.

As a light industrial development project situated in an established context, the proposed development assists in meeting the objectives of creating a compact city.

#### 3. Accessibility

The site has good access, being located along an existing local street, namely Houghton Road. The site is afforded direct access off Houghton Road. It is strategically located in terms of connecting to the higher order roads within the wider area. The site has easy access to provincial and national routes, and is in close proximity to major activities, services and facilities. (Refer to Annexure E: Traffic Impact Assessment Report).

#### 4. Traffic

The analysis of existing traffic volumes on the surrounding road network showed that there is little existing congestion on any of the roads including intersections that are likely to feed the proposed site. The proposed development is a light industrial development of low intensity and therefore will not cause traffic congestion in the area. Moreover, parking will be accommodated within the curtilage of the site, thus mitigating congestion. (Refer to Annexure E: Traffic Impact Assessment Report).

#### 5. Impact on surrounding social facilities

The proposed development is an industrial development, and is located within an area that has industrial, residential and other commercial uses situated within the vicinity, therefore blends in with the existing surrounding land uses. As the envisaged industrial land use will not be emitting noxious fumes and chemicals, the surrounding land uses will not be negatively affected. The site is located a distance away from residential uses; therefore, any noise caused by the warehouse will not impact on the residents.

HOUGHTON ROAD



## 6. Precedence

From the site visit, it was found that abutting the site are other sites are used for industrial purposes.



- The red circle is the applicant site and in the yellow indicates current precedent.
- The creep of industrial / mixed use activity can easily be seen.

## LEGISLATIVE FRAMEWORK

The legislative framework provides the mandate for various spheres of government outlining key statutory functions, roles, and responsibilities within the housing development arena. This also provides an overall framework for co-ordination and powers for delivery of mandate(s).

### ***Alignment with the Principles of the Spatial Planning and Land Use Management Act 16 of 2013***

The pre-1994 planning was designed to serve a different political idea - segregation, differentiation and privilege. This has resulted in the spatial form and settlements that we have today. Deeply entrenched, the issues of human settlement and access to land development and like opportunities have proven difficult to adjust. The Spatial Planning and Land Use Management Act (16) of 2013 emerged through the Green Paper (1999) and White Paper (2001) process to replace the Development Facilitation Act as the legislative instrument to regulate spatial planning and land use management in the country. Inherent in the legislation are principles namely: *Spatial Justice, Spatial Sustainability, Efficiency, Spatial Resilience, and Good Administration*. All principles contained in the act apply to all aspects of spatial planning, land development and land use management.

**REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN**

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMHLANGA, 4319, TEL: 031 546 3935

HOUGHTON ROAD

ETHEKWINI MUNICIPALITY

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COMPLIANCE WITH DEVELOPMENT PRINCIPLES IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (SPLUMA) – ACT NO. 16 OF 2013

| DEVELOPMENT PRINCIPLES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | ALIGNMENT OF THE PROPOSAL TO THE PRINCIPLES                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>a) <i>The principle of spatial justice, whereby—</i></p> <ul style="list-style-type: none"> <li>i. <i>past spatial and other development imbalances must be redressed through improved access to and use of land;</i></li> <li>ii. <i>spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterized by widespread poverty and deprivation;</i></li> <li>iii. <i>spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons;</i></li> <li>iv. <i>land use management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas;</i></li> <li>v. <i>land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas; and a Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application;</i></li> </ul> | <p><i>The proposed application is consistent with the spatial planning principles alluded herein in that;</i></p> <p><i>The proposed development will create employment opportunities in the following:</i></p> <ul style="list-style-type: none"> <li>1. <i>Maintenance</i></li> <li>2. <i>Security</i></li> <li>3. <i>Manufacturing</i></li> <li>4. <i>Cleaning</i></li> </ul> |
| <p>b) <i>the principle of spatial sustainability, whereby spatial planning and land use management systems must—</i></p> <ul style="list-style-type: none"> <li>i. <i>promote land development that is within the fiscal, institutional and administrative means of</i></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><i>The proposed development meets with this spatial planning principle in that:</i></p> <p><i>The development is economically sustainable in that it is located in close proximity to amenities that are appropriate to residential use. This cuts travel costs, and</i></p>                                                                                                  |

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT DURBAN.  
 ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMLANGA. 4319, TEL: 031 566 3935

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| <p>the Republic;</p> <ul style="list-style-type: none"> <li>ii. ensure that special consideration is given to the protection of prime and unique agricultural land;</li> <li>iii. uphold consistency of land use measures in accordance with environmental management instruments;</li> <li>iv. promote and stimulate the effective and equitable functioning of land markets;</li> <li>v. consider all current and future costs to all parties for the provision of infrastructure and social services in land developments;</li> <li>vi. promote land development in locations that are sustainable and limit urban sprawl; and</li> <li>vii. result in communities that are viable;</li> </ul> | <p>the time taken by long distance travel.</p> <p>-The development is small in scale and will therefore not contribute to urban sprawl within the area. Furthermore, it is proposed in a well-developed area.</p> <p>-The proposed development is located in an area with adequate infrastructural services and therefore the development will connect to existing infrastructural services. As such no major upgrades will be needed.</p> <p>-The proposed development is located away from environmentally sensitive areas. The proposed development does not form part of D'MOSS.</p> |
| <p>c) the principle of efficiency, whereby—</p> <ul style="list-style-type: none"> <li>i. land development optimizes the use of existing resources and infrastructure;</li> <li>ii. decision-making procedures are designed to minimize negative financial, social, economic or environmental impacts; and</li> <li>iii. development application procedures are efficient and streamlined and timeframes are adhered to by all parties;</li> </ul>                                                                                                                                                                                                                                                | <p>-The site is located in an already built precinct hence the development will utilise existing infrastructure thus mitigating the costs of implementing new infrastructure.</p> <p>-The information that is required by the Municipality will be provided timeously.</p> <p>-The site is already serviced hence the development will utilise existing infrastructure that is sewer, electricity, stormwater, roads and water.</p>                                                                                                                                                      |
| <p>d) the principle of spatial resilience, whereby—</p> <ul style="list-style-type: none"> <li>i. flexibility in spatial plans, policies and land use management systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks; and</li> </ul>                                                                                                                                                                                                                                                                                                                                                                 | <p>The proposal meets all requirements in terms of spatial plans and policies.</p> <p>-The proposed development is in line with the policies and land use management and will not have a negative impact in sustainable livelihoods of communities.</p> <p>The proposed development provides economic opportunities for the local members, thus making them resilient economically.</p>                                                                                                                                                                                                  |
| <p>e) the principle of good administration, whereby—</p> <ul style="list-style-type: none"> <li>i. all spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>-The proposed development meets the Spatial Planning and Land Use Management Act as demonstrated in the report.</p> <p>-The public will be given an opportunity to participate. All interested and affected parties within a radius identified</p>                                                                                                                                                                                                                                                                                                                                    |

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL ERF 309 DUNNS GRANT, DURBAN

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management systems as embodied in this Act;

- ii. all government departments must provide their sector inputs and comply with any other prescribed requirements during the preparation or amendment of spatial development frameworks;
- iii. the requirements of any law relating to land development and land use are met timeously;
- iv. the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them; and
- v. policies, legislation and procedures must be clearly set in order to inform and empower members of the public.

by Municipality will be notified as per the requirement of SPLUMA legislation.

#### DEVELOPMENT NORMS AND STANDARDS OF THE SPATIAL PLANNING LAND USE MANAGEMENT ACT (ACT 16 OF 2013)

#### ALIGNMENT OF THE PROPOSAL TO THE NORMS AND STANDARDS

1. The Minister must, after consultation with organs of state in the provincial and local spheres of government, prescribe norms and standards for land use management and land development that are consistent with this Act, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the Intergovernmental Relations Framework Act.

The proposed rezoning has considered the prescribed development norms and standards as per the Act (SPLUMA). The analyses of existing land use patterns in relation to the proposed have been done.

2. The norms and standards must—

- a) reflect the national policy, national policy priorities and programmes relating to land use management and land development;
- b) promote social inclusion, spatial equity, desirable settlement patterns, rural revitalization, urban regeneration and sustainable development;
- c) ensure that land development and land use management processes, including applications, procedures and timeframes are efficient and effective;
- d) include—

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL 401 307 DUNNS GRANT DURBAN

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- i. a report on and an analysis of existing land use patterns;
- ii. a framework for desired land use patterns;
- iii. existing and future land use plans, programmes and projects relative to key sectors of the economy; and
- iv. mechanisms for identifying strategically located vacant or underutilized land and for providing access to and the use of such land;
- e) standardise the symbology of all maps and diagrams at an appropriate scale;
- f) differentiate between geographic areas, types of land use and development needs; and
- g) provide for the effective monitoring and evaluation of compliance with and enforcement of this Act.

### Alignment with National Development Plan

The National Development Plan (NDP) emphasises the need for more job creation in the country. The vision for the year 2030 is that unemployment will be reduced to 6% from the current 25.2% (as per 2013). One of the key strategies for employment creation is promoting employment in labour-absorbing industries. The plan states that "A large percentage of jobs will be created in domestic-oriented activities and in the service sectors. Some 90 percent of jobs will be created in small and expanding firms. The economy will be more enabling of business entry and expansion, with an eye to credit and market access." The vision for 2030 is that the share of small and medium businesses and firms in output will grow substantially.

### Alignment with KZN Provincial Growth and Development Plan

The KZN provincial government understand the need and integral role played by Small Medium and Micro-sized Enterprises. This is mentioned in Strategic Objective 1.4 of Strategic Goal No. 7. The provincial government has identified that there is a low success rate of start-up SMMEs within the province.

The aim, therefore, of this objective is to encourage the establishment of SMMEs, especially in areas that are disadvantaged; the Canelands area being one of them. The Strategic Objective just mentioned identifies 3 interventions that will facilitate the process of SMME promotion<sup>1</sup>

<sup>1</sup> KwaZulu Natal Provincial Growth and Development Strategy

**HIGHLY TRAINED**



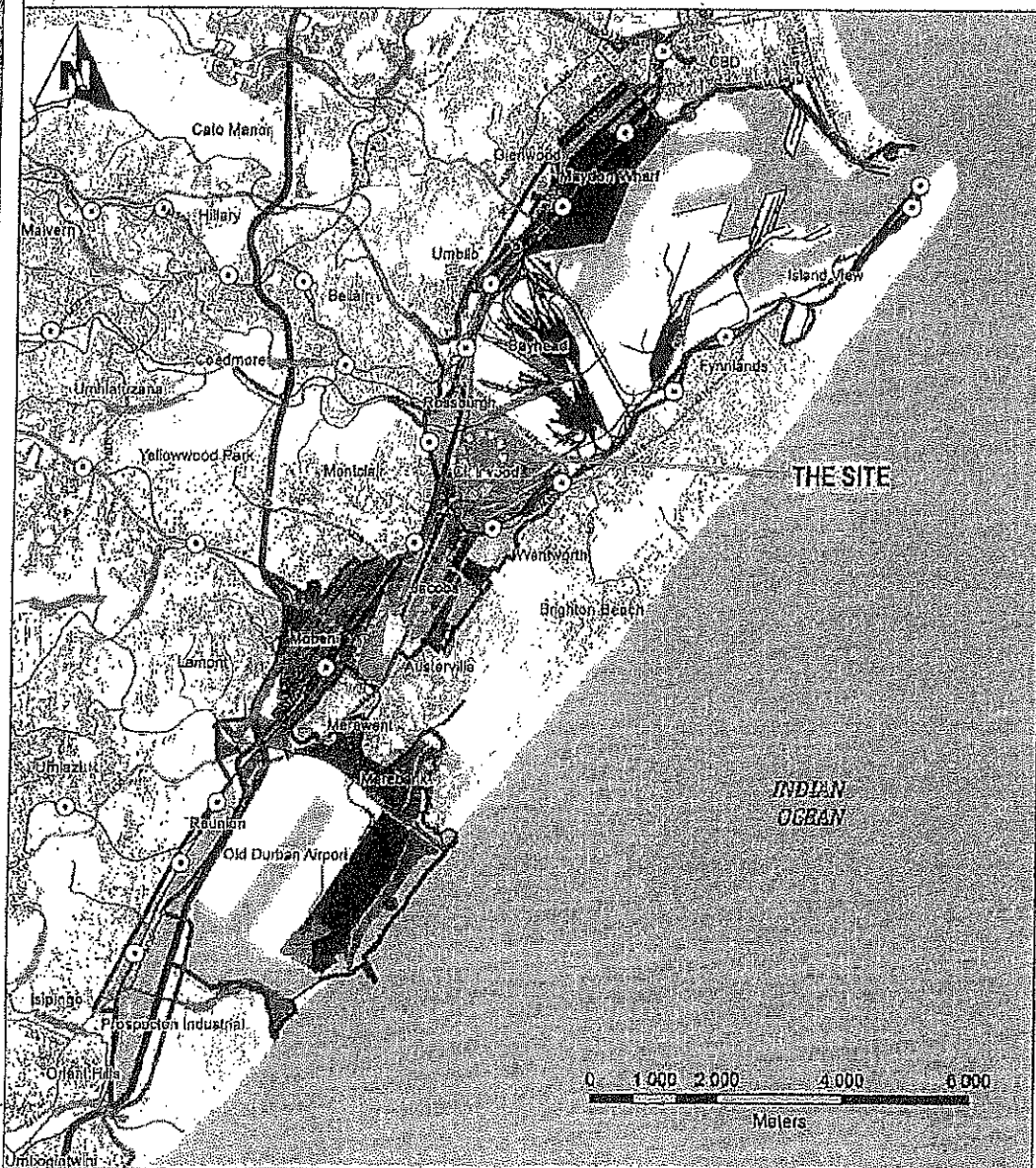
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# BACK OF PORT PROPOSED LAND USE PLAN



| Legend |  |  |  |
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Scale: 1:40 000

Prepared For:

STRATEGIC SPATIAL PLANNING BRANCH

DEVELOPMENT PLANNING DEPARTMENT

ETHEKWINI (2011) 214 7450

Dated: 05/11/11 at 10:00 AM

Prepared By:

Units of the Municipality

This site is for information purposes only.

The Municipality shall be responsible for the final

authoring and is advised through the

use thereof.

Scale: 1:40 000

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REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

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***Alignment with the Local Area Plan and Land Use Management Scheme for the Back of Port Interface - Chapter 5: Social Impact Assessment***

**The relationship between industry and residential areas in the South Durban Basin**

The SDB is home to the largest industrial and manufacturing centre in KwaZulu-Natal. It is the second largest industrial centre in South Africa, which is predominantly a petrochemical and chemical hub that contains manufacturing industries. The majority of the land in the SDB is zoned as Industrial. It is an area that contains a wide range of economic and industrial activities, including heavy and light industry, micro-manufacturing, warehousing, commercial business, the port and the DIA. All of these activities take place within and around dense middle to lower income residential areas.

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**REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN**

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMLANGA, 4319, TEL: 031 566 3935

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## 6.0 CONCLUSION

This report has provided the background, a statement of the current situation, and motivation which support the rezoning of the site to Light Industrial. The proposed rezoning allows for the development of a light industry in an established environment. We believe this to be in keeping with the existing context and existing studies. The rezoning is aligned with proposed spatial plans.

The proposed rezoning allows for the current development to align with the scheme. We believe this to be in keeping with the current context at a local level by formalizing the existing development. Judging from the above key points, it can be seen that the proposed development can be seen as being both a "need" and "desirable" at a local level. To conclude, it should be noted that the establishment of need and desirability in a case of this kind must be examined from a number of perspectives:

- The best use of the land

The issue of whether or not the proposed use represents the best use of the site in question is a central one to any development application. The "best use" of the land must be viewed from one important perspective: from the site's locational uniqueness. The site is suited for light industry and its location to the surrounding industrial developments is advantageous. In addition, the site's location along district and local transport networks assist in increased accessibility, making the positioning of the site more desirable. Furthermore, its accessibility and being utilized as a support base for the immediate surrounding residents makes the positioning of the site more desirable for the intended rezoning.

- Impact on traffic flows

An important impact, which needs to be evaluated, therefore, is the potential effect of the project on traffic flows, and the impact of these flows on the operation of the site at a broader scale. Significantly, this evaluation needs to occur at two scales: Impact on the surrounding areas and the impact on the larger sub-district. It is submitted that there will be no traffic impact on the existing road network as well as the surrounding sub-metropolitan network. This application is submitted on the basis that there will be no traffic congestion.

- Impact on surrounding uses

There are no foreseeable impacts on the surrounding amenities to any considerable degree, as the proposal does not involve any additional development, but rather formalizing the current industrial activity on-site through means of rezoning. It is clear that the proposed rezoning will not change the overall character of the area; however, it will improve the nature and integrity of the surrounding existing residential and business areas by aligning with the scheme.

- Environmental considerations

As the site does not form part of D'MOSS, and since there are sensitive areas identified on-site, no environmental scoping reports would be required. In addition, the site currently accommodates light industrial structures, of which the proposal seeks to rezone; no additional development will be undertaken. As the industry is light and will not be producing any noxious gases it will not have a negative impact on the residents living around the area and on the environment as a whole. Light industry can be viewed as low impact.

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• Concluding statements:

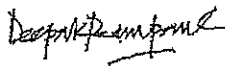
Judging from the above key points, it can be seen that the rezoning can be seen as being both a "need" and "desirable" at both a local and sub-metropolitan level.

In addition, other merits to be noted include:

- The development of the site will assist in meeting the demand for light industry in the area. In addition, it will allow convenience to the surrounding residents in terms of having their employment close by.
- The development of the site it is argued, does not impact negatively on the surrounding environment, in terms of visual and traffic impacts. Instead, the proposal will play a crucial role in upgrading the livelihoods of the residents living in the area by providing further job opportunities in an area that has an acute shortage thereof.
- The development of the site will cater for the needs of the existing area hence the needs of the surrounding local area and sub-metropolitan context.
- The rezoning of the site it is argued, does not impact negatively on the surrounding environment, in terms of visual, and traffic impacts as there will be no additional development on-site.
- No conceivable interference with amenities will arise as the site currently accommodates an existing light industry development.
- The proposal complies with all respects with the objectives specified in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) and the Central Town Planning Scheme.

*As can be seen, the proposed development is both needed and desirable, and meet the requirements of the local town planning scheme and its controls and regulations, and consequently, the Central Operational Entity is respectfully requested to approve this application.*

The Undersigned as duly authorized by ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS (PTY) LTD cc, herewith confirms that ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS (PTY) LTD cc HAS APPLIED DUE DILIGENCE TO THE CONTENT OF THIS Rezoning Application and takes full responsibility for its contents.



Full Name: Mr. Deepak Rampaul



Checked By: Mr. Philani Cele

MSACPLAN: A/217/2010  
MSAP: 12139

HOUGHTON ROAD

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMHLANGA, 4319, TEL: 031 566 3935



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**ANNEXURE A  
APPLICATION  
FORMS, OWNERS  
CONSENT & OTHER  
DOCS**

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REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 BUNNS GRANT DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMHLANGA, 4319, TEL: 031 566 3935





BY-LAW APP FORM  
**DEVELOPMENT PLANNING,  
 ENVIRONMENT & MANAGEMENT UNIT**  
**Land Use Management Branch**

166 KE Masinga Road, Durban 4001

PO Box 680, Durban 4000

Tel: 031 311 1111, Fax: 031 311 7776

www.durban.gov.za

INITIAL ENQUIRY FORM NO. 093 052018 DATE : .....

APPLICATION NO. ....

STATUTORY APPLICATION FORM FOR CONSIDERATION BY THE  
 ETHEKWINI MUNICIPALITY LODGED IN TERMS OF THE ETHEKWINI  
 MUNICIPALITY: PLANNING AND LAND USE MANAGEMENT BY-LAW 2016  
 (MUNICIPAL NOTICE 114 of 2017) AND THE APPLICABLE SCHEME

Please note that ALL sections of this form MUST be completed.

PLEASE TICK APPROPRIATE APPLICATION TYPE

| TYPE OF APPLICATION                                                                                               |   |
|-------------------------------------------------------------------------------------------------------------------|---|
| CATEGORY 1 – In terms of Section 26 of the Planning and Land Use Management By-law                                |   |
| AMENDMENT TO THE SCHEMES                                                                                          |   |
| CATEGORY 2 in terms of Section 27 of the Planning and Land Use Management By-law                                  |   |
| APPLICATION FOR REZONING OF LAND WITH OBJECTIONS                                                                  |   |
| INTRODUCTION OF A NEW AREA (EXTENSION OF THE SCHEME)                                                              |   |
| LAND DEVELOPMENT APPLICATIONS DEVIATING FROM THE PROVISIONS OF THE MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK (MSDF) |   |
| ZONINGS OF LAND                                                                                                   |   |
| CATEGORY 3 in terms of Section 28 of the Planning and Land Use Management By-law                                  |   |
| APPLICATION FOR REZONING OF LAND WITH NO OBJECTIONS AND IN LINE WITH THE MSDF                                     | ✓ |
| CLOSURE OF ROADS AND PUBLIC OPEN SPACE                                                                            |   |
| CONSOLIDATION                                                                                                     |   |
| DEVELOPMENT OF LAND OUTSIDE A SCHEME AREA (MAJOR APPLICATIONS)                                                    |   |
| REMOVAL OF RESTRICTIVE CONDITIONS                                                                                 |   |
| SPECIAL CONSENT                                                                                                   |   |
| SUBDIVISION                                                                                                       |   |
| TOWNSHIP ESTABLISHMENTS                                                                                           |   |
| CATEGORY 4 in terms of Section 29 of the Planning and Land Use Management By-law                                  |   |
| DEVELOPMENT OF LAND OUTSIDE A SCHEME AREA (MINOR APPLICATIONS)                                                    |   |
| NOTARIAL TIES                                                                                                     |   |
| RELAXATION (WITH CONSENT)                                                                                         |   |
| SCHEME EXEMPTIONS (i.e. Home business, B&B & Tuck Shop, etc.)                                                     |   |

IS THIS A COMBINED APPLICATION? (Tick the appropriate box)

YES

NO ✓

*Q8*

APPLICATION IS MADE IN TERMS OF Central SCHEME

DETAILS OF APPLICATION: (detail what the application is for. Any exclusion renders the application null and void)

Rezoning Application of ERF 309 Dunns Grant, Durban.  
from Special Residential 400 to UGHE Industrial.

### PARTICULARS OF SITE

Cadastral Description: ERF 309 Dunns Grant.

Street Address: 140 Houghton Road.

Area of Land: 1300 m<sup>2</sup> Title Deed No: 0000 30289 / 2011

Rate number (for payment purposes): .....

### PARTICULARS OF APPLICANT (applicant as defined in section 21(5) of the eThekweni Municipality Planning and Land Use Management By-Law 2017)

NAME: Zimanga Urban and Rural Design Consultants.

PHYSICAL ADDRESS: Suite 304 Strauss Day Building.

41 Richefond Circle Umhlanga. CODE 4319.

PHYSICAL ADDRESS: .....

(If different to above) ..... CODE .....

Tel. No. (W) (031) 566 3935 (H) ( ) Fax No. ( )

Cell No. .... E-mail rampaui@zimangaconsultants.co.za

SIGNATURE OF APPLICANT [Signature] I.D. No 7302045700002

PROFESSIONAL REGISTRATION NUMBER: .....

### PARTICULARS OF REGISTERED OWNER (to be signed by all registered owners)

NAME: A. Shah

PHYSICAL ADDRESS: .....

..... CODE .....

PHYSICAL ADDRESS: .....

(If different to above) ..... CODE .....

Tel. No. (W) ( ) ..... (H) ( ) ..... Fax No. ( ) .....

Cell No. .... E-mail .....

I hereby declare that I am:

☐ Tenant (P.O.A.)

☐ Other (P.O.A.)

☒ Registered Owner

☐ Sectional Title Holder

☐ Legal Representative (P.O.A.)

Note 1: Where the owner is a Body Corporate, a member of the Body Corporate, Director or a Member of a Company, a Trust or a Close Corporation, a letter of Authority is required.

Note 2: Sectional Title applications require minutes of Body Corporate meeting at which consent was granted.

SIGNATURE OF REGISTERED OWNER/S [Signature] I.D. No .....

SIGNATURE OF REGISTERED OWNER/S ..... I.D. No. ....

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A complete application (as referred in the eThekweni Municipality: Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) must consist of the following:

|                                                                                                                                                                                                                                                                                                                                                                                                          |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| 1. Copy of the initial Planning enquiry form                                                                                                                                                                                                                                                                                                                                                             | ✓ |
| 2. Owners Consent (original or certified copy)                                                                                                                                                                                                                                                                                                                                                           | ✓ |
| 3. Copy of Title Deeds & S-G Diagram/ General Plan                                                                                                                                                                                                                                                                                                                                                       | ✓ |
| 4. Bond holders Consent (original or certified copy)                                                                                                                                                                                                                                                                                                                                                     |   |
| 5. 6 copies of Planning Motivation, Site/Layout Plans and Locality Plans. One electronic copy in PDF                                                                                                                                                                                                                                                                                                     | ✓ |
| 6. Zoning and Land Use Plans                                                                                                                                                                                                                                                                                                                                                                             | ✓ |
| 7. On-site Parking Provision and schedule                                                                                                                                                                                                                                                                                                                                                                | ✓ |
| 8. Approved Traffic Impact Assessment/Statement (where applicable)                                                                                                                                                                                                                                                                                                                                       |   |
| 9. Copy of Environmental authorisation from Department of Agriculture & Environmental Affairs (where applicable)                                                                                                                                                                                                                                                                                         |   |
| 10. Geotechnical report (where applicable)                                                                                                                                                                                                                                                                                                                                                               |   |
| 11. Body Corporate Consent/ Home/Property Owners Consent etc. (where applicable) (original or certified copy)                                                                                                                                                                                                                                                                                            |   |
| 12. In the case of a Trust- a resolution authorising such application be made (where applicable) (original or certified copy)                                                                                                                                                                                                                                                                            |   |
| 13. Power of Attorney / Authorization (if not signed by the Registered Owner) (original or certified copy)                                                                                                                                                                                                                                                                                               | ✓ |
| 14. In the case of an application for the Alteration, Suspension or Deletion of Restrictions relating to Land, which creates a servitude in favour of another property, the names & contact details of all servitude holders                                                                                                                                                                             |   |
| 15. Any other information that may be considered by either yourself or the Municipality as being in support of your application                                                                                                                                                                                                                                                                          |   |
| 16. Clearance from External Organs of State, whichever is applicable (where applicable) inclusive but not limited to                                                                                                                                                                                                                                                                                     |   |
| 17. Water Use License Development of a site maybe subject to a water use license application (in terms of section 21 of the national water act 36 of 2008) In the event of water course on site or within 500m of the property/ties/ the applicant must either obtain the necessarily approval or written confirmation that a license is not required from eThekweni Department of Water And Sanitation. |   |

**Comments from the following Organs of State are attached:**

|                                                                                |                                               |
|--------------------------------------------------------------------------------|-----------------------------------------------|
| AMAFA                                                                          | Department of Public Works and Land Affairs   |
| Coöperative Governance & Traditional Affairs (COGTA)                           | Department of Tourism                         |
| Department of Agriculture Forestry & Fisheries                                 | Department of Water and Sanitation            |
| Department of Economic Development Tourism and & Environmental Affairs (EDTEA) | ESKOM                                         |
| Department of Education                                                        | Passenger Rail Agency of South Africa (PRASA) |
| Department of Energy                                                           | Provincial Department of Transport (DOT)      |
| Department of Health                                                           | South African National Roads Agency (SANRAL)  |
| Department of Mineral Recourses                                                | Transnet Freight Rail                         |
| OTHER                                                                          |                                               |

| Comments from the following Departments are attached: |   |                            |   |
|-------------------------------------------------------|---|----------------------------|---|
| Biodiversity Impact Assessment Branch                 |   | Health                     |   |
| Coastal, Stormwater & Catchment Management            | ✓ | IT/Trump                   |   |
| Design Review Panel                                   |   | Metro Police               |   |
| Durban Tourism                                        |   | Metro Waste Water          | ✓ |
| Economic Development                                  |   | Pollution Control          |   |
| Electricity                                           |   | Roads Provision            |   |
| Environmental Planning and Climate Protection         | ✓ | Soils Laboratory           |   |
| eThekweni Traffic Authority                           |   | Spatial Strategic Planning | ✓ |
| eThekweni Water and Sanitation                        | ✓ | Urban Management           |   |
| Fire                                                  |   | Other                      |   |
|                                                       |   |                            |   |

\*Complete Application means a land development application which is ready to be advertised or has undergone the pre-submission process, and is accompanied by, including but not limited to, authorisations, comments and specialist reports and studies;"

**DEEPAK RAMPAUL** (Applicant) affirm that the information and documentation submitted in this complete application is as per the information and documentation assessed and commented on by the relevant internal and external departments and has not been altered in any form or manner.

Signature of Applicant

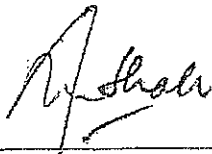
*Deepak Rampaul*

*Q*  
*8*



POWER OF ATTORNEY

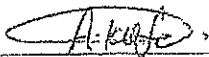
I, the undersigned, in my capacity as owner do hereby constitute / appoint / nominate MR. D. RAMPAUL (ID NO. 730204 5208 082) a representative of ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS cc to act as my lawful agent to make the necessary applications for the securing of the applicable planning rights and to apply for the necessary document or undertake necessary activities / actions/ for the finalisation of the same relating to ERF 309 DUNNS GRANT, CLAIRWOOD, situated at 140 HOUGHTON ROAD, CLAIRWOOD.



Landowner's Name &amp; Signature

01 May 2018

Date



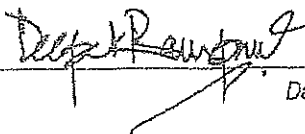
Witness Name &amp; Signature

01 May 2018.

Date

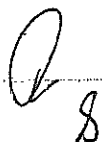
DEEPAK RAMPAUL

Agent Name &amp; Signature



20/07/2018

Date



ETHEKWINI MUNICIPALITY

CENTRAL OPERATIONAL ENTITY

# ANNEXURE B TITLE DEED & SG DIAGRAM

HOUGHTON ROAD

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 307, DUNNS GRANT, DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMLANGA, 4319, TEL: 031 566 3935

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*Cafey*  
 D. SEWJEE & COMPANY  
 ATTORNEYS & CONVEYANCERS  
 15 BAMBOO LANE  
 PINETOWN

PREPARED BY ME

CONVEYANCER  
 SEWJEE S M G

2010 10

000030288/2011

DEED OF TRANSFER

BE IT HEREBY KNOWN:

THAT *Priobhasthi Naidoo*  
 of Pietermaritzburg, Natal, Conveyancer appeared before me, Registrar of  
 Deeds for the Province of KwaZulu-Natal, at Pietermaritzburg, she, the said  
 Appeared, being duly authorised thereto by a Power of Attorney granted to  
 her by which *was signed at Isipingo on the*  
*22nd October 2010, granted to her by*

THE EXECUTOR IN THE ESTATE OF THE LATE  
 SHRI KISSOON DEYNARAYAN NO. 5238/2010/DEN  
 AND SURVIVING SPOUSE DASMATHY DEYNARAYAN,  
 IDENTITY NUMBER 330325 0094 088, UNMARRIED

~~dated the 22nd October 2010~~  
~~and signed at Isipingo.~~

*Cafey*

*Q*  
*8*

PAGE 2

WHEREAS SHRI KISSOON DEVNARAYAN who died testate on the 8<sup>th</sup> February 2010 and who was married in Community of Property to DASMATHY DEVNARAYAN, IDENTITY NUMBER: 330325 0094 088 is the registered owner of the belowmentioned property;

AND WHEREAS, DASMATHY DEVNARAYAN is entitled to a half share in the belowmentioned property by virtue of such marriage in Community of Property;

AND WHEREAS, in terms of the Joint Last Will and Testament of the deceased and surviving spouse, DASMATHY DEVNARAYAN, dated the 8<sup>th</sup> June 2007 and signed at Isipingo, the deceased's share was bequeathed to the belowmentioned heir;

AND WHEREAS, DASMATHY DEVNARAYAN, IDENTITY NUMBER: 330325 0094 088 did on the 12<sup>th</sup> March 2010 elect to adiate to the terms of the Joint Last Will and Testament of the deceased and herself dated the 8<sup>th</sup> June 2007 and signed at Isipingo;

AND WHEREAS in terms Clause 5.4 of the said Last Will and Testament of the deceased and surviving spouse Dasmathy Devnarayan, Identity Number: 330325 0094 088 the belowmentioned heir is entitled to the belowmentioned property;

NOW THEREFORE, the said Appraiser in her capacity aforesaid did by these present cede and transfer in full and free property to and on behalf of:

NIKETHAN AJAY SHAH  
IDENTITY NUMBER: 831017 5093 082  
AND  
URESHKA RAJIND SHAH  
IDENTITY NUMBER: 850316 0214 031  
MARRIED IN COMMUNITY OF PROPERTY  
TO EACH OTHER

*IN FULL AND FREE PROPERTY*  
their Heirs, Executors, Administrators and or Assigns the following

ERE 309 DUNNS GRANT  
REGISTRATION DIVISION ET  
PROVINCE OF KWAZULU-NATAL  
IN EXTENT 1302 (ONE THOUSAND  
THREE HUNDRED AND TWO)  
SQUARE METRES

First transferred by Deed of Transfer No. T 9723/1927 with diagram annexed thereto and held by Deed of Transfer No. T 19011/1969.

*Copy*

*As*

PAGE 3

THIS PROPERTY IS TRANSFERRED:

A. Subject to the whole terms and conditions in as far and still in force and applicable contained in the original Government Grant No. 878 dated 14th day of January 1870.

B. With the benefit over the remainder of the said Lot V of the use of the Road shown on the diagram of said Lot 187 as created in Deed of Transfer No. 6727/1927-2723/1927

WHEREFORE the said Appearer, renouncing all the right and title which the said

ESTATE LATE SHRI KISSOON DEVNARAYAN  
AND SURVIVING SPOUSE DASMATHY DEVNARAYAN

heretofore had to the premises did in consequence also acknowledge it/her to be entirely dispossessed of and disentitled to the same, and that by virtue of these presents the said

NIKETHAN AJAY SHAH  
AND  
UPRESHKA RAJIND SHAH  
Married as aforesaid

their Heirs, Executors, Administrators and /or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights and finally acknowledging the value of the property to be the sum of R230 000.00 (TWO HUNDRED AND THIRTY THOUSAND RAND).

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

THIS SIGNED, EXECUTED AND SEALED at the Office of the Registrar of Deeds, at Pietermaritzburg, in the Province of KwaZulu-Natal, on

in my presence

REGISTRAR OF DEEDS

g.d

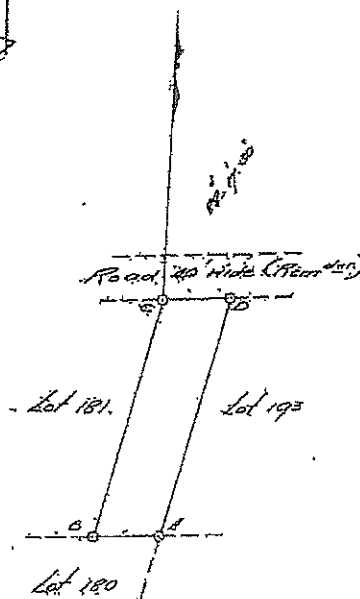
Copy

Original Instrument  
stamped *A. S. 10 p.*  
Examiner of Diagrams

22 JUNE 1925

S.G.O.  
Sub. Vol. 642 Fol. 59

*Ex. of D.*  
*15.57*



REG. DIV.  
FI

Now LOT 399 DUNN'S GRANT

| SIDES. |        | ANGLES. |     |    |    |
|--------|--------|---------|-----|----|----|
| AB     | 94.85  | A       | 136 | 57 | 25 |
| BC     | 353.99 | B       | 73  | 22 | 40 |
| CD     | 94.84  | C       | 106 | 57 | 20 |
| DA     | 353.99 | D       | 73  | 22 | 40 |

| Y | COORDINATES | X |
|---|-------------|---|
|   |             |   |
|   |             |   |
|   |             |   |
|   |             |   |

S



Now known as

The above Diagram lettered ABCD.  
Lot 187 of Parish V of the form Dunn's Grant No. 873.

represents Acres 1 Roddy 11.49 Parcel of land known as Lot 187 of Lot V of (Claimant Estate being a portion of) Lot 202 (Dunn's Grant) No. 873.

situated in the County of Dunbarton.  
Nathl. Bounded as indicated above.

Province of  
No. 27

Surveyed by me, *W. Elton Gallie*,  
Government Land Surveyor.

T3723/1927

June 1925.  
28010

2935

FOR ENDORSEMENTS, etc., SEE BACK F 173/14

*P*  
*S*

165

SV 642F 59

|            |         |
|------------|---------|
| SEARCHED   | INDEXED |
| SERIALIZED | FILED   |
| DEC 3 1998 |         |

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ETHEKWINI MUNICIPALITY

CENTRAL OPERATIONAL ENTITY

HOUGHTON ROAD

# ANNEXURE C EXISTING ZONING CONTROLS

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMLANGA, 4319, TEL: 031 566 3935

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8





ETHEKWINI MUNICIPALITY

CENTRAL OPERATIONAL ENTITY

# ANNEXURE D

## PROPOSED ZONING CONTROLS

HOUGHTON ROAD

REZONING FROM SPECIAL RESIDENTIAL 400 TO EIGHT INDUSTRIAL - ERF 309 DUNN'S GRANT, DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMHLANGA, 4319, TEL: 031 566 3935

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## CENTRAL ZONING CONTROLS

UPDATED: 05-11-2009

[illegible]

*P. b.*

ETHEKWINI MUNICIPALITY

CENTRAL OPERATIONAL ENTITY

# ANNEXURE E TRAFFIC IMPACT ASSESSMENT

HOUGHTON ROAD

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL ERF 309 DUNN'S GRANT, DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMHLANGA, 4319, TEL: 031 566 3935

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8

# Traffic Impact Assessment

For

**The Proposed Rezoning of Erf 309 Dunns Grant, Durban  
from Special Residential 400 to Light Industry.**



Date: 12 April 2018

Report Number: NSA 1058 – 2018, Revision: 00

Assessing Authority: Ethekwini Municipality



**CONSULTING  
ENGINEERS (PTY) LTD**

CIVIL • TRAFFIC • WATER • PROJECT MANAGEMENT

P O Box 949, Westville, 3639

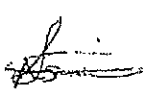
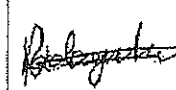
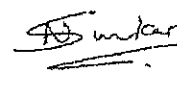
Tel: 082 200 9918

info@nsaengineers.co.za

CK No. 2016/491232/07

*[Handwritten signature]*

## Document Tracking Sheet

|                      |             |                                                                                                      |                                                                                   |                                                                                    |                                                                                     |
|----------------------|-------------|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <b>Project Title</b> |             | The Proposed Rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to Light Industry. |                                                                                   | <b>Project Number</b>                                                              |                                                                                     |
|                      |             |                                                                                                      |                                                                                   | NSA 1058 - 2018                                                                    |                                                                                     |
| <b>Document Type</b> |             | Traffic Impact Assessment                                                                            |                                                                                   |                                                                                    |                                                                                     |
| <b>Version</b>       | <b>Date</b> | <b>Project Number</b>                                                                                | NSA 1058 - 2018                                                                   |                                                                                    |                                                                                     |
| 00                   | 12/04/2018  | <b>Description</b>                                                                                   | Rezoning Application                                                              |                                                                                    |                                                                                     |
|                      |             |                                                                                                      | <b>Prepared By</b>                                                                | <b>Reviewed By</b>                                                                 | <b>Approved</b>                                                                     |
|                      |             | <b>Name</b>                                                                                          | A. Ismail                                                                         | N. Padayachee                                                                      | N. Sunker                                                                           |
|                      |             | <b>Signature</b>                                                                                     |  |  |  |
| <b>Version</b>       | <b>Date</b> | <b>Project Number</b>                                                                                |                                                                                   |                                                                                    |                                                                                     |
|                      |             | <b>Description</b>                                                                                   |                                                                                   |                                                                                    |                                                                                     |
|                      |             |                                                                                                      | <b>Prepared By</b>                                                                | <b>Reviewed By</b>                                                                 | <b>Approved</b>                                                                     |
|                      |             | <b>Name</b>                                                                                          |                                                                                   |                                                                                    |                                                                                     |
|                      |             | <b>Signature</b>                                                                                     |                                                                                   |                                                                                    |                                                                                     |
| <b>Version</b>       | <b>Date</b> | <b>Project Number</b>                                                                                |                                                                                   |                                                                                    |                                                                                     |
|                      |             | <b>Description</b>                                                                                   |                                                                                   |                                                                                    |                                                                                     |
|                      |             |                                                                                                      | <b>Prepared By</b>                                                                | <b>Reviewed By</b>                                                                 | <b>Approved</b>                                                                     |
|                      |             | <b>Name</b>                                                                                          |                                                                                   |                                                                                    |                                                                                     |
|                      |             | <b>Signature</b>                                                                                     |                                                                                   |                                                                                    |                                                                                     |



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P O Box 949, Westville, 2639

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[info@nsaengineering.co.za](mailto:info@nsaengineering.co.za)

CK No. 2016/491232/07

12 April 2018

Head: Ethekwini Transport Authority

P. O. Box 680

Durban

4000

### Verification for Traffic Impact Assessment

**The Proposed Rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to Light Industry.**

**Report number: NSA1058 - 2018**

**Revision 00**

The undersigned, on behalf of NSA Consulting Engineers cc, has been appointed as the registered professional for this Traffic Impact Assessment and has applied due diligence to the content of this report and endeavoured to ensure that the Traffic Impact Assessment is free of technical errors and takes full responsibility for its content.

We, NSA Consulting Engineers cc; also undertake to attend any forum where the Traffic Assessment is in dispute to report on matters that relate to the Traffic Impact Assessment. We understand and agree that the municipality shall not be liable to compensate us in this regard.

**N. SUNKER**  
Pr. Tech. Eng  
(Pr. No. 200670195)  
\_\_\_\_\_  
Sign

Signature

Full name: Mr. Neeraj Sunker on behalf of NSA Consulting Engineers

Academic qualifications: MTech Civil Engineer

ECSA Registration: PR 200670195

*JS*



30 Archie Gumede Place | Durban | 4001  
P O Box 680 | Durban | 4000  
Tel: 031 311 7344 | Fax 031 305 5871  
www.durban.gov.za

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### TRAFFIC IMPACT ASSESSMENT CHECKLIST

*Before a full review is conducted, the report will be checked for completeness. If the report is missing any of the items listed below, it will be returned for revision. If any content is not applicable this must be indicated (with reasons) as such under the section/s of the report*

ETA Ref. No:.....

Date of Application: 12 April 2018

Development Address: 140 Houghton Road, Clairwood

Development Description: Erf 309 Dunns Grant, Durban

Traffic Professional: NSA Consulting Engineers

| Content                                                                                                                                                  | Yes | No | N/A | Comment        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|-----|----------------|
| <b>1. Traffic impact assessment cover</b>                                                                                                                | ✓   |    |     |                |
| <b>2. Letter signed by ECSA registered professional</b>                                                                                                  | ✓   |    |     |                |
| <b>3. Development Particulars</b>                                                                                                                        | ✓   |    |     |                |
| 3.1. Development description and reference name                                                                                                          | ✓   |    |     |                |
| 3.2. Location plan                                                                                                                                       | ✓   |    |     |                |
| 3.3. Land use rights existing and applied, including type and extent of rights, list of land uses under proposed zoning including town planning controls | ✓   |    |     |                |
| <b>4. Study area</b>                                                                                                                                     | ✓   |    |     |                |
| 4.1 Study area plan or map indicated                                                                                                                     | ✓   |    |     |                |
| <b>5. Background information</b>                                                                                                                         | ✓   |    |     |                |
| 5.1. Listed information – transport facilities and planning                                                                                              | ✓   |    |     |                |
| 5.2. Relevant information provided by municipality e.g. Framework plans, road classification, traffic models, etc.                                       | ✓   |    |     |                |
| 5.3. Schematic diagram/s                                                                                                                                 |     |    | ✓   | Does not apply |
| <b>6. Site investigation</b>                                                                                                                             | ✓   |    |     |                |
| 6.1. Documented and photographic record (e.g. road conditions, geometrics, operations, transport facilities, etc)                                        | ✓   |    |     |                |
| <b>7. Traffic Demand Estimation</b>                                                                                                                      | ✓   |    |     |                |
| 7.1. Carried out for worst case trip demand land use under the proposed change in land use or extent as stipulated in the town planning application      | ✓   |    |     |                |
| 7.2. Assessment years                                                                                                                                    | ✓   |    |     |                |
| 7.3. Assessment hours                                                                                                                                    | ✓   |    |     |                |
| 7.4. Traffic counts not more than 2 years old – date and                                                                                                 | ✓   |    |     |                |
| 7.5. Traffic growth rates                                                                                                                                | ✓   |    |     |                |
| 7.6. Trip generation rates                                                                                                                               | ✓   |    |     |                |
| 7.7. Modal split                                                                                                                                         | ✓   |    |     |                |
| <b>8. Trip Distribution and Traffic Assignment</b>                                                                                                       | ✓   |    |     |                |
| 8.1. Manual trip distribution and assignment                                                                                                             | ✓   |    |     |                |
| 8.2. Simulation software used for trip distribution and assignment                                                                                       |     |    | ✓   | Does not apply |
| 8.3. Supporting information documented for traffic distribution                                                                                          |     |    | ✓   | Does not apply |

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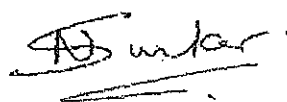
|                                                                                                                                                                                   |   |  |   |                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--|---|----------------|
| 8.4. Trip Distribution and Traffic Assignment diagrams                                                                                                                            | ✓ |  |   |                |
| 9. Total traffic demand – all aspects including diagrams                                                                                                                          | ✓ |  |   |                |
| 10. Demand side mitigation                                                                                                                                                        |   |  | ✓ | Does not apply |
| 11. Proposed improvements                                                                                                                                                         |   |  | ✓ |                |
| 11.1. New roads or widening or intersection improvements –<br>TRL drawing and fatal flaw implementation screening<br>checklist                                                    |   |  | ✓ |                |
| 11.2. Traffic signals must meet ETA's Urban Traffic Control<br>Warrant and requirements. In addition, a roundabout<br>assessment comparison must be carried out                   |   |  | ✓ |                |
| 11.3. Traffic management plans                                                                                                                                                    |   |  | ✓ |                |
| 12. Traffic Impact Assessment                                                                                                                                                     | ✓ |  |   |                |
| 12.1. Assessment based on worst case land use scenario                                                                                                                            | ✓ |  |   |                |
| 12.2. Design year horizon assessment                                                                                                                                              | ✓ |  |   |                |
| 12.2.1. "Without" proposed mitigating measures (with and<br>without development)                                                                                                  | ✓ |  |   |                |
| 12.2.2. "With" proposed mitigating measures (with and<br>without development)                                                                                                     |   |  | ✓ |                |
| 12.3. Planning year horizon assessment                                                                                                                                            |   |  | ✓ |                |
| 12.3.1. "With" proposed mitigating measures                                                                                                                                       |   |  | ✓ |                |
| 13. Site Impact Assessment (if applicable)                                                                                                                                        | ✓ |  |   |                |
| 14. Transport requirements and cost                                                                                                                                               | ✓ |  |   |                |
| 14.1. Any changes to transport master planning                                                                                                                                    |   |  | ✓ |                |
| 14.2. Transport / Road services cost contribution                                                                                                                                 |   |  | ✓ |                |
| 14.3. Improvement costs estimates or municipal tariff as<br>applicable                                                                                                            |   |  | ✓ |                |
| 14.4. Recommendation's                                                                                                                                                            |   |  | ✓ |                |
| 14.5. Traffic Road Layout Plans                                                                                                                                                   |   |  | ✓ |                |
| 14.6. Eng. Drawings, Cost estimate, Financial<br>guarantees, and Undertakings for new or existing<br>road improvements                                                            |   |  | ✓ |                |
| 15. Recommendations                                                                                                                                                               | ✓ |  |   |                |
| 15.1. The change in land use for which approval is                                                                                                                                | ✓ |  |   |                |
| 15.2. Proposed type and location of all erf accesses.                                                                                                                             | ✓ |  |   |                |
| 15.3. The improvements, changes and mitigation measures<br>that are required, subject thereto that these improvements<br>or measures may be amended in subsequent investigations. | ✓ |  |   |                |
| 15.4. Elements of the transport / road network master plan<br>that should be implemented in support of the development.                                                           |   |  | ✓ |                |
| 15.5 Traffic management measures aimed at protecting<br>Residential or other sensitive areas.                                                                                     |   |  | ✓ |                |
| 16. Appendix                                                                                                                                                                      | ✓ |  |   |                |
| 16.1. Relevant Traffic Impact Assessment Correspondence,<br>e.g. Traffic Counts, analysis details, maps, plans, etc.                                                              | ✓ |  |   |                |

Date: 12 April 2018

Name: Neeraj Sunker

Professional Registration Details:

PR 200670195



Signature



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## 1. Development Particulars

### 1.1 Development Description and Location

NSA Consulting Engineers was appointed to conduct a Traffic Impact Assessment (TIA) for the Proposed Rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to Light Industry. The proposed development is also known as 140 Houghton Road, Clairwood. The proposed development has a total site area of 1 302m<sup>2</sup>.

This report is in support of the rezoning application.

The site locality and aerial photograph is illustrated on figure 1 and 2 respectively.

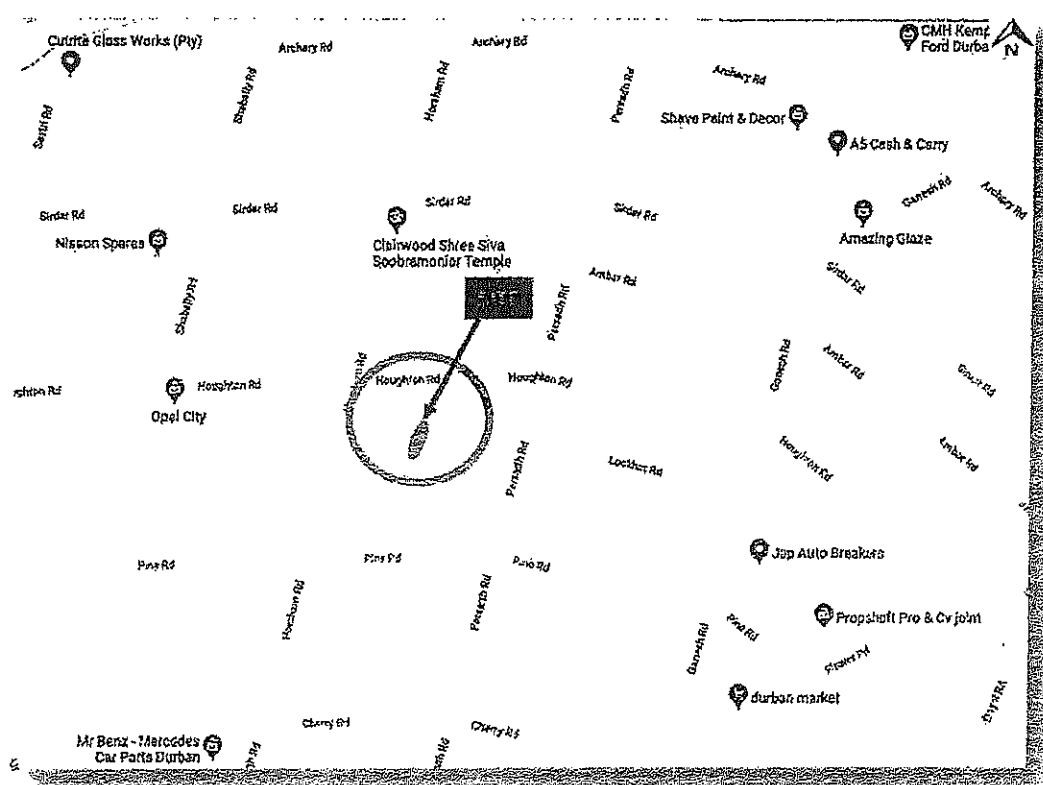


Figure 1: Locality Plan

*As*



Figure 2: Aerial Photograph of Site

## 1.2 Land Use

|                 |                         |
|-----------------|-------------------------|
| Current Zoning: | Special Residential 400 |
| FAR:            | N/A                     |
| Coverage:       | 50%                     |
| Height:         | 2 Storeys               |
| Site Area:      | 1 302m <sup>2</sup>     |

|                  |                     |
|------------------|---------------------|
| Proposed Zoning: | Light Industrial    |
| FAR:             | N/A                 |
| Coverage:        | 50%                 |
| Height:          | 2 Storeys           |
| Site Area:       | 1 302m <sup>2</sup> |

The Town Planning controls are illustrated on Annexure A.

## 2. Proposed Development

The proposed development currently consists of a Storage/Warehouse facility that is accommodated within two buildings on the site. The development provides work for locals that are within walking distance of the development.

However now with the same intention for the locals, as per the town planning report prepared by Zimanga Urban and Rural Design Consultants the developer wishes to develop the property for industrial use.

The extract from the town planning report is illustrated on Annexure B.

## 3. Study Area

The study consists of evaluating the impacts of the proposed development and developing mitigating measures where negative impacts exists in order to meet the requirements of the relevant authorities. In general, the scope of traffic studies is limited to intersections (and road networks) that will deteriorate significantly, due to the development-generated traffic.

It is a common cause that the traffic impacts of new developments are concentrated on the immediate transportation network with these impacts dissipating rapidly further away from the development as more access opportunities become available and traffic disperses onto the broader road network.

Consequently, the impacts of the proposed development are limited to adjacent road network, with the key focus on the following intersections:

- Houghton Road and Horsham Road
- Houghton Road and Persadh Road

The Road Network is illustrated in Figure 3.

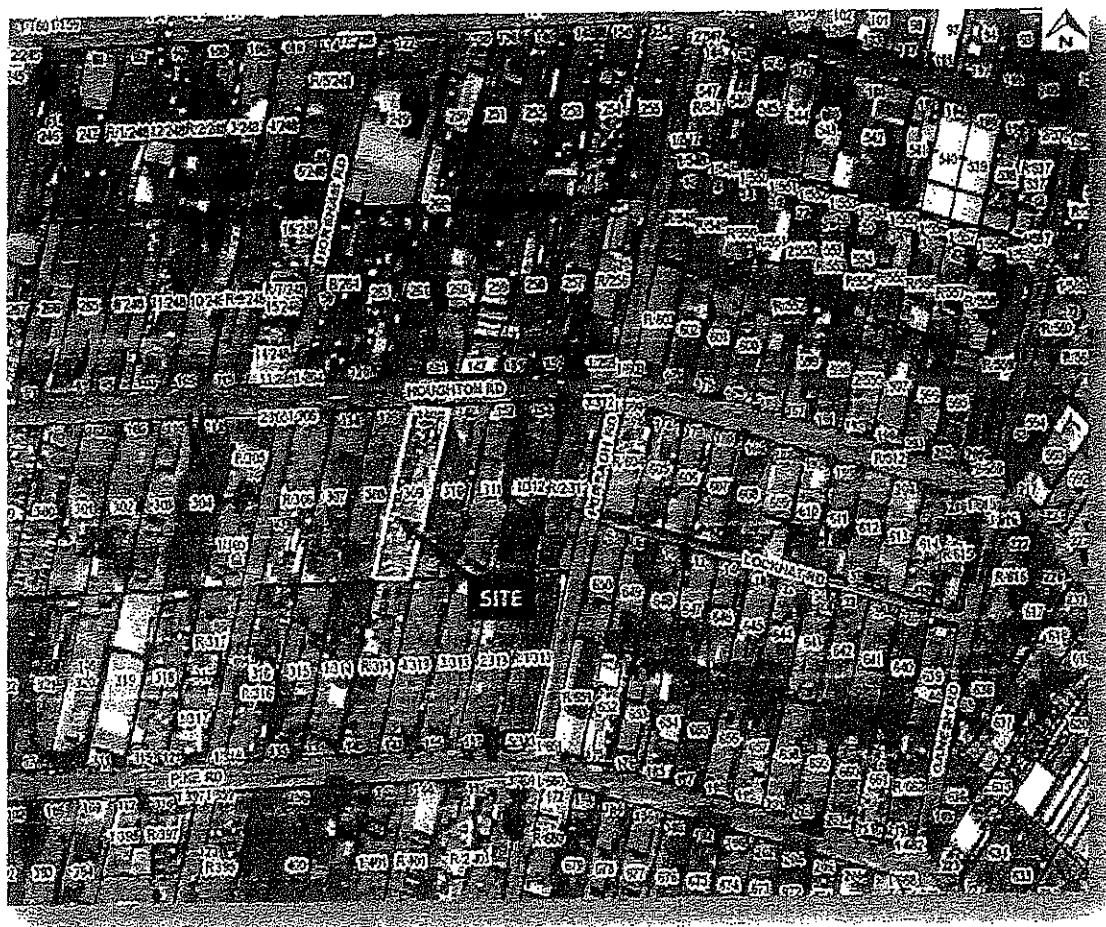


Figure 3: Road Network

### 3.1 Back of Port Plan

Majority of the area surrounding the Clairwood Suburb is currently in use for industrial uses, Warehousing, small-scale businesses and other manufacturing type of companies. Over the years Clairwood, once known as a residential suburb has gradually been infiltrated by businesses. As per the Back of Port Plan compiled in the Concept, Framework, Precinct Plans and Zoning Framework Report by IYER Urban Design Studio illustrates a change in the primary residential Land use.

The Back of Port Plan is illustrated on Annexure C.

As per the change in the primary landuse of the area from residential, the existing roads that do not meet the minimum road width requirement and do not consist of road pavement layers that would support the loading of vehicles in an industrial area therefore the existing roads will be subjected to upgrades on a large scale. The roads will need to be upgraded to a minimum width of 7.5m and will be subject to a redesign of the road pavement layers for industrial use.

## 4. Background Information

|                  |                                       |
|------------------|---------------------------------------|
| Road Name:       | Houghton Road                         |
| Road Width:      | Varies between 5.0 – 5.8m             |
| Road Reserve:    | 12.0m                                 |
| Road Class:      | Class 5                               |
| Number of Lanes: | 1 lane in each direction              |
| Region:          | Central Region                        |
| Authority:       | Ethekwini Municipality                |
| Surface:         | Asphalt                               |
| Speed Humps:     | Yes                                   |
| Sidewalks:       | Yes (sections of sidewalk broken off) |
| Street Lighting: | Yes                                   |
| Line Marking:    | Centre Line – Not Visible             |



|                  |                                       |
|------------------|---------------------------------------|
| Road Name:       | Horsham Road                          |
| Road Width:      | Varies between 4.8 – 5.5m             |
| Road Reserve:    | 1.0m                                  |
| Road Class:      | Class 5                               |
| Number of Lanes: | 1 lane in each direction              |
| Region:          | Central Region                        |
| Authority:       | Ethekwini Municipality                |
| Surface:         | Asphalt                               |
| Speed Humps:     | Yes (In sections along the road)      |
| Sidewalks:       | Yes (sections of sidewalk broken off) |
| Street Lighting: | Yes                                   |
| Line Marking:    | Centre Line – Not Visible             |

|                  |                           |
|------------------|---------------------------|
| Road Name:       | Persadh Road              |
| Road Width:      | Varies between 4.7 – 5.2m |
| Road Reserve:    | 12.0m                     |
| Road Class:      | Class 5                   |
| Number of Lanes: | 1 lane in each direction  |
| Region:          | Central Region            |
| Authority:       | Ethekwini Municipality    |
| Surface:         | Asphalt                   |
| Speed Humps:     | Yes                       |
| Sidewalks:       | No                        |
| Street Lighting: | Yes                       |
| Line Marking:    | Centre Line – Not Visible |

Road widths could not be determined accurately due to over grown vegetation along roadside. The sidewalks that are on either side of the road are broken or missing in sections along the road. The roads show extremely deteriorated conditions.

**Table 1: Road Classification System**

|                  |                                                                                                                                                |                   |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Class 1*</b>  | Freeway - High mobility, no or very limited at grade access. No traffic calming                                                                | 1010veh/hr/lane   |
| <b>Class 2*</b>  | Major Arterial / Regional Distributor - High mobility, limited at grade access (intersections), no direct property access. No traffic calming. | 820veh/hr/lane    |
| <b>Class 3*</b>  | Arterial / Major Collector - Balanced mobility and accessibility function. Traffic calming only to consist of signage and road markings.       | 790veh/hr/lane    |
| <b>Class 4**</b> | Collector - More accessibility, less mobility, direct property access. All types of traffic calming allowed.                                   | As Per ETA Manual |
| <b>Class 5**</b> | Local Street - Limited mobility, more accessibility. All types of traffic calming allowed including speed humps.                               | As Per ETA Manual |

\*Source: Highway Capacity Manual 2000 - Exhibit 10-7

\*\*Source: ETA Manual October 2015

## 5. Site Investigation

Observations during the AM peak hour revealed that there is a minimal flow of traffic along Houghton Road however, we had observed that the area is constantly utilised by pedestrians throughout the day such as children that are attending schools in the neighbourhood, workers and residents.

The roads however show extremely deteriorated surface conditions. The sidewalks are broken at intersection crossings and in intervals along the roads.

The area was once predominantly a residential area however over the years light industrial, trucking, commercial and other developments have infiltrated the area gradually turning the area into a Mixed Use area.

The land uses in the area consist of Place of Worship, Retail (Hair Salons, Small Tearooms, Fresh Produce Supermarkets), Scrap Yards Catering for each make of car (Volkswagen, Ford, Uno etc.), Trucking Depots, Storage Yards, Multiple Residential Units, Hardware Wholesalers, Plastic Wholesalers, Crèches, Schools, Community Halls and Recreational Areas.

Industrial, commercial and trucking depots now are a part of the predominant land uses in the area. There are residential properties that are utilised by residents who have been living in the same property for years.

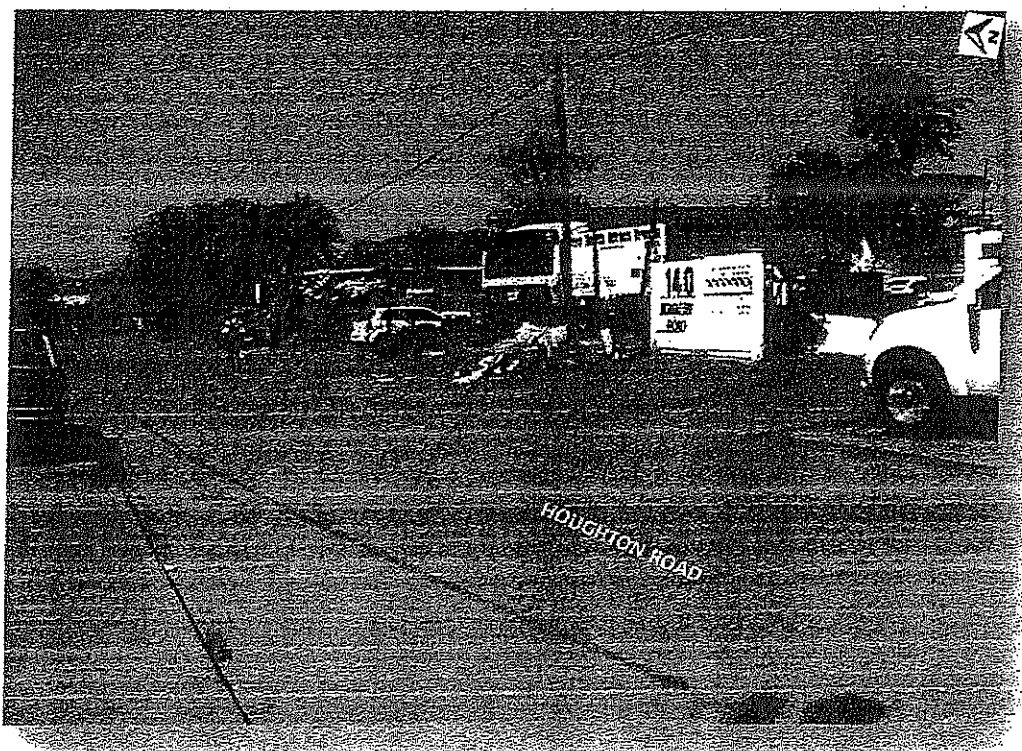


Figure 4: Intersection of Site Access and Houghton Road facing east

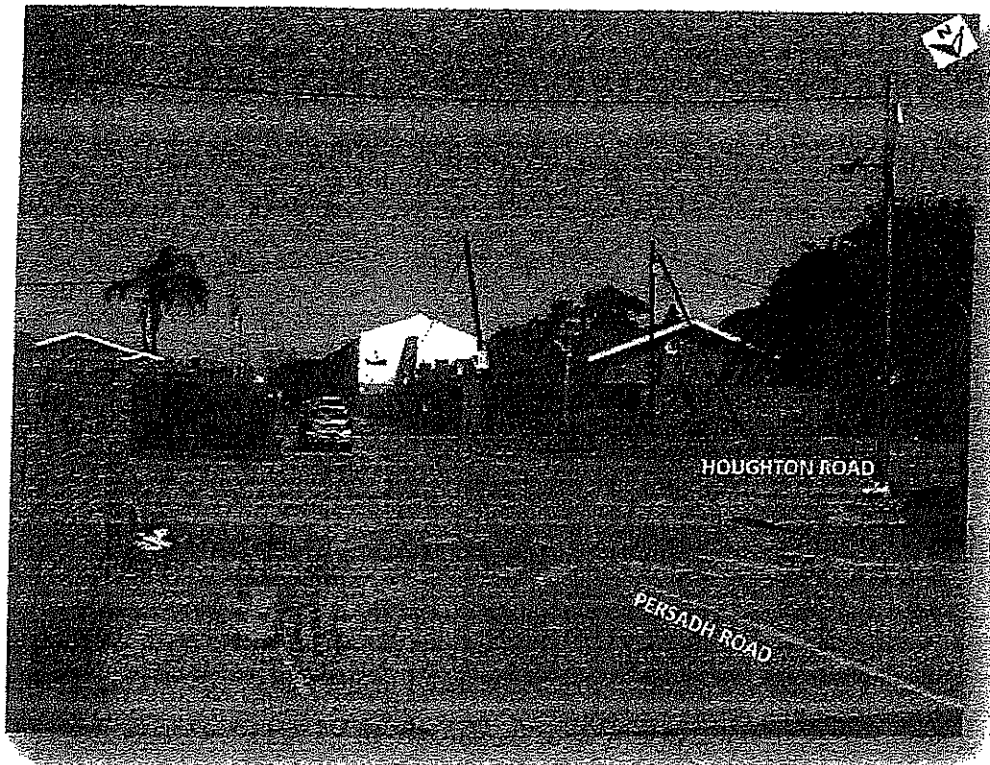


Figure 5: Intersection of Persadh Road and Houghton Road facing south

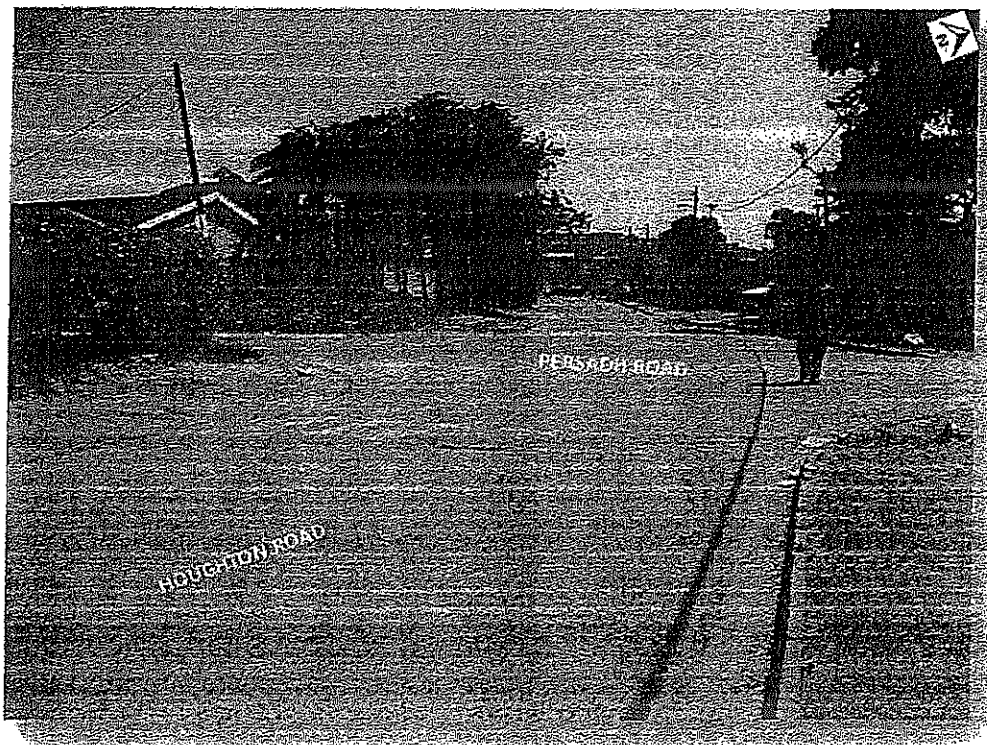


Figure 6: Intersection of Persadh Road and Houghton Road facing west

Q8



Figure 7: Intersection of Persadh Road and Houghton Road facing north west



Figure 8: Intersection of Persadh Road and Houghton Road facing north



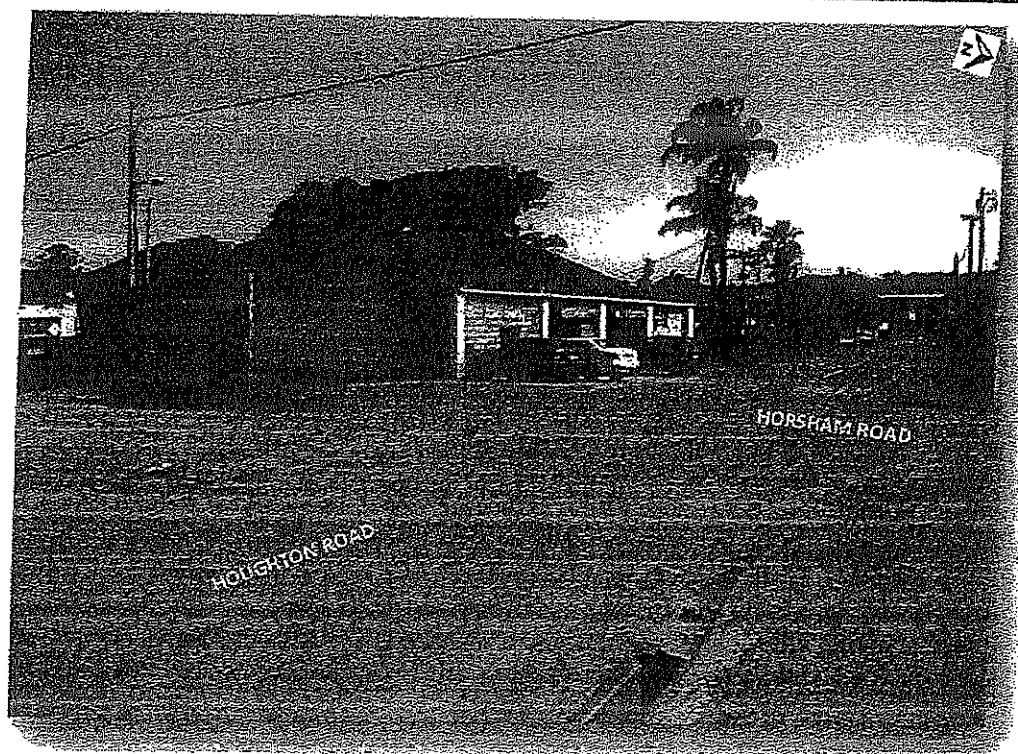


Figure 9: Intersection of Horsham Road and Houghton Road facing south west

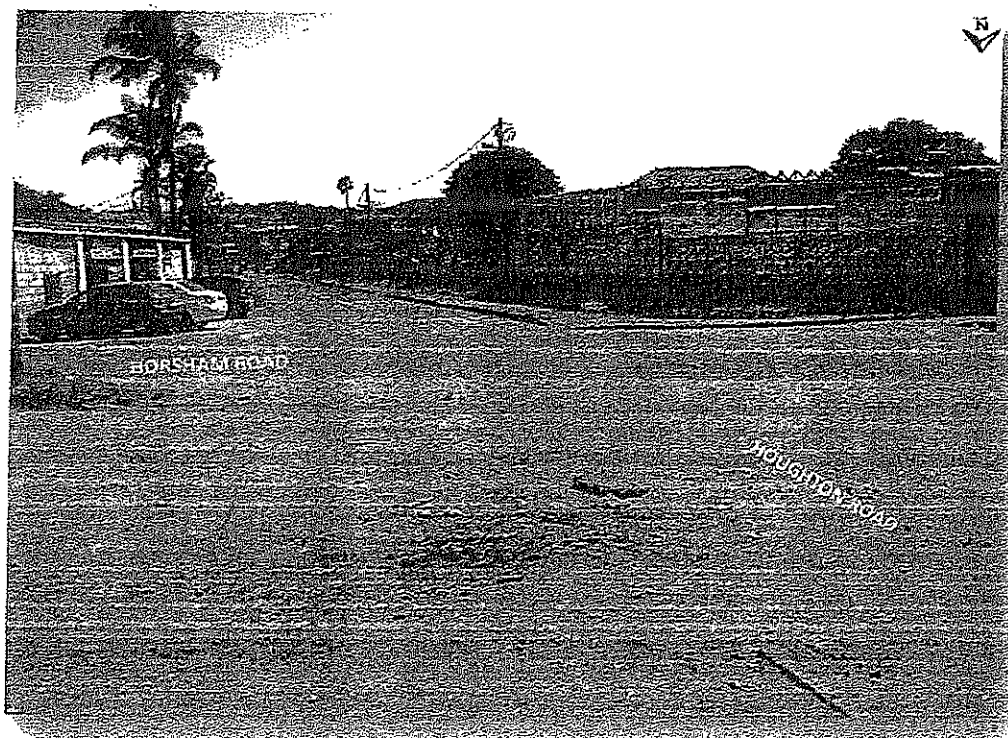


Figure 10: Intersection of Horsham Road and Houghton Road facing south

A handwritten signature in the bottom right corner of the page.

### 6.3 Assessment Hours

The existing assessment was done for a Weekday AM peak (06h30 – 07h30), Weekday PM peak (16h30 – 17h30).

### 6.4 Existing traffic counts

Traffic counts have been conducted under normal weather conditions by NSA Consulting Engineers on Tuesday, 27<sup>th</sup> March 2018 at the following intersections:

- Houghton Road and Horsham Road
- Houghton Road and Persadh Road

This is in conjunction with Clause 4.3.5 of the ETA Manual.

Existing traffic volumes are illustrated on Figure 11 below.



## 6. Traffic Demand Estimation

### 6.1 Worst Case Scenario

Current Zoning: Special Residential 400

FAR: N/A

Coverage: 50%

Height: 2 Storeys

Site Area: 1 302m<sup>2</sup>

Proposed Zoning: Light Industrial

FAR: N/A

Coverage: 50%

Height: 2 Storeys

Site Area: 1 302m<sup>2</sup>

#### Worst Case Scenario for Proposed Zoning – Industrial Use

Based on the above controls for the proposed zone the maximum developable area of 900m<sup>2</sup> is achievable. For a industrial area the parking ratio is 1 bay/100m<sup>2</sup> therefore 9 parking bays will be required. Using a parking bay and aisle width area of 22m<sup>2</sup>, the area required for parking is 198m<sup>2</sup>.

The proposed development will be analysed based on the the worst case scenario as per the town planning report done by Zimanga Urban and Rural Design Consultants.

### 6.2 Assessment years

A 5 year (2023) analysis is required, i.e. in accordance with the recommendations of the "Ethekwini Transport Authority Manual for Traffic Impact Assessments and Site Traffic Assessments."



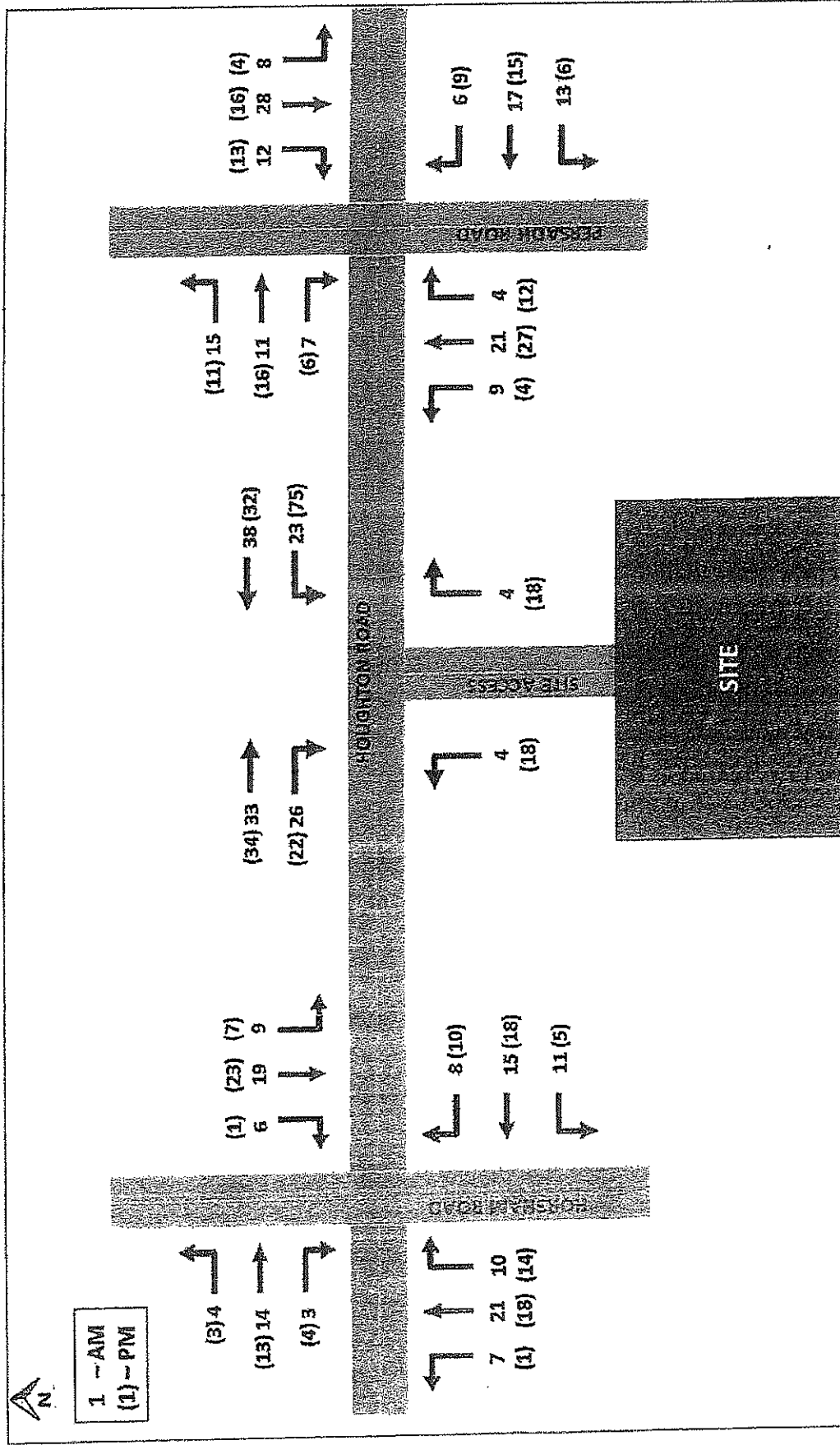


Figure 11: Existing Traffic Counts - AM/PM

**6.5 Traffic growth rates**

We have assumed 2% growth for 5 years.

**6.6 Trip generation rates****6.6.1 Worst Case Scenario****Industrial Facility – 900m<sup>2</sup>**

The proposed development of 900m<sup>2</sup> of Warehousing Area. The standard trip generation rate for this land use as per the 'EThekweni Transport Authority manual for Traffic Impact Assessments (October 2015)' is 0.8 trips/100m<sup>2</sup> during the AM and PM peak and 0.4 trips/100m<sup>2</sup> during Saturday AM.

This is consistent with land use code 110 Industrial Area. Summary of the trip generation is illustrated on Table 2 below.

**Table 2: Trip Generation – Industrial Facility**

| Land Use            | Peak         | Area (m <sup>2</sup> ) | Rate/m <sup>2</sup>   | No. of Trips | Split Ratio | Split in/out |
|---------------------|--------------|------------------------|-----------------------|--------------|-------------|--------------|
| Industrial Facility | WD - AM Peak | 900m <sup>2</sup>      | 0.8/100m <sup>2</sup> | 7            | 70:30       | 5:2          |
|                     | WD - PM Peak | 900m <sup>2</sup>      | 0.8/100m <sup>2</sup> | 7            | 25:75       | 2:5          |
|                     | Saturday     | 900m <sup>2</sup>      | 0.4/100m <sup>2</sup> | 4            | 30:70       | 1:3          |

\*WD- Weekday

**6.6.2 Proposed Development**

Not applicable to this statement

**6.6.3 Trip Adjustment Factor.**

Not applicable to this statement.

**6.6.4 Pass-By and Diverted Trips**

Not applicable to this statement.

**6.6.5 Adjusted Trip Generation.****6.6.5.1 Worst Case Scenario.**

Not applicable to this statement.

**6.6.5.2 Proposed Development**

Not applicable to this statement

**6.6.6 Trip Reduction Factor.**

Not applicable to this statement.

**6.6.7 Summary of Trip Generation.**

The summary of the trip generation for the worst case scenario and the proposed development is illustrated respectively on Table 3 below.

**Table 3: Summary of Trip generation – Industrial Facility**

| Land Use            | Peak         | No. of Trips | Split Ratio | Split in/out |
|---------------------|--------------|--------------|-------------|--------------|
| Industrial Facility | WD - AM Peak | 7            | 70:30       | 5:2          |
|                     | WD - PM Peak | 7            | 25:75       | 2:5          |
|                     | Saturday     | 4            | 30:70       | 1:3          |

\*WD-Weekday

Observation revealed that the Saturday counts are approximately 45% - 50% lower than the Weekday AM and PM count. Therefore, the total combination of the background plus development resulted in the worst case being the AM and PM Peak period.

However, As per the "Ethekwini Transport Authority Manual for Traffic Impact Assessments and Site Traffic Assessments." It is required that the elements of road infrastructure where 11 additional development trips are added to the sum of the critical lane volume being analysed. In this case, 7 is the highest trip generated during the AM and PM peak hour by the development which falls below the threshold for which intersection analysis is required. Therefore, the additional trips would have an inconsequential/marginal effect on the external road network.

**6.7 Modal split**

A large percentage of the commuters will be pedestrians from the surrounding residential area.

## 7. Trip Distribution and Traffic Assignment

For any proposed development, it is necessary to identify and estimate the proportional distribution of traffic along the roads that approach the site from various areas. The trip distribution is based on the ratio of the existing traffic volumes and turning movement.

Using this method of analysis, the trip assignment and trip distribution for the proposed development, has been assigned onto the surrounding road network.

The resultant development traffic distribution and assignment diagrams are illustrated below as per the following figures:

- Figure 12: Trip Distribution
- Figure 13: Trip Assignment - Industrial Area Weekday AM/PM



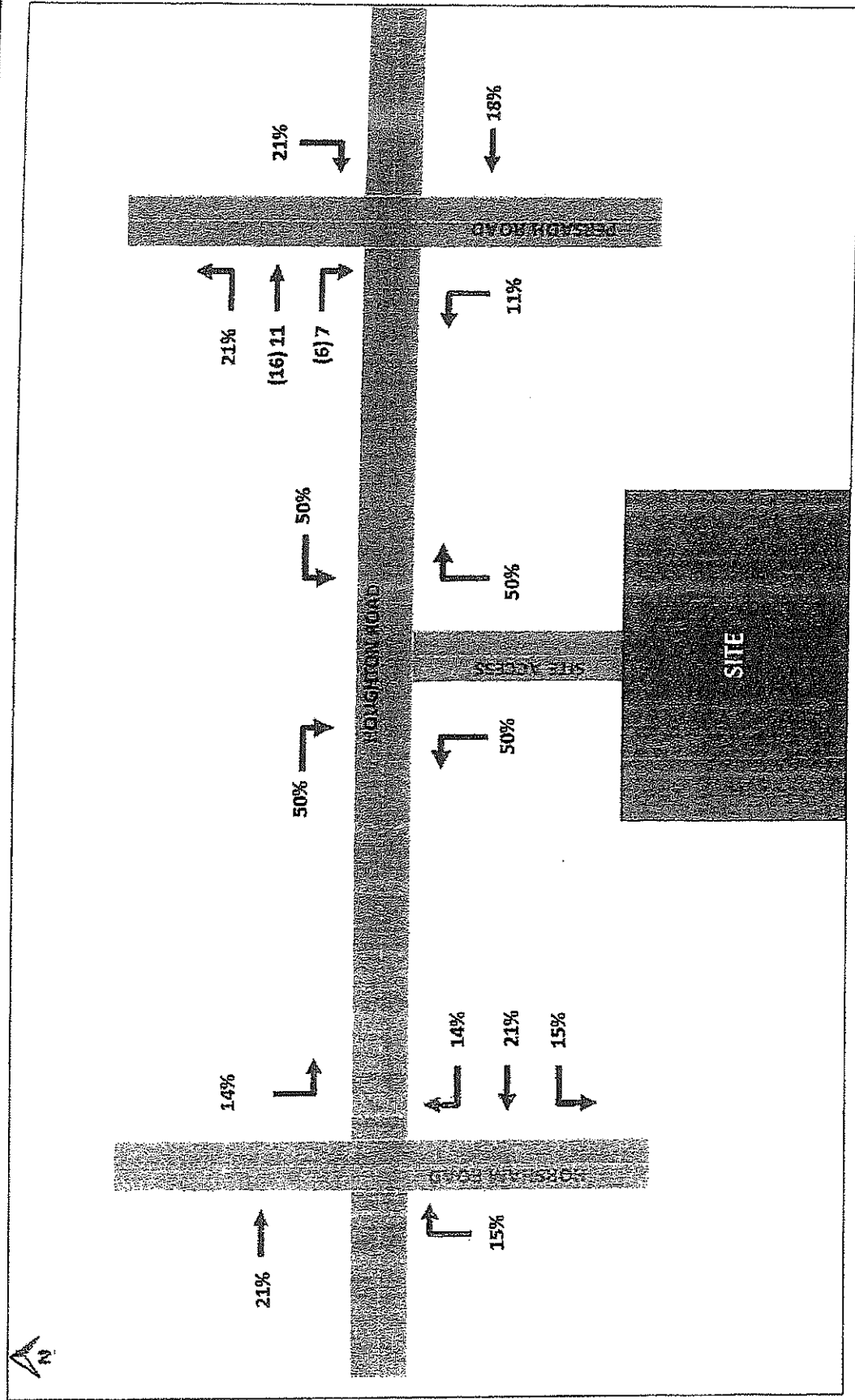


Figure 12: Trip Distribution

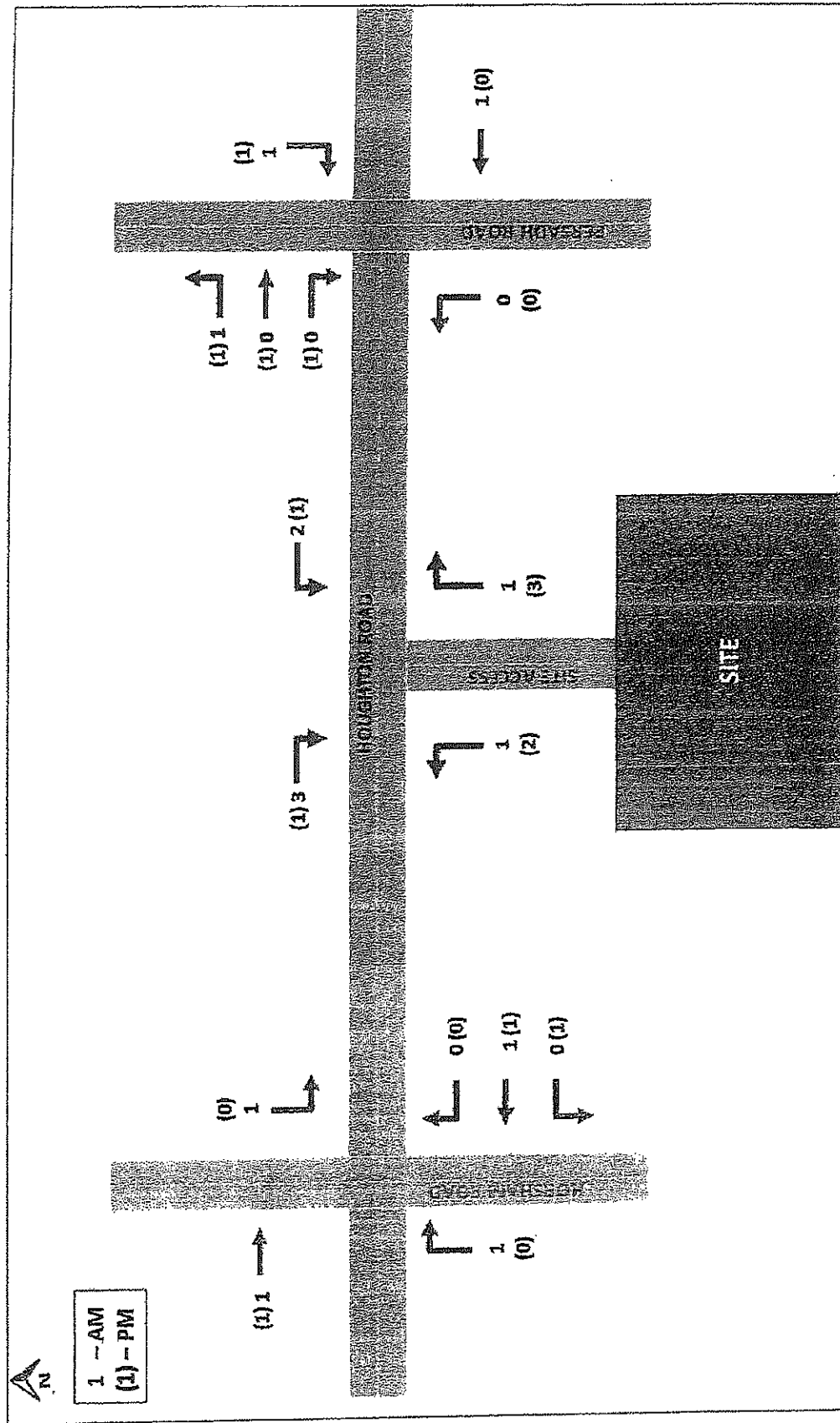


Figure 13: Trip Assignment- Industrial facility Weekday AM/PM

## 8. Total Traffic Demand

The total traffic demand which includes background traffic and development traffic for the 2018 analysis year and the forecasted 2023 analysis year diagram is illustrated on Figures 14 and 15 respectively.



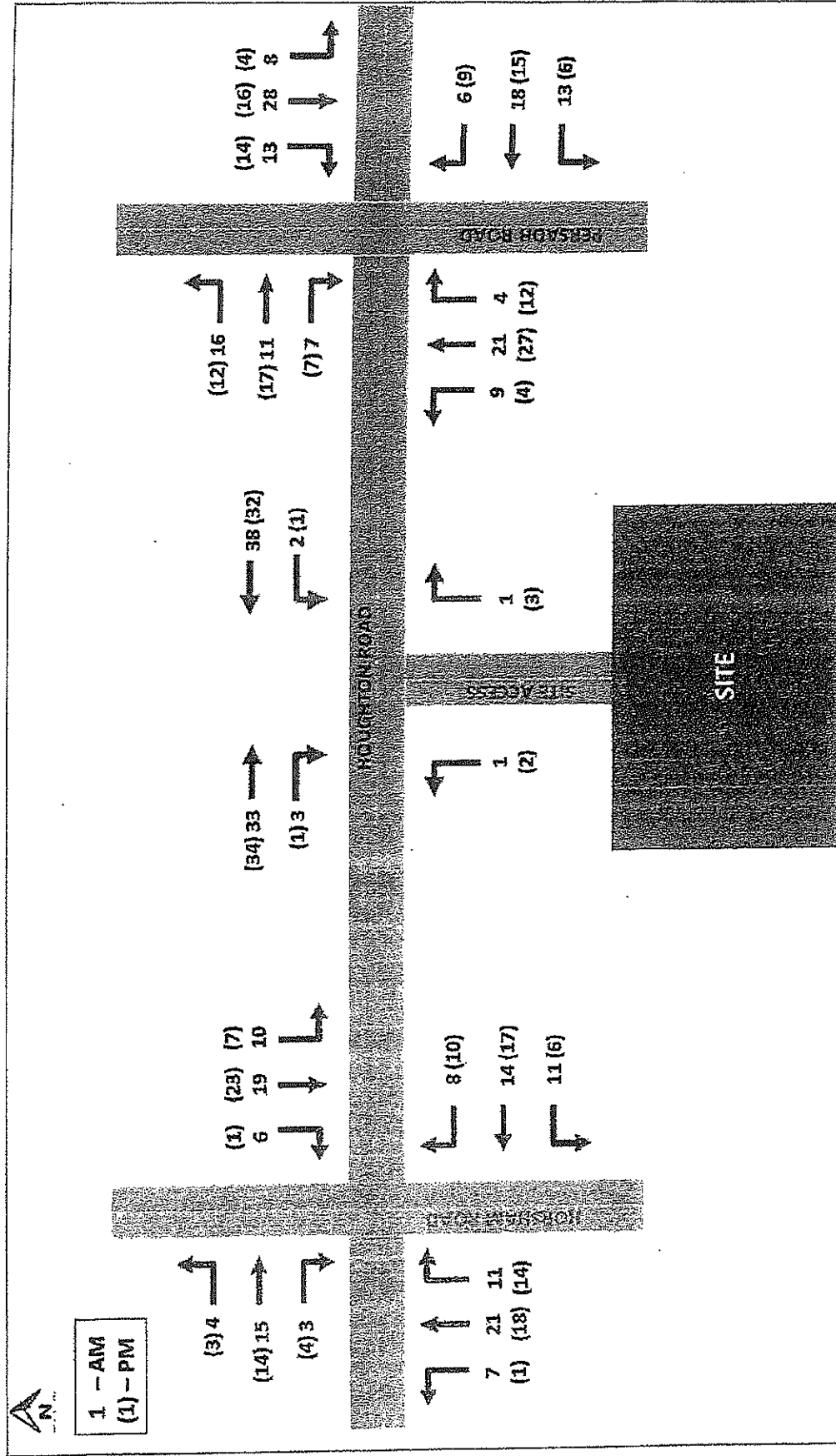


Figure 14: Existing 2018 plus Development



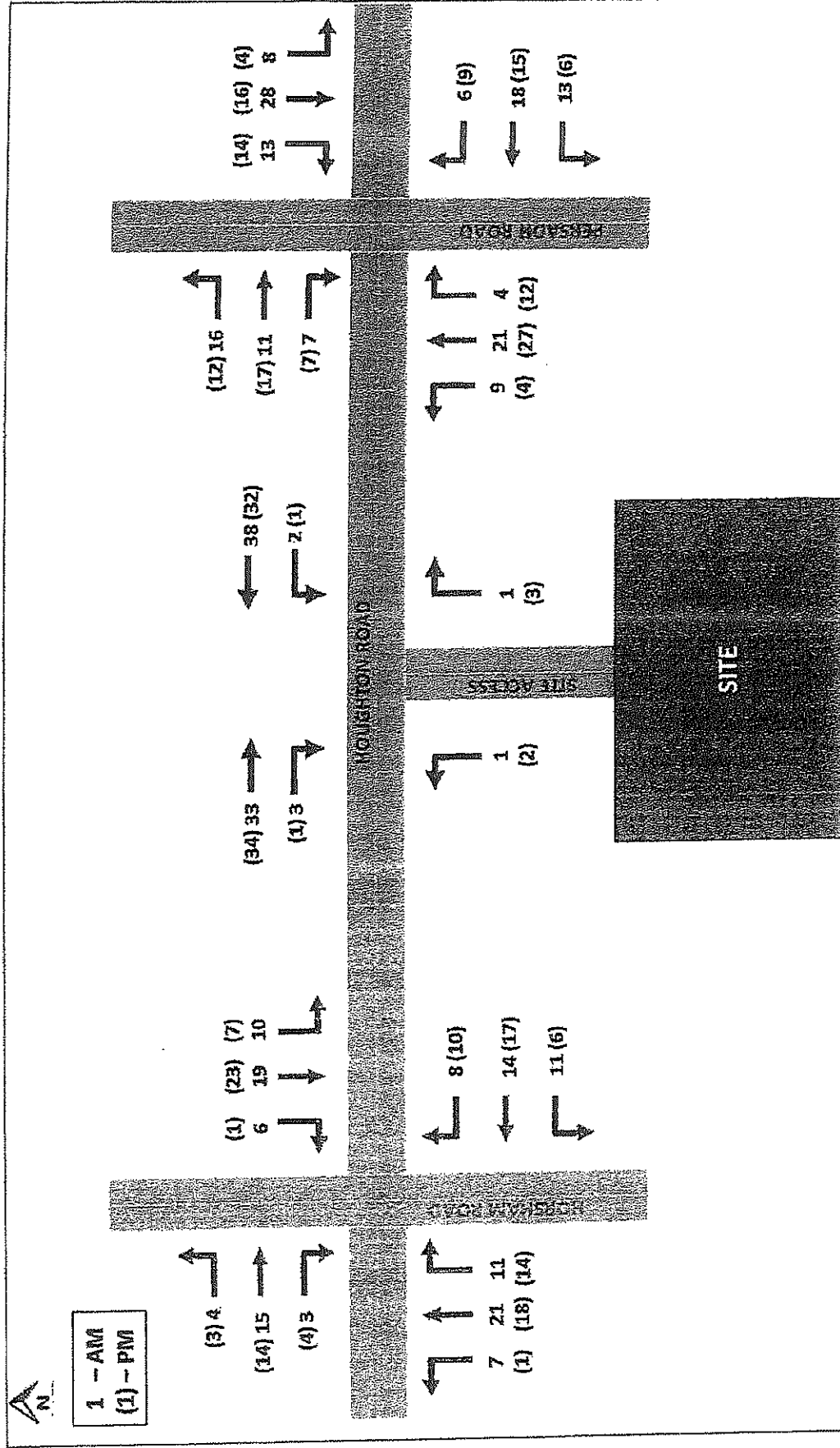


Figure 15: Forecasted 2023 plus Development

**9. Demand Side Mitigation**

Not applicable to this Statement.

**10. Traffic Impact Assessment Scenarios**

Not applicable to this Statement.

**11. Proposed Improvements**

Not applicable to this Statement.

**12. Site Impact Assessment****12.1 Accesses**

The Proposed Access Arrangement is illustrated on Table 4 below.

**Table 4: Proposed Access Arrangement**

| Access | Road          | Access Control                     | Min. Access Width (m) |
|--------|---------------|------------------------------------|-----------------------|
| 1      | Houghton Road | Full Directional Entrance and Exit | 6.0m                  |

According to the UTG 7: Geometric Design of Urban Local Residential Roads, the manual requires a minimum sight distance of 45m for a design speed of 40km/h. The sight distances provided at the Access is more than adequate on either side of the property boundary.

The access will be designed in accordance with the eThekweni Transport Authority's standards and specifications. All driveway ramps are to have a maximum gradient of 15% with a minimum 30m vertical curve radius.

All accesses are to be designed to the standards and specification of the ETA.

The proposed access positions for the development is illustrated on figure 16 below.



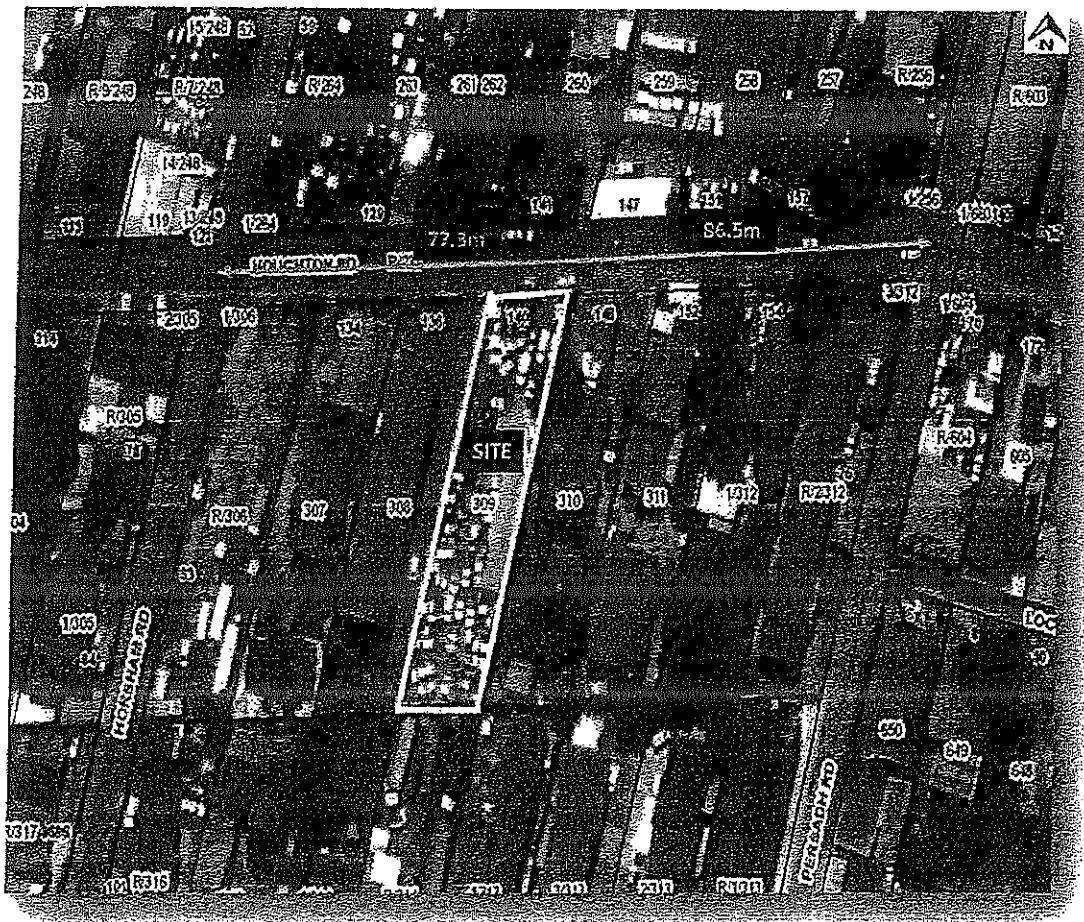


Figure 16: Existing Access Positions

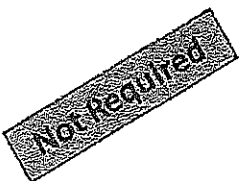
Please take note that Houghton Road is a Class 5 Road. The minimum access spacing has been checked according to Table 5 below.

Table 5: Location of Access Egress/Ingress

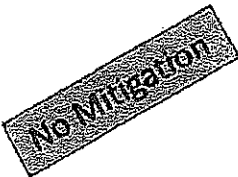
| Road Class of Primary Road | Min. access spacing on side street from intersection with primary road (m) |
|----------------------------|----------------------------------------------------------------------------|
| 4/5                        | 20                                                                         |
| 3                          | 60                                                                         |
| 1/2                        | 120                                                                        |

Source: eThekweni Transport Authority Manual for Traffic Impact Assessments and Site Traffic Assessments (October 2015)

**Table 6: Intersection of Access 1 (Entrance Only) and Site Access Peak Intersection SIDRA Analysis**

| Intersection No.1: Access 1 (Entrance Only) and Site Access |                                                |          |           |               |                                                                                     |           |              |
|-------------------------------------------------------------|------------------------------------------------|----------|-----------|---------------|-------------------------------------------------------------------------------------|-----------|--------------|
|                                                             |                                                | Approach | Road Name | Average Delay | LOS                                                                                 | V/C Ratio | Queue Length |
| 2018                                                        | Existing 2018                                  | AM       | South     | Site Access   |  |           |              |
|                                                             |                                                |          | East      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          | West      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          |           |               |                                                                                     |           |              |
|                                                             |                                                | PM       | South     | Site Access   |                                                                                     |           |              |
|                                                             |                                                |          | East      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          | West      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          |           |               |                                                                                     |           |              |
|                                                             | Existing 2018 plus Mitigation                  | AM       | South     | Site Access   |  |           |              |
|                                                             |                                                |          | East      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          | West      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          |           |               |                                                                                     |           |              |
|                                                             |                                                | PM       | South     | Site Access   |                                                                                     |           |              |
|                                                             |                                                |          | East      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          | West      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          |           |               |                                                                                     |           |              |
|                                                             | Existing 2018 plus Development                 | AM       | South     | Site Access   | 8.8                                                                                 | A         | 0.002        |
|                                                             |                                                |          | East      | Houghton Road | 0.0                                                                                 | A         | 0.022        |
|                                                             |                                                |          | West      | Houghton Road | 2.0                                                                                 | A         | 0.020        |
|                                                             |                                                |          |           |               |                                                                                     |           | 0.8          |
|                                                             |                                                | PM       | South     | Site Access   | 1.2                                                                                 | A         | 0.022        |
|                                                             |                                                |          | East      | Houghton Road | 8.9                                                                                 | A         | 0.006        |
|                                                             |                                                |          | West      | Houghton Road | 0.0                                                                                 | A         | 0.018        |
|                                                             |                                                |          |           |               | 2.0                                                                                 | A         | 0.019        |
|                                                             | Existing 2018 plus Development plus Mitigation | AM       | South     | Site Access   | 1.5                                                                                 | A         | 0.019        |
|                                                             |                                                |          | East      | Houghton Road |                                                                                     |           | 0.7          |
|                                                             |                                                |          | West      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          |           |               |                                                                                     |           |              |
|                                                             |                                                | PM       | South     | Site Access   |                                                                                     |           |              |
|                                                             |                                                |          | East      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          | West      | Houghton Road |                                                                                     |           |              |
|                                                             |                                                |          |           |               |                                                                                     |           |              |



| Intersection No. 3: Access 1 (Entrance Only) and Site Access |                               |    |                      |               |                                                                                     |     |           |              |  |
|--------------------------------------------------------------|-------------------------------|----|----------------------|---------------|-------------------------------------------------------------------------------------|-----|-----------|--------------|--|
|                                                              |                               |    | Approach             | Road Name     | Average Delay                                                                       | LOS | V/C Ratio | Queue Length |  |
| 2023                                                         | Forecast 2023                 | AM | South                | Site Access   | 8.8                                                                                 | A   | 0.002     | 0.1          |  |
|                                                              |                               |    | East                 | Houghton Road | 0.0                                                                                 | A   | 0.024     | 0.0          |  |
|                                                              |                               |    | West                 | Houghton Road | 2.0                                                                                 | A   | 0.022     | 0.8          |  |
|                                                              |                               |    | Overall Intersection |               | 1.1                                                                                 | A   | 0.024     | 0.8          |  |
|                                                              |                               | PM | South                | Site Access   | 8.9                                                                                 | A   | 0.006     | 0.1          |  |
|                                                              |                               |    | East                 | Houghton Road | 0.0                                                                                 | A   | 0.019     | 0.0          |  |
|                                                              |                               |    | West                 | Houghton Road | 2.0                                                                                 | A   | 0.021     | 0.8          |  |
|                                                              |                               |    | Overall Intersection |               | 1.5                                                                                 | A   | 0.021     | 0.8          |  |
|                                                              | Forecast 2023 plus Mitigation | AM | South                | Site Access   |  |     |           |              |  |
|                                                              |                               |    | East                 | Houghton Road |                                                                                     |     |           |              |  |
|                                                              |                               |    | West                 | Houghton Road |                                                                                     |     |           |              |  |
|                                                              |                               |    | Overall Intersection |               |                                                                                     |     |           |              |  |
|                                                              |                               | PM | South                | Site Access   |                                                                                     |     |           |              |  |
|                                                              |                               |    | East                 | Houghton Road |                                                                                     |     |           |              |  |
|                                                              |                               |    | West                 | Houghton Road |                                                                                     |     |           |              |  |
|                                                              |                               |    | Overall Intersection |               |                                                                                     |     |           |              |  |

The intersection (Site Access) will operate under acceptable conditions during the existing, existing plus development and the forecasted 2023 conditions as stipulated in the Highway Capacity Manual 2000 Table 17.2 un-signalised intersections.

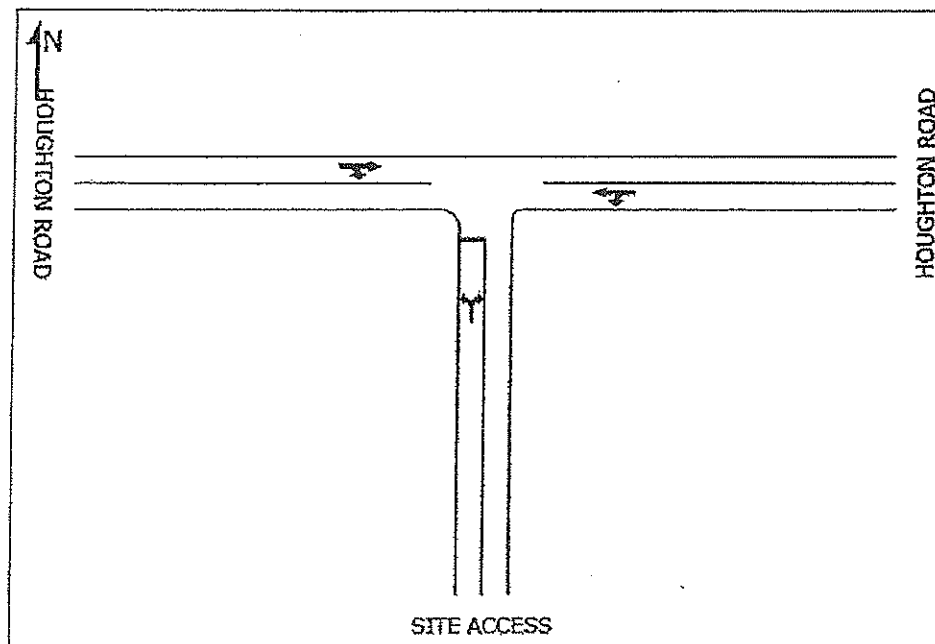


Figure 17: Site Access and Houghton Road Layout

*Handwritten signature/initials*

## 12.2 Heavy/ Delivery Vehicles

Tracking of Heavy Vehicles will be done at the detailed building plan stage.

## 12.3 Parking

Ample parking is a significant factor for any successful development. Parking should be adequate in number and design to facilitate easy manoeuvrability.

The parking requirements for the proposed development is illustrated on Table 7 below.

**Table 7: Parking requirements – Worst Case Scenario**

| Site Access           | Development<br>Area/ No. Rooms | Parking Standard        | Parking<br>Required |
|-----------------------|--------------------------------|-------------------------|---------------------|
| Industrial Area       | 900m <sup>2</sup>              | 1 bay/100m <sup>2</sup> | 9                   |
| Loading Bay           |                                | 1 X (9.0m x 3.0m) SU    | 1                   |
| <b>Total Required</b> |                                |                         | <b>10</b>           |

Based on the worst-case scenario, the development requires 9 parking bays and 1 Single Unit (9.0m x 3.0m) loading bay.

The minimum parking requirement is a town planning item and hence the final amount of parking that is required will be determined by the eThekweni Municipality town planning department.

All parking facilities, accesses and driveways are to be designed and dimensioned in accordance with the schedule of guidelines for off-street parking.

## 12.4 Queuing Analysis

Queuing analysis is not applicable to this statement as this is a rezoning application. The queuing analysis will be done at the detailed building plan stage.

### **13. Pedestrians and Public Transport**

#### **13.1 Public Transport**

There are no public transport facilities in close vicinity of the proposed development. Some people make use of the private car taxis that operate along Archary Road to the fresh produce market and other small retailers.

However majority of the people walk to South Coad Road in order to gain access to public transport facilities. South Coast Road is a Classified Class 2 Road and Public Transport Route (Bus-Route).

Please Note: The Proposed Development has no material effect on public transport.

#### **13.2 Pedestrians**

Houghton Road has adequate sidewalks. Persadh Road and Horsham Road has grassed verges. All roads have adequate streetlights and speed calming measures.

### **14. Transport requirements and Cost**

Not applicable to this Statement.

### **15. Link Analysis**

The link analysis for road Classes 1 to 3 will be determined using the Highway Capacity Manual 2000. The link analysis is based on the following capacities per lane:

- Class 1 - 1010 veh/hr/lane
- Class 2 - 820 veh/hr/lane
- Class 3 - 790 veh/hr/lane

With reference to Section 5.3.3 of the Ethekwini Transport Authority manual for Traffic Impact Assessments (October 2015), the determination



of the link analysis can be done by using the following formulas for a Class 4 and 5 roads:

- Class 4: Capacity =  $142.86 \times \text{width} - 285.71$
- Class 5: Capacity =  $120 \times \text{width} - 340$

Houghton Road is a 5.0m - 5.8m wide Class 5 Road therefore the road capacity is 260 - 356 veh/hr/lane.

Horsham Road is a 4.8m - 5.5m wide Class 5 Road therefore the road capacity is 236 - 320 veh/hr/lane.

Persadh Road is a 4.7m - 5.2m wide Class 5 Road therefore the road capacity is 224 - 284 veh/hr/lane.

The link analysis for the proposed development is illustrated on the figure 18 below.







April 2018

From the above analysis it can be seen that all roads are operating within the road capacity.

## 16. Recommendations

1. The proposed development is situated on Erf 309 Dunns Grant, Durban.
2. The proposed development is also known as 140 Houghton Road, Clairwood.
3. This report is in support of the rezoning from Special Residential 400 to Light Industrial.
4. The site area of the proposed development is site area is approximately 1 302m<sup>2</sup>.
5. The analysis for the proposed development will be based on the worst-case scenario.
6. The table below illustrates the trips generated for the worst-case scenario of the proposed development.

**Summary of Trip generation - Worst Case Scenario**

| Land Use            | Peak         | No. of Trips | Split Ratio | Split in/out |
|---------------------|--------------|--------------|-------------|--------------|
| Industrial Facility | WD - AM Peak | 7            | 70:30       | 5:2          |
|                     | WD - PM Peak | 7            | 25:75       | 2:5          |
|                     | Saturday     | 4            | 30:70       | 1:3          |

7. All access arrangements are discussed in section 12.1 of the report
8. All parking requirements is discussed in section 12.3 of the report.



9. All parking facilities, accesses and driveways are to be designed and dimensioned in accordance with the schedule of guidelines for off-street parking.
10. All mitigating measures are illustrated in Section 14.
11. All driveway ramps to have a maximum gradient of 15% with a minimum 30m vertical curve radius.
12. All internal roads are to be designed in conjunction with the Guidelines for Human Settlement planning and Design (Red Book).



ETHEKWINI MUNICIPALITY

CENTRAL OPERATIONAL ENTITY

**ANNEXURE F  
DEPARTMENTAL  
COMMENTS AND  
ENQUIRY FORM**

HOUGHTON READ

REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL - ERF 309 DUNNS GRANT, DURBAN

ZIMANGA URBAN AND RURAL DESIGN CONSULTANTS - SUITE 304, RIDGE 5, 41 RICHEFOND CIRCLE, UMLANGA, 4319, TEL: 031 566 3935

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**PLANNING ENQUIRY FORM IN TERMS OF ETHEKWINI MUNICIPALITY PLANNING AND LAND MANAGEMENT BY-LAW 2016 (MUNICIPAL NOTICE 114 OF 2017)**

**Enquiry no.:** (ref. description/ date/ region) 092052018 - 140 HOUGHTON

**Full Name of Planning Official:** M.M. NCAYIYANA

**Enquirer:** SUAPOKA NAMINI

**Nature of enquiry:** REZONING

**Zoning of property:** SPECIAL RESIDENTIAL 400

**D'MOSS:** YES ☐ NO ☒ TO BE CONFIRMED

Confirm compliance with strategic plans for the city such as MSDF, LAP's, FAP's etc.

**Additional comments:** TO BE CONFIRMED

**Comments from the following internal Municipal Departments are required:**

|                                               |   |                            |   |
|-----------------------------------------------|---|----------------------------|---|
| Biodiversity Impact Assessment Branch         |   | Health                     |   |
| Coastal, Stormwater & Catchment Management    | X | IT/Comp                    |   |
| Design Review Panel                           |   | Metro Police               |   |
| Durban Tourism                                |   | Metro Waste Water          | X |
| Economic Development                          |   | Pollution Control          |   |
| Electricity                                   |   | Roads Provision            |   |
| Environmental Planning and Climate Protection | X | Soils Laboratory           |   |
| eThekweni Traffic Authority                   | X | Spatial Strategic Planning | X |
| eThekweni Water and Sanitation                | X | Urban Management           |   |
| Fire                                          |   | Other                      |   |

**Comments from the following Organs of State are required**

|                                                                                |  |                                               |  |
|--------------------------------------------------------------------------------|--|-----------------------------------------------|--|
| AMAFA                                                                          |  | Department of Public Works and Land Affairs   |  |
| Cooperative Governance & Traditional Affairs (COGTA)                           |  | Department of Tourism                         |  |
| Department of Agriculture Forestry & Fisheries                                 |  | Department of Water and Sanitation            |  |
| Department of Economic Development Tourism and & Environmental Affairs (EDTEA) |  | ESKOM                                         |  |
| Department of Education                                                        |  | Passenger Rail Agency of South Africa (PRASA) |  |
| Department of Energy                                                           |  | Provincial Department of Transport (DOT)      |  |
| Department of Health                                                           |  | South African National Roads Agency (SANRAL)  |  |
| Department of Mineral Resources                                                |  | Transnet Freight Rail                         |  |
| Other                                                                          |  |                                               |  |

*Handwritten signature/initials*

The submission of a complete application (as referred in the eThekweni Municipality Planning and Land Management By-Law 2016 (Municipal Notice 114 of 2017) **MUST** consist of the following:

|                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Copy of the initial Planning enquiry form                                                                                                                                                                                                                                                                                                                                                                       |  |
| 2. Owners Consent (original or certified copy )                                                                                                                                                                                                                                                                                                                                                                    |  |
| 3. Copy of Title Deeds & S-G Diagram/ General Plan                                                                                                                                                                                                                                                                                                                                                                 |  |
| 4. Bond holders Consent (original or certified copy)                                                                                                                                                                                                                                                                                                                                                               |  |
| 5. 6 copies of Planning Motivation, Site/Layout Plans and Locality Plans. One electronic copy in PDF                                                                                                                                                                                                                                                                                                               |  |
| 6. Zoning and Land Use Plans                                                                                                                                                                                                                                                                                                                                                                                       |  |
| 7. On-site Parking Provision and schedule                                                                                                                                                                                                                                                                                                                                                                          |  |
| 8. Approved Traffic Impact Assessment/Statement (where applicable)                                                                                                                                                                                                                                                                                                                                                 |  |
| 9. Copy of Environmental authorisation from Department Economic Development, Tourism and Environmental Affairs (DEDTEA) (where applicable)                                                                                                                                                                                                                                                                         |  |
| 10. Geotechnical report (where applicable)                                                                                                                                                                                                                                                                                                                                                                         |  |
| 11. Body Corporate Consent/ Home/ Property Owners Consent etc. (where applicable) (original or certified copy)                                                                                                                                                                                                                                                                                                     |  |
| 12. In the case of a Trust- a resolution authorising such application be made (where applicable) (original or certified copy)                                                                                                                                                                                                                                                                                      |  |
| 13. Power of Attorney / Authorization (if not signed by the Registered Owner) (original or certified copy)                                                                                                                                                                                                                                                                                                         |  |
| 14. In the case of an application for the Alteration, Suspension or Deletion of Restrictions relating to Land, which creates a servitude in favour of another property, the names & contact details of all servitude holders                                                                                                                                                                                       |  |
| 15. Any other information that may be considered by either yourself or the Municipality as being in support of your application                                                                                                                                                                                                                                                                                    |  |
| 16. Clearance from External Organs of State, whichever is applicable (where applicable) inclusive but not limited to                                                                                                                                                                                                                                                                                               |  |
| 17. Water Use Licence Development of a site maybe subject to a water use licence application (in terms of section 21 of the National Water Act 36 of 2008) in the event of water course on site or within 500m of the property/ties the applicant must either obtain the necessarily approval or written confirmation that a licence is not required from the Provincial Department of Water and Sanitation (DWS). |  |

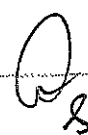
Note: when submitting an application please refer to Section 21(4) and 21(5) of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) to see who can "prepare and compile" a planning applications.

#### TARIFF CALCULATION

| TYPE OF APPLICATION | SINGLE APPLICATION | COMBINED APPLICATION 75% |
|---------------------|--------------------|--------------------------|
| Rezoning            | ✓ R2714            |                          |
|                     |                    |                          |
|                     |                    |                          |
|                     |                    |                          |

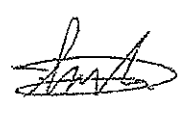
Planning official Signature: 

(This enquiry is based solely on the information provided during the consultation, and the department reserves the right to require additional information and documentation should it be deemed necessary upon submission.)



# ETHEKWINI MUNICIPALITY LAND DEVELOPMENT APPLICATION COMMENT SHEET

DEPARTMENT: E Thekwini Water and Sanitation  
 LUM ENQUIRY REF: 093052018 - 140 Houghton Road.  
 COMMENTING DEPARTMENT REF: \_\_\_\_\_  
 ERF NO: Erf 209 Dunns Grant.  
 STREET ADDRESS: 140 Houghton Road.  
 NATURE OF ENQUIRY: proposed Rezoning of Erf 209 Dunns  
Grant, Durban from Special Residential 400 to  
Light Industry.

| COMMENT                                                                                                                                                                                                                                                                                                                          | Date                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <p>ACCORDING TO OUR GIS, NONE OF OUR WATER INFRASTRUCTURE WILL BE AFFECTED.</p> <p>THIS DEPARTMENT (WATER PLANNING) HAS NO OBJECTION TO THE PROPOSED REZONING</p> <p>IF THERE IS TO BE ANY ADDITIONAL CONSTRUCTION ON SITE, THE DEVELOPER IS TO CONTACT OUR EWS (WATER PLANNING BRANCH) FOR BULK CONFIRMATION &amp; APPROVAL</p> | <p>19/06/2018</p>                                                                     |
|                                                                                                                                                                                                                                                                                                                                  | Name                                                                                  |
|                                                                                                                                                                                                                                                                                                                                  | D. DHEWKI                                                                             |
|                                                                                                                                                                                                                                                                                                                                  | Signature                                                                             |
|                                                                                                                                                                                                                                                                                                                                  |  |

Please ensure that all plans included in the submission are stamped and referenced in your comment.

Departmental Official: D. DHEWKI

E-mail/Phone: 031 311 8122

This comment is valid for 19/06/2021 (please include comment expiry date)

andiswe@zimangaconsultants.co.za

031 566 3935



# ETHEKWINI MUNICIPALITY LAND DEVELOPMENT APPLICATION COMMENT SHEET

DEPARTMENT: Coastal, stormwater and catchment management

LUM ENQUIRY REF: 093052018 - 140 Houghton Road

COMMENTING DEPARTMENT REF: \_\_\_\_\_

ERF NO: Erf 309 Dunns Grant

STREET ADDRESS: 140 Houghton Road

NATURE OF ENQUIRY: proposed rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to light industry.

| COMMENT         | Date               |
|-----------------|--------------------|
| <i>Approved</i> | <i>24/05/2018</i>  |
|                 | Name               |
|                 | <i>J. Nanga</i>    |
|                 | Signature          |
|                 | <i>[Signature]</i> |

Please ensure that all plans included in the submission are stamped and referenced in your comment.

Departmental Official: [Signature]

E-mail/Phone: 309950

This comment is valid for \_\_\_\_\_ (please include comment expiry date)

*dndisiwe@zimangaconsultants.co.za*

*031 566 3935*

*As*



# ETHEKWINI MUNICIPALITY LAND DEVELOPMENT APPLICATION COMMENT SHEET

DEPARTMENT: Environmental planning and climate protection.

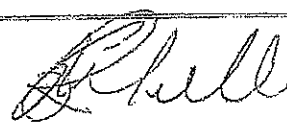
LUM ENQUIRY REF: 093052018-140 Houghton Road.

COMMENTING DEPARTMENT REF: \_\_\_\_\_

ERF NO: Erf 309 Dunns Grant.

STREET ADDRESS: 140 Houghton Road.

NATURE OF ENQUIRY: proposed rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to light industry.

| COMMENT           | Date                                                                                  |
|-------------------|---------------------------------------------------------------------------------------|
| See attached memo | 30.5.2018                                                                             |
|                   | Name.                                                                                 |
|                   | G. MULLINS                                                                            |
|                   | Signature                                                                             |
|                   |  |

Please ensure that all plans included in the submission are stamped and referenced in your comment.

Departmental Official: \_\_\_\_\_

E-mail/Phone: \_\_\_\_\_

This comment is valid for \_\_\_\_\_ (please include comment expiry date)

andispace@zimangaconsultants.co.za

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|                                                             |                  |
|-------------------------------------------------------------|------------------|
| ENVIRONMENTAL PLANNING AND CLIMATE<br>PROTECTION DEPARTMENT |                  |
| 24 MAY 2018                                                 |                  |
| ALLOCATED                                                   | FILE NO.         |
| <u>2146</u>                                                 | <u>093052018</u> |



**Sustainable Development & City Enterprises  
Development Planning, Environment & Management Unit  
Environmental Planning & Climate Protection**

165 K E Masinga Road  
PO Box 680 Durban, 4000  
Tel: 031 311 7875, Fax: 031 311 7134  
www.durban.gov.za

To: Central

Enquiries: Zinhle Dlamini  
Tel: 031 311 7474

REF: EN 093/05/2018

Our Ref: C/2815

This Department has reviewed the application for the proposed rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to Light Industry, it has been noted that the site is not of biodiversity importance to this Department.

The site is located outside Durban Metropolitan Open Space System (D'MOSS) and there are no additional environmental or water legislation requirements as per the National Environmental Management Act (NEMA) and in terms of the National Water Act (NWA).

Yours sincerely

Ms Michelle Lotz  
Pr.Sci.Nat. (Reg. No. 400 253/04)  
Regional Co-ordinator: Biodiversity Impact Assessment  
Environmental Planning and Climate Protection Department

Date: 30 MAY 2018

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# ETHEKWINI MUNICIPALITY LAND DEVELOPMENT APPLICATION COMMENT SHEET

DEPARTMENT: Metro Waste Water.

LUM ENQUIRY REF: 093052018-140 Houghton Road.

COMMENTING DEPARTMENT REF: \_\_\_\_\_

ERF NO: Erf 309 Dunns Grant.

STREET ADDRESS: 140 Houghton Road.

NATURE OF ENQUIRY: proposed rezoning of Erf 309 Dunns Grant, Durban from Special Residential 400 to Light industry.

| COMMENT                                                                                                                                                                                                               | Date                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <p>No objection subject to the ff:</p> <p>① No encroachment over municipal sewer service permitted.</p> <p>② Prior to any development some impact analysis to be done &amp; building plan submitted for approval.</p> | <p>THANDA MDLOLO<br/>(Service No: 80876-04)<br/>Inspector of Works</p> <p>23 MAY 2018</p> <p>Signature: <i>[Signature]</i></p> |
|                                                                                                                                                                                                                       | Name                                                                                                                           |
|                                                                                                                                                                                                                       | Signature                                                                                                                      |

Please ensure that all plans included in the submission are stamped and referenced in your comment.

Departmental Official: \_\_\_\_\_

E-mail/Phone: \_\_\_\_\_

This comment is valid for \_\_\_\_\_ (please include comment expiry date)

*andis@zimangaconsultants.co.za*  
031 566 3935

*[Signature]*  
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## STRATEGIC SPATIAL PLANNING BRANCH

166 K E Masinga Road  
Durban, 4001  
P.O. Box 680, Durban, 4001  
www.durban.gov.za

Enquiries: Marcus Govender  
Telephone No: 031-3117450  
Our Reference: Central 709  
LUM Enquiry No.: 093052018

Date: .....

01-06-2018

Andisiwe  
Zimanga Urban and Rural Design  
Suite 304, Ridge 5  
41 Richefond Circle  
Umhlanga  
4319

Dear Sir/Madam

**RE: PROPOSED REZONING OF ERF 309, DUNNS GRANT (140 HOUGHTON ROAD, CLAIRWOOD) FROM SPECIAL RESIDENTIAL 400M<sup>2</sup> TO LIGHT INDUSTRIAL**

*Summary: The aforementioned application site is currently zoned Special Residential 400m<sup>2</sup> and is located within the Durban Scheme Area. The site is 1302m<sup>2</sup> in extent. The application is for the proposed rezoning from Special Residential 400m<sup>2</sup> to Light Industrial.*

The Strategic Spatial Planning Branch (SSPB) has reviewed the abovementioned application and submits the following comments:

In terms of the Spatial Development Framework (SDF 2017/2018), the Central Spatial Development Plan (CSDP 2014/2016) and the Back of Port Interface (BOP) Local Area Plan (LAP) (November, 2014), the site in question has been earmarked for Future Industrial/Logistics. In view thereof, the Strategic Spatial Planning Branch (SSPB) raises no objection to the proposal in principle, as it aligns with the SDF, CSDP and the BOP LAP.

However, the SSPB notes the limited road infrastructure; as the area was originally designed for residential use. In this regard a Technical Task Team, which is chaired by the eThekweni Transport Authority (ETA), was constituted in order to phase the BOP LAP land use/road infrastructure recommendations. In view thereof, please liaise with eThekweni Transport Authority (ETA) in order to ascertain their comments with regards to the traffic implications.

In addition, the comment submitted is subject to the following conditions:

- a) This branch's support is subject to the applicant meeting all sector requirements.
- b) This support should not be deemed to be an approval of the eThekweni Municipality.
- c) This branch reserves the right to comment further should the need arise.

Yours faithfully,

*H.E. Epstein* 11/06/18  
H.E. EPSTEIN (Ms)  
SNR MANAGER: STRATEGIC SPATIAL PLANNING BRANCH

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## ETHEKWINI TRANSPORT AUTHORITY

30 Archia Gumede Place | Durban | 4001  
P O Box 680 | Durban | 4000  
Tel: 031 311 7344 | Fax 031 305 5871  
www.durban.gov.za

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FA  
8'

12 June 2018

LUMS ref: 093/05/2018

ETA ref: TE9867

Enquiries: Nathi Dube

Email: [nkosinathi.dube2@durban.gov.za](mailto:nkosinathi.dube2@durban.gov.za)

Ph: 0313117704

SIYABONGA DLAMINI

41 RICHEFOND CIRCLE

[andisiwe@zimangaconsultants.co.za](mailto:andisiwe@zimangaconsultants.co.za)

15663935

Dear Sir / Madam

**Re: 140 HOUGHTON ROAD**

**ERF 309 DUNNS GRANT**

**SPECIAL RESIDENTIAL 400**

With reference to the above application, please be advised that your application is **REFUSED**.

Documents considered in the refusal

- Traffic Impact Assessment Report for the proposed rezoning of ERF 309 Dunns Grant, Durban from special Residential 400 to Light Industry. Prepared by NSA Consulting Engineers dated 12 April 2018.
- Town Planning Report prepared by Zimanga Urban and Rural Design dated April 2018.

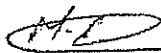
Reasons for refusal:

1. As per Section 14: Conclusion, on page 212 of the "BACK OF PORT CONCEPT, FRAMEWORK, PRECINCT PLANS AND ZONING FRAMEWORK REPORT", in order to consider the rezoning within the area from Special Residential to a logistics use, a totally new layout is required with wider roads and improved access from truck freight routes.
2. A new road hierarchy and layout will be required for the area. This entails wider roads for industrial/logistics use and consolidation of existing land parcels to appropriate sizes for said use. In addition, the "BACK OF PORT CONCEPT, FRAMEWORK, PRECINCT PLANS AND ZONING FRAMEWORK REPORT" requires that access to the Clairwood area be linked for truck freight routes. A freight route study has been carried out by ETA which shows that the freight route is not feasible for implementation.
3. In order to achieve the above (i.e. A new road hierarchy and layout), a traffic study is required.
4. ETA does not have funds in the current financial year nor in future financial years to carry out this study, alternatively, given that the application is lodged ahead of the ETA's plan, the applicant could carry out the study in consultation with the ETA.
5. It must be noted that the Traffic Impact Assessment submitted in support of the application fails to address the above requirements and is therefore incorrect.
6. Further to the above, if rezoning applications within the area are allowed to proceed without undertaking the above study, the risk to council is as follows:

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- a) Vehicle-Vehicle accidents, Vehicle-Pedestrian accidents due to the existing residential roads not being upgraded to industrial road standards i.e. adequate road widths / geometric standards and pavement structure.
- b) Additional cost for the expropriation of industrial land for establishing an appropriate industrial/logistic road network, as opposed to the expropriation of residential land.

Yours faithfully



Head: Ethekewini Transport Authority

Acknowledgement by applicant :

I hereby acknowledge receipt of this letter and the application documents.

Applicant : Name Andiswa

ID Number 8504230434053

Signature A. Yeste

Date 20 06 2018



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**Sustainable Development & City Enterprises  
Development Planning, Environment & Management Unit  
Environmental Planning & Climate Protection**

146 X R Musgrave  
PO Box 600 Durban, 4  
Tel: 031 311 7878, Fax: 031 311  
www.durban.gov.za

To: Central

Enquiries: Zinhle Dlamini  
Tel: 031 311 7474

REF: EN 093/05/2018

Our Ref: C/2815

This Department has reviewed the application for the proposed rezoning of Erf 309 Dunns Grant, Durban Special Residential-400 to Light Industry. It has been noted that the site is not of biodiversity importance Department.

The site is located outside Durban Metropolitan Open Space System (D'MOSS) and there are no additional environmental or water legislation requirements as per the National Environmental Management Act (NEMA) in terms of the National Water Act (NWA).

Yours sincerely

Ms Michelle Lotz  
Pr.Sci.Nat. (Reg. No. 400 253/04)  
Regional Co-ordinator: Biodiversity Impact Assessment  
Environmental Planning and Climate Protection Department  
Date: 30 MAY 2018

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**DEVELOPMENT PLANNING, ENVIRONMENT & MANAGEMENT UNIT**  
**Development Planning Department**  
**Land Use Management Branch**

**REGISTERED MAIL**

**'FA  
12'**

GCFP No : 21/7/2  
 Our Reference : REZ 024/07/2018/C  
 Enquiries : Mr N Mzimela  
 Telephone : (031) 3117077

DATE: 2019-04-30

Zimanga Urban and Rural Degn PTY Ltd  
 Suite 304, Strauss Daly Place  
 41 Richefond Circle  
 Umhlanga  
 4319

**REZONING DECISION NOTICE**

**APPLICATION NO.** : REZ 024/07/2018/C

**PROPOSED DEVELOPMENT** : REZONING FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL ZONE

**CADASTRAL DESCRIPTION** : ERF 309 DUNNS GRANT

**STREET ADDRESS** : 140 HOUGHTON ROAD

**OWNER** : AJAY AND URESHKA SHAH

**DATE OF MUNICIPAL PLANNING TRIBUNAL DECISION** : 18 MARCH 2019

In terms of Section 46 of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) the application for the amendment to the Durban Scheme by the Rezoning of Erf 309 Dunns Grant situated at 140 Houghton Road from Special Residential 400 to Light Industrial Zone is **APPROVED** for the following reasons:

- The proposed rezoning forms a logical extension to the existing industrial zones and promotes the gradation of industrial land uses at a prime location.
- The industrial activity proposed is consistent with the existing uses within the area and compatible with the Back Of Port Local Area Plan and vision for the area.
- The application is in keeping with the intentions of, and addresses the requirements of the SDF and SPLUMA principles.
- The residential nature of the area has long been diminished as Houghton Road is predominantly industrial in nature.

Subject to the following conditions imposed in terms of Section 46(1)(b) of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017):

A non-building reservation of 5m from the front cadastral boundary along Houghton Road.

*As*



You are hereby advised that the approval of this application:

- a) does not absolve the applicant from any duties or responsibilities which may be imposed on the applicant by virtue of the title deeds of the property;
- b) does not bind the Council to issue or to authorise the issue of any licence, permit or further consent.
- c) does not constitute an approval in terms of the National Building Regulations or any other law.

Your attention is drawn to the following:

**Effective Date of this authority:**

This authority shall become effective upon –

- a) the expiry of the 21 business day period if no appeal was lodged against the decision of the municipality; or
- b) the finalisation of the appeal, if an appeal was lodged against the decision of the municipality.

It should be noted that in terms of Section 47 of the eThekweni Municipality: Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017), this application will have no force or effect until such time as the above conditions have been complied with and the Compliance Certificate has been issued. The responsibility remains with the applicant/owner to provide proof of compliance and initiate the Compliance Certificate process.

The conditional approval of this application lapses if a condition is not complied with, within–

- a) a period of two years from date of this decision, if no period for compliance is specified in the conditions; or
- b) the period for compliance if specified in this approval, which, together with any extension which may be granted, may not exceed five years.

**Rights of Appeal:**

A person whose rights are affected, as set out in Section 60 of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017), by this decision may appeal against such decision by giving written notice of the appeal and reasons to the **Municipal Manager, the Applicant, any person granted intervener status and any other person who has noted an appeal** within 21 business days of the date of notification (registry postdate/email/collection) of the Decision Notice, as set out in the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017).

An appeal may be lodged as follows:

**The Municipal Manager**

c/o

eThekweni Municipality SPLUMA Office

First Floor Room 117

166 K E Masinga Road

Durban

4001

or

PO Box 680

Durban

4000

Attention: Ms A Nkomonde

or

Ms Lungile Silangwe

Email: anele.nkomonde@durban.gov.za

Email: lungile.silangwe@durban.gov.za

Tel: 031 322 8269

Tel: 031 311 7862

**Note:** An appeal fee of R5000.00 (incl. VAT) shall be payable on lodging of the memorandum with the eThekweni Municipality SPLUMA Office for the attention of the Municipal Manager. In the event of the fee not being paid, the appeal shall be deemed as not being lodged. Please request banking details for payment of the appeal fee from the SPLUMA Office.

*FS*

Section 63(2)(1) of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) requires that a 'Complete' appeal be submitted. Any additional information required to form part of the submission must be requested within the 21 business days to the appeal period. The Municipality reserves its rights to use its discretion in granting extensions and the supplementing of information where the information requested is not made available within the 21 day appeal period.

Should the Municipality not be notified within 21 business days of an Appeal lodged in terms Section 60 of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) then this approval shall be deemed to have come into force and effect.

Yours faithfully

  
**CHAIRPERSON: MUNICIPAL PLANNING TRIBUNAL**

**MR M. PHEWA**

**COPIES TO:**

- Valuations
- Senior Manager: Information Systems
- Senior Manager: Strategic Spatial Planning
- Clairwood Rate Payers Association-mevynr@sa-shipyards.co.za
- Durban South Community Environmental Alliance - shanice@sdceango.co.za



Our Reference : EXCO 15/05/2019/C  
Enquiries : Ms S Kala  
Telephone : (031) 311 7559

DATE: 2020-02-11

**ELECTRONIC MAIL**

Legal Resource Centre  
11<sup>th</sup> Floor Aquasky Towers  
25 Anton Lembede Street  
Durban  
4000  
[trevinen@lrc.org.za](mailto:trevinen@lrc.org.za)

**EXECUTIVE COMMITTEE APPEALS AUTHORITY APPEAL OUTCOME**

***APPELLANT***

Legal Resource Centre  
11<sup>th</sup> Floor Aquasky Towers  
25 Anton Lembede Street  
Durban  
4000

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***RESPONDENT***

ETHEKWINI MUNICIPALITY

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Dear Sir/Madam

**APPEAL IN IN TERMS OF THE ETHEKWINI MUNICIPALITY PLANNING AND LAND USE  
MANAGEMENT BY-LAW 2016 (MUNICIPAL NOTICE 114 OF 2017) TO APPEALS  
LODGED AGAINST THE DECISION OF THE ETHEKWINI MUNICIPALITY TO APPROVE  
THE APPLICATION FOR THE AMENDMENT OF THE DURBAN SCHEME BY FOR THE  
REZONING OF ERF 309 DUNN'S GRANT SITUATED AT 140 HOUGHTON ROAD,  
CLAIRWOOD FROM SPECIAL RESIDENTIAL 400 TO LIGHT INDUSTRIAL**

I hereby inform you that the Executive Committee Appeals Authority resolved against the granting of the Oral Submissions and considered written submissions in accordance with

*Handwritten signature*

Section 66 of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) as the issues of determination of the appeal could be adequately determined in the absence of the parties by considering the all documents submitted.

Executive Committee Appeals Authority has in terms of Section 56 of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) adjudicated and reached a decision on the abovementioned appeal in the meeting held on 2019-10-29;

The appeal in terms of the eThekweni Municipality Planning and Land Use Management By-Law against the decision of the EThekweni to approve the application for the amendment of the Durban Scheme by Rezoning of Erf 309 Dunn's Grant situated at 140 Houghton Road, Clairwood from Special Residential 400 to Light Industrial is **Dismissed**.

The following reason was considered in dismissing the appeal;

1. Decision to grant the rezoning was the result of careful consideration of all pertinent planning factors including the guiding strategic documents such as the IDP, SDF, CSDP and BOP LAP as well as the written comments lodged
2. The decision reached is considered to be in the best interest of the City and in no way unreasonable in the context of the competing interests at hand.

This decision is made in accordance to the provisions of Section 66 of the eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) "The Appeal Authority may consider an appeal without an oral hearing where in its view the issues for determination can be adequately determined in the absence of the parties by considering all documentation which has been submitted in respect of such appeal".

It should be noted that the decision is made in terms of eThekweni Municipality Planning and Land Use Management By-Law 2016 (Municipal Notice 114 of 2017) and does not absolve the applicant from compliance with the Conditions or the provisions of any other existent Act.

Yours Faithfully

  
 CHAIRPERSON:  
 EXECUTIVE COMMITTEE APPEALS AUTHORITY

11/02/2020  
 Date



IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case No: 7068/20D

In the matter between:

**CLAIRWOOD RATEPAYERS &  
RESIDENTS ASSOCIATION**

*Applicant*

and

**ETHEKWINI MUNICIPALITY & SIX OTHERS**

*Respondents*

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**SUPPLEMENTARY AFFIDAVIT ito Rule 53(4)**

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I, the undersigned,

**PRAGASAN REDDY**

do hereby make oath and state that:

1. I am an adult, procurement officer. I am the chairman of the applicant, the  
CLAIRWOOD RATEPAYERS & RESIDENTS ASSOCIATION (the  
Association).

*Pras*

2. The EtheKwini Municipality together with the 4 respondent departments within it are opposing this application. These respondents will be referred to collectively as the Municipality in this affidavit. With the Municipality having filed the record, this affidavit has been prepared to supplement the founding affidavit.
3. By its opposition to this application, the Municipality is effectively inviting the Court to countenance or be party to perpetuating its unlawful conduct.

**Duty of Municipality to Perform its Statutory Duties**

4. Let me say immediately that the Municipality ought not to have opposed these proceedings – because all the Association asks is that the Municipality performs those functions that it is mandated to perform by the Constitution and various statutes. The opposition is therefore spurious. Later, I will make submissions on why personal costs orders should be made against officials who authorised the opposition.
5. I respectfully submit that the offending logistics businesses are well aware of the poor governance and maladministration that plagues the Municipality throughout the City, and not just in Clairwood. They are leveraging that to their advantage: they have been emboldened to lay siege to the environment, lives, limb, health, safety and well-being of innocent people, secure in the knowledge that there will few or no consequences.
6. By-law s 76(3)(d) expressly prohibits the Municipality from permitting a rezoning application to be made by those who are accused of a contravention. Yet, not only does the Municipal Planning Tribunal (MPT; second respondent) entertain

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these applications, and except for only one that I am aware of, routinely approves them. To rub salt into the wounds, these decisions are also confirmed by the Appeal Authority (AA; fourth respondent).

7. These (illegal) approvals have caused the character of Clairwood to degenerate. It is therefore incorrect to examine only the facts that pertain to 140 Houghton Rd. The Association brings these proceedings to demonstrate to the Court the pattern of illegal conduct on the part of the Municipality over a period of time; and over the entire area of Clairwood.
8. The record shows that the AA does not perform appeal functions. The pattern seems to be that it rubber-stamps without qualification the decisions made by the MPT in respect of rezoning applications for Clairwood, because they supposedly align with other plans.
9. The Municipality has been aware for close on a decade of the limitations and shortcomings of the road infrastructure and its degradation, in South Durban generally and Clairwood in particular, if one has regard to the following:

- 9.1. The 2010/11 Central Spatial Planning Report (annexure **SA1** hereto) where it stated that the *"the district is also characterised by high levels of friction between residential and industrial traffic."*
- 9.2. The 2010-2015 Integrated Transport Plan (ITP) (devised in terms of the Land Transport Act 5 of 2009) (see annexure **SA2** hereto) where the finding is made that *"the team have identified*

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*a number of transport issues that impact on both the business and residents communities in the area. Deterioration of existing infrastructure, congestion, conflicting needs of the residential and industrial communities and lack of adequate roads and public transport infrastructure are all seen as having a negative impact on the area."*

10. Despite this knowledge, the Municipality stubbornly persists in making decisions that are worsening an already troubled situation.
11. Leaving aside the self-evident incompatibility of the road infrastructure for purposes of a logistics hub, it is significant that the Ethekwini Transport Authority (ETA; fifth respondent) – its findings informed by its special expertise – emphasises the **risk of injury and death to persons**. In other words, with Clairwood roads not yet fit for purpose, approval of rezoning applications is causing fatalities. None of the decision makers in this matter have engaged with this central issue.
12. Inexplicably, both the MPT and AA have not mentioned these risks in their approvals. The inference that one draws from this omission is that –
  - 12.1. They have probably failed to read the ETA's reports; or
  - 12.2. The Municipality is determined to approve the applications regardless of the risks or consequences so as to conform to pre-determined outcomes.



13. The Association witnesses the predictions of the ETA come true before its very eyes regularly. Damage to vehicles and property, injuries and death to persons are now routine and do not constitute news anymore.
14. The evidence shows that the actions/inactions of the Municipality satisfy the test for culpa. Culpa arises, it is respectfully submitted if –
- 14.1. A reasonable person in the position of the Municipality –
- 14.1.1. Would have foreseen harm of the general kind that actually occurred;
- 14.1.2. Would have foreseen the general kind of causal sequence by which that harm occurred;
- 14.1.3. Would have taken steps to guard against it, and
- 14.2. The Municipality failed to take those steps.
15. The principal evidence against the Municipality would be its own transport authority's warning to the Municipality of accidents and deaths.
16. Even if one disregards the needs of the residents of Clairwood, it cannot be disputed that the logistics service providers need proper infrastructure to operate their businesses safely, efficiently and effectively. They owe it to their employees, customers and visitors in terms of sections 8 and 9 of the Occupational Health and Safety Act 85 of 1993.

17. Since 2010 the Municipality has rezoned scores of sites in Clairwood, thereby exacerbating the load capacity of the road infrastructure, and intensifying the friction between residential and industrial traffic. Moreover, it cannot be correct to expose unwary visitors to the dangers and hazards that have now become "normal" in Clairwood.
18. Section 3(d) of SPLUMA provides for sustainable and efficient use of land. It is submitted that the approach of the Municipality is sowing the seeds of the destruction of the Plan itself: the time cannot be far off when Clairwood will become a chaotic and desolate wasteland because the Municipality would have lost control, administration and management of the roads in the area.
19. An example of the congestion and gridlock that awaits us is playing out in our city at present on the arterial roads that serve the harbour: Bayhead, Umbilo, South Coast and Maydon Roads. I work in a shipyard and run the gauntlet of navigating through these roads regularly. Whether it is occurring by design is immaterial. Both the Municipality and Transnet (the owner of the port) are jointly responsible for this problem yet cannot, or will not agree, on a solution – *fiddling while Rome burns*. What is evident is that the turmoil is escalating daily – threatening the long-term viability of the port of Durban.
20. The above issues are serious as they reveal that the environment is eminently unfit for purpose (i.e. trucking), and there is a high risk of injury or death for pedestrians. That this application was given an unqualified approval is astonishing and can only mean one of three things –

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- 20.1. The MPT and AA probably consider that they are above the law;
- 20.2. They do not care for the wellbeing, health or safety of residents;
- 20.3. That the application was probably not read; or The MPT and AA are single-minded in their determination to approve all applications for rezoning in Clairwood in a pre-determined manner regardless of the merits, risks or consequences.

**Further Examples of Poor Planning on the Part of the Municipality**

21. The issues being raised in this review are so widespread in Clairwood that I am bold enough to say the following without fear of contradiction:

- 21.1. That every application for rezoning that has been approved by the Municipality to date displays exactly the same irregularities as in this case;
- 21.2. Every property that has been rezoned was previously special residential;
- 21.3. That all the light industrial businesses that operate from rezoned sites commenced operations from sites that were zoned special residential. In other words the zoning was disregarded;

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21.4. That the Municipality has for over a decade ignored appeals by the Association to enforce the special residential zoning in Clairwood;

21.5. The Municipality is now seeking to create the impression that the lawlessness is endemic such that it is now impossible to arrest the decline. But it was the author of this lawlessness by its failure to strictly enforce the zoning.

22. I attach hereto marked **SA3** a spreadsheet showing 104 properties where light industrial businesses operated before those sites were rezoned light industrial; and other properties where such activities are taking place presently even though they are still zoned special residential.

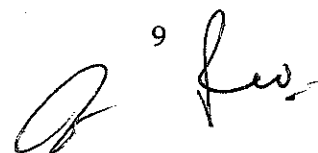
23. In **SA4** to **SA14** I set out the photographs taken by me that illustrate the intolerable conditions that must be navigated by Clairwood residents, visitors, school-children and others on a daily basis including weekends.

#### Evidence of Residents

24. Annexure **SA15** is a sample of residents who were consulted about the problems manifesting in their neighbourhoods. The following are the broad outlines of their evidence:

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- 24.1. It is a notorious fact that the logistics and other businesses operating in Clairwood are labour intensive. This has caused a migration of large numbers of labourers into Clairwood who live in informal settlements.
- 24.2. The presence of large number of these labourers is a catalyst for social ills such as prostitution and the illicit drug and liquor trade.
- 24.3. Due to the failure of municipal services, dumping; free flowing sewage; and vermin infestation is commonplace.
- 24.4. The businesses themselves have no concern to ensure that the area is clean and tidy. The repair of trucks and the dumping of oil on the road causes the oil to enter the stormwater system causing drains to be blocked – leading to flooding of residents' properties when there is a downpour.
- 24.5. The trucks are driven with no regard for pedestrians and children. Death and injury is a regular occurrence because the trucks encroach onto the pavements – the roads being too narrow to accommodate trucks. Accidents with the vehicles of residents is commonplace. The destruction of pavement and street furniture (light poles; traffic signs; traffic lights; fire hydrants etc) is inevitable.

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24.6. Trucks are parked on the narrow roads causing traffic congestion.

It is rare to see the Metro Police performing traffic enforcement duties.

24.7. Trucks emit fumes causing respiratory illnesses among residents and their children.

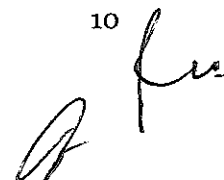
24.8. The driving of trucks raises dust and noise pollution at all hours of the day and night.

24.9. A number of businesses deal in flammable liquids with the Municipality failing to ensure safety of residents. A disaster is in the making. Already there have been a number of large fires in the area.

**Response to the Record filed by the Municipality**

25. In this part of the affidavit, I will demonstrate by reference to the record, that perpetrating irregularities and illegalities is routine for the Municipality and its departments.

26. I take this opportunity of respectfully reminding the Court that this application is about upholding the rule of law and ensuring that rational planning takes place. That failure on the part of the Municipality has led to the lives and safety of the residents of Clairwood being placed in jeopardy.



27. The following are reference to pages and paras of the record:

**VOL 1 OF THE RECORD**

27.1. Pages 1-17: This report was prepared by the regional co-ordinator and manager of the land use management section of the respondents and submitted to the MPT. It recommended the approval of the rezoning application –

27.1.1. Page 2 para 4: Despite stating that *“all sites surrounding the subject site are zoned special residential 400.”*

27.1.2. Page 2 para 4a: Despite stating that *“the application site is zoned special residential 400, however this zone is an unrealistic zone for the area as a whole based on the current trend.”* I submit that this “trend” was illegally set in motion by the Municipality for the reasons set out in the founding affidavit.

27.1.3. Page 2 para 4b: By incorrectly stating that *“the proposed rezoning aligns itself to the existing industrial zones in Clairwood.”* The evidence shows that the area is zoned special residential.

27.1.4. Page 2 para 4c: By correctly stating that *“the proposed municipal plan in terms of the Back of Port Local Area Plan identifies Clairwood area for Logistics.”* It is correct provided that the road infrastructure is upgraded.

27.1.5. Page 2 para 4d: The report states that *"the proposed rezoning application aligns to the existing uses within the area."*

The report fails to mention that most of existing uses are illegal and unauthorised.

27.1.6. Page 2 para 4e: The report states that *"the proposal makes use of existing infrastructure and services which enables the efficient use of resources ensuring a sustainable working environment and thriving logistics hub in line with the municipal vision for the area."* I submit that this is a blatant attempt to mislead the MPT because Annexure FA2.7 clearly states that the existing road infrastructure is ill-suited for logistics. To state that this would be an efficient use of resources boggles the mind.

27.1.7. Page 3 para 4h: By incorrectly stating that the proposal (by the sixth and seventh respondents) is in line with the town planning scheme. The land use scheme for Clairwood has not been amended in line with the LAP. This statement is therefore incorrect.

27.1.8. Page 3 Key Issue 1: Both the owner and the Municipality recognise that there has been "illegal uses" and "unauthorised uses". The Municipality is brazenly admitting to such uses to justify a rezoning application. The following are further examples where the Municipality is relying on illegal or unauthorised use to justify its decision:



- 27.1.8.1. Page 4 Key Issue 3: The owner is silent in the face of the objection that it *"will also increase the risk of accidents and fatality rates in this vicinity. Pedestrians and scholars will be at risk to and from work and school."*
- 27.1.8.2. Page 5 Key Issue 4: To answer the objection that residential and industrial uses are incompatible, the Municipality again relies on unauthorised uses to justify its decision.
- 27.1.8.3. Page 5 Key Issue 5: To answer the objection that rezoning will pose a health and environment hazard, the Municipality again relies on unauthorised uses to justify its decision. The Municipality relies on its plans for Clairwood, and submits that the rezoning aligns with those plans. But those self-same plans also direct the Municipality to upgrade the road infrastructure before it may be put to use as a logistics hub.
- 27.1.9. Page 9 Key Issue 7: The owner does not dispute that this is an example of apartheid era planning: that era was characterised by planning that ignored the legitimate rights and concerns of people of colour.
- 27.1.10. Page 10 Key Issue 10: To answer the objection that the quality of life of residents will be adversely affected, the

Municipality once again relies on unauthorised uses to justify its decision.

27.1.11. Page 11 Key Issue 11: To answer the objection that there will be noise pollution and environmental destruction, the Municipality again relies on unauthorised uses to justify its decision.

27.1.12. Page 12 Key Issue 12: To answer the objection that hazards will be posed to scholars and residents, the Municipality again relies on unauthorised uses to justify its decision.

27.1.13. Page 12 para 6.1: The decision of the Municipality's own Transport Authority to refuse the application is set out here with reasons which include the following:

27.1.13.1. *"A totally new layout is required with wider roads and improved access from freight routes."*

27.1.13.2. *"A new road hierarchy will be required for the area."*

27.1.13.3. *"A traffic study is required."* The Transport Authority does *"not have the funds ... to carry out the study."*

27.1.13.4. The Owner's traffic impact assessment fails to address the above requirements.

- 27.1.13.5. There will be a risk to the Municipality that there will be vehicle-vehicle accidents, vehicle-pedestrian accidents.
- 27.1.13.6. Page 14 para 7.1: The evaluation fails to deal with the above reasons.
- 27.1.14. Page 15 para 7.1.2: With the application for rezoning being defective, this para is clearly an attempt to remedy lacuna in the application. Again, the Municipality fails to engage with the LAP requirement that the road infrastructure must be upgraded if the area was to serve as a logistics hub.
- 27.1.15. Page 51 second para: The Owner recognises that applications for rezoning must take into account the *"interests of the broader community."* This must be examined by determining the *"positive input into the lives of the affected people, and the degree to which their impact may impinge upon, or negatively affect, other people's rights."* I agree. It is not clear to me how increasing traffic flows, will advance the health and safety of residents, motorists and pedestrians.
- 27.1.16. Pages 54-57: I have shown in the founding affidavit how the legislative framework has been ignored.
- 27.1.17. Pages 58-59: Approving applications to industrialise Clairwood may or may not be in alignment with the various plans

and frameworks. The central issue is whether increasing heavy truck traffic along narrow roads advances the safety of residents, motorists and pedestrians.

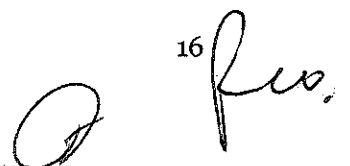
27.1.18. Page 90 third para: *"As per the change in the primary land use of the area from residential, the existing roads that do not meet the minimum road width requirement and do not consist of road pavement layers that would support the loading of vehicles in an industrial area therefore the existing roads will be subjected to upgrades on a large scale. The roads will need to be upgraded to a minimum width of 7.5m and will be subject to a redesign of the road pavement layers for industrial use."*

27.1.19. The following appears in the Owner's traffic assessment report:

27.1.19.1. Page 91: *"Sections of sidewalk broken off."*

27.1.19.2. Page 91 Last para: *"Road widths could not be determined accurately due to over-grown vegetation along roadside. The sidewalks that are on either side of the road are broken or missing in sections along the road. The roads show extremely deteriorated conditions."*

27.1.19.3. P 92 para 5: *"The roads however show extremely deteriorated surface conditions. The sidewalks are broken at intersection crossings and in intervals along the road."*

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27.1.19.4. P 93 first para: *"The land use in the area consists of place of worship; retail (hair salons, small tearooms, fresh produce supermarkets), scrap yards catering for each make of car (Volkswagen, Ford, Uno etc), trucking depots, storage yards, multiple residential units, hardware wholesalers, plastic wholesalers, crèches, schools, community halls and recreational areas."*

27.1.19.5. P 101 para 6.7: *"A large percentage of commuters will be pedestrians from the surrounding residential areas."*

It is common knowledge that Clairwood is also home to a significant number of informal settlements. Residents of these settlements go about their daily routine on foot.

14.1.20 A reasonable person perusing the above submissions would have probably concluded that –

14.1.20.1 The road infrastructure is unsuitable for the proposed land use;

14.1.20.2 The road surface is degraded;

14.1.20.3 There are facilities in the precinct that are patronized by large numbers of persons notably children;

14.1.20.4 There are a large number of persons frequenting the area on foot; and that

14.1.20.5 Pedestrian sidewalks are damaged or non-existent.

- 14.1.21 Page 125: The Strategic Spatial Planning Branch's non-objection was made subject to the road infrastructure recommendations of the Ethekwini Transport Authority – in other words it was conditional. Land Use Management misrepresented this when it stated on p 15 para iv that "*Strategic Spatial Planning Branch have supported this application ...*"

### **VOL 2 OF THE RECORD**

- 14.1.22 The MPT decision (pages 203-205) failed to deal with the dangers facing users of the religious, cultural and social sites in the vicinity; the noise and air pollution; or the risk of fatal accidents to pedestrians and children attending schools, as set out in the objections made by the Association and South Durban Community Environmental Alliance:

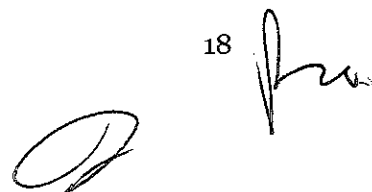
14.1.22.1 Page 139 bullet point 3 / page 140 bullet point 2 & 3.

14.1.22.2 Page 145 second para.

14.1.22.3 Page 146.

14.1.22.4 Page 148 second & third para.

- 14.1.23 Pages 151-156: The owners repeatedly rely on the illegal and unauthorised uses already occurring in Clairwood as justification for seeking approval of their application. To answer the objection – page 444 first para left column – of dangers facing users of the



religious, cultural and social sites in the vicinity; the noise and air pollution; or the risk of fatal accidents to pedestrians and children attending schools, the Owners say the following at page 444 first para left column: *"The applicant site is currently being utilized for light industrial purposes. This has been in existence for more than two years with no issues and interferences. Due to the overwhelming illegal uses, the area is totally transformed. The problem the city faces is that most of the uses are not legalised. This is threatening the area and measures need to be put in place to curb this. Clairwood has been identified as area begging for change – this needs to be ratified."* This response from the Owners is clearly a failure to deal with the substance of the objection.

14.1.24 Page 167-170: The Joint Advisory Committee (JAC) was irregularly constituted and its recommendation (relied on by the MPT) is void for the following reasons:

14.1.24.1 The JAC is defined in the Bylaw as the *"Joint Advisory Committee ... established in terms of section 30 of this Bylaw comprising municipal officials who are Registered Planners and who make recommendations to a decision maker on land development applications."*

14.1.24.2 Four municipal officials who are Registered Planners must serve on the JAC (Bylaw 30(3)). Page 167 shows that none of those present was a "registered planner."

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14.1.24.3 A chairperson must be appointed by the Head (Bylaw 30(4)).

There is no evidence from page 170 that one Terence Pillay was appointed by the Head.

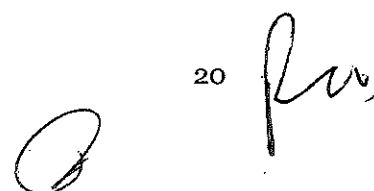
14.1.24.4 Three members of the JAC must be present in order for a meeting to proceed (Bylaw 30(6)). With none of those present being a registered planner, the meeting was irregularly constituted.

14.1.24.5 The Regional Co-ordinator must compile, sign and submit a planner's certificate to the JAC within prescribed timeframes after he or she deems the application to be complete (Bylaw 30(9)). There is no evidence of this certificate.

14.1.24.6 In the circumstances the "recommendation" made at Page 168 para 9 is null and void. Once again the record shows a failure to deal with the dangers facing users of the religious, cultural and social sites in the vicinity; the noise and air pollution; or the risk of fatal accidents to pedestrians and children attending schools.

### **VOL 3 OF THE RECORD**

14.1.25 Pages 193-202: This is the appeal of the Association. Amongst others, the Association emphasised that the road infrastructure does not meet minimum road width requirements; and secondly, that the

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ETA had refused its approval because of life threatening consequences.

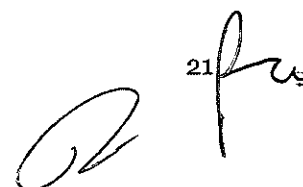
14.1.26 An examination of the submission made by the Regional Co-Ordinator Land Use Management Central South to the AA (pages 267-278) shows that the issues raised by the Association in the previous paragraph were completely ignored.

#### **VOL 5 OF THE RECORD**

14.1.27 The "Synopsis Report" of the SPLUMA office (pages 474-477) to the AA does indeed refer to the safety and lives of people in Clairwood being negatively impacted. But its recommendation evades this issue.

14.1.28 The decision of the AA (pages 480-481) also ignored the grounds of appeal raised by the Association. The Bylaw 56(a) (powers of AA) read with Bylaw 69(1) (determination of appeal) provides for the AA to uphold or dismiss an appeal, and to provide reasons therefor. **By simply ignoring grounds of appeal means that the AA did not in truth or in fact conduct an appeal.** Its decision falls to be reviewed and set aside simply on this basis.

#### **Costs de bonis propriis**

21 

28. The Municipality's contempt for the people of Clairwood does not befit an organ of government: it is invoking legal processes to impede the rightful claims of the residents and defying the Constitution by failing to respond to the needs of the people. The Association asks for costs *de bonis propriis* because I can predict that the Municipality will approach these proceedings in a cynical, expedient and obstructionist manner. It will conduct this case as if it was at war with us. It will be a shameful spectacle.

29. The Municipality has a tendency to oppose litigation against it as a matter of course. Regardless of what it says in opposing these proceedings, I respectfully submit there is no prospect of a real or genuine dispute of fact emerging: the following is irrefutable:

- 29.1. That the Plan, which it adopted without reservation or qualification, requires it to redesign and upgrade the road infrastructure in Clairwood in anticipation of it serving as a logistics hub;
- 29.2. That it has failed to redesign and upgrade the road infrastructure in Clairwood to ensure that it is conducive to its intended purpose; and
- 29.3. That it is nevertheless approving applications to rezone by those who seek to engage in trucking and logistics;
- 29.4. That these failures are having a detrimental effect on the residents of Clairwood and their properties.



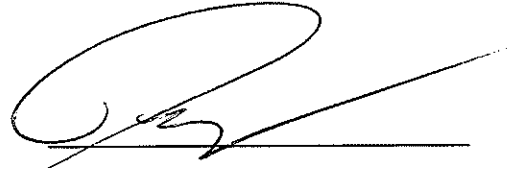
30. With these proceedings being opposed by the Municipality, I submit that those public officials or councillors or both, who have authorised the opposition should be held personally liable for the costs: their opposition would amount to defending the indefensible.
31. Costs must be awarded because in mounting an opposition to these proceedings, if any, these respondents will of necessity abuse the process of this Honourable Court by –
- 31.1. Insisting that its failure to perform its statutory duties is acceptable;
  - 31.2. Continuing to process rezoning applications in the full knowledge that they do not conform to existing zoning;
  - 31.3. Making submissions that are *mala fide*, unreasonable, misleading or obfuscating;
  - 31.4. Failing to take the Court into its confidence and fully explain the facts so that an informed decision can be taken in the interests of the public and good governance;
  - 31.5. Displaying a contemptuous attitude to the residents of Clairwood;
  - 31.6. Avoiding the giving of a full and fair account of the facts; or
  - 31.7. Making submissions it knows are hopelessly without merit.
32. The people represented by the Association are not wealthy. They are eking out a modest living and are vulnerable. The first and foremost duty of the Municipality is to ensure the wellbeing of its residents. Far from



doing that, the Municipality is actively and deliberately jeopardising their health and wellbeing. This is reprehensible and should not be countenanced.

33. The scale of costs sought is on the attorney and own client scale so that it sends a clear signal to like-minded public official that such reprehensible behaviour does not belong in, and is anathema, to the Municipality.
34. In order to facilitate the making of the costs orders, I ask that all those who make the decision to oppose, including councillors, be identified by name and office in the answering papers.

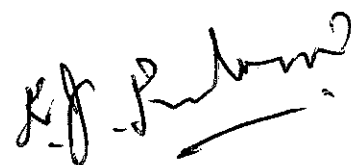
**WHEREFORE** I ask for an Order as contained in the AMENDED ORDER PRAYED.



**DEPONENT**

I certify that the deponent has acknowledged that ~~she~~ <sup>Q</sup> knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this the 6<sup>th</sup> day of DECEMBER 2022, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.

**RANJIT JAMNADAS PURSHOTAM**  
Practising Attorney  
Commissioner of Oaths  
22 Diakonin Avenue  
DURBAN  
Republic of South Africa



**COMMISSIONER OF OATHS**