



17 April 2024

Dept of Development Planning
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2017
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Dear Sir/Madam,

**Response to Municipal Planning Tribunal reasons: Erven 530 and 531 Parkwood:
Amendment Scheme 20-01-3940**

We hereunder set out our response to the MPT's reasons received on 12 April 2024 for consideration by the Appeal Authority together with our placeholder appeal submitted in respect of the Tribunal decision of 12 December 2023.

SAPRA understands the Tribunal primary reasons for its decision to be:

1. Compliance with s5 of the Bylaw and particularly the development principles of spatial justice, efficiency and sustainability

We have addressed this in our placeholder appeal; however, we would like to address the specific mention of the above principles:

- spatial justice requires that the spatial planning guiding decision making be fair and non-discriminatory. While this principle is incorporated into the Nodal Review, its true test rests with the spatial planning of local areas where the generic development guidelines are applied to the communities directly affected by the proposed spatial changes. The hierarchy of spatial plans referred to in both the Spatial Development Framework and the Nodal Review, and the concepts of smart growth and built form codes, attest to the need for local plans to guide private applications so that they contribute to the "community" development pattern.

- spatial efficiency in a spatial planning sense is linked to forward planning and integrated development rather than the singular use of excess infrastructural capacity by individual applications. It is accepted that better use of existing infrastructure is required, but that this is not a solution for the wider development of the Nodal development zone, where investment in infrastructural capacity is required to sustain the implementation of the development guidelines.

- sustainability is more than accommodating individual developments "within the means of the City" and requires forward and realistic thinking about the longer-term spatial outcomes as per the SPLUMA requirements for spatial development frameworks.

2. The site's location within the Metropolitan Node defined by the Nodal Review and the proposal's alignment with its development guidelines including the minimum density of 80du/ha.

These development guidelines and the potential scale of change a literal interpretation of their densities and heights would bring about is discussed briefly in our placeholder appeal. It is clear from Nodal Review (s3.1.2) that infrastructural capacity must be upgraded to allow for the spatial vision of the Nodal Review to be achieved, and that this would need to happen in a planned way for such development to be sustainable. To our knowledge there is no infrastructural planning linked to the Nodal Review guidelines at this stage.

3. The contribution the zoning and proposed urban form will make to the transformation of the Node and the site's strategic position near major roads, public transport, and work opportunities and other facilities.

The site's location is in our view good for densification; however, the proposed high-rise built form has no urban design context to justify its scale. Administrative realism, and the Bylaw s5(4) requirement, would seem to indicate that the radical departure from the existing scale of developments on the outside fringe of the Rosebank Box should be informed by the generic Nodal Review (p41) built form guideline on height and scale, and the necessary local planning required for "place creation".

4. The availability of existing services capacity and positive comments received from all services departments.

The aspect of infrastructural capacity and the need for investment to create a sustainable development environment has been addressed (see 2. above).

5. The expected effectiveness of the post-decision processes, such as the site development plan, to give effect to the use of the urban design principles to address the compatibility issues of overlooking and the like.

The idea expressed in the reasons that the required site development plan will ensure compliance with the design principles is not realistic, given the absence of contextual guidelines. This is more fully discussed in the placeholder appeal.

Kindly acknowledge receipt of this addition to our placeholder appeal.

Yours faithfully,



W. J. Haslam
SAPRA Chair

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Placeholder Appeal: Municipal Planning Tribunal decision in respect of Erven 530 and 531 Parkwood: Amendment Scheme 20-01-3940

1. INTRODUCTION:

Sapra, the appellant, is a registered objector to the above application. It has received notification of the Municipal Planning Tribunal (“MPT”) decision to approve the application on 12 December 2023 by letter dated 5 February 2024 (Annexure 1).

The appellant has requested that written reasons for the decision be provided in terms of S59 of the Municipal Planning By-law, 2016 (“Bylaw”), and these reasons are awaited. On receipt, the initial/preliminary grounds of appeal set out below will be augmented for consideration by the Appeal Authority.

2. THE MUNICIPAL PLANNING TRIBUNAL DECISION:

The MPT’s decision approves the rezoning of erven 530 and 531 situated at the corner of Oxford and Ashford Roads, Parkwood.

The rezoning is for a change from Business 1, subject to conditions (including 10 storeys and a floor area ratio of 5,0) to Business 1, subject to new conditions retaining the height and floor area ratio and permitting new land uses with various exclusions, floor area limitations, a density of 300 dwelling units, and 14 “specific conditions” as set out in Annexure 1.

The application was motivated by the applicant on two main points:

- the conversion from the existing Business 1 zoning approved in 2020 for office usage to a revised Business 1 zoning permitting high-density residential usage largely within the built form parameters approved in the 2020 rezoning; and
- the application’s compliance with the Nodal Review development guidelines for the Rosebank Metropolitan Node, specifically its height and scale which it illustrated in a proposed plan of the development on the site itself.

3. PRELIMINARY GROUNDS OF APPEAL

3.1 The composition and impartiality of the MPT

The Appellant submits that the MPT hearing process is flawed in the following ways:

Firstly, the composition of the MPT does not meet the requirement of an independent member as required in terms of s36(1) of the Spatial Planning and Land Use Management Act, 2013 (“SPLUMA”).

Secondly, the Development Planning recommendation is prepared in a consultative manner, based on the recommendation of the in-house forum known as the Planning Permissions Meeting (“PPM”). The PPM comprises municipal officials in the City Planning Department, some of whom may be members of the MPT.

Thirdly, it is apparent from the Development Planning report that there is a strong bias towards the implementation of the Nodal Review through the mechanism of rezoning, and to using the development guidelines as a blue print for the evaluation of land development applications. This approach to determining the application is understood from the Development Planning report to be based on the s22 SPLUMA provision that requires that no land development decision may be contrary to the approved municipal spatial development framework.

3.2 The purpose of spatial planning and the status of the Nodal Review

The purpose of spatial planning is to provide a “rational and predictable” spatial outcome for the affected area (as per the SPLUMA s12(l) requirements). The Appellant submits that the Nodal Review does not provide the planning guidance that is required for the applicant’s site and to provide a predictable outcome.

This is self-evident in the nature of the Nodal Review development guidelines applicable to the Metropolitan Node, which provide a range of possibilities, and which logically would need to be applied to the applicant’s site and surroundings. This application requires a suitable “detailed local plan” that provides the necessary guidance to application decision making and the “coordination, alignment and integration of sectoral policies of all municipal departments” including capital expenditure (SPLUMA s21). The problem, the Appellant submits, is not with the Nodal Review, but with the failure to develop the guidelines into a spatial framework to achieve coordinated transformation of the affected area or Nodal development zone.

The other important factor, and SPLUMA s12(1)(o) requirement is the need in such spatial planning to consider the public inputs to the local spatial planning process. The Appellant submits that since the lapsing of the Parkwood and Saxonwold Precinct Plan, with the adoption of the Nodal Review, there has been no public participation in the spatial planning of the area. The only form of such participation is in the responses to land development applications, which is in the Appellant’s submission totally inadequate to ensure “rational and predictable” development.

3.3 The Development Planning reasons and recommendation to the MPT

The Appellant notes that the Development Planning report indicates that the site is in the Node and “earmarked” for “the highest mix of land uses” that these “include residential, offices, retail, community services, healthcare and commercial”, and also that it is similarly earmarked for a minimum of 80du/ha; however, it states that properties within the nodal core and around transit stations “a density of 150+ du/ha is encouraged” and that the proposal falls accordingly within the City’s policies. The Appellant infers from this explanation that all erven within the Node, which covers about 500ha, are equally “designated” for similar purposes and scales of development. The obvious concern that is that the granting of zoning rights is not linked to a SPLUMA-compliant municipal spatial development framework and that there is no “rational and predictable” spatial outcome for the Node (as per the SPLUMA s12 requirements).

The above “designation” approach, promoted by the SPLUMA s22 provision that neither Development Planning in its recommendation, nor the MPT in its decision, may be contrary to the Nodal Review. The Appellant submits that this is not applicable to the Nodal Review, given that S22 only protects municipal spatial development frameworks that comply with the requirements of SPLUMA s21, which would need to address the items listed under s21(a) to (p).

In the absence of a local plan to create “a distinctive, attractive environment” (Nodal Review p36) - ie a context for development of individual projects, such as the one proposed - the Appellant submits that both Development Planning and the MPT need to apply the “wider” requirements of SPLUMA s42 and the Bylaw s5 in deciding the application. This, the Appellant submits, requires a more cautious approach on scale and compatibility, given the absence of a clear spatial plan.

The Appellant notes that the Development Planning evaluation of the rezoning is very focused on the land uses and not on the “built form” and how it relates to the existing development in the area and contributes to the development of the public environment. This important aspect is understood to be covered by the requirement for a site development plan in clause 3 of Column 13 of the Annexure; however, it cannot do more than regulate the built form and aspects relating to the applicant’s site itself as the public environment, and the further development of other erven, is not under the applicant’s control, but is under the municipality’s regulatory and planning control.

The Appellant would like to draw the Appeal Tribunal’s attention to the numerous special and site-specific zoning clauses that similar nodally-located properties, such as erven 508, 733/4 and 813/4 Parkwood, have been granted. These differ substantially both in content and wording to the approved conditions for the applicant’s site and importantly provide no link to the urban design criteria set out in the Nodal Review. The Appellant submits that under these conditions of “zoning individuality”, and an absence of a local or nodal-relevant spatial development framework, there is no chance of facilitating what the Nodal Review (p36) refers to as urban design tools for creating “distinctive, attractive environments with a strong sense of place and local ownership” informed by the “specific property development context”.

3.4 Concluding Submission

The grounds of appeal relate to the Appellant’s growing concern that the Nodal Review is being incorrectly applied to designate zoning parameters to land falling within the Metropolitan Node transect development zones.

The Appellant submits that significant developments, such as proposed in this application, must be scrutinized and evaluated in terms of the full set of criteria in the Nodal Review, as well as those in SPLUMA and the Municipal Bylaw. In this way, the aspects of compatibility and harmony of developments through scale and compatibility can be achieved. It accordingly requests that the Appeal Authority refer the application back to the MPT to further evaluate the implications of both the scale and zoning conditions in achieving a planned outcome.

The Appellant would further request that the MPT, in its further evaluation of the application, request that Spatial Planning and City Transformation prepare a local

spatial framework plan with the affected community's participation to guide the developmental changes in the area with due regard to the SPLUMA requirements for such local spatial frameworks and the generic guidelines set out in the Nodal Review.

The Appellant has requested the MPT's reasons for the current approval, and has provided the above preliminary grounds for the appeal.

These will be augmented with further grounds on receipt of the reasons.

SAPRA

1 March 2024