

REPORT TO TOWN PLANNING COMMITTEE

PROPOSED AMENDMENT OF THE DURBAN TOWN PLANNING SCHEME BY THE REZONING OF THE REM OF 226, REM OF 227, REM 230 AND THE REM OF 699 ALL OF NEWLANDS NO 229 IN THE FOSAVILLE AREA OF UMGENI NORTH FOR BOTH HOUSING, MIXED USE COMMERCIAL & ENVIRONMENTAL CONSERVATION PURPOSES IN TERMS OF SECTION 47BIS A OF THE TOWN PLANNING ORDINANCE NO 27 OF 1949, AS AMENDED.

File Reference: 15/1/3 & DPM 65/06

1. EXECUTIVE SUMMARY

In an effort to protect the endangered KwaZulu-Natal North Coast Grasslands and Scarp Forests, the majority of which is already included in the DMOSS layer, and in order to provide for a variety of environmental goods and services, it is proposed to rezone the southern area of the vacant land in Fosaville area for Environmental Conservation Reserve/Conservation Zone. It is simultaneously intended to rezoning the northern portion, which is more disturbed, for housing and mixed use purposes while at the same time densifying the residential component.

This conservation initiative supports the South African Constitutional environmental mandate as contained in Section 24(b) and observes compliance with the National Environmental Management Act (NEMA) principles as contained in Chapter 1 of Act No 107 of 1998. It also conserves a meaningful area for prosperity and for the communities north of the Mngeni River (which are otherwise very short of same) an example of landscape which used to exist in the past.

There have been a number of attempts to establish housing and or mixed uses in the area over the years, which for various reasons these efforts have failed. The current rezoning initiative, with Housing Department input, attempts to achieve an equitable balance.

2. DECISION REQUIRED:

A decision is required to the effect that it is the intention of Council to amend the Durban Town Planning Scheme in-course-of-preparation by rezoning the Rem of 226, Rem of 227, Rem 230 and the Rem of 699 all of Newlands No 229 from Special Residential 400 to Special Residential 180, General Business 2 and Environmental Conservation Reserve and thereafter to advertise for public representations and objections with a view to the eventual adoption of such proposals, all as required in terms of Section 47bis A (2) of the Town Planning Ordinance No 27 of 1949, as amended.

LOCATION:

The properties concerned are situated within a block broadly contained by the Mngeni River in the south and the existing residential developed areas in the Hillgrove area of Newland West (zone Special Residential 180 m2), and Parlock in Umgeni North. While to the north east lies the Fosaville/Sooklall Drive residential area. Access to the area may is taken from

the Newlands West Drive which in turn connects to the Inanda Highway near the Marbleray shopping centre. (See following aerial photograph). In addition portions of the site may be accessed from minor roads within both Parlock and Hillgrove. (See below extract from the GIS)



EXISTING ZONING

The entire Commercial Properties (Pty) Ltd land holding is currently zoned Special Residential 400 m2. The Council owned Rem of 699 Newlands is zoned Special Residential 180

D'MOSS STATUS & FLOOD PLAINS



The entire site proposed to be rezoned is currently designated as D'MOSS land and abuts further D'MOSS linking corridor areas to the north and along the banks of the Mngeni River (green areas). In addition a large area flanking the Mngeni River falls within the 100 year flood plan of that river (blue areas). In addition an east flowing stream in the north also has flood plains affecting the site.

PURPOSE OF REZONING

To rezone the inappropriately zoned Special Residential 400 area, which contains critically endangered North Coast grassland, woodland and forest, all limited resources particularly to the north of the Mngeni River, for conservation purposes and to rezone the portions identified for residential purposes to an appropriate zoning to match the Council's intentions and the need to densify within the core of the city and minimise urban sprawl, as directed in terms of the Integrated Development Plan, but while remaining sensitive to surrounding existing zonings where necessary.

LAND OWNERSHIP

Other than for the Council owned Rem of 699 Newlands, the land is all owned by Commercial Properties (Pty) Ltd who have members of the Paruk and Lockhart families as directors. They have held the land from circa 1924.

Rem of 226 of Newlands No 229 – 65.2137 ha (south of Newlands West Drive)

Rem of 226 of Newlands No 229 - 6.0209 ha (north of Newlands West Drive)

Rem of 227 of Newlands No 229 – 49.8058 ha

Rem of 230 of Newlands No 229 – 42.6675 ha

The total area owned by Commercial Properties (Pty) Ltd is therefore some 163 hectares in extent.

The small portion of the Rem of Erf 226 north of Newlands West Drive which is 6.0209 ha in extent was initially not part of the land being considered for acquisition, however since it is also owned by Commercial Properties (Pty) Ltd and the land owners initially indicated their willingness to dispose of this portion. It was accordingly initially be included as part of rezoning process, however as the potential is very limited due to physical constraints, it has not been further considered for rezoning.

BACKGROUND & HISTORY

The Commercial Properties (Pty) Ltd properties, consisting of the Rem of 226, Rem of 227 and the Rem of 230 all of Newlands No 229, were originally considered in the late 1960's by the erstwhile Durban City Council for acquisition as part of the then Newlands West housing project development, but were eventually discounted as been too broken and steep and as a result had too low a housing yield with resultant very high servicing costs. The land was therefore because of the high anticipated development costs then left for eventual development by the private sector. However, after some forty years, this has never eventuated.

The sites were subsequently identified in the 1990's for inclusion in D'MOSS, particularly being a large parcel of land containing largely woodland and forest that would lend itself for eventual declaration of a nature reserve. The fact that it is located in an area with a high

population density, but where there is very little in the way of remaining natural open space added additional emphasis for such reservation.

LAND CHARACTERISTICS

The properties are bounded by:

- the Mngeni River with the Siripat Road area of the suburb of Reservoir Hills beyond in the south,
- the small privately developed residential area of Sooklall Drive, including Fosaville, to the north,
- the Hillgrove area of the Newlands West housing scheme area developed by the Council in the west, and
- the privately developed residential area of Parlock to the east.

Newlands West Drive runs in an east-west direction over the northern portions of the properties giving access the Hillgrove area of Newlands West from Inanda Highway. This is a limited access arterial road that runs from the N2 to KwaMashu.

The land is heavily dissected by a number of stream lines that run generally flow southwards to join the Mngeni River. In the far north of the site there is a south east to east flowing stream. Associated with this stream along the valley floors is an extensive wetland system. Large portions of the properties are steep with slopes greater than 1 in 3 – classified as undevelopable.

ENVIRONMENTAL ASSESSMENT

Most of the land is environmentally sensitive and has been identified variously as North Coast Grassland, Scarp Forest, Transitional Forest, Closed Woodland and Open Woodland. There is also within it a small area of commercial market gardening near the Mngeni River. Outside of the main area of the site there are areas of Transitional Thicket. However, the biodiversity conservation value of the Fosaville precinct is arguably matched by its social value as an outdoor recreational and educational resource, especially due to its close proximity to densely developed urban areas. The area is also a significant provider of a broad range of environmental goods and services (e.g. reducing the impacts of flooding) to nearby areas as well as to the eThekweni Municipality as a whole.



Panorama 1: North westerly view from Parlock over the southern portion of the site showing closed woodland/transitional forest.



Panorama 2: Westerly view from Parlock over southern portion of the site showing scarp forest



Panorama 3: South Easterly view from Hillgrove over southern portion of the site towards the Berea showing open woodland.

ZONING HISTORY

The sites were (presumably) blanket zoned Special Residential 650m² in the original zoning of Durban. Commercial Properties (Pty) Ltd subsequently sought to have them rezoned in the mid 1990's to Special Residential 400 m², which was successful. They were, however, not

subsequently developed for this purpose. Circa 2005 a further mixed-use rezoning proposal was pursued by the owners that included residential, public open space, commercial and industrial. This rezoning was refused by the Council, primarily because of the subsequently acquired D'MOSS designation, and was then taken on appeal by the applicant. The Provincial Planning and Development Commission turned down the appeal, but suggested that the applicant negotiate further with the Council with a view of reaching a mutually acceptable compromise solution. No further initiative was then pursued by the owners.

THE FOSAVILLE HOUSING PROJECT

The Commercial Properties (Pty) Ltd owned properties, as previously stated, were originally considered circa 1968 as part of the then proposed Newlands West housing scheme to be undertaken by the erstwhile City of Durban, but were rejected at the time as being unsuitable, primarily on topographical reasons.

In more recent time the current Metro Housing Department has, given the shortage of centrally located land in the city for low cost housing purposes and despite the topographical challenges, again looked at the land for housing purposes. It has also in these processes included the adjacent Council owned land Rem of 699 Newlands.

Any potential conflict between using the land for housing or for environmental purposes (the land being D'MOSS designated) has been resolved through negotiations between the Housing Department and the Environmental Planning and Climate Protection Department. In terms of this initial proposal, the northern portion, which is located near to Newlands West Drive, will be developed for housing, and the southern portion, developed ultimately as a nature reserve, i.e. for conservation and recreation purposes.

A coloured ortho-photo map titled "Fosaville Development Assessment" is attached (**to be inserted!!**) showing the area with contours and with overlays showing the various undevelopable areas, *viz.* oversteep (steeper than 1 in 3), affected by 100-year flood lines, drainage lines, servitudes (electrical) and potentially unstable in terms of a geotechnical assessment. The environmental compromise line agreed between the Housing and Environmental Planning & Climate Protection Departments is shown in red dividing the erven in northern and southern portions.

Based on the "Fosaville Development Assessment", a desk top assessment utilizing information on the City's database, a schedule has been prepared by the Housing Department which indicates the undevelopable and developable areas of the respective portions and the respective portions that would be acquired in bulk for housing and for conservation purposes to the north and south of the compromise line respectively. See below: -

Portion/ Erf	Un-developable Ha	Developable Ha	Total Ha	Ownership	Required in Bulk for	Total by Erf
Rem 226 north of Newlands West Drive	5.4	0.6	6	Commercial Properties (Pty) Ltd	Housing	
Rem 226 Northern Portion	3.9	10.5	14.4	Commercial Properties (Pty) Ltd	Housing	
Rem 226 Southern Portion	24.2	26.6	50.8	Commercial Properties (Pty) Ltd	Conservation	71.2
Rem 227 Northern Portion	6.2	6	12.2	Commercial Properties (Pty) Ltd	Housing	
Rem 227 Southern Portion	25.6	12	37.6	Commercial Properties (Pty) Ltd	Conservation	49.8
Rem 230	38.2	4.4	42.6	Commercial Properties (Pty) Ltd	Conservation	42.6
TOTAL	103.5	60.1	163.6			163.6

Undevelopable: (Constraints: geotechnical, oversteep areas, drainage lines, 100 year flood line, unstable soils, servitudes)



Panorama 4: North Westerly view from Parlock over northern portion of site and Newlands West Drive towards Fosaville over land proposed to be developed for housing/commercial purposes.

In addition to the above areas in the schedule identified for housing, some limited infill in the west abutting the existing Hillgrove area of the Newlands West housing scheme may be

considered for housing where it helps seal off access to the otherwise conservation area so as to prevent any potential dumping. Some of which is currently occurring.



Panorama 5: South Westerly view from south western portion of the site towards Reservoir Hills from a position adjacent to Hillgrove area showing fringe land proposed to be developed for housing.

SERVICES

The site is traversed by a number of significant electricity power lines servitudes – this obviously impacts on the development potential of the land under such servitudes. The associated towers may be seen in a number of the panorama photos. There is also a substantial substation developed in recent time on a formally expropriated portion of the site.

Other than this, no bulk services exist on the site which may be tied into by any development. Any future development of the site would accordingly be dependent on the extension of existing external services, i.e. water, sewer, normal electrical reticulation, etc. to the site.



Photo 1: Westerly view from Parlock showing substation near the Mngeni River with market gardening beyond on its flood plain.

VALUATION EXERCISE

Prior to acquisition, a realistic valuation is required of the Rem of 226, Rem of 227 and the Rem of 230 all of Newlands No 229 with a view to their eventual acquisition by the eThekweni Municipality. The primary purposes being to secure the properties for both D'MOSS and Housing purposes. It is also possible that portion of the land proposed for housing could be developed in a joint venture (JV) with the private sector provided the housing is aimed at products no higher than R450 000 per unit.

The three properties are all owned by Commercial Properties (Pty) Ltd. It is necessary to ascertain a market valuation of the overall land holding with a view to ideally reaching a willing buyer willing seller land acquisition deal between Commercial Properties (Pty) Ltd and the Council. Failing which expropriation will need to be considered by Council.

Accordingly initial meetings were held with Mr Ismail Lockhart and Mr Paruk, both Directors of Commercial Properties (Pty) Ltd. A Mr Roy Alderdice of Alliance Properties also attended the meeting as a possible JV developer of portion of any land to be designated for GAP housing purposes. During the meetings the Directors indicated their concerns at not previously being successful in achieving enhanced rights in the prior rezoning process and stated that they still wished to retain a portion of the land for commercial or mixed use purposes, possibly in the vicinity of existing commercial development off Inanda Road. Arising from these meetings, it was finally verbally agreed that two valuations would be obtained, one by a valuer appointed by the Council and another valuer appointed by Commercial Properties.

As a result draft terms of reference for the valuation for properties at Fosaville were prepared by Council and a valuer with considerable experience of complex valuations approached. However before commencing the valuation process, written confirmation from the company's directors was requested that they would indeed conduct a similar valuation using the same terms of reference and a valuer on the Municipality's list of approved valuers. A list of valuers was supplied. They were further advised that the city was to appoint valuer. Despite this and the earlier verbal agreements no further written advice was received from Commercial Properties (Pty) Ltd.

As a result the valuation process has not proceeded and at face value it would seem that Council will have to contemplate expropriation if it is to acquire the properties or portions thereof.

THE 2009/10 PROPOSED LAND-USE PLAN FOR THE FOSAVILLE PRECINCT

Arising from the above the municipality's Environmental Planning and Climate Protection Department (EPCPD) and Housing Department have jointly conducted a land-use planning exercise in 2009/2010 for the greater Fosaville precinct. This planning exercise had the following objectives:

- a. To see ensure that its broader environmental conservation objectives could be met for the area north of the Mngeni River, which has very little in the way of significant natural areas, particularly in closer proximity to the poorer communities.
- b. To identify land for a social and/or other housing project to be undertaken by the Housing Department.
- c. To identify land for a possible JV housing project to be undertaken by the current land owners and/or a third party.
- d. To identify land for mixed use, i.e. commercial land/service industry/residential for the current land owners.

CONSULTATION

The following key stakeholders were then consulted during the course of 2010 prior to presenting this report to eThekweni Executive Committee. All parties indicated in principle their support for the proposal. Specifically: -

- Metro Housing Department
- Staff of the Development Planning and Management Unit (LUMS & Framework Planning)
- eZemvelo KZN Wildlife

FOSAVILLE NATURE RESERVE AREA

A new Environmental Conservation Reserve was recently introduced into various town planning schemes situated throughout the city where properties had been acquired by Council for environmental purposes. One of the schemes into which the Environmental Conservation Reserve was introduced was the Durban Town Planning Scheme. These acquired properties were then zoned for this purpose along with other nearby council or provincial owned land that had also retained in the past for environmental purposes. Areas zoned Environmental Conservation Reserve in this process included the Krantzkloof Nature Reserve, the New Germany Nature Reserve, the Paradise Valley Nature Reserve and the Silverglen Nature Reserve.

It is now similarly intended to rezone the proposed Fosaville Nature Reserve as Conservation Zone. This very specific form of zoning for conservation purposes, with its tight controls, will compliment the intended long term formal proclamation of the area by eZemvelo KZN Wildlife of the area in terms of the National Environmental Management: Protected Areas Act as a Nature Reserve as part of their stewardship programme.

Comment received from eZemvelo KZN Wildlife

“A very timely rezoning. I have been hoping something like this would happen to the Fosaville site ever since I started in Stewardship. The report is well written and does give consideration to both social and environmental obligations of the municipality, which makes it a win-win proposal. I would support the rezoning of the conservation area to Environmental Conservation Reserve for long term security. Especially considering the Critically Endangered status of its North Coast Grassland. I wonder how much of the site is virgin ground. This would improve the possibility for Nature Reserve proclamation under our stewardship programme.”

ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS

Fosaville Housing Project

The Housing Department will be required to initiate an environmental impact assessment process as required in terms of National Environmental Management Act No 107 of 1998 (NEMA) and its regulations R385-387 prior to development.

Commercial Area/JV GAP Housing

The current owners of the land and/or their JV partner will be required to initiate an environmental impact assessment process as required in terms of National Environmental Management Act No 107 of 1998 (NEMA) and its regulations R385-387 prior to development.

Fosaville Nature Reserve Area.

No environmental assessment is required in terms of NEMA and its regulations R385-387 or in terms of the new draft regulations.

TRAFFIC IMPACT ASSESSMENT

No traffic impact assessment has been undertaken at this juncture given the uncertainty in the final number of units obtainable on rezoning, particularly so with the large undevelopable areas. It is recommended that with the commencement of the environmental impact assessment, which will of necessity require a far closer indication of yield, that a traffic impact assessment be simultaneously undertaken. The bulk of the traffic will however feed onto Newlands West Drive and from there to Inanda Highway via the existing traffic signal controlled intersection. It is not anticipated that this will prove unduly difficult, though some improvement to the intersection may be required and some modification to the current timing of the traffic signals.

RECOMMENDATIONS

It is recommended

- (1) That in terms of Section 47 *bis* A (2) of the Town Planning Ordinance No 27 of 1949, as amended, the proposed amendment of the Durban Town Planning Scheme-in-course-of-preparation by the rezoning of the Rem of 226, Rem of 227, Rem 230 and the Rem of 699 all of Newlands No 229 from Special Residential 400 and Special Residential 180 to Special Residential 180, General Business 2 and Conservation Zone all as depicted on Plan No 21 be advertised with a view to its eventual adoption in terms of Section 47 *bis* A (4) of the Town Planning Ordinance No 27 of 1949, as amended.
- (2) That upon receipt of any objections and representations in regard to the proposals in (1) above, the Head: Development Planning and Management be required to report further thereon, but in the event of no such objections being received, the proposals be placed before the eThekweni Municipal Council for its adoption in terms of Section 47 *bis* A (4) of the Town Planning Ordinance No 27 of 1949, as amended.

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