

EVERGREEN BERGVLIET – SUMMARY OF DISCUSSIONS RE: APPLICATION FOR REZONING, CONSOLIDATION AND APPROVAL OF SITE DEVELOPMENT PLAN

1. BACKGROUND

On Thursday March 24, 2022 the City of Cape Town's Council ("*Council*"), without any prior notification to residents of Evergreen Bergvliet Village ("*the Village*"), erected a number of notices on the gates and fences of the Village in connection with a development application made by Evergreen Property Investments (Pty) Ltd ("*EPI*").

Upon becoming aware of the application notices, residents of the Village and Rescom sought to understand from the Village management the background with regard to the various applications. At that time the Village management was unable to provide any information in relation to the development application and Rescom subsequently sought explanations from EPI.

On Thursday April 14, 2022 members of Rescom met with Garry Reed (MD of Evergreen Lifestyle Village (Pty) Ltd) and with Cobus Bedeker ("*Cobus*") and Shannon Newman (both from EPI) to understand the rationale behind the application and what it meant for residents of the Village. This document provides a summary of these discussions.

2. BASIC UNDERSTANDING

Cobus provided some general background information into the rezoning and consolidation application, as follows:

- a. The main reasons for the rezoning from Single Residential Zone 1 to General Residential Subzone GR1 is to ensure uniformity across all erven in the Village and for ease of administration on EPI's part.
- b. Most importantly Cobus stressed that as a result of the rezoning application there was no change in the legal standing in respect of ownership of the individual units nor any change in legal standing for individual life right holders residing in these units.
- c. In South Africa the Land Register, which records every piece of land in the country, records land as either being held (i) under Freehold Title or (ii) via Sectional Title Register. More specifically:
 - i. under Freehold Title the owner of the property owns the land and buildings outright; and
 - ii. under Sectional Title each owner owns a section (house or apartment) of what has been developed on the property, with the remaining land being common property.
- d. EPI currently has 7 developed life right villages within its portfolio with Lake Michelle and Bergvliet the only villages that have property still held as Freehold property. 5 of EPI's developed villages were already registered as Sectional Title properties prior to

being developed whilst the first phase of Muizenberg was developed as a Freehold property and subsequently converted some time ago to Sectional Title.

- e. As a result of Bergvliet still having Freehold property, the Village is therefore made up of a number of individual erven.
- f. Moving the Village to become a fully-fledged Sectional Title Scheme will mean that every building within the Village will sit together and in that manner it makes managing the Village from an administrative perspective so much easier from EPI's perspective.
- g. As a result of becoming a Sectional Title Scheme all roads and public spaces (e.g. the club house lawn) will be consolidated into one and be known as common property.
- h. The timing for doing the consolidation now and not before is because the construction of the apartment building is now complete (the apartment building already developed under Sectional Title) and the Village therefore now has a mismatch with the apartment and all the other separate erven.
- i. The Site Development Plan is a diagram showing where all of the houses and apartments and roads and other common spaces are situated. The Sectional Title Plan shows the same outline of external boundaries as what is shown on the Site Development Plan, further showing the various sections (houses and apartments) all on one plan.

3. REZONING OF BERGVLIET VILLAGE AND CONSOLIDATION TO GENERAL RESIDENTIAL SUBZONE GR1

Cobus provided the following details specific to EPI's rezoning application:

- a. The apartments are already zoned General Residential Subzone GR2 and therefore are not affected by the rezoning application.

In addition, the apartments are already recorded as a Sectional Title Scheme as a result of the fact that it is a multi-story building.

There are no Exclusive Use areas forming part of the apartments, the reason being that all sections within the scheme are owned by EPI.

- b. The Manor House is already zoned General Residential Subzone GR2 with its own rates account and therefore does not form part of the rezoning application.
- c. The first 26 units that were built on the property as part of Phase 1 of EPI's development of the Village (units 1 to 20 and 36 to 41) are already zoned General Residential Subzone GR1 and therefore do not form part of the rezoning application.
- d. The remainder of the Village consists of individual Erf numbers zoned as Single Residential Zone 1 (even the roads have Erf numbers). As the Village is currently

Freehold, the Deeds Office recognises the Village under individual erven and not as a single residential estate, as in the case of a Sectional Title Scheme.

- e. In order for the Village to be recognised as a single residential estate all erven need to be consolidated and the remaining erven zoned from Single Residential Zone 1 to General Residential Subzone GR1.
- f. Notwithstanding the fact that EPI's property (i.e. the Village) will become more valuable under General Residential Subzone GR1, from a municipal rates perspective there will be no change to individual units' municipal rates amounts payable as a result of this application.
- g. Basically, from the Council's perspective, the administration remains unchanged – the "middle piece" of the Village (currently zoned Single Residential Zone 1) is being aligned to the rest of the Village in terms of the consolidation.

4. THE SITE DEVELOPMENT PLAN

Cobus advised that the process of submitting a Site Development Plan is purely a Council administrative process, as the Village is developed and is in existence.

The Site Development Plan being submitted to Council is showing what has already been developed, as submission of this plan is a requirement for rezoning purposes.

Accordingly, EPI is not seeking to get approval for its Site Development Plan because it already has approval for this plan.

5. DELETION OF HOME OWNERS ASSOCIATION

Cobus advised that in terms of a Sectional Title Scheme one cannot, by law, have a Home Owners Association ("HOA"). Accordingly, in applying for a change from Freehold to Sectional Title all previous reference to an HOA in documents previously submitted to, and approved by, Council for the development of the Village needs to be removed.

A Body Corporate will come into effect in terms of the Sectional Title Act to replace the HOA. The Body Corporate is automatically formed once the Sectional Title Register has been opened. EPI will be the sole member of the Body Corporate (as is the case with the current Freehold properties) as a result of the fact that it owns all the sections within the Sectional Title Scheme.

6. DEPARTURES FROM THE DEVELOPMENT MANAGEMENT SCHEME

Cobus advised that building lines in respect of Single Residential zoned properties are less onerous than those relating to General Residential zoned properties.

For example, in Single Residential zoned properties the building lines may have been 3 metres from the boundary whereas the building lines in the rezoned General Residential category need to be 5 metres – and accordingly certain of the units in the Village, were the rezoning to

be approved by the Council, will sit within previously legally-permitted building lines but will now be encroaching on the permitted General Residential zoned building lines.

There are other examples of departures being requested – see number 10 (e) below for confirmation of these departures and related explanations.

According to Cobus the original buildings under the Single Residential zoning was permitted and the departure applications merely seek to regularise building lines applicable under the General Residential Zoning. It would be an unrealistic expectation to have to change boundary lines when, for example, the main affected neighbour (Nick Wides, residing at the corner of Barn Road and Homestead Avenue) must have previously agreed to the current reduced building lines, in particular to the Winery Road houses being built so close to his property.

7. WHAT WON'T CHANGE FOR RESIDENTS

Cobus has categorically confirmed that the following potential items of concern to residents will not change as a result of the application:

- a. The current municipal rates being charged on individual units will not change as a result of a change from Freehold to Sectional Title.

Cobus did mention that EPI cannot control the Council's rates percentages and so, for example, if Cape Town itself received a general increase in the percentage over which property rates are calculated then the Village's rates would increase.

Cobus, however, confirmed that the individual units' values themselves would not increase as a result of the rezoning and confirmed that there would be no change in the Council's method of calculating rates as a result of a change from Freehold to Sectional Title, and accordingly there would be no increase in individual units' rates.

- b. The endorsement of individual units' land which is registered at the Deeds Office will not be affected by the change from Freehold to Sectional Title, this as a result of the fact that the individual Erf which is currently endorsed as being subject to a life right will be replaced by an individual Section on the particular Erf on which the unit is housed and which refers to the fact that it (an Erf which is replaced by a Section) is endorsed as being subject to a life right.
- c. A change from Single Residential Zone 1 to General Residential Subzone GR1 does not decrease the zoning rights.
- d. Each resident's Life Right Agreement ("*LRA*") will not change, as the LRA specifically references a particular unit in which the resident resides and over which the LRA has been signed.

8. COMMUNICATION WITH RESIDENTS

Notwithstanding the fact that Cobus said EPI was taken by surprise by the Council erecting the signs of the front gate and surrounding fences of the Village, he did admit that communication

with residents had been poor and that this lack of communication had caused much angst amongst residents.

Cobus has agreed that EPI will, in future, keep residents apprised of matters relating to the rezoning application, in particular noting that EPI will immediately notify residents once Council's approval has been obtained and whereby the individual LRAs subsequently refer to a Section as opposed to an Erf number.

9. THE MOTIVATION SUBMITTED TO COUNCIL BY EPI

The motivation for undertaking the rezoning application is a public document available from Council. Cobus agreed to email this document to Colin Levine following the meeting.

10. THE PURPOSE OF THE APPLICATION AND RELATED ANSWERS

The purpose of the application, as contained in the notices attached to the Village gate and surrounding fences, is 5-fold and the explanations provided by Cobus are as follows:

- a. **APPLICATION** – *“Rezoning of the subject erven that are currently zoned Single Residential Zone 1 to General Residential Subzone GR1 (note that the erven currently zoned General Residential Subzones GR1 and GR2 will not be rezoned)”*.

EXPLANATION – see numbers 2 and 3 above.

- b. **APPLICATION** – *“Consolidation of the subject properties into 1 property”*.

EXPLANATION – see numbers 2 and 3 above.

- c. **APPLICATION** – *“Application for the approval of Council of a site development plan in terms of item 36 of the Development Management Scheme”*.

EXPLANATION – see number 4 above.

- d. **APPLICATION** – *“Amendment and deletion of conditions of previous approvals relating to the formation and constitution of a Home Owners Association”*.

EXPLANATION – see number 5 above.

- e. Departures from the Development Management Scheme:

- i. **APPLICATION** – *“Item 35(e)(i) to permit the group houses to be set back 0.55m, 1m & 1.45m in lieu of 5m from Barn Road”*;

EXPLANATION – this departure affects units 78, 32, 31, 30, 29, and 65 and the principle is more fully explained in number 6 above.

- ii. **APPLICATION** – *“Item 35(e)(ii) to permit the group houses to be set back 1.65m in lieu of 3m from the common boundary with Erf 931 (to the south)”*.

EXPLANATION – this departure affects the property owned by Nick Wides and certain houses in Winery Road, for which permission to build 1.65m from the neighbour’s property was confirmed by Cobus as having been previously granted by Council (because the units have been built) – per number 6 above.

- iii. **APPLICATION** – *“Item 35(f)(i) to permit the carports / garages to be set back 1.25m in lieu of 5m from the kerb of the internal roads”.*

EXPLANATION – this departure relates to most units’ garages and/or carports in the Village which are closer to the internal access roads than would normally be permitted under the General Residential zoning rules. However, Cobus confirmed that approval was previously granted by Council under Single Residential zoning with no objections and residents have been living in their units for many years without issue.

11. DAVID WALKER’S QUESTIONS

David Walker was unable to attend the meeting and provided the following 3 questions, all of which were dealt with during the meeting. David’s questions are as follows:

- a. **Question 1** – *“Will residents receive revised registration documentation? I would be unhappy if this will not be the case because we would then have registration certificates on non-existent erven”.*

Answer – No revised documentation is needed. However, notification will be provided by EPI re: Erf numbers replaced by corresponding sections – see number 8 above.

- b. **Question 2** – *“What is the difference between “Single Residential Zone 1” and “General Residential Subzone 1”?”*

Answer – see numbers 2 and 3 above.

- c. **Question 3** – *“What is the nature of the site development plan”?*

Answer – see number 4 above.