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Application Number: TP1308/2025
Our File Reference Number: Erf 406 & 398, Raithby
Your Reference Number:
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PER E-MAI [redacted]

Dear Sir/Madam

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW: APPLICATION FOR AMENDMENT OF A CONDITION OF APPROVAL: ERF 406 AND 398, RAITHBY

1. This Municipality's decision letter dated 24 October 2025, refers.

2. The Appeal Authority resolved on 19 June 2026 that the appeal submitted against the decision of the Municipality on the 24th October 2025 to approve the subject application (with conditions) **BE DISMISSED**, and that the subject decision **BE CONFIRMED** in terms of Section 81(7)(b) of the Stellenbosch Municipal Land Use Planning By-law as follows

   2.1 That the following application(s) in terms of Section 15(2) of the Stellenbosch Municipal Land Use Planning By-law:

      2.1.1 Amendment of condition 3.9 in approval letter dated 11 March 2025, in terms of Section 15(2)(h) of the said By-law, by excluding reference to the registration of a right of way servitude in favour of Erf 167, Raithby over Erf 398, Raithby and to read as follows;

"3.9 *The right of way servitude over Portion 1 to 3 in favour of the subdivided portions of Erf 406, Raithby; over Erf 398, Raithby in favour of Portions 1 to 4 of Erf 406, Raithby simultaneous registration of the subdivision in the deed's office, in all the title deeds of the applicable property/ies and transfer to the new title deeds, will be the responsibility and for the cost of the owners."*

BE APPROVED in terms of Section 60 of the said By-law and subject to conditions of approval.

3. The approval is subject to the following **conditions** imposed in terms of Section 66 of the said By-law:

3.1 The approval applies only to the amendment of the condition of approval and shall not be construed as authority to depart from any legal prescriptions or requirements from all other internal and external departments.

3.2 All other conditions listed in approval letter dated 11 March 2025, remain applicable unless replaced by this approval and must be complied with at all times.

3.3 The validity period of the approval, notwithstanding the date of this amendment of condition, remains from the final letter of notification dated 02 April 2025.

3.4 Facilitating the registration of a right of way servitude over Erf 398, Raithby in favour of Erf 167, Raithby remains the responsibility of the owner of Erf 398, Raithby at all times.

4. Matters to be **noted**:

4.1 The access to Erf 167, Raithby will not be altered and existing rights and arrangements will remain the same, ensuring that the property is not land locked, until such time a right of way servitude is registered to formalise the existing access arrangement.

5. The **reasons** for the above decision are as follows:

4.1 The Authorised Official's decision to approve the above application is endorsed as rational. The reasons for the decision relate directly to the impact of the amended condition on all parties involved without disregarding any party's rights. The Appeal Authority therefore agrees with the following reasons for approval provided by the Authorised Official:

a) No surrounding property owners will be materially affected by this application for the amendment of the subject condition of approval to exclude the registration of a servitude in favour of the owners of Erf 167, Raithby as requested by themselves.
b) The responsibility to facilitate the registration of a right of way servitude over Erf 398, Raithby in favour of Erf 167, Raithby remains with the owner of Erf 398, Raithby and amending the subject condition as proposed do not absolve them of this duty.

4.2 The Appellant's argument that the registration of a right of way servitude over Erf 398 is not required as the Owner of Erf 167 is entitled to claim a right of way of necessity (via necessitates) is noted but it ignores the Municipality's responsibility to ensure that all properties have access to public roads. A requirement for the registration of a servitude is the only land use planning mechanism that is within the Municipality's mandate to secure access to properties that do not have direct access to public roads.

4.3 The approval of the application for registration of a 6.5m right of way servitude over Erf 398, Raithby in favour of Erf 167, Raithby as per previous decision letter dated 11 March 2025 is confirmed as no appeal was received against that decision. The Owner, or any future Owners of Erf 398 may therefore act on the decision within the approved validity period. The conditions imposed as part of the subject application for amendment of condition of approval, and matters to be noted, merely remind any Owner of Erf 398 of the responsibility to grant a right of way servitude in favour of Erf 167 should the need arise in the future. The Municipality will be neglecting its abovementioned duty by amending the condition of approval and matter to be noted as proposed by the Appellant.

4.4 The need to remove the matters to be noted 6.1 is irrelevant as it is a non-enforceable matter merely acknowledging the existing access arrangement and that access to Erf 167 be formalised by registering a right of way servitude in the future when needed.

6. Accordingly, the decision detailed in this letter may be implemented, subject to compliance with the conditions of approval.

7. The appeal process has now been concluded.

Yours faithfully

FOR DIRECTOR: PLANNING AND ECONOMIC DEVELOPMENT **DATE:** 10/7/2026.

COPIES TO :

1. [redacted]
2. [redacted]
3. [redacted]