



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500155269

**Erf 2095, 5 Cairmount Avenue,
Oranjezicht, Gardens**

Development Management

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Date: November 2025

Ref: 11638 (SA)



PERMANENT DEPARTURES AND REMOVAL OF TITLE DEED CONDITIONS: ERF 2095 ORANJEZICHT AT 5 CAIRNMOUNT AVENUE, GARDENS

1. INTRODUCTION AND APPLICATIONS

This report serves to motivate the application for permanent departures in terms of the Development Management Scheme (DMS), and the removal of title deed conditions on Erf 2095 Oranjezicht ('the property'). The report will show that the proposal is desirable and satisfies the adjudication criteria set out in the City of Cape Town's Municipal Planning By-Law ('MPBL') of 2015. The following applications are required in terms of Section 42 of the MPBL to permit the alterations and additions to the existing dwelling house on Cairnmount Avenue:

Section 42(b): Permanent departures

Section 42(g): Removal of title deed conditions

The following documents accompany this report:

- Application Form
- Power of Attorney
- SG Diagram & Noting Sheet
- Previous Approvals
- Owner's Affidavit
- Proposed Plans
- Copy of the Title Deed
- Conveyancer's Certificate
- Bondholder's Consent Letter
- Pre-Application Consultation Minutes

2. THE PROPERTY

2.1 Ownership and Title Deed

Erf 2095 Oranjezicht at 5 Cairnmount Avenue is registered in the names of _____ and _____ and is held by Deed of Transfer No. _____. The owners have duly authorised **Thomas Brian Brummer** to submit the application on their behalf.

2.2 Locality and Context

With reference to the **locality map**, below, the property is situated in the suburb of Gardens.

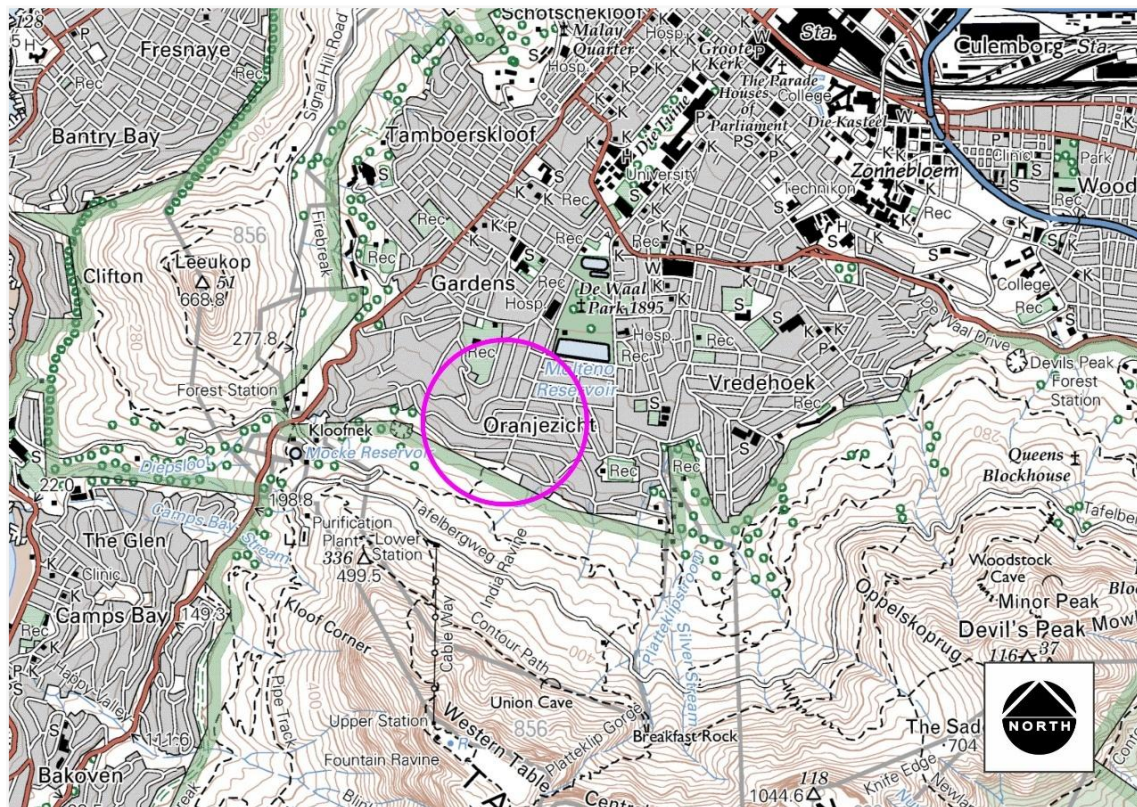


Figure 1: Locality Map

The **aerial photograph**, below, illustrates the locality of Erf 2095 Oranjezicht at 5 Cairnmount Avenue.

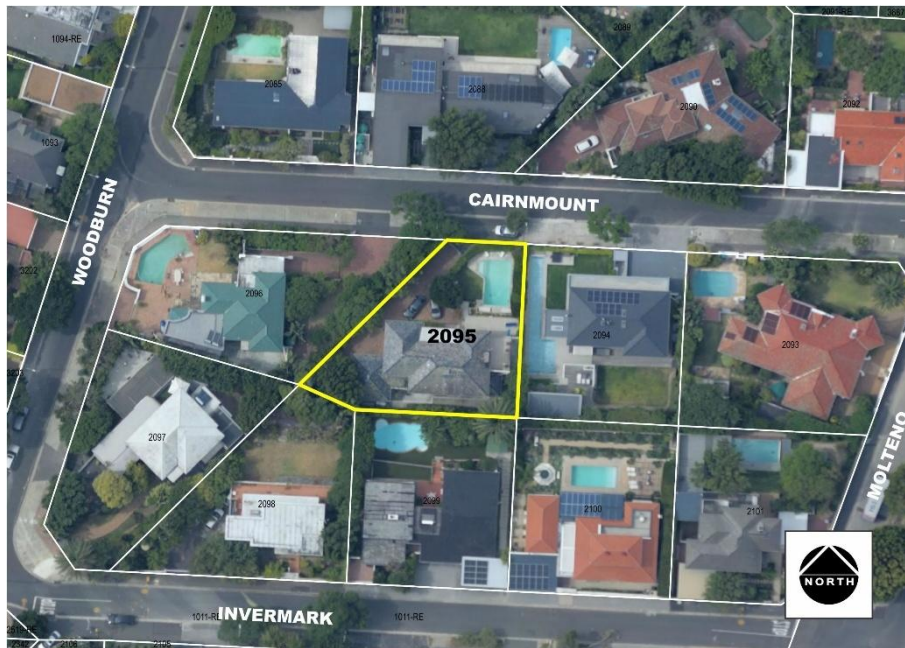


Figure 2: Aerial Photograph

This part of Gardens is characterised as a high-income residential area, with medium sized erven.

2.3 Surveyor General's Diagrams

The **Noting Sheet** (M1638), below, indicates the context of the property in relation to the surrounding erven and street network.

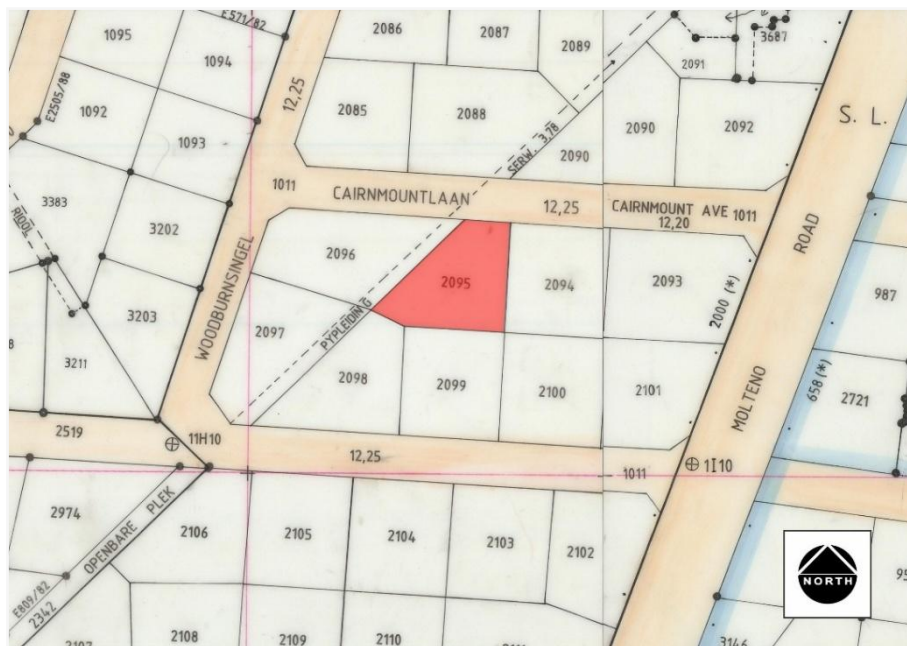


Figure 3: Extract of the Noting Sheet

Below is the **General Plan** (S8538/34) for the property that has been obtained from the office of the Surveyor General.

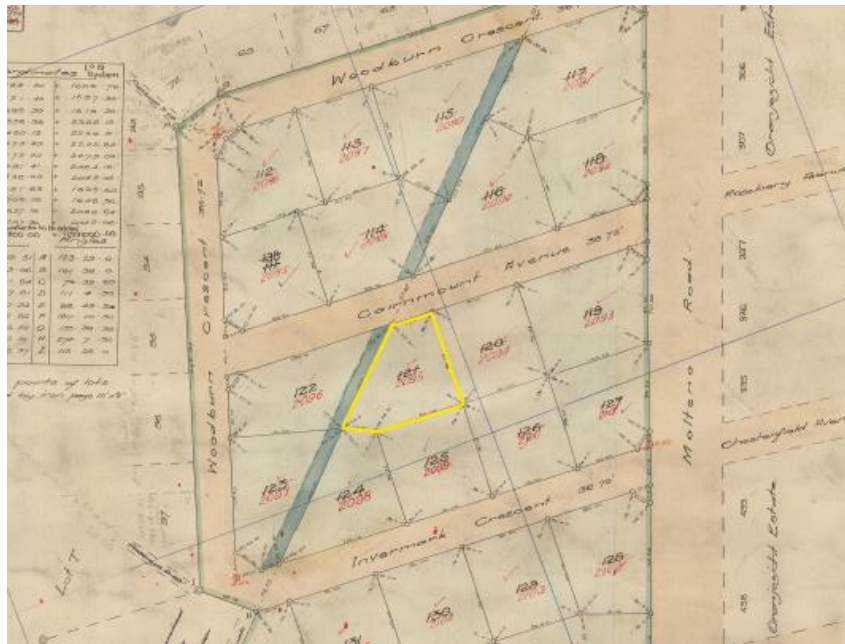


Figure 4: Extract of the General Plan

2.4 Zoning

The zoning of properties in Cape Town is controlled by the provisions of the DMS, being Schedule 3 of the MPBL. Below is an extract of the City's **Zoning Map** that indicates that the property is zoned Residential Zoning 1 (R1).



Figure 5: Extract of the City of Cape Town's Zoning Map

2.5 Background to the Property

The property contains a pre-existing dwelling, with building plan approvals dating from 2025 (Approval No: 26353), 2018 (Approval No: 97545172), 2007 (Approval No: 506315), 1981 (Approval No: 252171) and 1949 (Approval No: 81384).

The property measures 822m² in extent and is situated close to Table Mountain National Park. The existing dwelling on the site is three storeys in height, with various alterations and additions occurring over the years. Prior to the current ownership of the property, approvals were granted that contravened the title deed building lines on the eastern and southern common boundaries (see figures below). As these are an existing and approved situation, departures are not required in this regard. The current owners purchased the property in September 2024 and wants to make further alterations and additions.

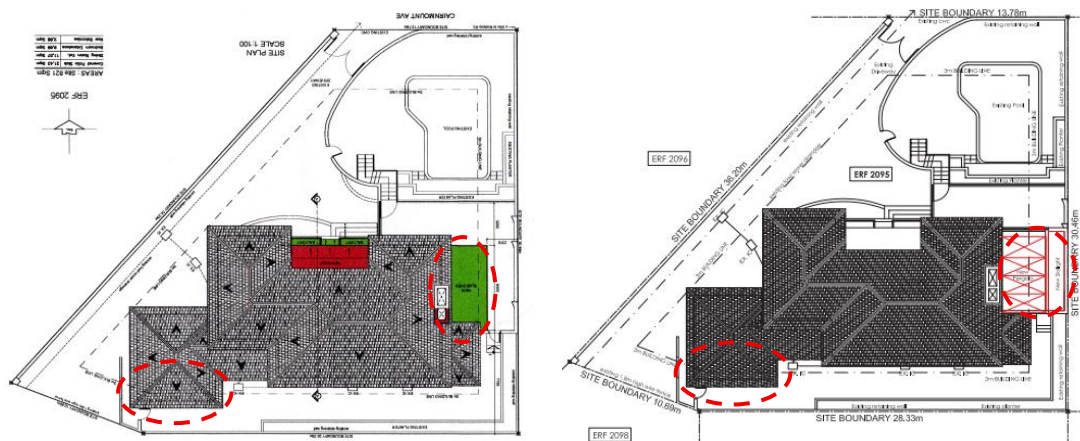


Figure 6: Approved Plans (2007 on left and 2018 on right) showing title deed setback contravention



Figure 7: Aerial imagery (2007 on left, 2018 on right) showing the existing situation

3. TITLE DEED

3.1 Conveyancer's Certificate

The Conveyancer's Certificate has been prepared by **Nicolette Joubert** from **Debra Gouws Attorneys** and confirms that there are restrictive conditions in the Title Deed which prohibit the proposed alterations and additions to the previously approved dwelling. As certified, the conditions were imposed by the Administrator of the Cape Province (now the City) in terms of Ordinance 13 of 1927. These conditions are not enforced by the City and are proposed to be removed voluntarily.

3.2 Bondholder's Consent Letter

As the property is bonded, a letter was obtained from the mortgage bondholder indicating consent for the application.

4. DEVELOPMENT PROPOSAL ASSESSMENT

4.1 Proposed Plans

The proposed plans have been prepared by **Studio HS** and are assessed in terms of the relevant conditions contained in the title deed, and the R1 zoning provisions for a dwelling house.

4.2 Item 21(a): Land use (compliant)

A dwelling house is a primary use for R1-zoned properties. The use of the property remains unchanged and compliant.

4.3 Item 22(b): Floor space (compliant)

The maximum permissible floor space for land units of this size is 1 500m². The proposed floor space is 566m² and is thus compliant with this provision.

4.4 Item 22(c)(i): Height (compliant)

The maximum permissible height above the existing ground level (EGL) to the top of building is 10m. In terms of Item 22(c)(i), the proposal remains compliant, where no changes exceed the approved and existing heights.

4.5 Item 22(c): Raising of ground (compliant)

In terms of Item 126(a) of the DMS, the ground floor of a building may not be raised more than 1.5m above the existing ground level (EGL) without City approval.

[illegible]

The property is subject to a 3.5m street boundary building line, with

Below extracts of the proposed plans show the position of the proposed garage and terrace above, as well as the departures areas hatched in red. The title deed prescribes that *“no buildings may be erected within 3.15m of any street line which forms a boundary of the erf”*. The title deed condition needs to be removed to permit buildings within 3.15m from the street. The following departures are required from the DMS:

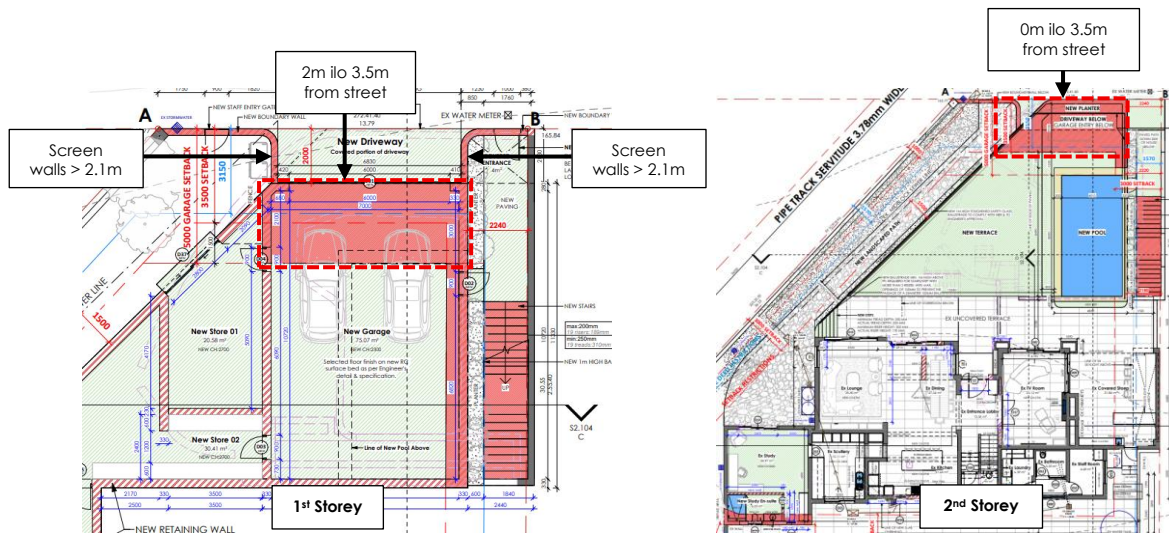
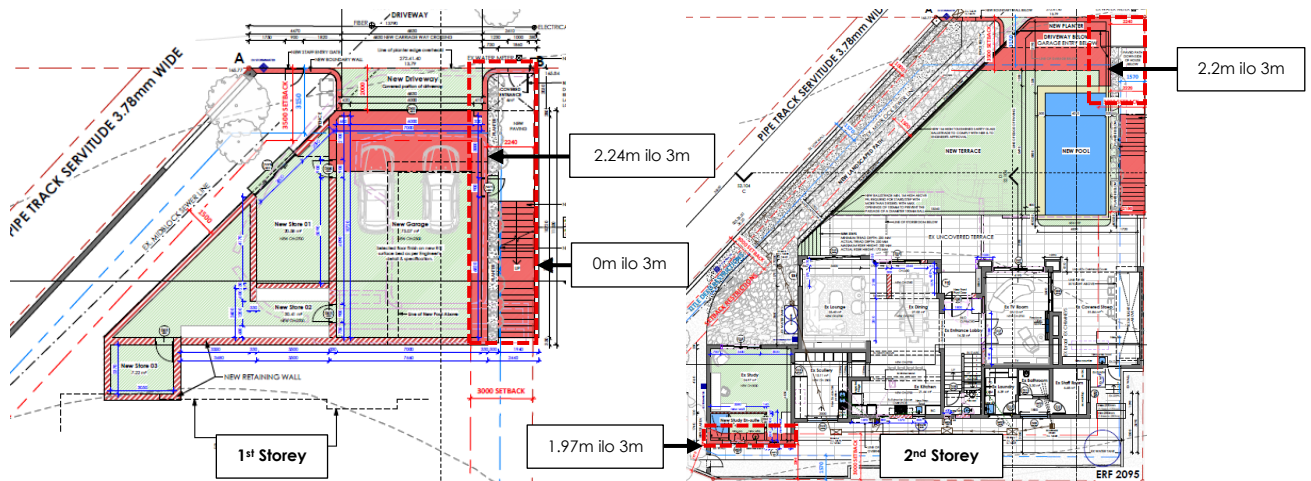


Figure 9: Proposed plans highlighting street departures in red

4.7 Item 22(d) & 22(c)(ii): Common boundary building lines & height (departure & removal)

Buildings must be set back 3m from the common boundaries and where a building is permitted within 3m of a common boundary, the height thereof is limited to 4m above the EGL. Furthermore, windows and doors facing onto a common boundary must be set back at 1m (ground floor) and 1.5m least 1.5m from said boundary.

In addition to the 3m DMS common boundary building line, the property is also subject to a title deed condition that states "no building shall be situated within 1.57 metres of any adjoining erf". This condition is proposed to be removed.



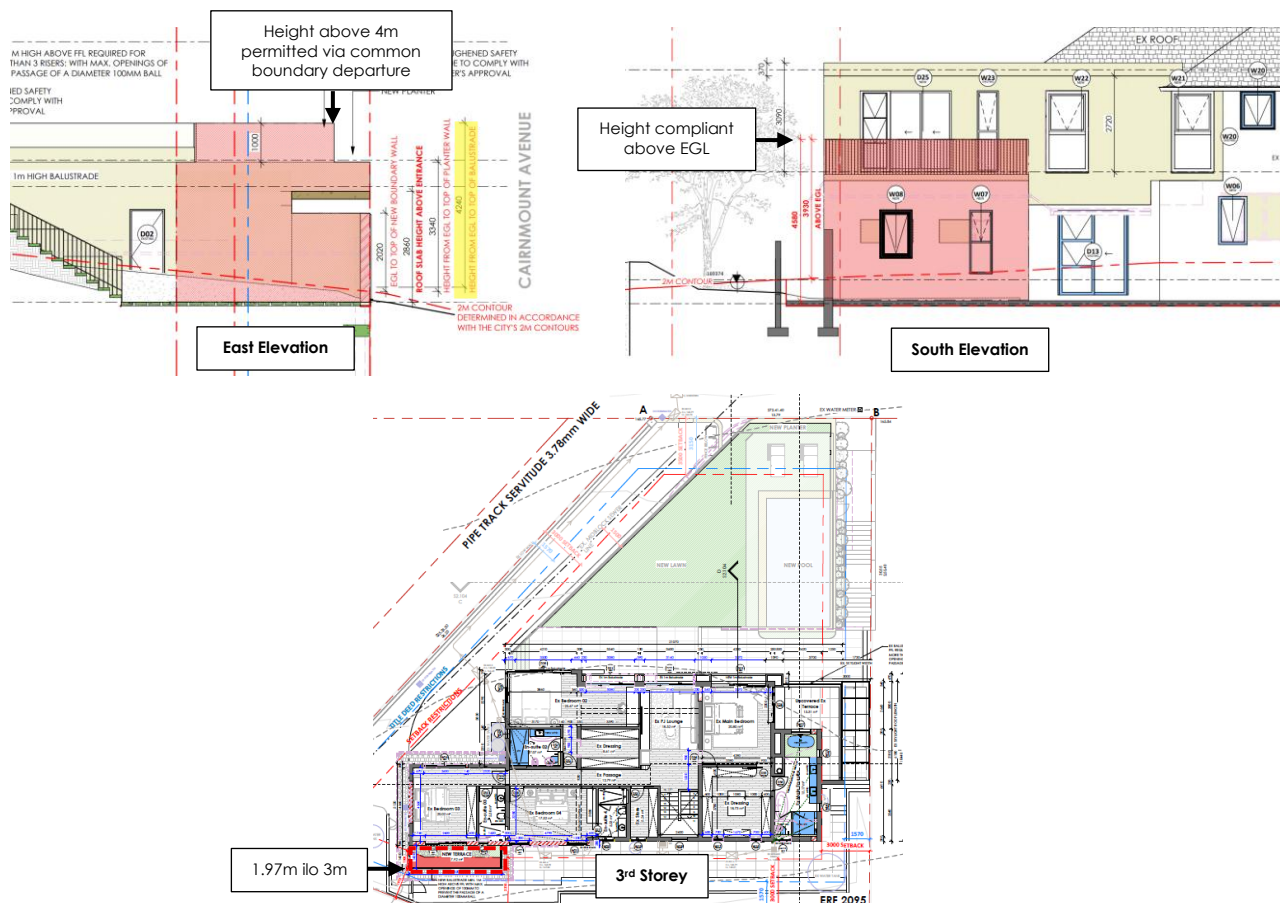


Figure 10: Proposed plans highlighting common boundary departures in red

As indicated in the above figures, the following departures are required from the common boundaries in terms of Item 22(d) of the DMS:

- From the eastern common boundary:
 - For the external stairs that do not meet the definition of entrance steps or landscaped stairs to be at 0m in lieu of 3m (1st storey).
 - For the garage wider than 6.5m to be at 2.24m in lieu of 3m (1st storey).
 - For the terrace to be at 2.2m in lieu of 3m (2nd storey).
- From the southern common boundary:
 - For the new study (existing garage) and terrace to be at 1.97m in lieu of 3m (1st & 2nd storey).

4.8 **Item 22(f): Garages, carports and outbuildings** (departure)

The existing garage is approved; however, it is proposed to be converted into a study and a new double garage built on Cairnmount Avenue. The proposal requires departures from both the street boundary and the common boundary.

In addition, the proposed garage exceeds a width of 6.5m and therefore requires a common boundary departure in terms of Item 22(f)(i)(cc).

4.9 **Item 22(g): Parking and access** (compliant)

The property falls within a PT1 area, in which 1 bay is required per dwelling unit. The proposed garage is capable parking two motor vehicles and is therefore compliant. Access is to be provided by a new 6.830m carriageway crossing that is compliant in terms of Item 140 of the DMS.

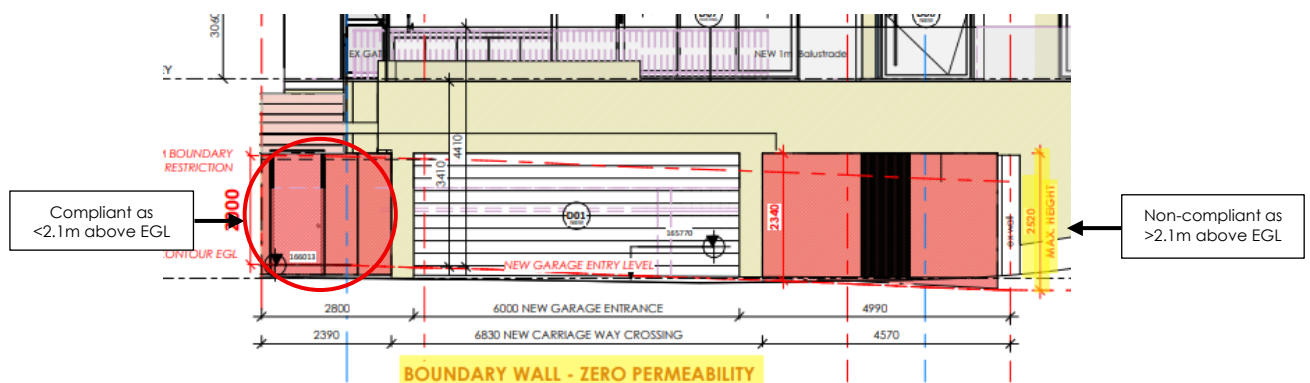
The property is zoned R1, which permits motor vehicles to reverse across the sidewalk when leaving the site.

4.10 **Item 22(h): Coverage/"built upon"** (removal)

The DMS does not restrict the coverage of a dwelling house for a land unit of this size. Condition B.(c) in the title deed prescribes that "no more than one third of the area of the erf be built upon". Erf 2095 has an area of 822m², where 33.3% (274m²) is permitted to be "built upon". The proposed "built upon" is 52.3% (429.82m²), which requires the removal of this condition.

4.11 **Item 136B: Boundary walls** (departure)

The new street boundary walls on Cairnmount Avenue are 2.52m above the EGL at the highest point, with no visual permeability proposed. This requires departures in terms of Item 136B of the DMS, which are illustrated in the figure below. The proposal makes no changes to the existing common boundary walls.



5. APPLICATIONS

The following land use approvals are required in terms of Section 42 of the City of Cape Town Municipal Planning By-Law ('MPBL') and certain provisions of the Development Management Scheme ('DMS'):

5.1 **Removal of restrictive title deed conditions:**

In terms of Section 42 (g) of the MPBL, application is made for the voluntary removal of the following conditions in Deed of Transfer imposed by the Administrator of the Cape Province in terms of Ordinance 13 of 1927.

Condition B.(c):

"That no more than one dwelling, together with the necessary outbuildings and appurtenances, be erected on the erf and that no more than one third of the area of the erf be built upon".

Condition B.(d):

"That no building shall be erected within 3.15 metres of any street line which forms a boundary of the erf. No building shall be situated within 1.57 metres of any adjoining erf, provided, however, that exception may be made in case of two or more adjoining erven under a single ownership being blocked and built upon as a single erf".

5.2 **Permanent Departures:**

In terms of Section 42(b) of the MPBL, application is made for the following permanent departures from the provisions of the DMS:

1. Street building line departures:

- a. From Item 22(d), to permit the building at:
 - i. 0m in lieu of 3.5m from the street for those portions of the screen walls greater than 2.1m above the EGL.
 - ii. 0m in lieu of 3.5m (terrace) from the street (2nd storey).
- b. From Item 22(f) (iii), to permit the garage at 2m in lieu of 3.5m from the street.

2. Common boundary building line departures:

- a. From Item 22(d), to permit the building at:
 - i. 0m in lieu of 3m (external stairs) from the eastern common boundary
 - ii. 1.97m in lieu of 3m (study & terrace) from the southern common boundary (2nd & 3rd storeys)
 - iii. 2.24m in lieu of 3m (garage) from the eastern common boundary (1st storey)
 - iv. 2.2m in lieu of 3m (terrace) from the eastern common boundary (2nd storey)
- b. From Item 22(f)(i)(cc), to permit the garage to be 6.83m in width in lieu of 6.5m.

3. Boundary wall departures:

- a. From Item 136B(a), to permit the street boundary wall to be 2.52m in lieu of 2.1m above the EGL.
- b. From Item 136B(g)(bb), to permit the visual permeability of the street boundary wall to be 0% in lieu of 25% minimum of the total vertical area of the boundary wall, including any garage doors or visually permeable gates.

6. MOTIVATION IN TERMS OF SECTION 99 OF THE MPBL, LUPA AND SPLUMA
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Section 99 of the By-Law sets out the criteria for deciding on an application.

6.1 Motivation in terms of Section 99(1) of the DMS

The application complies with the minimum threshold requirements, as below:

- (a) The proposed land use is consistent with the Municipal Spatial Development Framework (MSDF), a deviation from the MSDF is not required.
- (b) The proposed application does not require height or floor space departures and will not have the effect of granting the property the development rules of the next subzone, there being no subzones for R1-zoned properties.

6.2 Motivation in terms of Section 99(2) of the DMS

The application should be approved when assessed in terms of this sub-section.

- (a) Any applicable spatial development framework

The Municipal Spatial Development Framework (MSDF) and the Table Bay District Plan are relevant to consider in motivating this application.

(i) **Municipal Spatial Development Framework (MSDF)**

The revisions to the MSDF were approved by Council on 26 January 2023. The MSDF sets out the City's spatial vision and development priorities to achieve a reconfigured, inclusive spatial form for Cape Town. Oranjezicht forms part of the "Urban Inner Core" (UIC), which is identified by the City as a priority area, highlighting the importance of private sector investment through incentivisation.

The proposal is not inconsistent with the intentions of the MSDF, and accounts for private sector investment into the area.

(ii) **Table Bay District Plan**

The MSDF guides the proposals contained in the more detailed District Plans, which were also revised and approved in January 2023.

The Table Bay District Plan designates the area for "urban development". The area is an "existing developed urban area" with the development guidelines being: "[To] Support the incremental intensification over time of urban areas where appropriate. This should be guided by suitability of the area for land use intensification, such as surrounding neighbourhood character and density; access to public transport; proximity to places of employment, services and social facilities; proximity to public open space, and infrastructure availability (existing and planned)".

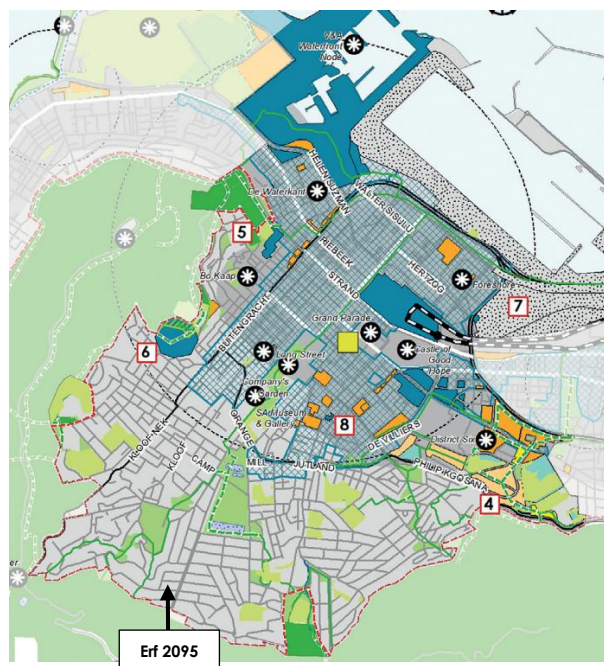


Figure 12: Subdistrict 2: City Bowl, Port and surrounds

The property is located within Subdistrict 2 of the Table Bay District Plan, being the “*City Bowl, Port and surrounds*”. Specific guidelines are provided for distinct areas within subdistrict 2, where the property is situated in the residential suburbs of Tamboerskloof, Oranjezicht, Gardens and Vredehoek. The proposal is not contrary to the intentions of the Table Bay District Plan, as it accounts for private sector investment that seeks to optimise the use and efficiency of the land.

(b) Relevant Criteria in the DMS

The application complies with relevant criteria contemplated in the DMS, i.e., the proposal is desirable when assessed in terms of the adjudication criteria set out in Section 99.

(c) Applicable Policies Approved by the City

The proposal complies with the following approved Council Policies:

- **Inclusive Economic Growth Strategy** (2021)

The proposed development will contribute to economic growth and as such will comply with the principal objective of the IEGS, which is to grow the economy and to create jobs. This will be achieved through temporary employment that will be created during construction phase of the project, and the retention of the permanent employment of the domestic staff on the property. The proposal represents private sector investment and directly contributes to an increase in the City's property rates income when the improvements are next valued.

- **Social Development Strategy** (2013)

The proposal is consistent with this strategy as it will allow for domestic staff that are living on-site to be retained, and further enhance the quality of life and the living accommodation of the family living on the property.

- **Environmental Strategy** (2017)

This proposal ensures long-term, environmentally sustainable growth by focusing development and density within the urban development edge and existing urban areas. The proposal contributes to the vision of the environmental strategy, as no natural or cultural resources are proposed to be removed.

(d) Desirability of the proposed use

The proposed land use is considered desirable as the property will still be used for residential purposes. The alterations and additions will not impact on the existing rights of the surrounding neighbours. Therefore, in terms of land use, the proposal is considered to be compatible with the area.

(e) Impact on Existing Rights

- **Removal & deletion of title deed conditions:**

The conditions that are proposed to be removed were imposed by the Administrator of the Cape Province (now the City) in terms of Ordinance 13 of 1927. As these predate Ordinance 33 of 1934, they are voluntary conditions that are not enforced by the City but can still be voluntarily removed from the title deed.

The removal of these archaic conditions will not result in the deterioration of the urban environment and its associated rights. If anything, the modern principles of design and architecture have allowed for creative solutions regarding how space is utilised. Modern buildings are typically more able to mitigate impacts on issues around setbacks, privacy, and security, thus contributing to the creation of a quality streetscape and urban environment that meets modern demands.

The removal of the “*built upon*” and building line conditions will not result in the complete removal of all green spaces on the property, given that sufficient green space is to be incorporated as part of the terrace above the new garage.

- **Street building line departures:**

Granting of the building line departures in lieu of 3.5m from the street to permit the garage at 2m, the screen walls that are higher than 2.1m above the EGL at 0m, and the terrace on the second storey to be at 0m, will not impact negatively on existing rights.

A number of the surrounding properties are of a similar size and have garages and outbuildings built closer than 3.5m to the street. The property has a much smaller street frontage than all the surrounding properties (approximately 13.8m), and thus requires departures to prevent a much longer, more unsightly

garage entrance that is set back an additional 1.5m from the street and would necessitate further costly excavation. The terrace being situated above the garage allows for the green space to be retained and a new pool to be situated thereon, where planters and existing street trees further screen the property from the street and contribute towards the streetscape.

The street setback departure for the screen walls is required as they exceed 2.1m in height and can't be considered as boundary walls as they are situated 2m inside of the cadastral boundary. The screen walls contribute to general security of the property, and screen pedestrian and service entrances from street view.

- **Common boundary building line departures:**

The setback departures from the common boundaries will not impact negatively on existing rights.

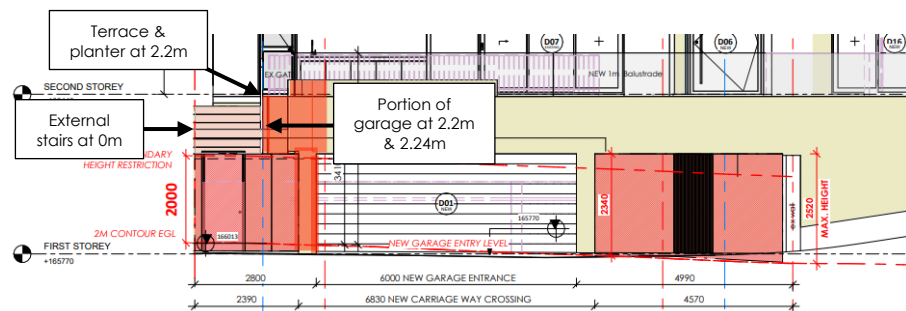


Figure 13: North elevation

The common boundary departures relate to the following:

Ground floor:

- v. The garage is proposed to have a width of 6.83m, therefore, the portion of the garage at 2.2m in lieu of 3m from the eastern boundary requires a departure.
- vi. The external stairs connect between the ground floor and the first floor and therefore require a departure to be at 0m in lieu of 3m from the eastern boundary. These stairs are almost completely screen by boundary walls and are expected to have no impact.

First floor:

- vii. The portion of the terrace and planter at 2.2m in lieu of 3m from the eastern boundary requires a departure. The terrace ensures that green space is retained on the erf, in a similar manner to the direct neighbour on Erf 2094. The terrace is set back in excess of 2m from the common boundary, which is compliant with Item 121A of the DMS.
- viii. The external stairs and portions of the garage and terrace that are within the 3m common boundary are well screened from both the street and the neighbouring Erf 2094 by an existing hedge, boundary wall, and the planters that are proposed to be built as a means to prevent issues of privacy and overlooking, as well as to contribute towards the streetscape.

- **Boundary wall departures:**

The departures required for the boundary walls relate to a visual permeability of 0% and the height in relation to the EGL exceeding 2.1m.

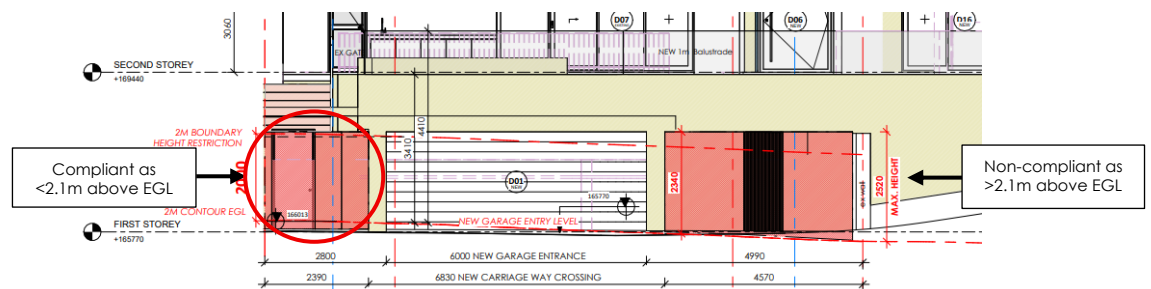


Figure 14: North elevation

The property has a relatively narrow street frontage, where the proposed boundary walls provide some level of privacy by screening the pedestrian entrances to the property on either side of the garage. High visually impermeable boundary walls are relatively common along Cairnmount Avenue; therefore, the proposal remains in character with the area, with no additional impact expected.

The impact of the lack of visual permeability is diminished by the terrace on the first floor and the planters thereon, which softens the streetscape and enhances passive surveillance by overlooking the street.

6.3 Motivation in terms of Section 99(3) of the DMS

The application complies with the following relevant considerations:

(a) Socio-economic Impact

The proposal will enable a more efficient use of residential land, which is a scarce and expensive resource. This will directly and positively contribute towards the City's income through increased rates and taxes, which is much needed to better manage the City and provide for all its residents. The proposal will have a positive socio-economic impact by providing temporary (construction workers) and permanent (retaining of domestic staff) employment. The financial investment in the property will contribute to the City and the Western Cape's economy.

(b) Compatibility with Surrounding Uses

The use of the property will remain residential in a neighbourhood that is predominantly residential in nature. The area is characterised by large upmarket dwellings, second dwellings and outbuildings. The proposed alterations and additions respect the established built environment and character of the area and therefore will remain compatible in this regard.

(c) Impact on External Engineering Services

There will be no negative impact on external engineering services. The application will be circulated to the relevant service branches for comment, and any upgrades required to services as a result of the development will be at the owner's cost.

(d) Impact on Safety, Health & Wellbeing of the Surrounding Community

The proposed development on the property will have no negative impact on the safety, health and wellbeing of the surrounding community. Granting the application will result in alterations and additions to an existing dwelling house within an established urban area.

(e) Impact on Heritage

The property is not graded as per the City's heritage inventory, with the existing buildings on site not being older than 60 years. The erf is not located within any Heritage Protection Overlay Zone (HPOZ), and as such, no heritage impacts will result from this proposal.

(f) Impact on the Biophysical Environment

The proposed development occurs on an already developed property. The alterations and additions will not have a negative impact on the biophysical environment, as there are no proposed activities that require environmental authorisation in terms of the National Environmental Management Act (NEMA) of 1998.

(g) Traffic, Transport, Parking and Access

Despite the conversion of the existing garage into a study, the property will be sufficiently supplied with parking in the form of the proposed double garage. The proposed carriageway crossing is also compliant, with no additional traffic, parking, or access requirements being relevant.

(h) Imposition of Conditions and Mitigation of Adverse Impacts

There are no adverse impacts predicted. If the City finds it necessary, conditions of approval can be imposed to mitigate any potential adverse impacts.

6.4 Motivation in terms of LUPA and SPLUMA

Section 48(4) of the By-law states that the City must have regard to the Western Cape Land Use Planning Act (LUPA) of 2013 and the Spatial Planning and Land Use Management Act (SPLUMA) of 2013 when considering whether to remove, suspend or amend a restrictive condition.

6.4.1 Section 59 of LUPA and Section 7 of SPLUMA

The proposal complies with the above sections of the Acts in terms of spatial sustainability, efficient and resilience in terms of the following:

- The proposal will assist with limiting urban sprawl by creating a more spatially compact city through the proposed alterations and additions to the existing dwelling house in an established urban area.
- Erf 2095 is situated within the MSDP's "*Urban Inner Core*", which is identified as a priority area in which private sector investment is to be incentivised. The proposal relates to the current owners of the property creating a more efficient use of their land and optimising their investment.
- The proposal makes use of existing infrastructure in the form of the City's services, which limits unnecessary expenditure for all parties involved.

- The proposal is in line with existing rights, where the removal of restrictive title deed conditions allows for a more efficient planning process that is predominantly governed by the prescriptions of the DMS. The departures are relatively minor in nature and allow for a more efficient and appropriate use of the available land that does not impact on neighbours and meets the needs of the owners.
- The proposal is consistent with the City's approved planning documents and policies.

6.4.2 Section 39(5) of LUPA

The considerations with respect to Section 39(5) of LUPA are laid out below.

(a) The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement:

It is not believed that the conditions relating to one dwelling only, "built upon" or building line setbacks add any financial or other value to the holders of these rights. These conditions seek to maintain a low-density residential nature and character in the area, specifically by controlling the built form through limitations on building footprint, via building line setbacks and "built upon", and the number of dwellings that are permitted on the property. It is our opinion that the conditions that are proposed to be removed have a negative financial impact on the owners of the property as they limit development that would ordinarily be permitted in terms of the modern DMS.

These conditions were imposed with the establishment of the township in 1934 in terms of Ordinance 13 of 1927, when urban ideals and the perceptions of the character of the area were vastly different from those of the modern era. This is particularly evident in the context of the ever-changing needs of society regarding residential densification and intensification of land use. The City supports this shift, where appropriate, to curtail urban sprawl, create a more efficient urban form, and minimise environmental degradation.

It is evident, not only on the property, but also in the surrounding area, that buildings and outbuildings (including garages) are constructed closer than permitted in terms of the title deed setbacks. A number of removal of restrictions

applications have been successfully undertaken in the area, which have not resulted in any apparent reduction in financial or other value.

(b) The personal benefits which accrue to the holder of rights in terms of the restrictive condition:

The title deed restrictions envisage a low-density residential character for the area. The application, while proposing the removal of certain of the title deed conditions, will still be subject to the development controls prescribed by the R1 zoning of the property, and the title deed conditions that are retained.

It is unrealistic to expect that the prevailing urban form will be unchanged almost a century after these conditions were initially imposed. The personal benefits that would accrue to any holder of these rights are negligible, as the character of the township has long since undergone change as a result of modern perceptions of development, land use and densities. No personal benefits are expected to accrue to any individual owner in the township through these conditions.

(c) The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:

The owners will achieve personal benefits from the removal of the conditions, as it will unlock additional value by allowing the property to be developed in terms of the development rights associated with the R1 zoning of the property.

The removal and deletion of these conditions does not permit the owners to develop the property unchecked, however, as the DMS and planning application processes still control the way in which the land can be developed. The development of land in Cape Town has to take various factors into account, including the desirability of the proposal, and the compatibility with the surrounding land uses, built form, and character of the area. The proposal takes these factors into account and therefore remains compliant in this regard.

(d) The social benefit of the restrictive condition remaining in place in its existing form:

Since "social" refers to society and its organisations, the relevant question is how these right benefits the community. "Society" here includes the neighbours, the township, local residents, and the broader public.

The retention of the title deed conditions may provide some social benefit by allowing for outdoor, unbuilt green space to be retained, however, the proposal does introduce additional green space on the terrace, as well as planter features to soften the streetscape and the interface with Erf 2095. Retention of these conditions does equally not guarantee that private unbuilt green space will be retained, as these spaces are often paved.

Should the conditions remain in place, the owners are restricted from incremental densification that is in line with the City's approved policies. Accordingly, the out-dated restriction relating to "built upon" and title deed building line setbacks do not inherently provide a social benefit. Removing and deleting these conditions provides an opportunity for a prime residential property to be optimally developed, in line with modern approaches to city-building.

In these circumstances, the social benefit of the removal and deletion of these conditions outweighs the social benefit of retaining these restrictive conditions.

(e) The social benefit of the removal, suspension or amendment of the restrictive condition:

The majority of the Garden Township, in which Erf 2095 Oranjezicht is contained, is zoned as Residential Zoning 1 (R1), apart from one property that has been rezoned to General Residential subzone 2 (GR2). The intention of the R1 zoning, which is described via the development rules of the DMS, differs from that of the built form that the title deed aims to achieve. The removal of the title deed restrictions will result in a social benefit for the owners, given that the conditions contradict the modern-day development intentions and have also been historically contravened.

The social benefit of retaining these conditions needs to be weighed against the removal and deletion and these title deed conditions. The following are the social benefits that result from the removal of these title deed conditions:

- Better utilisation of the property in terms of the modern DMS;
- Contribution towards the prevention of urban sprawl;
- Alignment with various City policies that require a more efficient use of land and appropriate built form;
- Contribution towards the greening of the streetscape and passive surveillance via the proposed terrace.

The application for the removal of restrictive conditions allows for development on the property to be governed by the prescriptions of the DMS, as opposed to multiple overlapping and contradicting sets of development rules. The owner's ability to exercise their rights over their land is a crucial social benefit, which is enshrined in legislation and policy. Accordingly, the social benefit of removing the condition outweighs that of the conditions being retained.

(f) Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights:

This application requires the removal of title deed restriction to permit the proposal. The removal of these selected title deed conditions will not completely remove all rights enjoyed by property owners in this township. The conditions of title that restrict the built form via building line setbacks and "built upon" limitations were imposed prior to the existence of any zoning scheme.

The DMS provides for a separate layer of compliance, in addition to those of the title deed, thus when certain conditions of title are removed, the development of land units in Cape Town still needs to comply with the development rules of the zoning of the property, amongst other factors contained in the MPBL. These development rules provide for the permitted building line setbacks, land uses, and effectively control the development envelop of a proposal.

6.4.3 Section 47 of SPLUMA

The title deed restrictions that are to be removed do not constitute servitudes or contractual rights. They are limitations on the use of land imposed in the interest of the public. Neighbouring owners have an interest in the restrictions, but the restrictions do not vest in them with any private rights to property within the meaning of Section 25 of the Constitution.

Section 25(1) of the Constitution permits the deprivation of property rights provided that it is not arbitrary and is done in terms of a law of general application. The removal of the restrictions is specifically permitted and regulated by laws of general application being, SPLUMA, LUPA and the MPBL. It follows that the removal of restrictions is constitutional as long as it complies with applicable legislation. Furthermore, Section 47(3) of SPLUMA precludes any award of compensation.

With regard to public interest, the development of cities, including all suburbs therein, is dynamic in nature. Each generation contributes to the social and economic development of the city, inclusive of all of its inhabitants. This proposal contributes significantly towards social and economic benefits in the surrounding area, township, and greater city, as has been described above.

7. CONCLUSION

Application has been made for the removal of Condition B(c) and (d) of the title deed, and permanent departures on Erf 2095 Oranjezicht. It has been demonstrated that the application satisfies the adjudication criteria set out in SPLUMA, LUPA and the MPBL.

The proposal accounts for responsible development that aligns with the principles of Cape Town's Municipal Spatial Development Framework, and the Table Bay District Plan. It is demonstrated that the application is compliant with the various forward planning policies that govern land use in the Cape Town Region, and furthermore complies with the desirability criteria in terms of S99(3) of the MPBL and thus should be supported by the City and **recommended for approval.**

TOMMY BRUMMER TOWN PLANNERS

NOVEMBER 2025