



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500160333

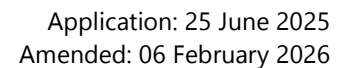
**Remainder Erf 147 and Erf 435,
72 Vrygrond Avenue, Capricorn,
Vrygrond**

Development Management

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**ERVEN 147 AND 435, CAPRICORN
(STREET AND PUBLIC PLACE)**



CONTENT

1. BACKGROUND	4
1.1 Introduction.....	4
1.2 Site context.....	5
1.3 Title deed.....	7
2. LAND DEVELOPMENT APPLICATION AND MOTIVATION	7
2.1 Proposed development and land development application	7
2.2 Motivation.....	9
2.3 Engineering.....	11
2.4 Section 99 assessment	11
3. CONCLUSION	13
3.1 Application in terms of Section 42 (a) for the rezoning of land.....	13
3.2 Application in terms of Section 42 (b) for a permanent departure.....	14
3.3 Application in terms of Section 42 (d) for the subdivision of land.	14
3.4 Application in terms of Section 42 (f) for the consolidation of land.	14
3.5 Application in terms of Section 42 (i) for consent, approval or any other permission or requirement in terms of the development management scheme.	14
3.6 Application in terms of Section 42 (u) any other application which the City Manager may prescribe in terms of the CTMPB (l) for amendment of an approved General Plan (GP 565/2000).....	14

Table of figures

Figure 1: Site situation and locality.....	4
Figure 2: Locality Remainder Erf 147 (Street) and Erf 435 (Public Place), Capricorn.....	5
Figure 3: Site map in agreement of sale	6
Figure 4: Street view of existing facilities (October 2024)	7
Figure 5: Aerial view of existing facilities and surrounding street encroachments	8

ANNEXURE

- ANNEXURE A: LOCALITY MAP**
ANNEXURE B: APPLICATION AUTHORISATION
ANNEXURE C: APPLICATION FORM
ANNEXURE D: TITLE DEED
ANNEXURE E: DIAGRAM
ANNEXURE F: APPROVAL OF DISPOSAL
ANNEXURE G: SUBDIVISION PLAN
ANNEXURE H: CONSOLIDATION PLAN
ANNEXURE I: SURVEYOR GENERAL STATUS REPORT

EXECUTIVE SUMMARY

MOTIVATION IN SUPPORT OF LAND DEVELOPMENT APPLICATION FOR: ERVEN 147 AND 435, CAPRICORN (STREET AND PUBLIC PLACE) SG Code: C01600740000014700000 & C01600740000043500000 Location: Lat: 34° 04' 59.74" S Lon: 18° 29' 4.217" E	
<u>Owner:</u> CITY OF CAPE TOWN with agreement of sale to: Where Rainbows Meet Training & Development Foundation NPO-Reg. No.: 063-830, PBO-Reg. No.: 930029165, Vendor No: 19399 Contact person: Cellular: Tel: E-mail: Address: 98 Vrygrond Avenue, Vrygrond, Muizenberg, Cape Town 7945	<u>Project Consultant:</u> Planner: Mr Dupré Lombaard (SACPLAN: B/8076/1998 // EAPASA: 2019/304) Contact person / facilitator: Mr Nico Williams Cellular: E-mail: / Address: 11 Elektron Street, Techno Park, Stellenbosch, 7600

This motivation and application are submitted in keeping with the conditions of sale of the land by the City of Cape Town to the Where Rainbows Meet Training and Development Foundation (File Reference: S14/3/4/3/918/97/435, Record Number: 130008773). In terms of the conditions, the purchaser must close the public places, subdivide the relevant portions and consolidate them to create a single land holding for transfer purposes to the Foundation.

The application is made in terms of the City of Cape Town Municipal Planning Bylaw, 2015 (MPBL), as amended and covers the following aspects:

- (1) Application in terms of Section 42 (a) for the rezoning of land;
- (2) Application in terms of Section 42 (b) for a permanent departure;
- (3) Application in terms of Section 42 (d) for the subdivision of land;
- (4) Application in terms of Section 42 (f) for the consolidation of land;
- (5) Application in terms of Section 42 (i) for consent, approval or any other permission or requirement in terms of the development management scheme; and
- (6) Application in terms of Section 42 (u) ~~any other application which the City Manager may prescribe in terms of the MPBL~~ 42 (l) for the amendment of an approved General Plan.

Title deed does not include any conditions which would restrict the proposed land development, namely the closure of the public places, subdivision and consolidation of the property and the continued use thereof for community purposes, including urban agriculture.

Remainder Erf 147 is zoned Transport Zone 2: Public Road and Public Parking. Erf 435 is zoned Open Space Zone 2: Public Open Space. A large portion of Erf 435 is occupied by Where Rainbows Meet and used for the intended community purposes. The rest of the property is informally occupied; hence subdivision thereof is required. A portion of the buildings housing the facilities of Where Rainbows meet encroach the Vrygrond Road street boundary; hence subdivision thereof is required. Both properties are public places, and closure thereof is thus necessary.

1. BACKGROUND

1.1 Introduction

This application is submitted on behalf of the current user of the site and purchaser (Where Rainbows Meet Training and Development Foundation), with the power of attorney of the owner, the City of Cape Town.

The application seeks to create an erf for the purchaser, to which end the land occupied and used by it, must be subdivided, consolidated, and rezoned, while simultaneously being closed as public places. In view of the existing use of the property, it will also be necessary to apply for permanent departures and a consent use. The land use has gradually established in response to community needs.



Figure 1: Site situation and locality

Where Rainbows Meet is a non-profit organization devoted to community and business development founded in 2008 to improve the chances of people from the community in gaining knowledge, experience, and opportunities. It offers educational programs for youth to prepare them for their formal education and those who have not completed school by development and training. It has an ECD (early childhood development) programme for abused and neglected children as well as a day and aftercare centre that also includes social gathering for parents who need guidance and support. Where Rainbows Meet has erected formal structures on the site, amongst others a computer centre, ECD centre and youth hall.

The centre offers training programmes in “foundations-of-business” for prospective entrepreneurs and others interested in business, English classes, computer literacy and use, and other internet skills. It also offers life skills courses to community members, using its formal facilities on the site, but also by outreach.

Where Rainbows Meet took over a gardening project on the land when it was abandoned by another organization and use the produce in a nutrition program to feed the children and the community in the facilities. Surplus produce is sold to the community of Vrygrond. The site thus also contains urban agriculture.

1.2 Site context

The site is located at the entrance to Vrygrond, which makes it a good locality for a community facility. The site consists of two parts, namely

- a portion of Remainder Erf 147, the mother Erf for the development of the particular phase of Vrygrond and with a status of street; and
- a portion of Erf 435, a public open space with a status of public place.

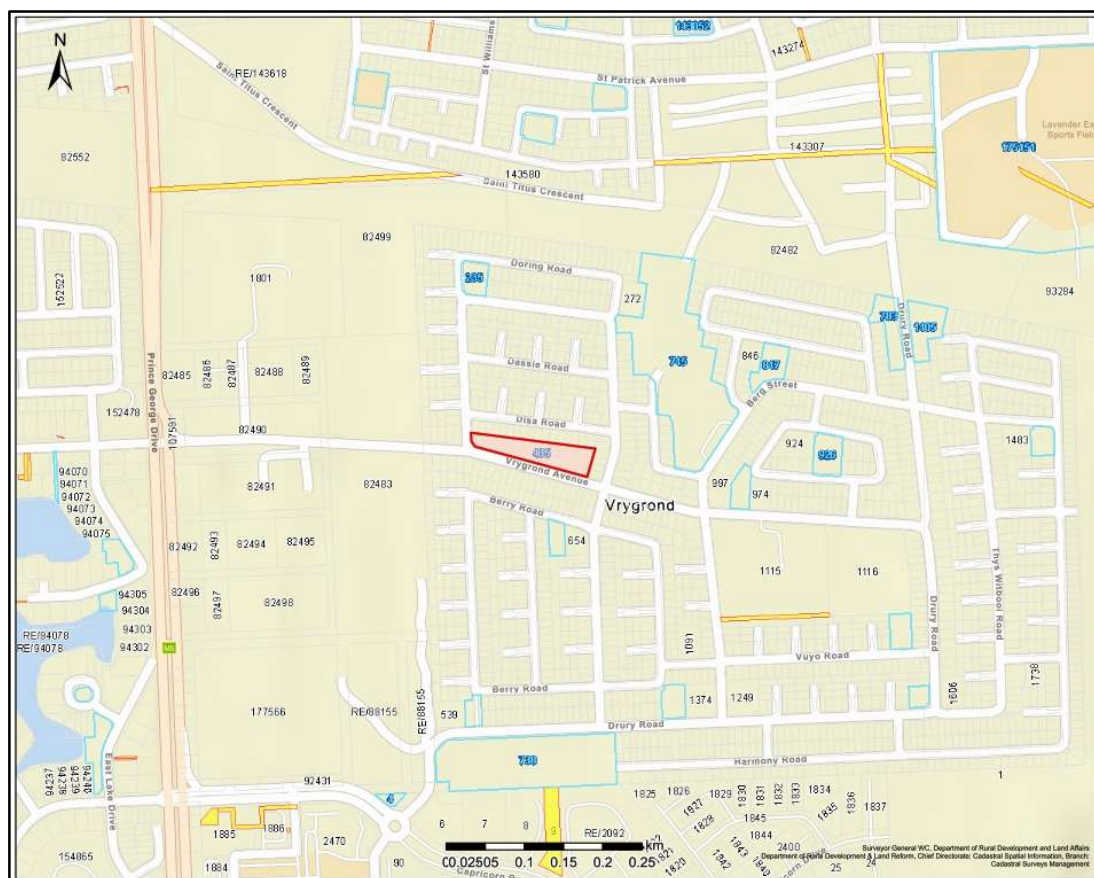
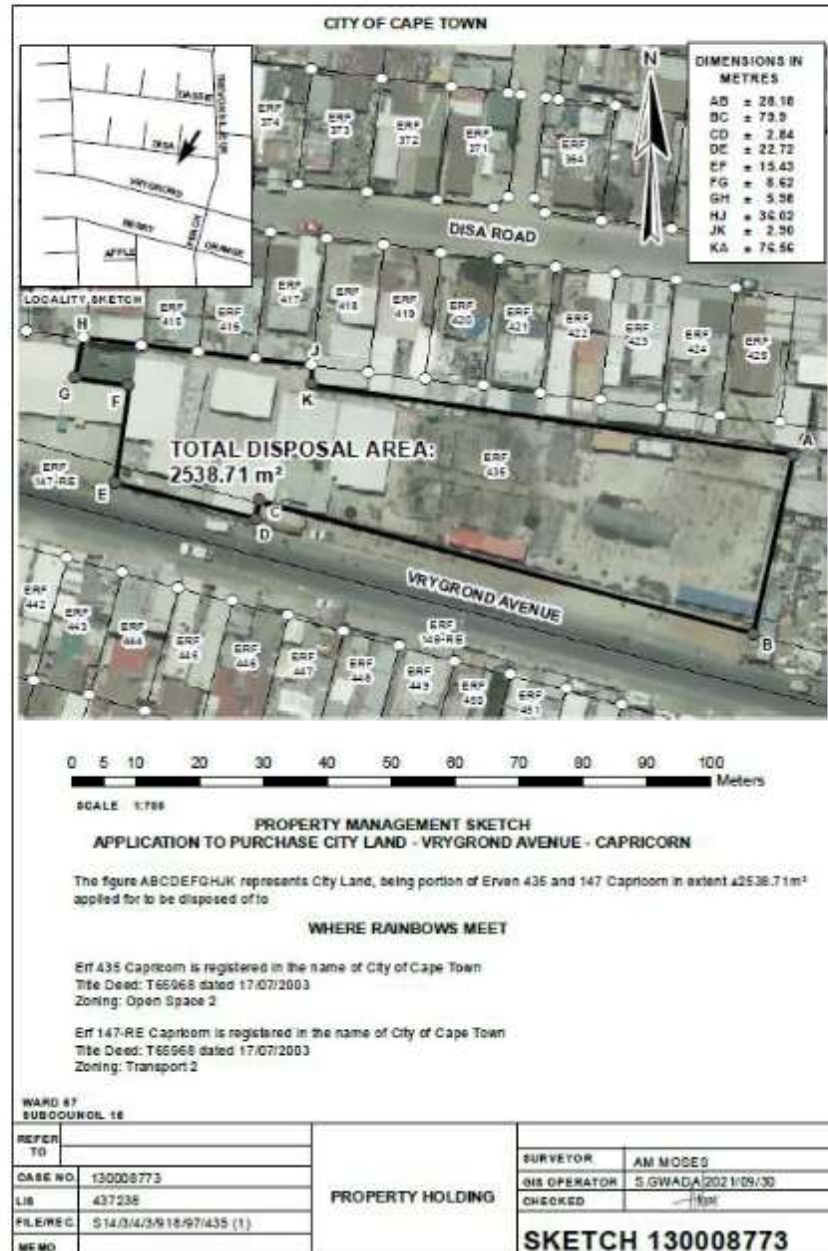


Figure 2: Locality Remainder Erf 147 (Street) and Erf 435 (Public Place), Capricorn

The City agreed to dispose of the relevant portions to Where Rainbows Meet for purposes of the community uses as established on the land. The site delineation in the agreement of sale is the main determinant of the shape, form, and dimensions of the proposed Erf to be created by the subdivision and consolidation

of the two subject properties. Moreover, due to the pre-existing buildings and uses on the land, the departures and consent use are pre-determined.

ANNEXURE A



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Figure 3: Site map in agreement of sale

The proposed use, consent use, and departures must be seen in the light of the situation in the surrounding area, where informal settlement prevails and land, including public places and streets, are used maximally to provide in the needs of the community, whether for shelter (housing), business, or community purposes.

1.3 Title deed

The title deed of the property, does not contain any restrictive title condition that would prevent the use of the property, or the application submitted herewith.

2. LAND DEVELOPMENT APPLICATION AND MOTIVATION

2.1 Proposed development and land development application

The application is made in terms of the City of Cape Town Municipal Planning Bylaw, 2015 (MPBL), as amended and covers the following aspects in keeping with the conditions of sale of the land by the City of Cape Town to the Where Rainbows Meet Training and Development Foundation (File Reference: S14/3/4/3/918/97/435, Record Number: 130008773) and the existing use of the site for community purposes.

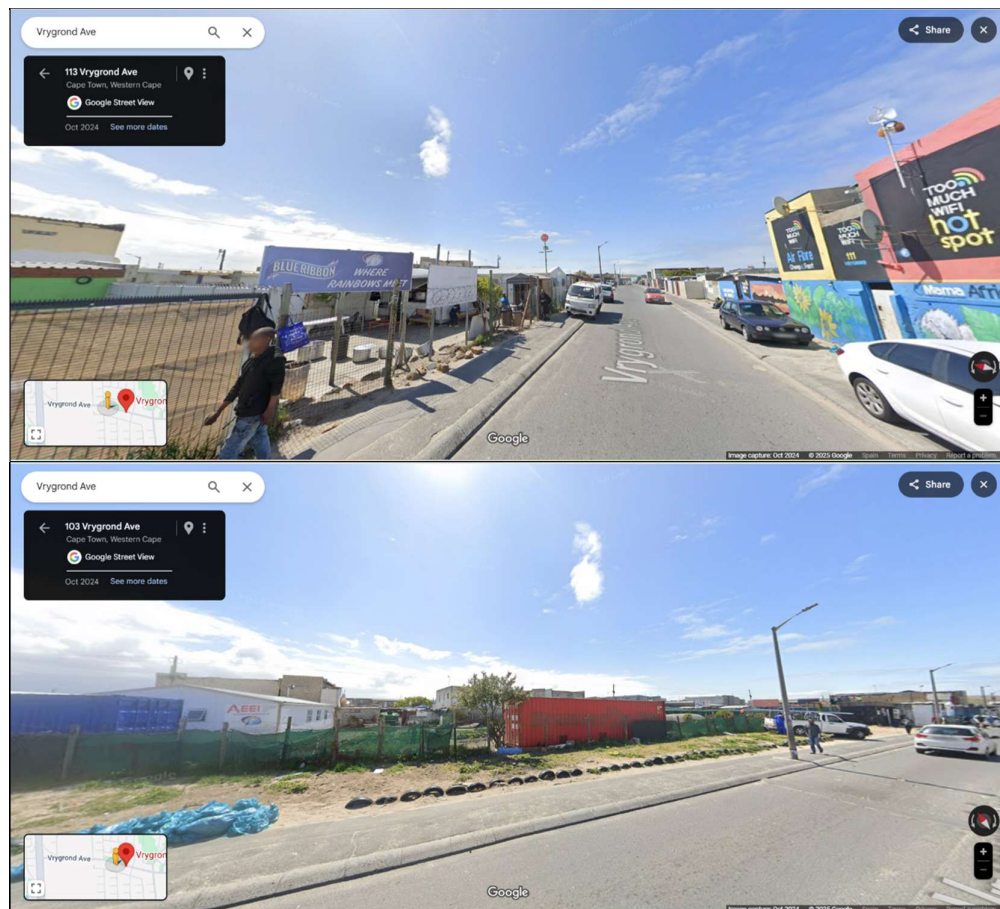


Figure 4: Street view of existing facilities (October 2024)

2.1.1 Application in terms of Section 42 (a) for the rezoning of land.

Remainder Erf 147 is zoned Transport Zone 2: Public Road and Public Parking. It is largely used for this purpose; however, street boundary encroachments have occurred in the area and as a result a portion of the road is occupied by buildings and structures of the Where Rainbows Meet NPO, requiring a rezoning of a portion of the road to allow for the pre-existing community use.

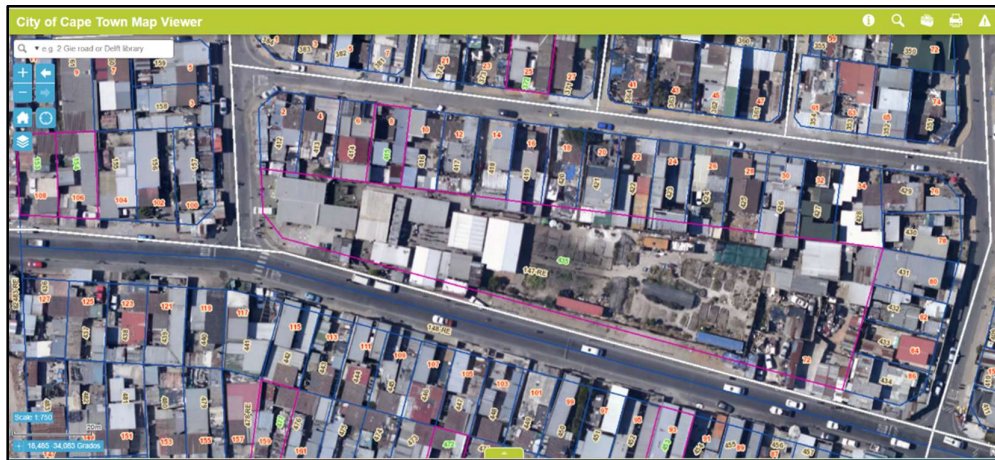


Figure 5: Aerial view of existing facilities and surrounding street encroachments

Erf 435 is zoned Open Space Zone 2: Public Open Space. As a large portion of Erf 435 is occupied by Where Rainbows Meet and used for the intended community purposes, the application is for the rezoning of the relevant portion of the property to an appropriate Community Zone as it intended for social uses directed at community needs, such as educational, religious, welfare or health services. A CO1 zoning is most appropriate as the facility will serve predominantly the Vrygrond local community needs.

2.1.2 Application in terms of Section 42 (b) for a permanent departure.

A portion of the buildings housing the facilities of Where Rainbows Meet encroach the Vrygrond Road street boundary as well as the common boundaries with Erven 414 – 417. Due to the encroachment by other abutting properties (Erven 418 – 426) and the proposed subdivision of Erf 435, buildings and structures of Where Rainbows Meet will encroach on the newly created common boundaries with the Remainder of Erf 435. A nil metre building line in lieu of 5m is required on the aforementioned street and common boundaries to accommodate the existing buildings and structures.

Parking and access cannot be provided on the land unit in accordance with Chapter 15 of the MPBL. The facility requires complete exemption from any on-site parking provision by departure.

2.1.3 Application in terms of Section 42 (d) for the subdivision of land.

As indicated above, the encroachment of buildings and structures onto Vrygrond Avenue, Remainder Erf 147, requires of a portion of the Erf (street) with an area of approximately 55m² to be subdivided.

The rest of Erf 435 is informally occupied by others; hence subdivision thereof is required to separate that portion being purchased by Where Rainbows Meet from the rest. A portion of approximately 2 555m² is subdivided off Erf 435, leaving a Remainder of approximately 1 578m², consisting of two portions (split Remainder), one L-shaped of 1 202m² to the north and east of the subdivided portion and one odd-shaped of 376m² to the west.

2.1.4 Application in terms of Section 42 (f) for the consolidation of land.

The subdivision of the two portions of land, respectively from Remainder Erf 147 (public street) and Erf 435 (public open space) and the existence of buildings, structures and uses on the land require the consolidation of the subdivided portions to create a new erf of approximately 2 610m².

2.1.5 Application in terms of Section 42 (i) for consent, approval or any other permission or requirement in terms of the development management scheme.

The CO1 zoning provides for local educational, worship and health needs as primary uses, but allowance is also made for the City to approve other community needs which may have a greater impact. The site is already used for institutional purposes (counselling centre), a place of assembly (civic function to serve social and community needs), and urban agriculture. Consent for these uses is therefore required.

2.1.6 Application in terms of Section 42 (u) ~~any other application which the City Manager may prescribe in terms of the CTMPB~~ (l) for amendment of an approved General Plan (GP 565/2000).

Both properties are public places, and closure thereof is thus necessary. Attached hereto the status report of the Surveyor General confirming the public place status of both Erf 147 and Erf 435, Capricorn.

2.2 Motivation

2.2.1 There are no title deed restrictions which would prevent the proposed use of the property.

2.2.2 The zoning of the two properties: Remainder Erf 147 is zoned Transport Zone 2: Public Road and Public Parking and Erf 435 is zoned Open Space Zone 2: Public Open Space, must be changed to allow for the correct zoning aligned to the use of the land.

Where Rainbows Meet was established to provide support services and care to the local community in 2008. Erf 435 was at the time used for an urban agriculture project and food gardens. The organisation of the gardening project could not be sustained and in 2011 Where Rainbows Meet took over management of the food gardening project. With the success of running the food garden came a need to provide extended support for the local community, leading to gradual growth and expansion of the facilities on the land, leading to the situation as occurs and for which purpose the application is being made in response to the City's decision to sell the land to the NPO.

There is thus good reason why the application should be considered favourably, in view of the City's position in condoning the use over time and decision to dispose of the land for the stated community purposes to the NPO.

- 2.2.3 The use of the land is desirable. It benefits the local community by the provision of numerous social services as indicated above. On the other hand, it does not detract from the City's capacity or ability to provide essential services to the community, and it is accepted by the City and the local community as being beneficial, hence the agreement to dispose of the land for the stated community purposes.

The use of the land is compatible with the surrounding uses, it being of the same scale and form as that in the surrounding area. The use also does not cause any threat to the health or well-being of surrounding residents. The contrary is rather true, in that the land and the NPO provide services to the surrounding residents and offers opportunities for further education, care and support not found elsewhere in the vicinity.

- 2.2.4 There are no heritage or environmental concerns relating to the site or to the area in general. It is already fully developed and used.

- 2.2.5 The proposed use, subdivision and consolidation will have no significant negative effect on traffic and pedestrian movement or cause for concern about congestion in the abutting streets. Vrygrond is mostly an informally developed neighbourhood as seen in Figure 5 above. The street is encroached by numerous buildings and structures as in Figure 4 above, indicating that the local community have few options relating or objection to the situation.

- 2.2.6 The City of Cape Town Southern District Spatial Development Framework (SDF) promotes the development of social facilities in the Vrygrond area. Although it requires the provision of more space for parks and recreation facilities, it also indicates a need for community facilities, such as being proposed on the land.

- 2.2.7 The matters referred to in Section 42 of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and the principles referred to in Chapter VI of the Western Cape Land Use Planning Act, 2014 (LUPA), with specific reference to spatial justice, spatial sustainability, efficiency and good

administration find limited application in this application. The application is for formalisation of an existing situation at a scale where the proposal affects the local community and its effects do not ring wider.

2.3 Engineering

The use of the property is existing, and the facilities are already connected to the municipal services infrastructure. The subdivision might create the need for separate services connections to be established for the connection of the two split remainders of Erf 435.

2.4 Section 99 assessment

In terms of the Bylaw, *an application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements* – In Section 99 of the Bylaw, the following criteria for deciding applications are prescribed. The table below summarises and highlights the relevant considerations. Consistency assessment is done in terms of City of Cape Town Energy, Environmental and Spatial Planning Circular 3 / 2015. Herein it is stated that “A development proposal or development application can be considered consistent with the MSDF by virtue of the fact that: (i) the MSDF provides for the development through its proposals, or (ii) it is deemed to be consistent with the MSDF, as it is not necessarily clearly in conflict with the intent and purpose of the MSDF map designation and/or text concerned.”

Criterion in Section 99	Applicability	Compliance of application
<i>(1) An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements</i>	Not applicable – application complies with the thresholds.	The application is compliance with thresholds, as elaborated below.
<i>(b) the proposed use or development of land must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible</i>	Application is consistent with SDF.	- Vrygrond area is in need of community services and community / social facilities. - Although there is a demand for public open space, the existing food garden provides open space functions under managed conditions. - Use is deemed consistent if the SDF provides for the development through its proposals, or if it is not clearly in conflict with the intent and purpose of the SDF map designation and/or text concerned.
<i>(d) (i) subject to subparagraph d(ii), in the case of an application for a departure to alter the development rules relating to permitted floor space or height, approval of the application would not have the effect of granting the property the development rules of the next subzone within a zone</i>	The departures as applied for do not grant development rules of next subzone.	Important to consider that the application is made in consideration of an existing situation with existing buildings and uses.
<i>(d) (ii) the approval of an application for a departure to alter</i>	Departures applied for do not exceed	Existing buildings and structures can be assessed on site.

Criterion in Section 99	Applicability	Compliance of application
<i>the development rules relating to permitted floor space or height that does not exceed 10% of the maximum height or floor space of the existing subzone does not trigger the minimum threshold requirement</i>	the 10% limit on height or floor space.	
<i>If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision maker must consider all relevant considerations including, where relevant, the following</i>	Recommendation for approval, subject to consideration of criteria.	There are no grounds for refusal of the application or use of the land, as the proposal is consistent with the spatial planning policies and the relevant considerations.
<i>(a) any applicable spatial development framework</i>	Falls in Cape Flats District LSDF and is generally compliant with MSDF.	- Area is in need of community facilities to provide social services, albeit also in need of open spaces. Considering the surrounding land use character, access to the food gardens, and community services / social facilities offered, the use offers advantages similar to what could be by public open space use. - It is not in conflict with the intent and purpose of the SDF map designation and/or text concerned.
<i>(b) relevant criteria contemplated in the development management scheme</i>	Complies with Sections 40, 41 and 45A of DMS.	Departures from the development parameters do not have any negative effect on the surrounding uses.
<i>(c) any applicable policy or strategy approved by the City to guide decision making, which includes the Social Development Strategy and the Economic Growth Strategy</i>	Aligned to SDF social development strategy for Vrygrond area.	See 2.2.6 above.
<i>(d) the desirability of the proposed use or development of land as contemplated in subsection (3)</i>	Use is desirable.	- The desirability of the use is assessed in the context of the above fit with the relevant policies and development frameworks in addition to its being an existing use. - See 2.2.3 above.
<i>(e) impact on existing rights (other than the right to be protected against trade competition)</i>	None identified.	- No negative effect on the surrounding neighbourhood. - The facility is well supported by the local community, which in turn is supported by the services it provides.
<i>(f) in an application for the consolidation of land unit (i) the scale and design of the development, (ii) the impact of the building massing, (iii) the impact on surrounding properties</i>	No negative effect by consolidation.	The scale and form of structures on the site will remain in keeping with that of the surrounding area, as it is a community facility with an urban agricultural use.
<i>(g) other considerations prescribed in relevant national or provincial legislation, which includes the</i>	Adherent.	See above assessment under 2.2.

Criterion in Section 99	Applicability	Compliance of application
<i>development principles as contained in section 7 of the Spatial Planning and Land Use Management Act, 2013 (Act no. 16 of 2013)</i>		
<i>(h) whether the application complies with the requirements of this By-law</i>	Compliant.	The application addresses all the relevant considerations and matters, and the process is in accordance with the Bylaw.
<i>(3) The following considerations are relevant to the assessment under subsection (2)(d) of the desirability of the proposed use or development of land</i>	Desirable.	See (a) – (j) below.
<i>(a) socio-economic impact</i>	Positive impact.	The NPO provides much-needed community services to the local community.
<i>(d) compatibility with surrounding uses</i>	Compatible.	Scale and form of the use will remain in keeping with that of the properties in the surrounding area.
<i>(e) impact on the external engineering services</i>	No negative impact.	Existing services connections and capacity able to accommodate proposed new erf.
<i>(f) impact on safety, health and wellbeing of the surrounding community</i>	No negative impact identified.	Use is intended to provide services to the community and compatible with the surrounding uses.
<i>(g) impact on heritage</i>	No negative impact identified.	Vrygrond, albeit formally developed, retains much of its original informal character.
<i>(h) impact on the biophysical environment</i>	No negative impact identified.	None – urban area.
<i>(i) traffic impacts, parking, access and other transport related considerations</i>	Insignificant impact.	It is an existing use being separated from the other uses on the same land. No additional traffic will be generated.
<i>(j) whether the imposition of conditions can mitigate an adverse impact of the proposed use or development of land:</i>	Conditions can mitigate.	Conditions could be imposed to limit any potential negative effects in future, if Where Rainbows Meet disposes of the land to a new owner, albeit unlikely.

3. CONCLUSION

The application as detailed herein could be approved in view of the lack of negative effects on the receiving environment and the benefits brought by the formalisation of the existing use on the land.

3.1 Application in terms of Section 42 (a) for the rezoning of land.

Rezoning of Remainder Erf 147, zoned Transport Zone 2: Public Road and Public Parking due to existing street boundary encroachments causing a 55m² portion of the road to be occupied by buildings and structures of the Where Rainbows Meet NPO, requiring a rezoning of a portion of the road to allow for the pre-existing community use.

Rezoning of a subdivided portion of Erf 435 that is zoned Open Space Zone 2: Public Open Space, with an area of approximately 2 555m² currently occupied by Where Rainbows Meet NPO and used for community purposes.

The application is for the rezoning of the two above-mentioned portions of the property to Community Zone CO1 as it intended for social uses directed at the Vrygrond local community needs.

3.2 Application in terms of Section 42 (b) for a permanent departure.

A departure for building line encroachments where the buildings housing the facilities of Where Rainbows Meet NPO encroach the Vrygrond Road street boundary as well as the common boundaries with Erven 414 – 417 and with the Remainder of Erf 435 (after subdivision) to allow a nil metre building line in lieu of 5m.

A departure from the provision of parking on the land unit in accordance with Chapter 15 of the MPBL. No on-site parking provision is available.

3.3 Application in terms of Section 42 (d) for the subdivision of land.

Subdivision of Remainder Erf 147, to create a portion with an area of approximately 55m² to be consolidated with the abutting subdivided portion of Erf 435 with an area of approximately 2 555m², leaving a Remainder Erf 435 of approximately 1 578m², consisting of two portions (split Remainder).

3.4 Application in terms of Section 42 (f) for the consolidation of land.

The consolidation of the two subdivided portions of land, respectively from Remainder Erf 147 (public street), 55m², and Erf 435 (public open space), 2 555m², create a new erf of approximately 2 610m².

3.5 Application in terms of Section 42 (i) for consent, approval or any other permission or requirement in terms of the development management scheme.

Consent is required to use the newly created erf with a CO1 zoning for local educational, worship and health needs as primary uses, but also for other community needs such as institutional purposes (counselling centre), a place of assembly (civic function to serve social and community needs), and urban agriculture in keeping with the services provided by the Where Rainbows Meet NPO.

3.6 Application in terms of Section 42 (u) ~~any other application which the City Manager may prescribe in terms of the CTMPB~~ (l) for amendment of an approved General Plan (GP 565/2000).

Both Erven 147 and 435 are public places, and closure thereof together with consolidation and subdivision are thus necessary.