CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500166277

Erf 891, 91 Kloof Road, Bantry Bay

Development Management

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Date: June 2026 *(Amended 10 September 2026)*

Ref: 8066 (Arina de Villiers)

Your ref: *Case ID 1500166277 (Andy Mitev)*

TOMMY BRÜMMER
TOWN PLANNERS

PROPOSED REMOVAL OF RESTRICTIONS & DEPARTURES TO PERMIT THREE DWELLINGS ON ERF 891 BANTRY BAY, AT 91 KLOOF ROAD

APPLICATION SUMMARY	
Purpose	To obtain land use approval to enable the redevelopment of Erf 891 with a building comprising 3 units (a dwelling house, second dwelling and third dwelling)
Enabling legislation	City of Cape Town Municipal Planning By-law, 2015 (MPBL) City of Cape Town Development Management Scheme (DMS)
Erf Number	Erf 891 Bantry Bay
Address	91 Kloof Road, Bantry Bay
Township	The Botany Bay Estate (established 1901)
Title Deed	
Erf Size	1 498m^2
Zoning	Residential Zoning 1 (R1)
Ownership	
Existing improvements	Dwelling house, swimming pool & garage outbuilding (to be demolished)
Heritage	Garage older than 60 years Grading: Not conservation worthy
Applications Amended August 2026	• Section 42(g), for the removal of Conditions II.C.2, 3 & 4 and IV.C.2, 3 & 4 from the title deed for Erf 891 related to the construction of one house only. • Section 42(b), for permanent departures from the development rules related to floor space, heights exceeding the 4m limit and building lines in Items 22(b), 22(c)(ii), 22(d) & 121(2) of the DMS.

SUPPORTING DOCUMENTATION	
1. Application form	2. Record of pre-application meeting
3. Power of Attorney	4. Resolution
5. CIPC report	6. Certified copy of title deed
7. Letter of consent Erf 884	8. Conveyancer's certificate
9. Bondholder's consent	10. General Plan
11. SG Diagrams	12. SDP Amended 10 September 2026

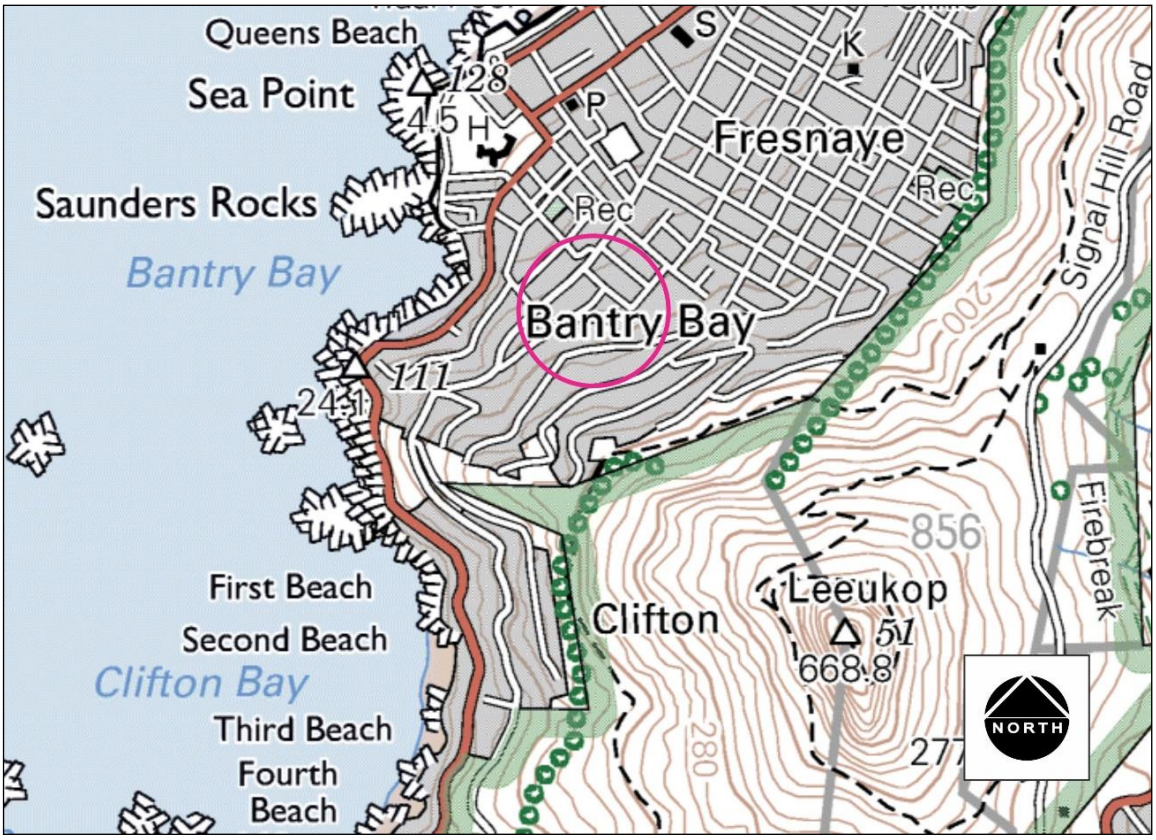


***Figure 1**: Locality Map*



***Figure 2**: Aerial Photograph*



***Figure 3**: Noting Sheet*

1 TOWNSHIP LAYOUT AND TITLE DEED CONDITIONS

Erf 891 is part of the Botany Bay Estate which was established in 1901.

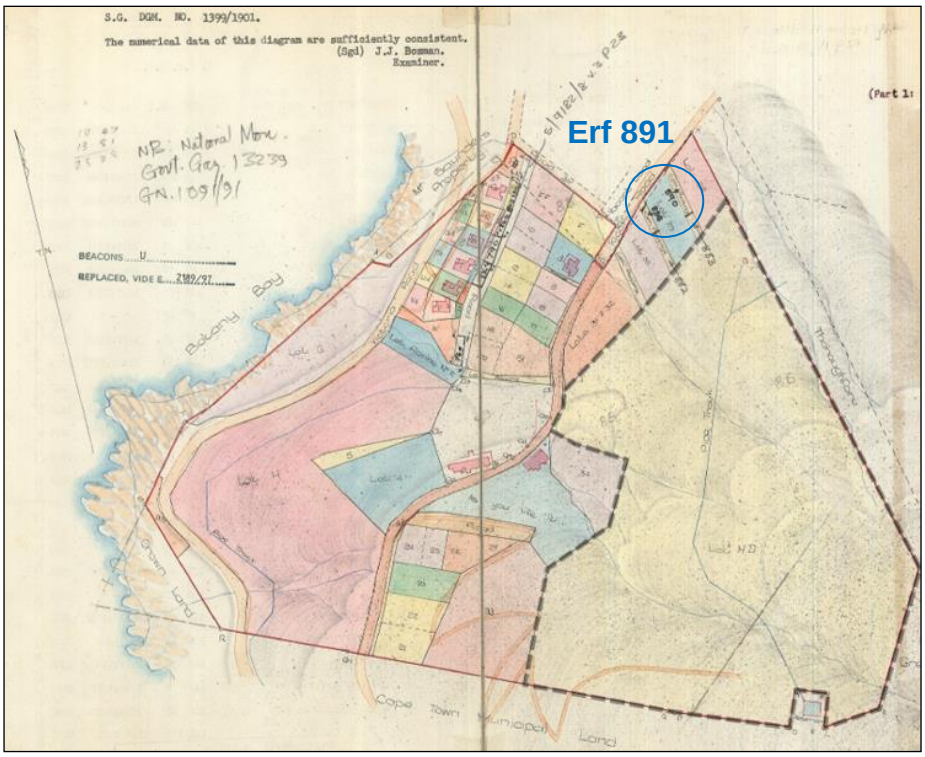


***Figure 4**: Extract of the diagram for the Botany Bay Estate, the broken line shows the extent of Lot HJ (the Bantry Bay Township)*

The site is part of the original “Lot 29” (later described as Erf 95), indicated in blue on the 1901 diagram, with common passages on either side of it. Erf 95 was subdivided into two portions in 1963; a portion was later deducted from Erf 289, for road widening purposes.

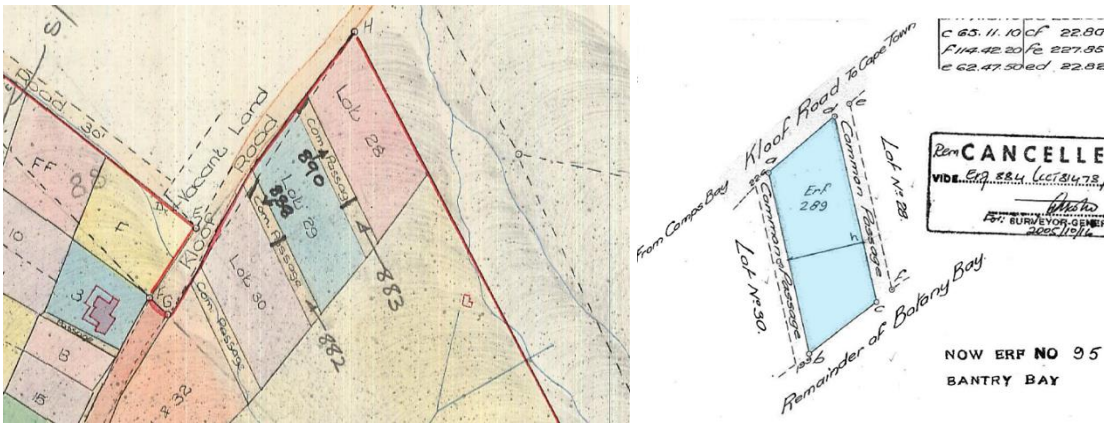


Figure 5*: Extracts of the 1901 & 1963 diagrams for Botany Bay Estate (left) and Erf 95 (right)*

Erf 891 was registered in 2005 and is the consolidation of four erven, e.g.:

(i) Two of the erven (components “AfmD” and “gBCn” on the SG Diagram) originally formed part of the common passages (which abutted the original Lot 29) and are <u>not</u> subject to any township conditions of approval limiting the use or envelope of building that may be erected.

(ii) The other two erven (components “fghjk” and “kjhnm”, highlighted below in orange) were part of the original Lot 29 (Erf 95) and are subject to the township conditions that were imposed on erven in the Botany Bay Estate.

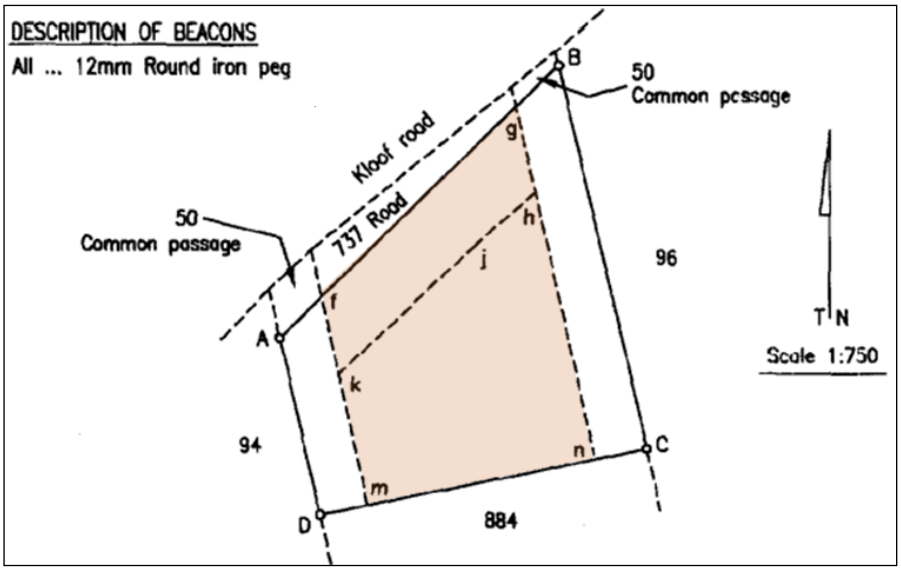


Figure 6*: Extract of the 2005 diagram for Erf 891 (portion subject to township conditions are highlighted in orange)*

Township conditions of approval:

The conditions in Paragraphs II.C. and IV.C. of the title deed are Category 1.2 (developer's restrictive) conditions and are in favour of both owners and tenants of properties in the Botany Bay Estate. These conditions may be removed from the title deed in terms of Section 42(g) of the MPBL (voluntary removal).

C. SUBJECT FURTHER to the following special conditions contained in Deed of Transfer No T 4998/1919 imposed against Erf 95 Bantry Bay of which the property hereby conveyed forms part, namely :-

1. That the passage on the diagram of the above property between Lots 29, now Erf 95 Bantry Bay, and 28 shall be common passage to the said Lots and the remaining extent and that the passage on the diagram of the above property between Lots 29 and 30 shall be common passage to the said Lots and to the remaining extent.

2. That no more than one house shall be built on each of the Lots.

3. That no dwelling house to be built shall be inconsistent with the environment.

4. That each house shall be used only as a dwelling house.

5. That no shop business of any kind shall be carried on in any such dwelling or adjuncts or on the said land.

6. .....

7. That every person owning any piece of land in this Estate or his tenant shall have the right singly or in conjunction with other owners or tenants to an action for redress and relief against any owner or tenant subject to similar conditions not obeying or breaking any of the conditions.

Information

***Figure 7**: Township conditions to which components fghjk & kjhnm are subject to*

Note: Regarding the conditions in C.1. referring to common passages, the conveyancer has certified that only minor portions of the passages still exists; these portions abut Kloof Road and are registered as Remainder Erf 50 Bantry Bay. Those portions now part of Erf 891 are no longer subject to any restrictions.

Servitude conditions:

Components fghjk and kjhnm are subject to servitude conditions (see extract below) imposed by the owner of the original Erf 95 in 1963 when this erf was subdivided into two portions. The servitudes are in favour of Remainder Erf 95 (now part of Erf 884 behind). The servitude conditions are referred to in Paragraphs II.E. and IV.E. of the title deed and are Category 1.4 (traditional servitude) conditions. The conditions will be amended in terms of a notarial variation to the servitude agreement.

E. SUBJECT FURTHER to the following servitudes contained in said Deed of Transfer No imposed by the transferor, as owner of the remaining extent of Erf No 95 Bantry Bay, situate at Sea Point in the City of Cape Town, Cape Division, measuring as such 873 (Eight Hundred and Seventy Three) square metres, held by the said under Deed of Transfer No which servitudes are imposed in favour of the said and his successors in title to the said remainder :-

1. The land hereby conveyed shall be subject to a servitude of prospectus in terms whereof the view from the said remainder shall in no mannter or degree whatsoever be obstructed or impaired by buildings, structures, trees or other growing animate matter or inanimate things upon the land hereby conveyed.

   The transferee and his successors in title shall however be entitled to erect upon such land hereby conveyed a single residence with necessary outbuildings provided that the highest point of any such building or structure shall not exceed a height of 78,79 metres above sea level at low water ordinary spring tide (that being the height of the floor of the open front stoep of the existing structure on the remaining extent).

2. No dwelling or other structure shall be erected upon the land hereby conveyed until the transferee shall have erected at its own expense, a strong, neat and tidy supporting wall upon the land hereby conveyed within the boundary line dividing the land hereby conveyed from the remainder, being the line marked "CB" on the said Diagram No 7462/62. Such wall shall be adequately and properly constructed and shall conform to the standard set by the Council of the Municipality of Cape Town, which shall first approve of plans for such wall. The said wall shall at all times be kept in good order and repair and adequately maintained by the transferee and his successors in title. The transferee and his successors in title shall not have the right to erect a wall or other structure at the point of the dividing line above the ground level of the remainder at that poing.

3. The land hereby conveyed shall take and allow free passage of stormwater and other drainage from the remaining extent, and such stormwater or drainage shall not be obstructed in any way by any works, buildings, or constructions upon the land hereby conveyed, and the supporting wall referred to in the immediately preceding conditions shall accordingly be planned in such a way as to allow for the passage of such stormwater and drainage, including weep-holes where necessary.

4. The reference in the preceding conditions to "ground level" at point "C" on the said Diagrm No 7462/62 and all other references to ground or other levels shall mean the levels at the date of survey as indicated on the aforesaid Diagram No 7462/62.

***Figure 8**: Servitude conditions imposed in 1963 with the subdivision of Erf 95*

Private servitude:

Erf 891 is **entitled** to the following servitudes:

- A height restriction over Erf 901 situated at 138 Kloof Road, as described in Notarial Deed of Praedial Servitude No. K376/2012S.
- A height restriction and road boundary setback restriction over Erf 453 Bantry Bay situated at 140 Kloof Road, as described in Notarial Deed of Praedial Servitude No. K377/2012S.

2 ZONING & LAND USE

Erf 891 measures **1498m²** and is zoned Residential Zoning 1 (**R1**). Erven in the area are developed with a range of buildings and densities, in accordance with the single and general residential zonings of the erven. The area is characterised by large dwellings, second dwellings, flats and guest accommodation facilities. Properties on the upper side of Kloof Road are subject to road widening (zoned TR2), with road widening already taken from Erf 891 but not the abutting properties.

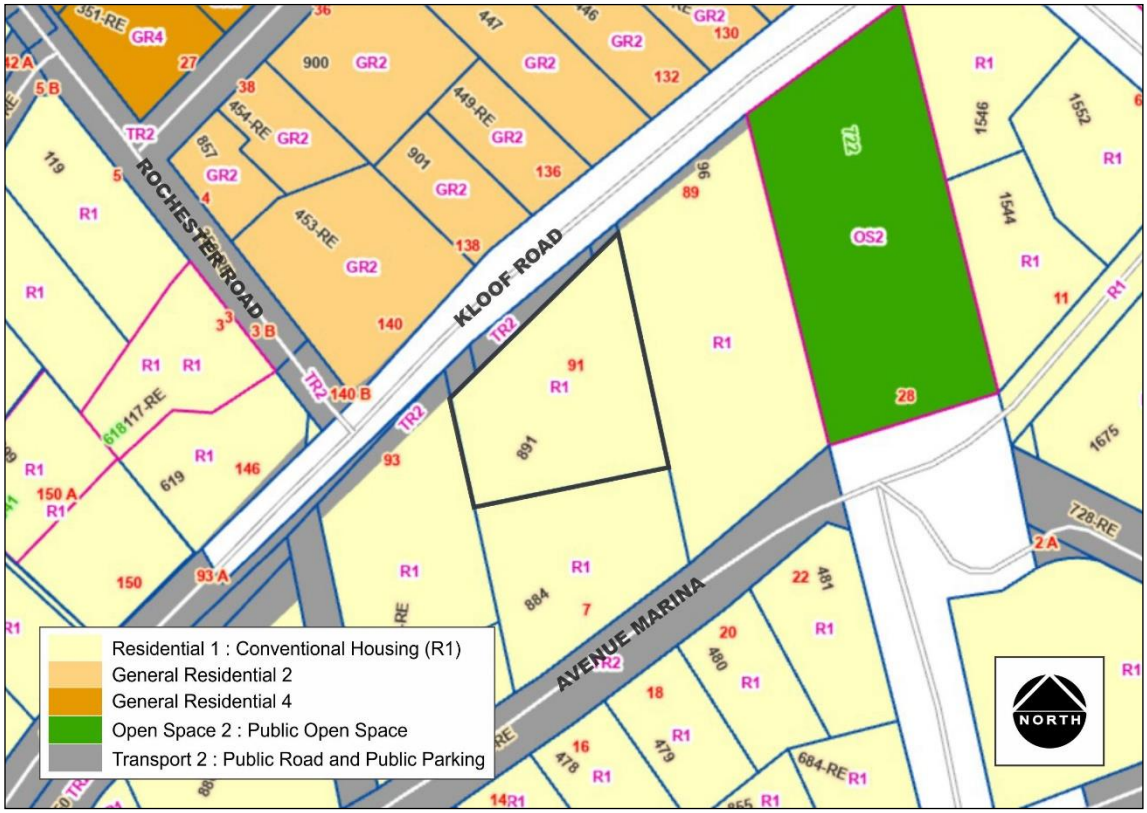


***Figure 9**: Zoning Map*

3 PROPOSAL



***Figure 10**: 3D render of the proposed building*

The proposal is to demolish the existing buildings and to redevelop Erf 891 (1498m²) with a building comprising 3 dwellings. The SDP was assessed in terms of the title deed conditions and the R1 DMS development rules.

3.1 Demolition *(no heritage approvals required)*

Erf 891 is located outside of a declared or proposed Heritage Protection Overlay Zone (HPOZ). The existing dwelling is not older than 60 years; the garage outbuilding on Kloof Road and remnant of an old stair structure in the road are. The property is however graded "not conservation-worthy". The proposal to demolish the existing structures therefore does not require any heritage approvals from the City or from Heritage Western Cape.

3.2 Item 21: Land use *(removal)*

A dwelling house is a primary use in R1. Second and third dwellings are permitted as additional use rights which means that they must comply with the conditions in Items 25A and 25B respectively. The proposal complies with the conditions, e.g.:

- The total floor space of the second and third dwellings (474,67m² and 460,37m² respectively) do not exceed that of the main dwelling unit (602m²).
- The second and third dwellings are contained in the same building as the main dwelling house, designed to appear as a single dwelling house. All units are duplex units; the second and third dwellings are on the ground and first floors of the building (side by side) and the main dwelling on the second and third.
- The layout/design is such that subdivision will not be possible.
- The application will be circulated internally for branch comments and must obtain the support of the relevant municipal service department responsible for calculating the development charge (the building plan will ultimately be cleared by this department once the development charge has been paid).
- An affordable rental flat is not proposed.

The proposal to construct three dwellings on Erf 891 requires the removal of the "one dwelling only" conditions from the title deed.

3.3 Item 22(b): Floor space *(departure)*

A departure is required to permit a floor space of 1683m² in lieu of the permitted 1500m².

3.4 Item 22(c)(i): Building height *(notarial amendment of private servitude)*

The permissible building height is 10m, measured from the EGL to top of the building. The overall building height has been reduced to ensure **compliance** with the 10m height restriction.

The top of the building is proposed at 82,050 amsl which is 3,26m higher than the private height servitude of 78,79m amsl that was registered over Erf 891 in favour of Erf 884 behind, in 1963. While the City need not enforce the servitude and may approve the land use application with the servitude in the title deed, it is relevant that the owner of Erf 884 has consented to the notarial amendment of the servitude conditions once the LUM application has been finalised.

3.5 Items 22(d) & 121(2): Street boundary building lines *(departure)*

The prescribed setbacks from Kloof Road, a metropolitan road, are 4,5m (in terms of the R1 base zoning provision) and 5,0m (for erven abutting metropolitan roads).

The basement and ground floor of the building is setback 5m from the street boundary with the upper floors terracing up the slope of the site, in compliance with the base zoning provision. Certain feature walls (not part of the boundary wall) are proposed up to 0,0m from the street boundary, for which a departure is required from Item 121(2).

3.6 Item 22(d): Common boundary building line *(departure)*

A 3m building line applies to the common boundaries. Item 121(1) provides for certain structures such as roof eaves and architectural features to be built within the building line. The only setback departure required is for the building (roof slab and wall on the south common boundary) to be at 0m in lieu of 3m from the rear (south) common boundary.

3.7 Item 22(c)(ii): Height of structures within 3m of a common boundary *(departures)*

Portions of the building beyond 12m from the street and proposed within 3m of a common boundary (even those structures permitted in the building lines in terms of Item 121), are limited to a height of 4m above EGL. That part of the building extending to the rear boundary (roof slab and wall), as well as the 500mm wide architectural features on the upper floors of the building, are more than 4m above EGL and require departures from the 4m height limit.

3.8 Item 121A: Unscreened trafficable roof *(not applicable)*

This item reads that “an unscreened trafficable part of a roof, balcony or terrace facing onto a common boundary must be set back at the common boundary building line or at least 2 m from the common boundary, whichever is more restrictive.” This provision does not apply given that the proposed roof is non-trafficable.

3.9 Item 126(a): Raising of Ground *(complies)*

A small portion of the ground floor terrace is raised above the EGL, but not higher than 1,5m above EGL, in compliance with Item 126(a) of the DMS.

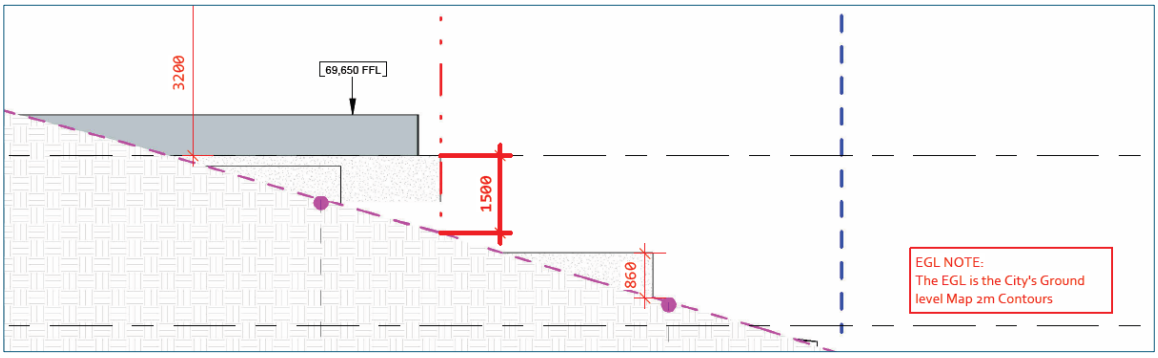


***Figure 11**: Extract of East elevation (ground floor not raised >1,5m above EGL)*

3.10 Item 136A: Boundary walls *(not applicable)*

The existing boundary walls on the common boundaries will be retained, with no new walls proposed on these boundaries which require assessment in terms of this provision.

3.11 Items 137 to 141: Parking and access *(complies)*

Bantry Bay is a PT1 parking area where dwellings must be provided with one bay each. Whereas 3 on-site bays are required, each dwelling will be provided with 2 bays (total of 6 bays). The access and parking layout is such that vehicles will be able to exit the site in forward gear. Only one 6m wide vehicular carriageway crossing (CWC) is proposed from Kloof Road. The existing double garage will be demolished and the existing CWC, closed.

4 LUM APPLICATION

4.1 Removal of restrictions

In terms of **Section 42(g)** of the MPBL, application is made for the removal of the following conditions from Deed of Transfer No. for Erf 891 Bantry Bay, which conditions read as follows:

II.C.2. & IV.C.2.: That no more than one house shall be built on each of the Lots.
II.C.3. & IV.C.3.: That no dwelling house to be built shall be inconsistent with the environment.
II.C.4. & IV.C.4.: That each house shall be used only as a dwelling house.

4.2 Permanent departures

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

- Item 22(b): To permit an increase in the floor space from 1500m² to 1683m².
- Item 22(c)(ii): To permit portions of the building beyond 12m from the street boundary and within 3m from the south common boundary, to be 7,06m in lieu of 4m in height from existing ground level to top of roof.
- Item 22(c)(ii): To permit portions of a building (500mm wide architectural features), beyond 12m from the street boundary within 3m from the west common boundary, to be 9,67m in lieu of 4m in height from existing ground level to top of roof.
- Item 22(c)(ii): To permit portions of a building (500mm wide architectural features), beyond 12m from the street boundary within 3m from the east common boundary, to be 9,19m in lieu of 4m in height from existing ground level to top of roof.
- Item 22(d): To permit the building at 0m in lieu of 3m from the south (rear) common boundary.
- From Item 22(d) read with Item 121(2): to permit walls (not part of the boundary wall) to be closer, up to 0m (basement) and 3,64m (ground floor) in lieu of 5m from Kloof Road, a metropolitan road.

5 ADJUDICATION CRITERIA

Section 99 of the By-law sets out the criteria for deciding an application.

Section 48 of the By-law deals with the removal, suspension or amendment of restrictive conditions, with sub-section (4) specifying that the City must consider the following when deciding on the application to remove the title deed conditions:

(a) Whether the result would better align with the DMS;
(b) The decision-making criteria in Section 99; and
(c) Sections 42(1)(c) and 47 of SPLUMA.

6 ALIGNMENT WITH THE DMS

The title deed limits the development potential of Erf 891 to only one dwelling house while the R1 zoning, on the other hand, permits a total of 3 dwellings (a dwelling house, second dwelling and third dwelling) on the property.

Removal of the title deed conditions will therefore fully align the development potential of the property to the DMS.

7 SECTION 99 OF THE MPBL

Section 99 of the By-Law sets out the criteria for deciding on an application.

7.1 Section 99(1)

The application complies with the minimum threshold requirements, e.g.:

(a) The proposed land use is consistent with the MSDF.
(b) Building height and floor space departures are not required which would require a rezoning to a next subzoning. The zoning will remain R1.

7.2 Section 99(2)

The application should be approved for reasons set out below.

(a) The proposal complies with the applicable spatial development frameworks

(i) Municipal Spatial Development Framework (MSDF) (2023)

The MSDF encourages densification and land use intensification across the City and promotes a variety of housing options and dwelling sizes within any one area.

Bantry Bay is part of the “Incremental Growth & Consolidation Area” which includes existing built-up areas not immediately framed by structuring elements such as development corridors and nodes and where the City is committed to servicing existing communities and permitting new developments.

Desired spatial outcomes include diverse and dense land uses where bulk engineering infrastructure allows, diversification of mono-use residential patterns, incremental intensification (density and diversity) via subdivisions, second and third dwellings and rezoning, the maintenance of existing infrastructure and development according to infrastructure capacity and associated lifecycle costs.

(ii) Table Bay District Plan (2023)

Erf 891 is situated in an area designated for urban development where a wide range of urban uses must be considered and permitted. Bantry Bay is an established developed area within the existing urban footprint.

The Table Bay District is divided into 4 sub-districts with Bantry Bay falling within Sub-District 1: Atlantic Seaboard Suburbs. The proposal for Erf 891 complies with the spatial development objective which is to ensure appropriate built form and land use, to achieve a quality environment. In terms of the supporting development guidelines, the variety in built form and residential densities must be retained and the diversity of housing types in the area, protected; a medium density, lower rise built fabric must be supported on the higher slopes.

The proposal is for the sensitive densification of the site, by increasing the density from one to three houses. This will ensure variety in built form.

(b) DMS criteria

The application complies with relevant criteria contemplated in the DMS. All documents required by the City are submitted with the application and the proposal considered desirable when assessed in terms of the adjudication criteria.

(c) Applicable strategies and policies

The proposal complies with the City's approved strategies and policies.

- The principal objection of the *Inclusive Economic Growth Strategy (2021)* is to grow and create jobs. Employment will be created during the construction phase and post construction given increased employment opportunities at the additional dwellings.

- The proposal is consistent with the *Social Development Strategy (2013)* as it will help to create a safer area by increasing the number of people/families residing in the area and allowing more people to live near the economic, institutional and recreational facilities the City has to offer.

- Residential densification and land use intensification within the urban edge contribute to the containment of urban sprawl and comply with the vision of the *Environmental Strategy (2017)* to enhance, protect and manage Cape Town's natural and cultural resources for long term prosperity, in a way that optimises economic opportunities and promotes access and social wellbeing.

- The proposal complies with the City's approved *Densification Policy* which supports densification across the City by way of subdivisions, second and third dwellings, or flats. Densification within urban areas is desirable for the following reasons:

    - More efficient use is made of land which is a scarce resource.
    - More efficient use is made of existing municipal infrastructure.
    - Urban sprawl is contained, contributing to environmental sustainability.
    - Densification facilitates the gradual restructuring of the City which is vital in terms of social, economic and environmental sustainability; a compact urban form is an essential pre-condition for well performing cities.
    - Residential densification is in the interest of the public and the development of townships throughout the City and is supported by all approved City policies and spatial frameworks.

(d) The application is desirable, as contemplated in subsection (3).

(e) Granting of the application will not impact negatively on existing rights

Removal of title deed conditions:

The proposal represents the sensitive densification and efficient use of land, a scarce resource. Three dwellings are proposed within an established urban area close to the many facilities the City has to offer. The proposal is supported by all relevant and approved densification policies.

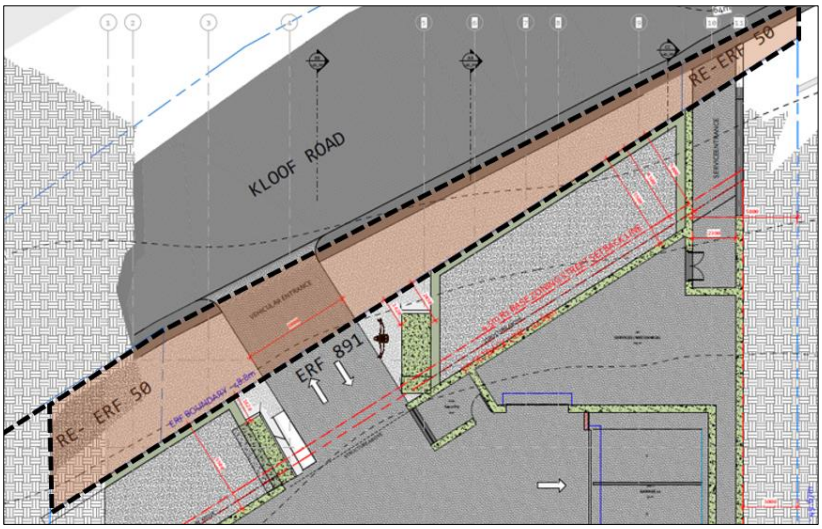
Floor space departure:

Granting of the departure will result in an increased floor space of only 183m². The departure is desirable given that the proposed excavation will result in a large part of the building, which terraces up the slope of the site, to be underground and not visible from the surrounding area.

Street boundary building line departure:

The building is setback 5m from Kloof Road, a metropolitan road. While walls are permitted in the 4,5m base zoning building line, only boundary walls are permitted within 5m from a metropolitan road. A departure is required for the architectural walls proposed within this space.

Granting of the departure is desirable, for reasons set out below.



It is relevant that that portion of the original site that was subject to road widening (zoned TR2 and indicated in orange, to the left) was already deducted and is now part of the road reserve (unlike the neighbouring erven from which road widening has not yet been taken). The walls now proposed up to 0m from the existing street boundary are therefore setback between about 2m and 5m from the original street boundary.

***Figure 12**: Portion of the original site now part of the road highlighted in orange*



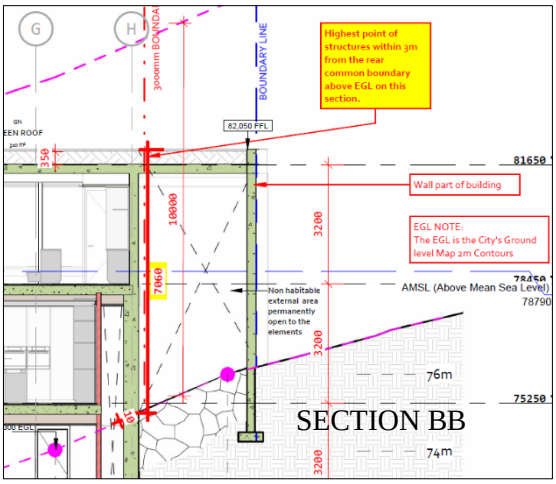
***Figure 13**: The architectural wall on the existing cadastral boundary is setback further away from the street than the walls on adjacent erven (road widening already taken)*

Common boundary building line departure:

The building complies with the 3m common boundary setbacks, except for the rear portion of the building which is proposed at proposed at 0m in lieu of 3m from the south common boundary. The wall on the boundary with Erf 884 does not contain any overlooking features and will have no impact whatsoever on this property.

Departures from the 4m height limit:

That part of the building at 0m from the rear boundary as well as the 500mm wide architectural features on the upper floors of the building (on the sides) are higher than 4m above EGL for which height departures are required.



The portion within 3m from the rear (south) boundary is not higher than the rest of the roof (which is much lower than what is permitted in this area) and will not impact negatively on the views from Erf 884 behind. The owner of Erf 884 has agreed to this height by consenting to the notarial amendment of the existing height servitude, following the approval of this LUM application.

***Figure 14**: Height of structures within 3m from the south common boundary*

The architectural features within 3m from the lateral boundaries are permitted (do not require setback departures) and will have no impact on Erven 94 and 96 given the aesthetic and functional (shading) purpose of these non-trafficable features.

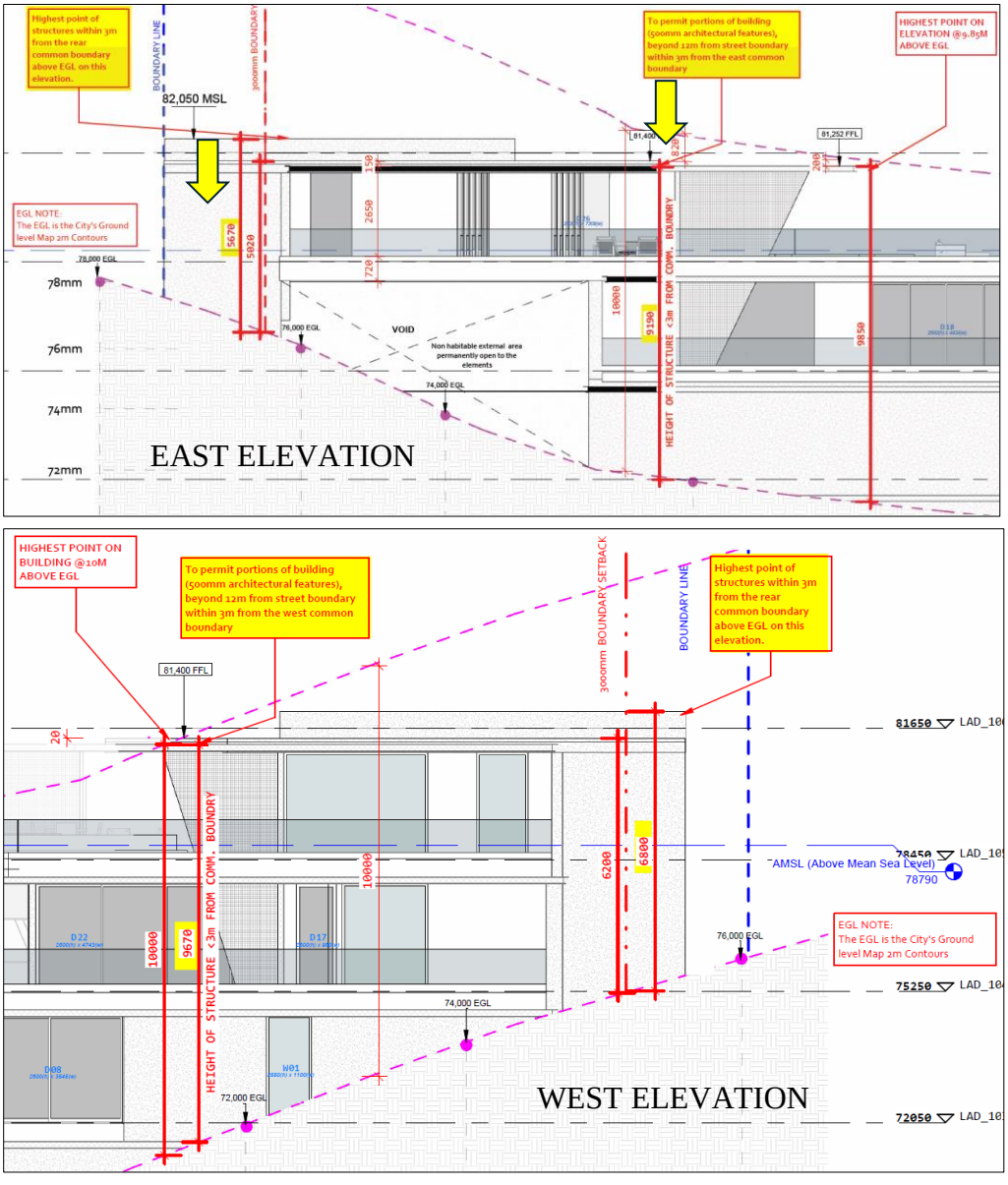


***Figure 15**: Height of structures wihtin 3m from the common boundaries*

7.3 Section 99(3):

In terms of this sub-section, the proposal is desirable for the following reasons:

(a) The socio-economic impact will be positive. The proposal will result in the more efficient use of land and will provide additional housing opportunities within a sought-after residential suburb where land is a scarce resource. The municipal valuation of Erf 891 will increase, as will that of the surrounding erven. There will also be a social advantage given that employment is to be created during construction and additional domestic staff that will be employed by the families residing in the units.

(b) The proposal is compatible with surrounding uses. The area is a residential neighbourhood characterised by medium to high density developments on the lower side of Kloof Road (where erven are zoned for general residential purposes), with properties in the Bantry Bay Township characterised by large upmarket dwellings, second and third dwellings.

(c) There should be no negative impact on external engineering services. Relevant services branches will comment on the proposal, a development contribution levy will be paid to contribute to the upgrading of bulk engineering services and in addition any services upgrades which may be required because of the development, will be at the owners' cost.

(d) There should be no negative impact on the safety, health and wellbeing of the surrounding community. Granting of the application will result in two additional families residing on the property which will increase surveillance in the area.

(e) The property is not situated in a Heritage Protection Area and is graded "not conservation worthy." There should be no negative impact on heritage.

(f) There will be no negative impact on the biophysical environment. No activities are proposed which require environmental authorisation in terms of the National Environmental Management Act (NEMA) regulations.

(g) The access and parking arrangements comply with the DMS provisions and there should be no impact on access and parking and other traffic related considerations.

8 SECTION 39(5) OF LUPA

The LUPA assessment of the removal of restrictions application is required in terms of Section 99(2)(g) of the MPBL.

(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;

The title deed conditions that are to be removed prescribe that each lot in the Botany Bay Estate may only be developed with "one house" which shall "not be inconsistent with the environment" and that each house shall be used only as a "dwelling house".

These conditions attempt to create a particular density and use within the township, e.g., for each erf to be developed with one dwelling house which is not inconsistent with the environment. Property owners within the township could consider this single residential character that was to be established of having a financial or other value.

The character of townships however changes over time as the needs of society change and Bantry Bay is no exception. Erven in the township have been developed with a range of building types, residential densities and residential uses, including guest accommodation facilities such as hotels, guest houses and AirB&Bs. The character of Bantry Bay is not consistent in terms of land use and the township has clearly not developed as intended by the township developer 125 years ago, as a purely single dwelling residential area.

The photograph in Figure 15 below shows the character of the Botany Bay Estate to be that of a densely built-up environment comprising a range of residential densities, with the higher density apartment and other buildings on the lower slopes closer to the sea and the density reducing on the upper slopes where erven are developed with dwellings and additional dwellings.



***Figure 16**: The character of the Botany Bay Estate is that of a densely built up environment comprising of a range of building types and residential densities and uses*

It is not clear what exactly the intention of the "not to be inconsistent with the environment" condition was, taking into consideration that the conditions were imposed in 1901 when the Botany Bay Estate was established. As shown on the 1901 diagram in Figure 4, only a very few buildings at the time existed along Victoria Road and Kloof Road, with the vast remainder of the land undeveloped and in a natural state. The natural environment has over the years been completely transformed.

Within the context of a transformed environment and built-up area with a range of residential densities, it is submitted that the title deed conditions have very limited, if any, financial or other value to the owners of property within the Botany Bay Estate.

The township is clearly not a single residential neighbourhood. The development of the erven with buildings other than single dwellings have not affected property values negatively with properties in Bantry Bay being highly sought after and of the most expensive in Cape Town and South Africa.

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

The holder of the rights are the owners and tenants of property within the Botany Bay Estate. Personal benefits could include benefits such as views and privacy, amongst others, and could also relate to the character of the area.

The value of this right needs to be assessed in relation to the reality of a changing pattern of development in the area which is becoming more compact and denser over time and where the quality of the built environment is rather maintained through quality urban design instead of maintaining a low-density suburban pattern. As described above, erven in the township have been developed with a range or residential densities and building types which have occurred because of the changing needs of a modern city and the fact that denser properties are supported by all the approved City policies and frameworks.

The character of Bantry Bay has changed considerably over the past 125 years and is still changing. The township is clearly not a single dwelling only residential neighbourhood. It is therefore submitted that the benefits of the conditions to the township have been diluted to the extent that the personal benefits accruing to the holders of the rights in the Botany Bay Estate are negligible insofar as the conditions that are to be removed are concerned.

None of the owners in the township gain anything significant personally by having the conditions preventing more than one dwelling unit to be built on Erf 891.

(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;

Granting of the application will allow the redevelopment of the property with three dwellings. This will enhance the value of the property which will benefit the owner personally as it will enable him to respond to the market by renting or selling units to three families looking to reside in or acquire property in Bantry Bay.

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

"Social" is defined as "of relating to society and its organisations" and the question is therefore what the benefit of the rights are as it relates to society. "Society" comprises the neighbours, residents and the broader society which includes future generations.

The question is therefore whether the preservation of the historical pattern of one dwelling per lot comprise a social benefit to the beneficiaries within the context of a changing and densifying modern city?

The township character is already changing towards a more compact and denser form of development. Properties in Bantry Bay are developed with a range of building types and densities and are no longer developed with one house on each erf.

Keeping the conditions in the title deed would freeze the intention of this lot as envisaged by the township developer 125 years ago for this area to be a low-density suburban development, notwithstanding that this vision was not achieved. The conditions may have some social benefit in that a house on the site will enable larger gardens for its residents. The same benefit can be achieved should the conditions be removed, given the efficient urban design of creating large outdoor decks which serve as outdoor space and gardens with swimming pools. Low maintenance gardens on buildings as proposed are resource efficient, use less water in a water-stressed city, and are of high value in the urban neighbourhoods of Cape Town.

The social benefits of densification are underpinned by a number of factors including the increasing cost of land, population increase, the decrease in family sizes, the increase in fuel prices, the increase in the cost of watering and maintaining large gardens, the safety of living in multi-unit compact developments instead of freestanding dwellings, and the ease of "lock up and go" living.

If the conditions are not removed, the density on the property will remain very low (one house only); this will create an inefficient city form which is wasteful of resources and which does not increase thresholds for improved public transport and service infrastructure efficiency, nor will it align with existing development patterns in the area.

The social benefit of removing the conditions outweigh the social benefit of retaining the conditions.

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

The question is whether the redevelopment of the property with 3 dwellings comprises a social benefit to anyone. The answer would be yes; removing the conditions will have a positive social benefit given that it will enable residential densification and land use intensification within an existing urban area which is well served by a range of facilities and services. The development will further create employment opportunities during the construction phase as well as on completion, given that domestic staff will be employed by the families occupying the new units.

The social benefits in removing the conditions are therefore essentially:

- Better utilisation of the property in terms of modern city development.
- Contributing to the prevention of urban sprawl.
- Alignment with various City policies which require a more efficient use of land and appropriate densification of land.
- Additional housing stock which will create employment opportunities for construction workers (construction phase) and domestic staff (once completed).

The removal of the title deed conditions supports the development and land use planning principles set out in SPLUMA and LUPA. For example, the proposal will support the principles of spatial sustainability by creating a more efficient use of land within the constraints of existing infrastructure.

The removal of the conditions is therefore in the direct interest of the social needs of the community of Bantry Bay and greater Cape Town.

(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.

Only some of the beneficiaries' rights will be removed, given that the condition preventing non-residential uses will remain in the title deed. Removing the "one dwelling only" conditions from the title deed is crucial to align the development rights of the property with the DMS.

9 ASSESSMENT IN TERMS OF SPLUMA

9.1 Sections 42(1)(c) of SPLUMA

The proposal is desirable in terms of this subsection.

- *Public interest:* Appropriate land use intensification and densification in urban areas serves the public interest. Benefits to the public are sustainable development (increasing efficient use of land, reducing urban sprawl and preserving green spaces), economic growth (strengthening the local economy and property market) and improved public services (given that higher density areas justify investments in public transportation, healthcare and other essential services).

- *Constitutional transformation imperatives and related duties of the State:* The State must realise the constitutional imperatives of Sections 24 and 25 of the Constitution, which are to protect the environment through legislation which include a land use planning system (densification and land use intensification contribute to environmentally sustainable and economically viable cities) and to protect property rights (granting of the application will not impact existing rights).

- *The facts and circumstances relevant to the application:* The property is part of the *Incremental Growth & Consolidation Area* in terms of the MSDF and earmarked for urban development in terms of the *Table Bay District Plan*. It is located within an existing urban area where residential densification and land use intensification are encouraged to support the City's public transport system.

- *The respective rights and obligations of all those affected*: The conditions were imposed in 1901 when the Botany Bay Estate was approved. The rights and obligations of property owners and tenants in the township will not be affected as the building respects the surrounding character.

- *The state and impact of engineering services, social infrastructure and open space requirements:* The application will be circulated to all relevant branches during the public participation process, to confirm whether there are sufficient services infrastructure to permit the small guest house.

- *Any factors that may be prescribed including timeframes for making decisions:* The City must decide on the application within the prescribed timeframes.

9.2 Section 47 of SPLUMA

Section 47(1) of SPLUMA provides for the Municipal Planning Tribunal (MPT) to amend, remove or suspend title deed conditions.

Section 47(2) refers to Section 25(1) of the Constitution which expressly permits the deprivation of property rights if it is done in terms of a law of general application and is not arbitrary. Such laws have been purposefully enacted, with the removal of conditions specifically permitted and regulated by laws of general application (e.g., SPLUMA, LUPA and the MPBL).

Given that the State will not acquire any property rights by removing the conditions, the approval will not constitute the arbitrary deprivation or expropriation of properties as contemplated and prohibited by the Constitution. Granting of the application will not have a financial or other adverse impact on owners in the township and in the event of there being such an impact, this will be outweighed by the social and public benefits.

Section 47(3) specifically does not require any award of compensation should the Tribunal approve the application to remove the condition.

10 CONCLUSION

The removal of the title deed conditions and granting of the departures to permit three dwellings on Erf 891 is desirable and in line with the City's approved densification policies and spatial development frameworks.

TOMMY BRÜMMER TOWN PLANNERS
JUNE 2026 (Amended 10 September 2026)