



**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

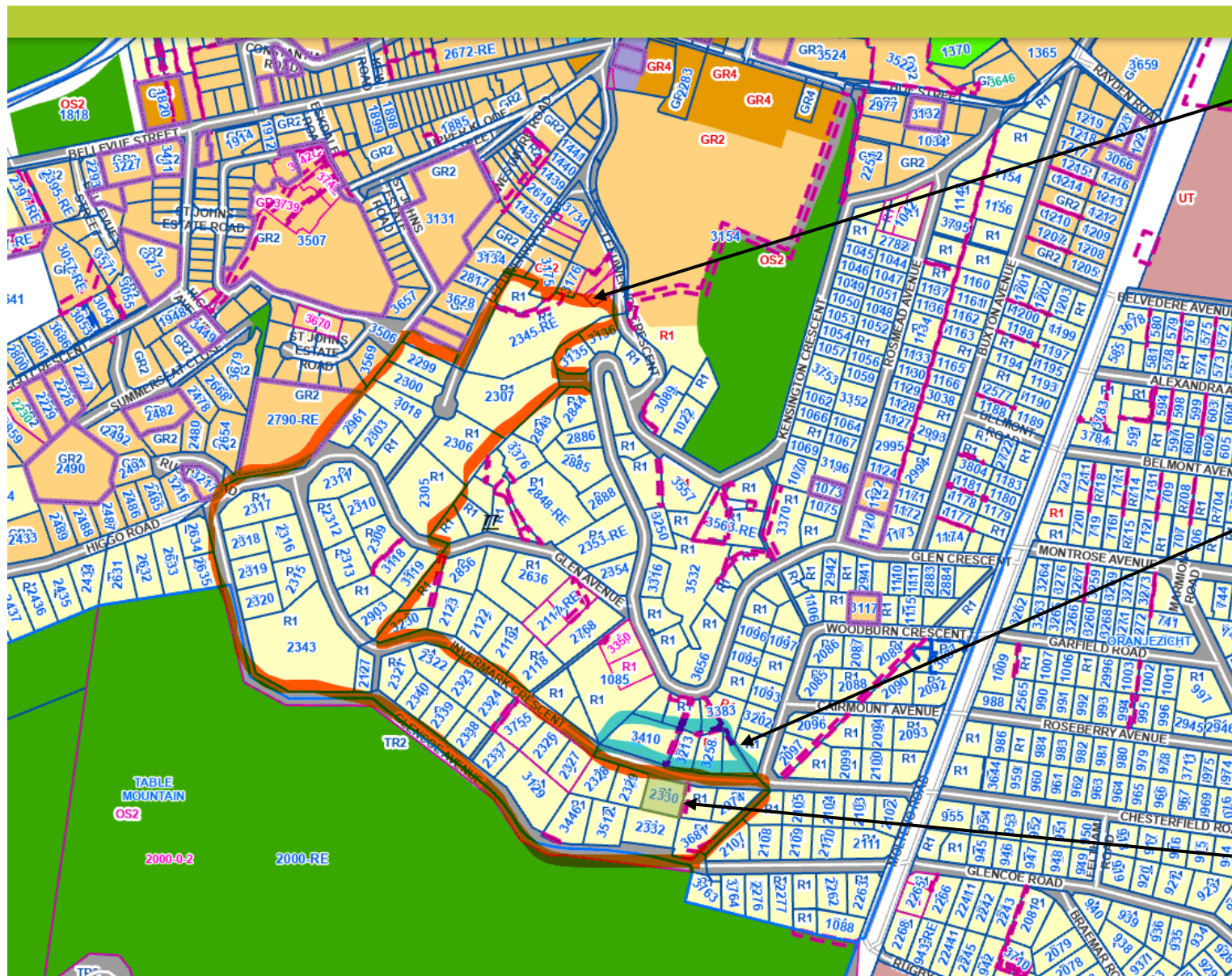
Case ID 1500149911

**Erf 2330, 13 Invermaak Crescent,
Gardens, Oranjezicht**

Development Management

This cover page is added by the City of Cape Town as part of our standard branding and document-management process. It does not indicate that the City authored, verified or endorses the submission. All application documents remain the responsibility of the applicant and the City assesses them as submitted. Any errors or discrepancies will be addressed through the normal land use assessment process.

All rights reserved. No part of this data may be reproduced or transmitted without written permission from the Development Management Department of the City of Cape Town. This document is available on the City of Cape Town website (www.capetown.gov.za/LandUseNotices) for a limited time. Please do not host the document independently; you may link to it from the City's site. Documents downloaded from any other website cannot be verified for authenticity.



Township outline
(red) –
Oranjezicht
Extension 4

Additional
notification (blue
outline)

Subject site : Erf 2330
Oranjezicht

Date: August 2025
April 2026 (amended)

Ref: 11705 (SA)
Your Ref: 1500149911



REMOVAL AND DELETION OF TITLE DEED AND DEEMED LAND USE CONDITIONS, AND PERMANENT DEPARTURES: ERF 2330 ORANJEZICHT AT 13 INVERMARK CRESCENT, GARDENS

1. INTRODUCTION AND SUMMARY

The purpose of this report is to motivate the application for the removal and deletion of title deed conditions which are also deemed land use conditions in terms of the By-law, and an associated departure on Erf 2330 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, 2015 ('MPBL').

The following applications are required in terms of Section 42 of the MPBL to permit minor alterations and additions on the property including the relocation of the approved entrance staircase that encroaches over the street boundary:

Section 42(b): Permanent departures

Section 42(g): Removal of title deed conditions

Section 42(j): Deletion of conditions in respect of an existing approval granted or deemed to be granted in terms of this By-Law

2. THE PROPERTY

2.1 Ownership and Title Deed

Erf 2330 Oranjezicht is registered in the name of _____ measures 1 162m² in extent, and is held by Deed of Transfer No. _____ – see attached. The owner has duly authorised **Thomas Brian Brummer** to submit the application on her behalf, with the relevant documentation accompanying the application.

2.2 Locality and Context

With reference to the **Locality Map**, below, the property is situated in the suburb of Gardens.

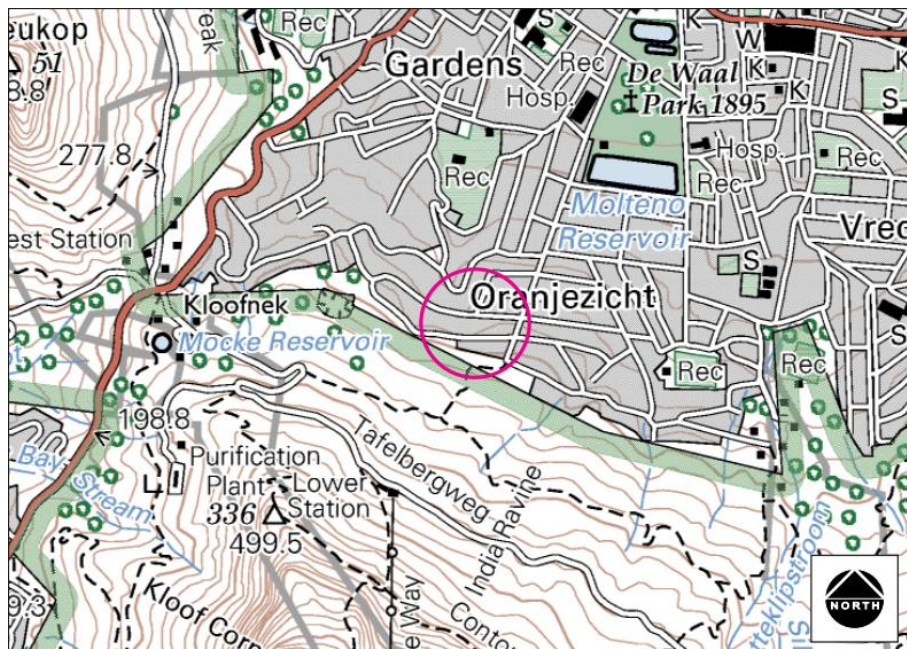


Figure 1: Locality Map

The **Aerial Photograph**, below, illustrates the locality of Erf 2330 Oranjezicht at 13 Invermark Crescent.



Figure 2: Aerial Photograph

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

2.3 Surveyor General's Diagrams

The **General Plan** (GP 1722^{LD}) and **Noting Sheet** (M1638), below, indicate the context of the property in relation to the surrounding erven and street network.

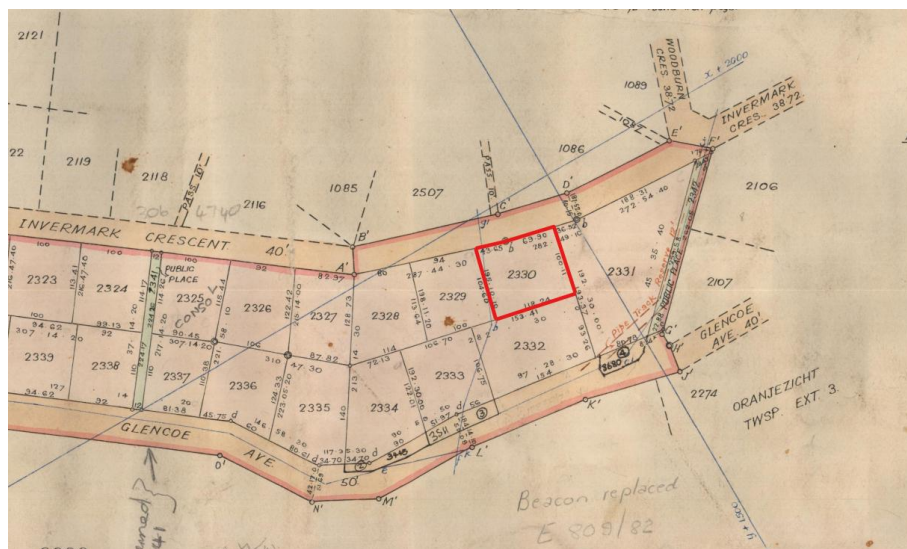
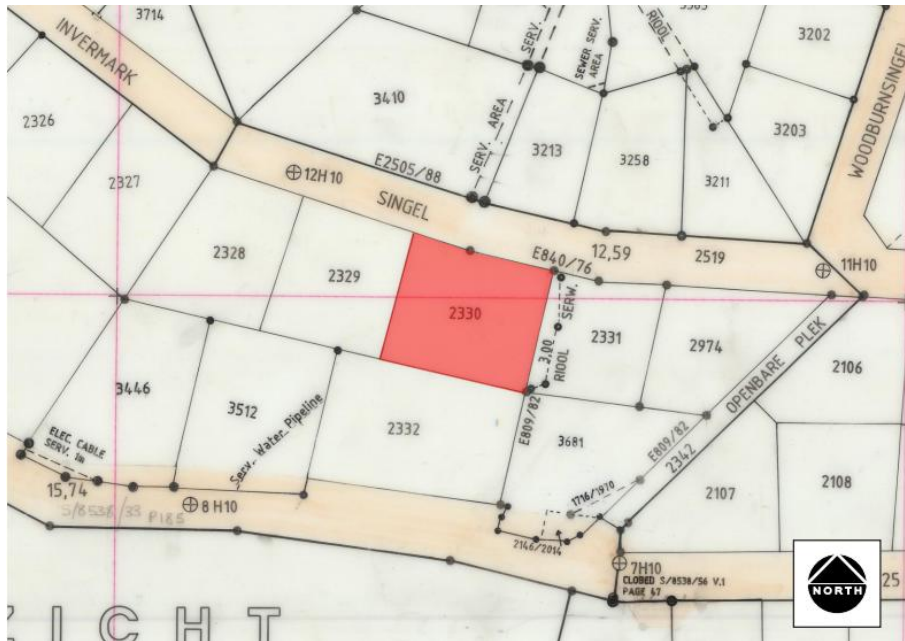


Figure 3: Extract of the General Plan (GP 1722^{LD})



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 Council's **Zoning Map** that indicates that the property is zoned Single Residential SR1 Zone.



2.5 Background to the Property

The property contains a pre-existing dwelling, with previously approved building plans dating from May 2013. The purpose of this application is for the removal and deletion of restrictive title deed conditions and deemed land use conditions respectively, and the departures required to regularise the existing unapproved building work on the property. Various owners have made alterations and additions to the property over the years, where certain unlawful building works have occurred, however, the majority of the building work is compliant in terms of LUM requirements.

The approved plans from 2013 (Approval number: 605/2013) pre-date the City's 2015 Municipal Planning By-Law (MPBL), where various of the approved works contravened title deed conditions, specifically relating to conditions D.6.(c), (d) and (e).

Furthermore, the previous owners built a staircase into the road reserve sometime between September 2007 and June 2008 (see imagery below), where the staircase reflects on the approved plans from 2013. The current owner purchased the property in September 2023 and has subsequently demolished the staircase and rebuilt it entirely within the cadastral boundaries, for which an administrative penalty application has been submitted (Case ID: 1500156622).

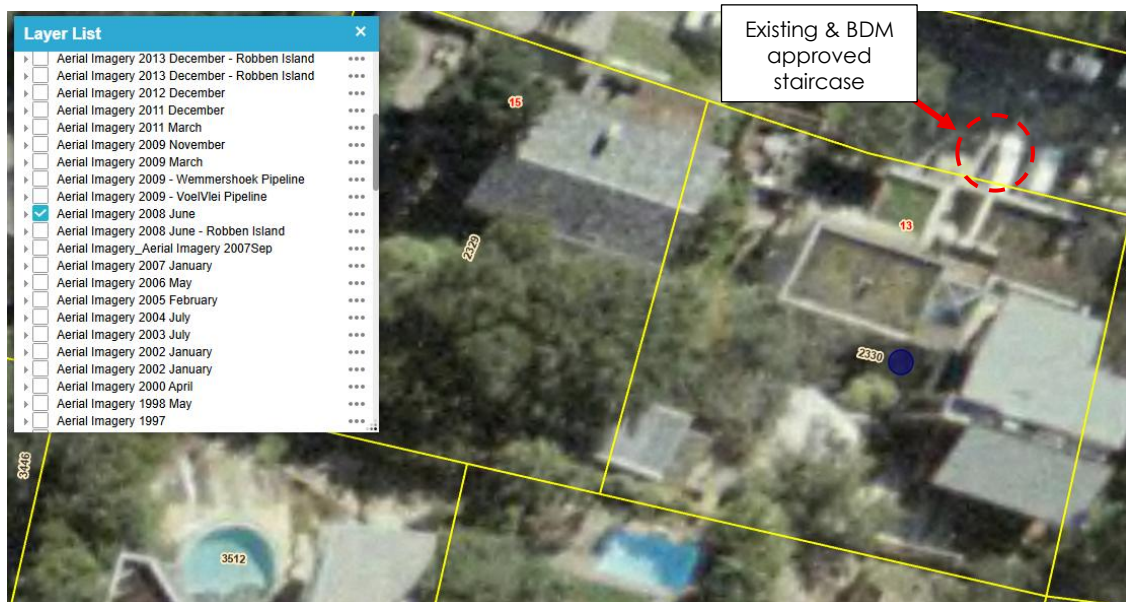


Figure 6: June 2008 aerial imagery

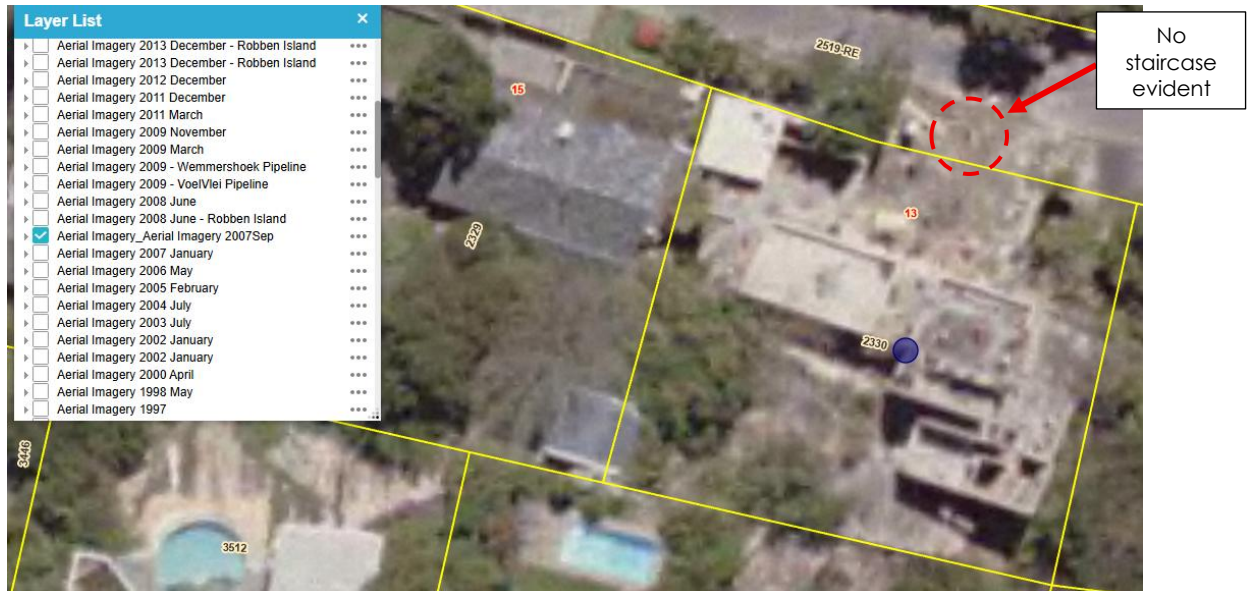


Figure 7: September 2007 aerial imagery

3. TITLE DEED

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 prohibits the proposed alterations and additions to the previously approved dwelling. As certified, the conditions were imposed by the Administrator (now the City) in terms of Ordinance 33 of 1934 and are therefore mandatory to remove to enable the City to approve the proposed alterations.

Bondholder's Letter

The property is not bonded; therefore, it is not necessary to provide a bondholder's consent letter.

4. DEVELOPMENT PROPOSAL ASSESSMENT

4.1 Site Development Plan

The Site Development Plan ('SDP') has been prepared by **Sarah Calburn Architects** and accompanies this application. The plan was assessed in terms of the Single Residential 1 (SR1) provisions for a dwelling house and the title deed conditions.

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

A dwelling house is a primary use in SR1 and is permitted in terms of the title deed. The use of the site remains unchanged in this regard.

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 660.34m² and is thus compliant with this provision.

4.4 Item 22(c): Height (compliant)

The maximum permissible height above existing ground level to the wall plate is 9.0m, where the maximum permissible height above the existing ground level to the top of the roof is 11.0m.

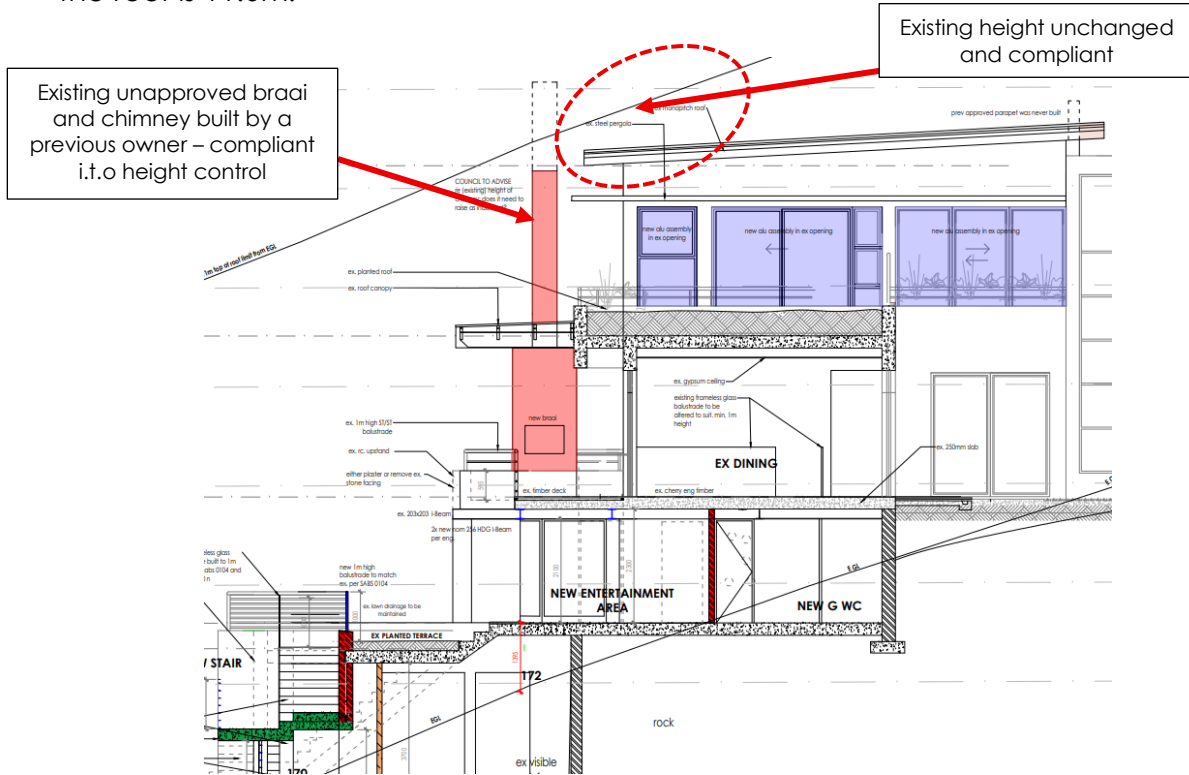


Figure 8: Extract from Section AA indicating approved height compliance

The wall plate and top of roof heights are approved as existing, where none of the proposed work exceeds these heights. No unapproved or proposed portions of the building are built within 3m of the common boundary after 12m from the street.

It is noteworthy that the chimney of the existing and unapproved braai exceeds the height restrictions, however, this is permitted in terms of height control as the maximum horizontal dimension of the chimney is 0.6m.

4.5 Item 22(d): Building Lines (departure & removal)

In terms of the DMS, the property is subject to a 4.5m street boundary building line and a 3m common boundary building line. The title deed also prescribes a 6.3m street boundary building line, a 3.15m rear boundary line and a 1.57 lateral boundary building line.

A departure is required from the street building line setback to permit the new location of the entrance staircase. The staircase that encroaches into the street boundary has been removed and relocated within the cadastral boundaries; however, this requires a departure for the staircase to be at 0.83m in lieu of 4.5m from Invermark Crescent, and the removal of the 6.3m title deed street building line.

On examination of the approved plans from 2013, it is apparent that the staircase within the eastern common boundary is not approved. The staircase appears on the north elevation, however, is not shown on the site plans, therefore it is seen as prudent to apply for this departure. The owner has signed an affidavit to confirm that the staircase was existing on-site at the time of purchase of the property.

Various approved structures have historically been built closer than permitted from the street, where further changes are proposed that require this condition to be removed.

The existing double garage was approved closer than the DMS permits, however, Condition D.(6)(e) in the title deed indicates that *"in no event shall may [sic] such garage be erected less than 1,42 metres from the said street boundary"*. While the existing and approved garage is compliant in this regard, the condition is proposed to be removed.

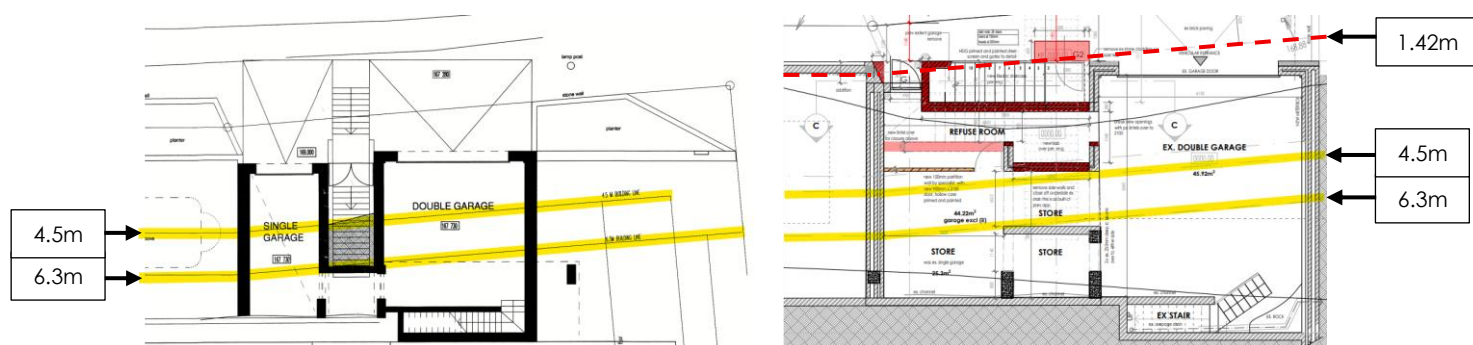


Figure 9: Approved & proposed plans – setbacks highlighted

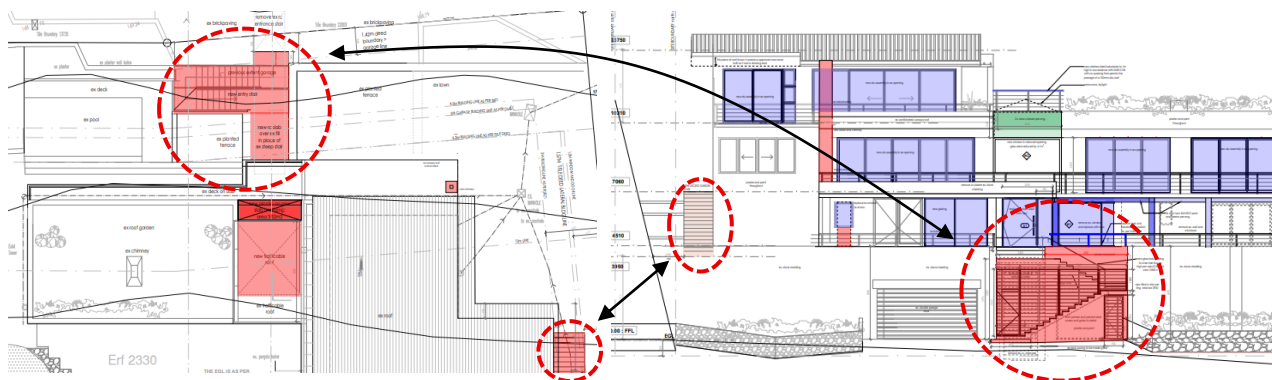


Figure 10: Unapproved building work requiring LUM departures circled

4.6 Item 22(f): Garages, carports and outbuildings (compliant)

The double garage is existing, approved and not situated within the common boundary. The outbuilding had previously changed use from a storage room to a domestic staff quarter (DSQ); however, the structure itself was existing and approved as per the 2013 plans. The envelope of the outbuilding remains unchanged and compliant.

For land units exceeding 650m², a garage or carport may not be closer than 5m from the street boundary, notwithstanding the street building line. However, the double garage is existing as approved, and no new departures are required in this regard.

4.7 Item 22(g): Parking and access (compliant)

The property is situated in a PT1 parking area, in which a lower parking ratio is applied. In that regard, a main dwelling house situated in a SR1 zoning, requires 1 bay per dwelling unit. The property contains an existing and approved double garage and carriageway crossing, therefore the parking and access arrangements on the site are previously approved. Motor vehicles on SR1-zoned properties are permitted to leave the site in reverse gear. Therefore, no departures are required, and the property remains compliant in this regard.

4.8 Item 22(h): Coverage / "built-upon" (removal)

The DMS does not restrict the coverage of a dwelling house. Condition D.6.(c) is the title deed prescribes that not more than one-third of the area of Erf 2330 shall be "built-upon". The combined existing and proposed "built-upon" is 38.14% (443.24m²), which requires the removal of this restriction.

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 **Departures in terms of Section 42(b) of the MPBL:**

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

- For Item 22(d) of the DMS, to permit the entrance staircase at 0.83m in lieu of 4.5m from the street.
- For Item 22(d) of the DMS, to permit the existing staircase on the eastern common boundary to be at staircase at 1.46m in lieu of 3m.

5.2 **Removal and deletion of restrictive title deed conditions:**

In terms of Section 42 (g) and (j) of the MPBL, application is made for the removal and deletion of the following conditions in Title Deed imposed by the Administrator (now the City):

Condition D.6.(c):

"Not more than one-third the area thereof shall be built upon."

Condition D.6.(d):

"No building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 6,30 metres to the street line which forms a boundary of this erf; nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3,05 metres in height measured from the floor to the wall plate, may be erected within the above prescribed lateral space for a distance of 9,45 metres reckon from the rear boundary. On consolidation of two or more erven, this condition shall apply to the consolidated area as one erf."

Condition D.6.(e):

"Notwithstanding the provisions of Condition (d) above, a garage intended as an adjunct to the dwelling may be erected at such distance from the street line as is permitted under the provisions of Town Planning Scheme of the Municipality of Cape Town relating to the erected of private garages on steeply sloping sites provided that in no event shall may such garage be erected less than 1,42 metres from said street boundary."

6. MOTIVATION IN TERMS OF SECTION 99 OF THE MPBL, LUPA AND SPLUMA
--

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, e.g.:

- (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 SR1-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), an area identified by the City as an investment priority, highlighting the importance of private sector development through incentivisation. The proposal is for regularising existing unlawful building work, which is not contrary to the intentions of the MSDF.

(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)”.

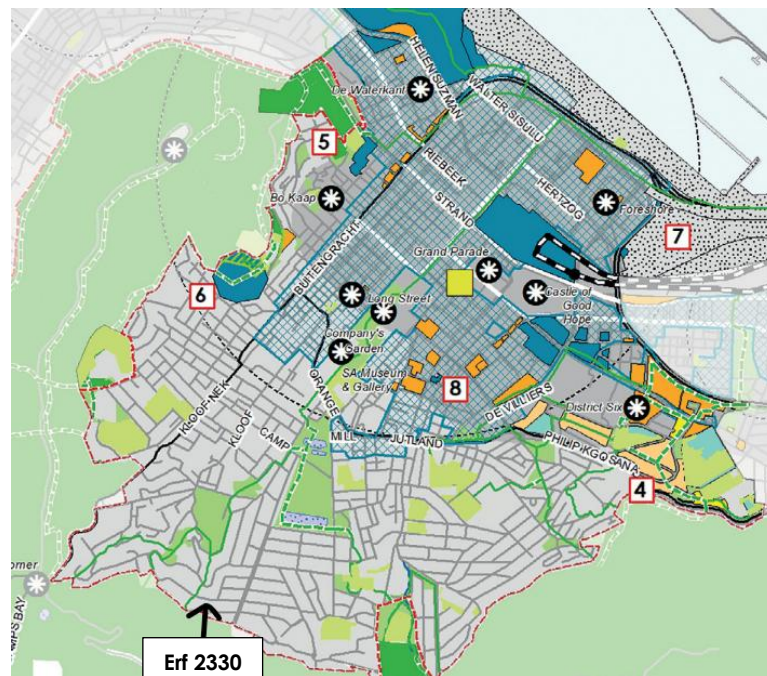


Figure 11: Subdistrict 2: City Bowl, Port and surrounds

The erf forms part of Subdistrict 2: City Bowl, Port and surrounds, and more specifically, within the residential suburbs of Tamboerskloof, Oranjezicht, Gardens and Vredehoek. While the proposal is minor in nature and scale, it will assist in achieving a built form and land use in the area that achieve a quality environment. The proposal is compatible with this intention.

(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 proposal is compliant 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.

- **Social Development Strategy** (2013):

The proposal is consistent with the strategy as it will improve the living accommodation and quality of life of the family residing on the property.

- **Environmental Strategy** (2017):

The proposal will ensure that growth is environmentally sustainable in the long term by developing and densifying within an already existing and developed urban area.

(d) Desirability of the proposed use

The proposed land use is considered desirable as the property will still be used for residential purposes. The minor 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 highly compatible with the area.

(e) Impact on Existing Rights

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

The conditions referring to “*built-upon*”, general building line setbacks and specific provisions for garages were imposed by the Administrator of the Province of the Cape of Good Hope (now the City) in 1933. The impact on existing rights as a result of the removal of these title deed conditions is discussed in Section 6.4 of this report.

- **Street building line departure:**

Granting the departure to permit the entrance staircase at 0.83m in lieu of 4.5m will allow for the existing situation to be regularised. The departure is desirable as it permits the entrance staircase to be situated entirely within the cadastral boundaries of the property and within the same line as the existing structures.

- **Common boundary building line departure:**

The departure required to permit the existing staircase on the eastern common boundary to be at 1.46m in lieu of 3m from the common boundary does not have any impact on existing rights. The departure is not for new building work but rather seeks to regularise the existing and unapproved staircase that was built illegally by a prior owner of the property.

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 does not have any negative socio-economic impact as it is strictly for regularising existing unapproved building work. The departures allow for the owner to optimise the investment in the property, which is a scarce and expensive resource, especially in this area of Oranjezicht near the urban edge. The investment into the property will contribute towards the City's rates and taxes when the improvements are next valued.

(b) Compatibility with Surrounding Uses

The use of the property will remain residential, and the proposed regularising of the two staircases remains consistent with the surrounding uses and built environment. The existing rights of the neighbours will not be affected.

(c) Impact on External Engineering Services

The application will be circulated to the relevant service branches for comment; however, the proposal will have no impact on external engineering services.

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

The proposal demonstrates a positive impact on the safety, health and wellbeing of the surrounding community given that the staircase previously protruded into the road reserve and has been relocated entirely within the cadastral boundaries of the property.

(e) Impact on Heritage

The proposal has no impact on heritage as the building is not graded as per the City's heritage inventory, is not identified as being older than 60 years, and is not situated in any Heritage Protection Overlay Zone (HPOZ).

(f) Impact on the Biophysical Environment

No activities are proposed which require environmental authorisation in terms of the National Environmental Management Act (NEMA). No vegetation has been or is proposed to be removed as a result of this proposal.

(g) Traffic, Transport, Parking and Access

The dwelling contains an existing and approved double garage, capable of parking two motor vehicles. Parking is compliant, even with the removal of the single garage to form part of the staircase. Access over the existing carriageway crossing remains unchanged.

(h) Imposition of Conditions and Mitigation of Adverse Impacts

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

6.4 Motivation in terms of LUPA and SPLUMA

The proposal complies with Sections 7 of SPLUMA and 59 of LUPA in the following ways:

Section 59 of LUPA and Section 7 of SPLUMA

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

- The proposal assists with limiting urban sprawl, as the erf is already developed and is located in an existing urban area.
- The MSDP situates the erf within the "*Urban Inner Core*", which area is identified as an investment priority, in which private sector involvement is to be incentivised. The proposal directly relates to the owner addressing historic and current contraventions and optimising their investment in the property.
- The proposal makes use of existing infrastructure in the form of the City's services, thereby curbing unnecessary expenditure for all parties involved.
- The proposal is consistent with the City's approved planning documents and policies.

Section 39(5) of LUPA

The considerations in Section 39(5) 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 “built-upon”, building line setbacks and specific setbacks for garages add any financial or other value to the holders of these rights. These conditions seek to maintain the residential nature and character of the area, inclusive of the built form, with restricted building footprints.

These conditions, particularly for the larger erven (such as Erf 2330 Oranjezicht) situate the building further back from the street and limit the development to one-third “built-upon” as a means to preserve the urban fit.

It is our opinion that the conditions that are proposed to be removed/deleted have a negative financial impact on the owner of the property, as they are archaic in nature and limit development that would ordinarily be permitted in terms of the modern DMS.

These conditions were imposed with the establishment of the township in 1933, when urban ideals and perceptions of the character of the area were different from those of the current era. This is particularly evident in the context of the ever-changing needs of society with regards to residential densification and intensification of land use, which are now supported and encouraged by the City as a means to, amongst others, curtail urban sprawl and environmental degradation.

It is evident, not only on the property but also in the surrounding area, that buildings and outbuildings are constructed closer than permitted in terms of the title deed conditions. Furthermore, various removal of restrictions applications have been successfully conducted on properties in the area, in which title deed conditions have been amended or deleted, where there is no evidence of any associated 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 seeking to remove certain conditions in this regard, is still aligned with the low-density nature of the area, due to the prescriptions of the DMS that govern properties zoned as Single Residential 1 (SR1).

It is accordingly unrealistic to expect that the prevailing urban form remains unchanged multiple decades after the conditions were initially imposed. The personal benefits that would accrue to any holder of the rights are negligible, as the character of the township has long been changing due to modern perceptions of land use, density and development. 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 property owner will receive personal benefits from the removal and deletion of the conditions, as it will unlock additional value on the erf and allow the existing staircases to be regularised. The removal of restrictions, however, does not permit the property to be developed unchecked as the Development Management Scheme (DMS) still controls the development of land units. The development of land in Cape Town must consider, amongst other things, whether the proposal is compatible with the character and built form of the surrounding area and is desirable. The proposal takes these factors into account.

(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". Thus, the pertinent question in this regard relates to the benefit of the right to society. "Society" comprises the neighbours, township, the local residents and the broader society.

Should the conditions remain in place, the owner is restricted from incremental densification that is in line with approved City policy. The restrictions stifle appropriate development that is in line with more modern approaches to city-building, as expressed in the DMS.

It is not believed that there will be any social benefit should the restriction remain in place. The retention of conditions referring to “*built-upon*” and large street setbacks do not inherently provide a social benefit, therefore these conditions being retained does not benefit society as a whole. If the conditions are retained, Erf 2330 will lose the opportunity of being optimally developed, which is particularly detrimental due to its highly sought-after location.

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

The restrictive conditions were imposed several decades ago, in a time when there were significantly different perceptions of land, development, and the general availability of resources. Planning and development were controlled in a different way, where land was a lot more readily available and there were different ideas regarding what was appropriate and desirable. Therefore, it is unsurprising that perceptions and policy imperatives have shifted to address the realities of the current urban environment.

The removal/deletion of the title deed restrictions will result in a social benefit for the owner, given that conflict with modern development requirements and trends. Modern development perceptions and imperatives have shifted, where the City now supports and encourages land use intensification and densification in existing urban areas. The removal of these restrictions will permit responsible development of the land unit and allow future applications to forgo lengthy removal of restrictions processes. The removal/deletion application allows for development on the property to be governed by the prescriptions of the DMS, as opposed to multiple competing sets of development rules. Furthermore, the owner’s ability to exercise their rights over their land is a key positive social benefit, which right is enshrined in legislation and policy.

- (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:

The removal and deletion of the restrictive conditions will not completely remove all rights enjoyed by the beneficiary. Conditions of title restricting built form on properties were imposed prior to the existence of any Zoning Scheme.

Even with the removal of selected conditions, the conditions which remain in the title deed are still valid and must be complied with. Notwithstanding the remaining title deed conditions, land use and built form on properties are now primarily controlled by the provisions of the DMS. Thus, even when conditions of title are removed, the development of land still needs to comply with development rules in the DMS, in which factors such as building line setbacks and the permitted envelope are controlled.

Section 47 of SPLUMA

The title deed restrictions that are to be removed and deleted 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.

In addition, Section 25(1) of the Constitution permits the deprivation of property rights provided that it is done in terms of a law of general application and is not arbitrary. The removal of the restrictions is specifically permitted and regulated by laws of general application being Section 47 of SPLUMA, Section 39 of LUPA, and Section 42 of the MPBL. It follows that the removal of restrictions is constitutional as long as it complies with applicable legislation.

There will be no deprivation of any property belonging to the owners who enjoy the benefits of these conditions, where the proposal will not intrude on their properties nor limit the use or enjoyment thereof. Furthermore, appropriate land use intensification serves the public interest, as encouraged by the City's approved policies and development frameworks, therefore granting of this application should be supported.

The removal and deletion of the restriction further do not entitle neighbouring owners to compensation under Section 25, due to the fact that Section 47(3) of the SPLUMA specifically precludes any award of compensation as follows: *"A Municipal Planning Tribunal considering an application to remove, amend or suspend a restrictive condition is not liable to compensate any person for any loss arising from or related to a decision made in good faith and in terms of this Act to remove, amend or suspend a restrictive condition."*

7. CONCLUSION

The application has been made for the removal and deletion of title deed and deemed land use conditions, and departures from the provisions of the DMS. The proposal aligns with the City's approved policy, and is modest in nature and scale, where minimal alterations and additions are proposed, thus demonstrating suitability and desirability by respecting the character and built form of the area. It has been demonstrated that the application satisfies the adjudication criteria set out in SPLUMA, LUPA and the MPBL, and thus should be supported by the City and **recommended for approval.**

TOMMY BRÜMMER TOWN PLANNERS
AUGUST 2025 (Amended: APRIL 2026)