CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500167370

Erf 387, 9 Portman Road, Bantry Bay

Development Management

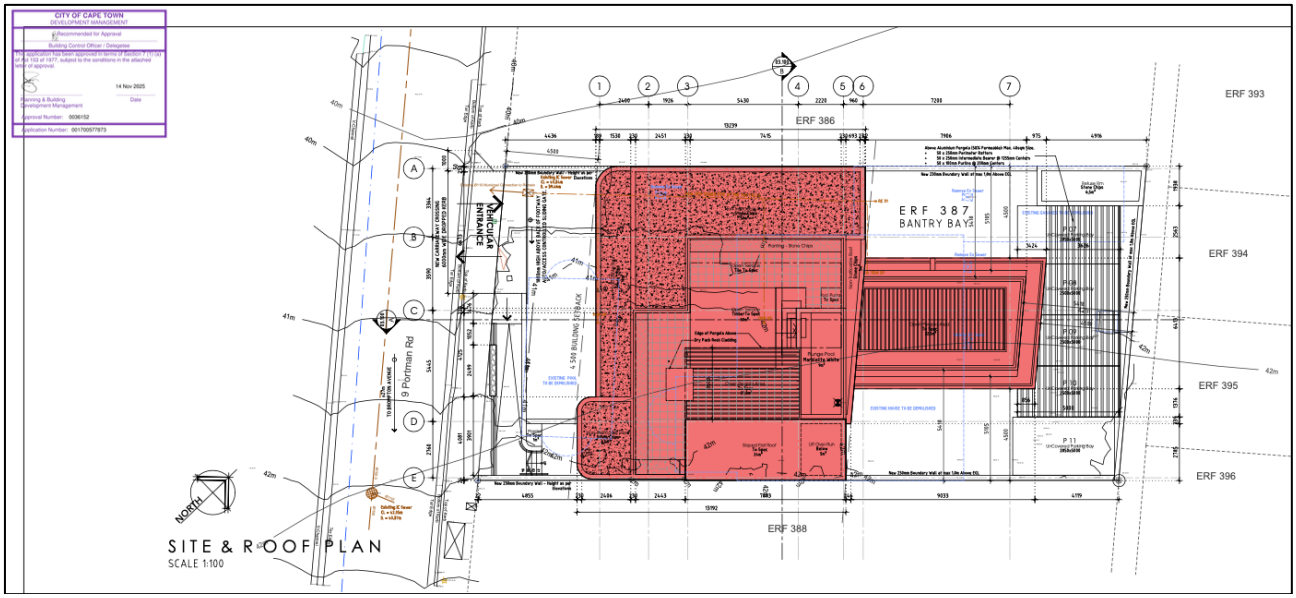
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PLANNING STUDIO

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APPLICATION FOR DELETION OF TITLE DEED CONDITIONS IN TERMS OF THE MUNICIPAL PLANNING BY-LAW (AS AMEDNED) OF 2015: ERF 387 BANTRY BAY, 9 PORTMAN ROAD



2026-07-15

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1. INTRODUCTION

1.1 Planning application and proposal

Application is made for the removal of restrictive title deed conditions, as listed in Section 1.5 below (and see Annexure A), in order to permit the development of a new 9 unit block of flats on the property as per the approved building plan (i.e. building plan approved in Nov 2025 for the new block of flats). Importantly, as per the conveyancer certificate, the restrictive conditions are not enforceable by the City in terms of the Municipal Planning By-law (MPBL) (i.e. it is historic conditions imposed by the City & developer of the Sea Point Estate at the time) and therefore a compliant building plan could be considered and approved by the City. The approved building plan shows the development of a new block of flats on the property containing 9 flats and were considered compliant with the relevant MPBL development rules for the GR4 zoning of the property.

The removal of the conditions will basically permit contextually appropriate densification by allowing additional dwelling units on the property. **Importantly and as per the approved building plan**, the development of the new block of flats is as per the development rules of the Municipal Planning By-Law (i.e. no departures form the development rules are applicable).

The restrictive title deed conditions to be removed indicates that: "Not more than one dwelling house shall be erected upon any one lot / plot" and refers to dwelling houses to face the street, which condition is also just applied to be deleted to remove any ambiguity in this regard. The main title deed issue to be dealt with relates to the permitted dwelling houses on the property.

The title deed conditions limiting the number of dwelling houses on the property is considered outdated in nature, specifically in light of the provisions of the MPBL (i.e. current zoning of the property) and the City's policies regarding densification, built form, etc. The deletion of the conditions will allow for contextually appropriate densification in line with City policy and align the title deeds with the MPBL rules. Even if these conditions are removed; considering the approved building and compliance with the development rules of the DMS; this provides sufficient clarity for surrounding property owners in terms of the development of the property.

1.2 Proposal details

The approved building is a 6-level structure (i.e. 15m from the EGL) and contains 9 flats as follows:

- The 1st storey is somewhat excavated into the slope and provides the pedestrian entrance and 11 parking bays, including 4 motorcycle bays.
- The 2nd storey contains 4 flats, including 2 smaller bachelor flats, which should improve the affordability in the area.
- The 3rd storey contains 3 flats.
- The 4th storey contain one flat.
- The 5th and 6th storey also contains only one flat, including a rooftop entertainment area.

The property is zoned GR4 and is not subject to any overlay provisions within the MPBL.

1.3 Subject property / property description

The subject property is 493m^2 in extent and is currently improved with a double storey dwelling house, which will be demolished. As per the approved building plan provided and the EGL shown, the property currently slopes downwards from its south-eastern to north-western boundaries (i.e. approximately 2m). Vehicular and pedestrian access is provided off Portman Road.

Aerial view of the subject property



1.4 Development Management Scheme (DMS) assessment

The Municipal Planning By-Law (MPBL) and associated DMS are applicable to the subject property. As indicated earlier in this report, the subject property is zoned GR4.

It should also be noted that the building plan approved for the subject property was submitted prior to the MPBL amendments that came into operation on the 1st of Oct 2025. As per the approved plan submitted, no changes are required as a result of this application and therefore no departures from the development rules are applicable.

DMS extract

LAND USES	SUB-ZONING	FLOOR FACTOR	COVERAGE	MAXIMUM HEIGHT ABOVE EXISTING GROUND LEVEL TO TOP OF BUILDING	BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
					Street boundary	Common boundaries		
PRIMARY USES Dwelling house, second dwelling, third dwelling, group housing, boarding house, guest house, flats, private road, filming, electric vehicle charging stations, micro wind turbine, structure-mounted energy system and open space **ADDITIONAL USE RIGHT** Home occupation, supplementary dwelling unit and small-scale windturbine **CONSENT USES** Utility service, place of	GR2	1,0	60%	15,0 m	4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)	N/a	Parking and access Screening Wind mitigation
	GR3	1,25	60%	20,0 m	4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)		Dwelling house and second dwelling Group housing
	GR4	1,5	60%	24,0 m	4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)		Institution, place of instruction and place of assembly Shops and restaurants

In terms of the relevant development rules of the **DMS** and as per the approved building plan please briefly note:

Floor Factor

1.4.1 A maximum floor space of 740m^2 is applicable to the property. As per the approved building plan, the floor space for the new block of flats complies in this regard. A total floor space of 732m^2 is proposed, which clearly complies with the permitted. The proposal therefore **complies with the permissible floor space**.

Height

1.4.2 A permissible height of 24m is applicable given the GR4 zoning of the property. However, as per the approved building plan, the building has been kept to a height of 15m from the EGL. The proposal therefore **complies with the permissible height**.

Street boundary

1.4.3 A required street boundary building line of 4.5m is applicable. As indicated above, no changes are proposed to the approved building plan and therefore the **proposal complies in this regard**. Only a less than 5m^2 entrance canopy is approved within the 4.5m building line, which complies with Item 121 of the MPBL.

Common boundaries

1.4.4 A 0m common boundary setback is applicable for the 1st 18m distance from the street boundary, whereafter a 4.5m or 0.6XH setback will apply. As per the approved building plan, the proposal **complies with the common boundary setback rules**.

Parking provision

1.4.5 The subject property is located in a PT1 area, which means that 1.25 parking bays per flats is required to be provided. As per the approved building plan, 11 parking bays have been provided for the 9 flats, which therefore **complies with the parking provision requirement of the DMS**. Four additional motorcycle parking bays have also been provided.

1.5 Applications required in terms of planning law

Application is made for the deletion of a restrictive title deed conditions in terms of **Sections 42(g)** of the Municipal Planning By-Law (MPBL), in order to permit the development of a new block of flats on the subject property (as permitted in terms of the MPBL and as per the approved building plan).

1.5.1 **Deletion of restrictive title deed conditions contained in Deed of Transfer T2174/2026 as follows:**

- Condition B.2."That not more than one dwelling be erected on any plot and that not more than half the area of any lot be built upon"

- Condition C.2. "That not more than one dwelling house shall be erected on each of the said lots. Such house to be used for residential purposes only, and the value of same to be not less than R2 000 000.00.

- Condition C.3. "That the houses to be erected on the said Lots respectively in terms of the aforegoing conditions shall face the new 9,45 metre road between the said property hereby conveyed and the remaining extent of the said portion Lot A of Lots 26 to 43 (held by the Transferor by the said Deed of Transfer No. 4982 dated 11th August 1896).

2. BASIC INFORMATION

2.1 Applicant and owner

The registered owner of the subject property, has duly authorised D&S Planning Studio to make application to the City of Cape Town for the application referred to in Paragraph 1.5 above, and to act as the Applicant in this and related matters.

2.2 Title deeds and restrictions

The subject property is held in Deed of Transfer

Application has been made to delete restrictive title deed conditions in terms of the MPBL.

The specific conditions to be deleted currently permits only one dwelling house on the property and are deemed superfluous given the requirements of the MPBL and DMS. It will be shown later in this report that the deletion of these conditions satisfy the adjudication criteria as per the MPBL.

In terms of the restrictive title deed conditions to be deleted, the following should be noted (as per the conveyancer's report):

- As per the conveyancer certificate, the conditions to be deleted was imposed by the City (1925) and developer (1925) at the time and therefore an application in terms of section 42(j) is not required as per the City SOP in this regard, i.e. not conditions currently enforceable by the City.
- It appears clear that the conditions were imposed by a developer and by a statutory body in terms of an Ordinance that predates the Townships Ordinance No 33 of 1934. The removal of the conditions are therefore voluntary.
- The conditions are not traditional servitudes, but restrictive conditions as defined in the SOP.
- The SG diagrams relating to the specific township and lots (i.e. Sea Point Estate) to which the conditions apply are attached to this application (see below sketch).

Sketch showing the portion of the Sea Point Estate which is subject to the title deed Conditions under "C" in the title deed (i.e. Lot A of Lots 26 to 43)



2.3 SG diagrams

The Surveyor General (SG) diagram for the subject property (i.e. A4101/1927) and Portion Lot A of Lots 26…43 of the Sea Point Estate (i.e. 1236/1894) are attached.

Except for the condition required to be deleted as per Section 1.5 above, there are no further relevant servitudes or encumbrances reflected on the registered SG diagrams that would prohibit the proposed development of the subject property as applied for.

3. PLANNING MOTIVATION

3.1 Location, surrounding land uses and character of the area

The subject property is located within the Bantry Bay / Sea Point areas, which is characterised by a variety of erf sizes and a corresponding variety of building forms, from larger blocks of flats to finer grained and smaller dwelling houses. The area is also characterised by accessibility to the City area, as well as its location to residential amenities such as the Sea Point Promenade. Recently, this area has also seen a significant transformation in terms of blocks of flats being developed, due to the General Residential zoning of the properties and the generous setback provisions on such properties in terms of the MPBL. All of the surrounding properties appear to be used for residential purposes (i.e. dwelling houses, blocks of flats and boarding houses).

3D image showing the built character of the area surrounding the subject property



The character of the area will not be compromised by the proposed development, as (1) the proposed building has already been approved for the subject property (i.e. compliant with the MPBL rules), (2) all the properties in the area have the same development rights, (3) a number of properties have already been or are in the process of being developed with blocks of flats, and (4) the built form is in clearly in keeping with the area. The development rules applicable to this and all other properties in the area are not being changed as a result of this proposal.

3.2 Motivation & consideration of criteria in terms of Section 99(2) of the MPBL

3.2.1 Any applicable Spatial Development Framework

Provincial Spatial Development Framework (PSDF)
The PGWC's strategy of densification is embodied within the Provincial Spatial Development Framework (PSDF), which strongly focuses on urban restructuring, and identifies various objectives and associated linked strategies to address spatial discrimination and inefficiencies. The identified strategies are specifically geared towards curtailing urban sprawl through the appropriate densification of urban settlements and minimising the consumption of scare resources (i.e. land). Residential densification is identified as a key-planning element.

The proposal is considered to be consistent with the overarching objectives and strategies specified within the PSDF.

The Municipal Spatial Development Framework (MSDF - 2023)
The subject property is located within the existing urban footprint and is consistent with the MSDF insofar as it promotes land use intensification and residential densification in the form of additional dwelling units within an area with service capacity and close to amenities. The proposal also aligns with the following policy guidelines:

- Support appropriate land use development to increase efficiencies and infrastructure development
- Ensure urban growth towards a more integrated and accessible city by supporting appropriate urban development and land use intensification within the urban inner core and incremental growth areas. Decision- making that considers inward, contextually appropriate, transit-supportive land use intensification as guided by the Differentiated Intensification Guidelines
- Diverse and dense land uses, where bulk engineering infrastructure allows.
- Incremental intensification (density and diversity) via subdivisions / 2nd and 3rd dwelling and rezoning.
- Implementation of public and private land development supportive of spatial transformation;
- Consolidation and diversification of land uses in support of city growth;
- Incremental upgrading approach to development is applicable.

This proposal is consistent with these policy statements within the MSDF.

The Table Bay District Plan (TBDP - 2023)
The Table Bay District Plan indicates that the subject property is located within a are specified for "urban development", where incremental densification is appropriate.

Further to the above, the following policy statements contained within the TBDP, relating to this specific area (Sub-District 1), are applicable to this proposal:

- Facilitate the taking up of existing rights in a way that allow sensitive interfaces between different building scales, forms and land uses
- Retain variety in built form and residential densities and protect the diversity of housing types in the area.
- Encourage medium density, lower rise built fabric on higher slopes and retain green character closer to the mountain interface.
- Support increased residential densities along public transport routes and in the vicinity of public transport stops.
- Maintain the aesthetic character and destination value of the Atlantic Seaboard.

The approval of this proposal is consistent with these policy statements within the TBDP.

3.2.2 Any applicable policy or strategy approved by the City to guide decision-making

Transit-Oriented Development (TOD) Strategic Framework
The subject property is located within a Transit Accessible Precinct (TAP) and therefore supports the TOD Strategic Framework, which is the long-term development strategy to achieve the City's vision for Cape Town 2032.

The proposal also generally aligns to the core principles of efficiency, accessibility and intensification as per the TOD Strategic Framework.

Council's Cape Town Densification Policy
The Densification Policy recognises the need for appropriate densification across the City to promote longer-term sustainability of Cape Town's natural, urban and rural environments. The Densification Policy identifies various Density Priority Zones, with the subject property being located within such a zone.
It has been shown in this report that the proposal will not have a negative impact on the built character of the area or surrounding property owners' rights

(especially when considering the approved building plan and the taking up of existing rights), thereby complying with the Densification Policy requirement for contextually appropriate densification.

3.2.3 Other considerations prescribed in relevant national or provincial legislation (including the development principles in Section 7 of SPLUMA) and considering the MPBL criteria in dealing with title deed conditions

Considering Section 59 of the Land Use Planning Act and Section 7 of the Spatial Planning and Land Use Management Act, the following should be noted:

Principle of spatial justice
- Contextually appropriate densification indirectly and cumulatively contributes to spatial justice at a city-wide scale by relieving pressure for development elsewhere that drives the poor to the periphery.
- This proposal, at a micro level, will contribute to addressing low densities in well located areas with good linkages to urban infrastructure and therefore contribute to not displacing people to worse located areas.
- The proposal intensifies the appropriate use of the land within the applicable development rules.
- The proposal complies with the local spatial development framework and policies as motivated as part of the application.
- Support staff will be required, which will provide much needed job opportunities for people of a lower income.

Principle of spatial sustainability
- Densification has a positive impact on environmental sustainability by reducing pressure on other land such as land used for agriculture, natural areas and community services.
- Urban sprawl is addressed via this application, with a more intensified and sustainable use of land and infrastructure.
- All relevant planning aspects relating to sustainability, heritage, etc have been addressed as part of this application.

Principle of efficiency
- This proposal will contribute positively to the more efficient use of land, public resources, urban infrastructure and services.
- The planning applications improves the municipal efficiency and expediency in dealing with land use and building plan matters in that the administrative burden is lessened.
- It has been shown as part of the land use motivation that the proposal will not negatively impact on financial, social, economic or environmental resources.

Principle of spatial resilience

- By the development of the subject property, the proposed and possible future use thereof would be more resilient to change, allowing for better options and development possibilities.
- The proposal is considered in term of the MPBL, which allows for flexibility in spatial plans, policies and land use management systems to accommodate and ensure sustainable livelihoods and land use options.

Principle of good administration

- The application has been submitted and is being considered in terms of applicable laws and regulations.
- The proposal is considered in term of the MPBL, which allows for flexibility in spatial plans, policies and land use management systems to accommodate and ensure sustainable livelihoods and land use options.
- This proposal has been motivated in terms of all legislation and policies relating to land use management and was clearly guided by various spatial planning documents.
- As per the land use motivation, it is argued that the proposal complies with the applicable law in this regard.

Removal of title deed restriction and title deed assessment

Historic character of the area as a result of restrictive title deed conditions

When this portion of the Sea Point Estate was established (see SG diagrams submitted), the City and developer imposed title deed conditions to basically serve the purpose of guiding and controlling the urban form of the area. Historically, the conditions (when read together) resulted in a certain built form and lower density development, which has significantly changed over the years in this specific area. It should be noted that the City and developers of areas sometimes imposed conditions specifying certain setbacks, limiting the number of dwelling houses, placing limits on type of building materials, etc. The impact of the application on these specific conditions is further expanded on below.

When considering this small portion of the Sea Point Estate, which is subject to the historic conditions, the following should be noted:

- There are only 7 GR4 zoned residential properties within this area.
- The built form is a mix of larger blocks of flats and dwelling houses.
- Two of the 7 properties currently contain blocks of flats, with the block on Erf 388 being 5 storeys in height and the block of Erf 651 being 7 storeys in height.

- It is also clear when considering the original SG layout / diagram compared with the current layout that two properties were also subdivided, which slightly changed the proposed density for the area.
- Considering the above, the built character and density of this area have therefore significantly changed from what was envisaged in the 1925 title deeds and diagrams for te area.

Sketch showing the portion of the Sea Point Estate which is subject to the title deed Conditions under "C" in the title deed (i.e. Lot A of Lots 26 to 43)



Through the modernising of the area, the changing land use system and the development of various spatial and built form policies, etc by the City of Cape Town, the built form has significant changed in this and the larger area, with dwelling houses being replaced by blocks of flats, more than one dwelling house being erected on properties, etc. The land in the area is very expensive, resulting in owners wanting to utilise every possible square meter of land to extract the value. As per the built character of the area description earlier in this motivation and considering the proposal, it is clear that there is a move away from the strict single

dwelling house character envisaged within the now outdated title deed conditions. This is in line with specifically the City's densification policy and also considers the City's Urban Design Policy. The MPBL and DMS are still sufficient to protect the built character of the area and provides some certainty for surrounding property owners.

Considering the City's densification policy specifying the required contextually appropriate densification of all areas, it is clear that the low-density character of the area should and is beginning to change. The approved block of flats (complying with the GR4 development rules) will not have any negative impact in this regard.

Alignment of the proposed title deed removal with the DMS
It is clear that the proposed deletion of the "only one dwelling" title deed conditions will better align with the DMS as follows:

- The removal of the conditions will align the title deed with the permissible development as per the MPBL rules (i.e. a block of flats on a GR4 zoned property).
- Contextually appropriate densification is encouraged as per the MPBL rules and City policies
- It is clear that the City in any event does not enforce these types of title deed conditions considering the approved building plan showing the new block of flats on the property in line with the MPBL rules.

Other considerations in any applicable National & Provincial Legislation as well as Section 48(4) of the MPBL
When considering Removal of Restrictions applications, the MPBL indicates that the City must have regard to any considerations in National or Provincial legislation [i.e. such as Section 39(5) of the Land Use Planning Act (LUPA)] and Sections 42(1)(c) & 47 of Spatial Planning and Land Use Management Act (SPLUMA). In this regard and taking cognisance of the above-mentioned legislation, the following should be considered:

Section 39 (5) of LUPA
"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"

In terms of the value of the specific conditions being deleted and its relevance to the application, the following should be noted:

One dwelling

- This condition regulates the density in the area and may impact on other issues such as built form, open space / garden areas, traffic, parking, etc.

Buildings facing the street

- This condition just relates to the appearance of a street to ensure active facades facing the street to ensure safety, etc.

The value of the restrictive condition rights

- The restrictive condition provide property owners with an understanding of the possible density that may occur in the township, at the time of their creation and can provide a financial or other value (whether positive or negative) to a person as they create the look and feel of the township, which can determine the utility and desirability of the township to a person. This may determine purchasing considerations.
- Given the significant changing character of the area over time, the value of the above-mentioned condition has also changed in line with the changing built character.
- As indicated above, a number of properties in this area have been densified with new blocks of flats in terms of their underlying GR zonings.
- Various properties in this and larger area, including adjacent Erf 388, have had restrictive conditions removed or amended to allow for a block of flats.
- Given the value of the land in the area, the built form of buildings have been maximised, with very little benefit remaining even of other conditions mentioned in the title deed such as street setback title deed conditions.
- The value of the rights enjoyed by a person & entity as mentioned in the title deed can be perceived as possibly negatively impacting on the various densification and other policies of the City, given that they may want to retain the "one dwelling condition" in order to protect a personal benefit / value such as a view, etc. On balance, such an argument should be disregarded in favour of the greater good for the area and City. The value in adjacent properties does not just lie in views, etc, but various aspects such as location, price, accessibility, public and natural amenities, etc which abound in the area.
- As per the specific title deed assessment provided later in this report, additional dwellings are provided within the permissible building envelope of the GR4 zoning, with all other development rules being complied with.
- Just considering the City's own valuation records for the area, it is clear that the densification of the area with various medium and larger scale blocks of flats has not had any negative impact on values in the area. In fact, the values of all properties in this area has significantly increased over time.

General (possible benefits of the removal of the condition in terms of value)

- The deletion of the specified title deed condition regarding one dwelling will increase the financial and use value of the subject property, in that it will allow additional dwelling houses to be erected on the subject property.
- Although the title deed conditions may create a particular development form and usage (i.e. built character) within the township (which may result in perceived value); the built character changes over time (as is already the case) and this proposal (i.e. compliant block of flats) will have no negative impact in this regard.
- It may be argued that retaining the conditions to be removed (i.e. to permit only one dwelling) may have a negative impact on the perceived values of properties in the area, given its negative effect on the allowable built form, additional dwelling units and perceived ease of obtaining approvals.
- It can be argued that the restrictive conditions actually limits financial value, due to being contrary to Provincial and Municipal planning policies relating to densification. Property owners are unable to densify their properties in line with its zoning parameters and various policies due to the restrictions, which diminishes any financial value of the rights.
- The possible "low density and built form value" being created by the title deed restrictions has significantly changed in the area and the actual proposal will not result in a perceived contextually unappropriated development in the area. As indicated, this all occurs within the permissible building envelope and various other blocks of flats exist in this immediate and larger area.

"the personal benefits which accrue to the holder of rights in terms of the restrictive condition"

- It can be argued that the personal benefits accruing to the holder of the rights in the township are negligible in relation to the condition to be removed. Except for possibly some specific person benefits for some owners in terms of views, etc (which is not a right in terms of the MPBL), the surrounding owners in the township do not gain anything significant personally by retaining conditions, which prevent the proposed development of a block of flats on the property. The personal benefits / rights now enjoyed by the owners in the township were similarly obtained by amending / removing title deed conditions. The development of the property will surely enhance the area.
- As is clear from any property valuation assessment of all erven in this township that the general property values in this area have increased significantly over time, notwithstanding the fact that certain properties have been develop with and basically contains a block of flats original lots. This means that there are likely to be personal financial benefits for most owners in the township as a result

of allowing contextually appropriate densification and built form changes, as per the modern changing urban form of the City.

- The value of the rights need to be assessed in relation to the reality of a changing pattern of development in the area which is becoming more compact and dense over time and where the quality of the built environment is maintained through quality urban design instead of the preservation of a low density suburban built pattern.
- Considering new Council policies regarding densification, etc, it can be argued that there may be negative impacts on the various holders of the rights if the conditions remain unaltered, given that development of the area may stagnate, possibly impacting negatively on property values in the area and the attractiveness of the area in terms of a desirable place to live.
- Continued development and upgrading of the area (which can only take place if archaic title deed conditions are addressed) can have a positive impact (i.e. personal benefit) to the holders of the rights, given that the property will be developed with a high quality development, which will increase their property values and be seen as an asset to the area.
- It is shown as part of this report that the removal of the condition relating to the number of dwelling houses should not (on balance) negatively impact on the rights of surrounding property owners or impact on any perceived personal benefits that may arise as a result of the restrictions remaining in place.
- It is shown as part of this report that any perceived density and built form benefits to surrounding property owners as a result of the restrictive title deed condition are negligible, especially when considering the character of the area and recent developments.
- In the long run, the redevelopment of the property will also financially benefit the surrounding property owners and the general area, which are indirect possible beneficiaries of the rights limiting the dwelling units, etc.
- Although the proposal, to a very minor extent changes the township built form connotation; this should be considered in terms of the changing City and area in terms of the changing needs of homeowners, which results in the increased need for more compact and denser development.
- Ultimately, the character of the broader Sea Point / Bantry Bay area is changing as the City densifies, especially areas near amenities, etc. In the context of the changing character of the township, the benefits to the township derived from these conditions have been diluted to the extent that the personal benefits accruing to individual owners are negligible.

"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"

- It is clear that there will be financial benefits to the owner of the subject property (or future owners) if the title deed conditions are removed, given that additional dwelling units will be permitted, which can be sectionalised and sold.
- It should be noted that a building plan has already been approved for the property and therefore the owner has existing rights. However, removing the conditions will ensure the possible sectionalisation of the property, which can add value.
- The value of the subject property should increase, but so should the value of most adjacent properties.
- Given the compliance with various policies, the development should also broadly benefit the City, surrounding area and public.
- Through this By-Law application, it can be argued that the law enables restrictive conditions to be removed, where this is reasonably required to accommodate the changing built form of the city and the changing needs of property owners, which is the case with this application.
- Again, it should be noted that "personal" benefits should be considered in view of the "greater good benefit" of City wide contextually appropriate densification, taking into consideration rights of adjacent and surrounding properties. Therefore, the possible impact of the development of Erf 386 to the north-west of the subject property should be considered by the owner of the subject property, similarly to the impact of the development of the subject property on the owners of Erf 388 to the south-east. A situation cannot be created whereby obtaining similar rights to develop a block of flats in the area are blocked by other property owners due to the fact that such rights were taken up 1st / historically by these owners. This will effectively take away rights from properties on the principle that "they were not 1st to take up these rights" which cannot be constitutionally sound.

"the social benefit of the restrictive condition remaining in place in its existing form"

- If the restrictive conditions remain intact, the broader social benefit will be minimal and it can be argued that the possible social benefit of removing the restrictive title deed conditions and consequently allowing for additional dwelling units / flats will be positive. Small scale and contextually appropriate densification (such as this application) should be encouraged in all areas and will allow additional residents into the area. Appropriate densification is a trademark of vibrant and well performing cities.

- It can be argued that if the title deed condition remain intact, there will be a negative social impact, given that people who wishes to reside in the Bantry Bay / Sea Point area, will still be excluded from the property market, due to a lack of well-priced and varying dwelling size option ownership opportunities in the area.
- The conditions were generally historically imposed by the Administrator (Provincial Government of the Western Cape), City of Cape Town or township developer / owner at the time for the greater good and integrity of the area. However, it should be considered that historically (prior to the modern planning legislation coming into force), the title deeds were utilised to determine the appropriate built form and use of a subject property. The new MPBL and DMS are now in force, which effectively facilitates appropriate use and built-form in the area, resulting in the dated title deed restrictions being unnecessary and only providing an additional red-tape layer. It can be argued that the new MPBL & DMS, due to its recent approval, incorporates modernised and appropriate planning mechanisms, which ensure up-to-date planning and land use assessments of any development. The new MPBL & DMS allows for certain flexibilities to facilitate appropriate use of a property, which is not always the case with the title deed restrictions. It is therefore clearly desirable that an additional, inappropriate layer of legislation, which is out-dated, is deleted.
- It should also be considered that the underlying zoning, which has been the predominant zoning for some time in the area, already allows a block of flats and therefore this area has always been earmarked for higher density development.
- The retention of the title deed conditions would freeze the historical pattern of low-density development within the township, which cannot be considered "socially acceptable" given the proven social benefits of contextually appropriate densification. .
- The proposal complies with all the development rules of the MPBL, which can be deemed "socially beneficial". Also, significant public open space is available in the surrounding area (such as Table Mountain National Park, Sea Point Prominade, etc).
- 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 desirability of living near safe public transport (i.e. My-Citi), the safety of living in multi-unit compact developments instead of freestanding dwellings, and the ease of "lock up and go" living. This is all clear through this proposal.
- The township character has already changed significantly towards a denser form of development.

- It is our opinion that the social benefit of retaining the restrictive conditions is outweighed by the social benefit of removing such conditions.

"the social benefit of the removal, suspension or amendment of the restrictive condition"

- The social, built form and engineering infrastructure benefits of densification is well known and are discussed in detail earlier in this report. It is therefore clear that the deletion of the restrictive title deed conditions as per Section 1.5 above will have a positive boarder social impact on the area and the City.
- A block of flats on the property is permitted in terms of its underlying rights, which alludes to the possible degree of social acceptability of such a use within this area.
- Additional families will be able to purchase and own property in a well-located area, close to amenities and recreational activities.
- The removal of the title deed conditions are in alignment with various City policies, which require a more efficient use of land and appropriate densification of land, as well as with the planning principles set out in SPLUMA and LUPA as motivated earlier in this report.
- It is our opinion that the social benefit of removing the title deed condition outweighs the social benefit in retaining such conditions.

"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 conditions to be removed will not completely remove any rights relevant to the area and property owners. The rights for remaining properties will be kept intact and the deletion of the stated conditions will merely allow the possible erection of additional dwelling units / flats on the subject property in terms of its existing rights.
- It is important to note that the title deed does not alone grant rights to beneficiaries. The Development Management Scheme (MDS) also grant rights to the surrounding property owners and these will still be place. Thus, not all the rights of the beneficiaries are removed with the removal of the conditions.
- A building plan has already been approved for the subject property, which provides clarity in terms of rights to be taken up by the owner of the subject property to the surrounding property owners.

Section 42(1)(c) of SPLUMA

- As argued above, allowing contextually appropriate densification is in the public interest.

- The application allows for the densification of a privately owned property and therefore does not relate to public land.
- The application has no impact on the constitutional transformation imperatives and related duties of the state.
- This motivation deals in detail with the facts and circumstances relating to this application, which application is considered negligible in terms of any impact on the area and surrounding property owners, especially if considering existing rights in terms of the MPBL and the approved building plan.
- This motivation considers all respective rights & obligations of all parties affected.
- Given the approved building plan, there will be no unduly impact on any engineering services. The proposal will also have no impact on any social infrastructure or open space requirements. Sufficient social infrastructure and open space amenities are available in this and the larger area, which ca easily absorb this minor small scale contextually appropriate densification of the property.
- All prescribed factors in the MPBL and other legislation have bene addressed as part of this report.

Section 47 of SPLUMA

- It is clear that the deletion of the title deed conditions to allow additional dwelling units / flats on the property will not deprive any person in the area of property as contemplated in Section 25 of the Constitution. The proposal will not be considered a deprivation of property.
- However, it could be argued that not allowing the deletion of specifically the "one dwelling" restriction will deprive additional families of being able to own property in this sought after area.
- It has been shown above that the deletion of the title deed restriction is in the public interest and will not have, on balance, an unduly impact on the rights of the possibly affected surrounding property owners, especially when considering that they can access and some have taken up similar rights.
- The title deed restrictions are applied to be deleted in the pre-scribed manner as per the MPBL.
- It is shown in this planning report that the development of the subject property in terms of existing rights within the permissible DMS envelope should not have a negative impact on the area and supports contextually appropriate densification in the area. Support of this proposal will therefore be in the public interest and in the interest of the area.
- Although the title deed condition restrict the number of dwellings on the property, the built character of the area has already significantly changed towards a more modern form of city development and density. It has been argued that the social benefits of low-density suburbia are becoming

outweighed by the social benefits of a more resource efficient, dense and compact urban fabric.
- The proposed development will make more residential opportunities available in the area without detracting from the visual or residential appeal of the area.
- It is clear that there is no infringement of Section 25 of the Constitution. SPLUMA, LUPA and the MPBL constitute laws of general application. All three laws empower municipalities to remove and amend restrictive title deed conditions.
- The City will ensure (in terms of procedural fairness) that the application is advertised to all parties (i.e. township property owners, etc) in terms of the proposed deletion of conditions and invite their comment.
- As motivated in detail above, the perceived personal benefits conferred by the title deed conditions on the immediate local residents is outweighed by the wider social benefit of removing the restrictive conditions. There are substantial benefits to removing the restrictions.
- Considering the above, the proposed removal of the title deed condition cannot be considered an arbitrary deprivation of property.

Specific title deed assessment
In terms of the specific title deeds conditions applied to be deleted, the following should also be considered:

Regarding the "one dwelling house" condition
- The condition permitting only one dwelling on the subject property is seen as limiting contextually appropriate densification in terms of the Council's Policy in this regard.
- The subject property is zoned GR4, which permits a block of flats "as of right" and considering the character of the area can be seen as an appropriate built form for the area.
- A building plan showing a new block of flats on the property has already been approved by the City.
- It should be noted that the "one dwelling house" condition does not appears to be a uniform and consistent condition that is enforced on all properties in the larger area. This is clear from the various subdivisions, second dwellings and blocks of flats that exist in the larger area, which were constructed either as a result of historic approvals or as a result of the lack of enforcement of specific title deed conditions.
- Removal of this condition will not change the possible built envelope of any buildings on the subject property. All the DMS development rules relating to blocks of flats the GR4 zone will still remain and will be adhered to as part of this proposal. As indicated, a. compliant block of flats has been approved on the property.

- In the context of the built character of the area and the Council's Densification Policy, it is not deemed appropriate that existing rights for additional dwelling units / flats is underutilised and reduced through archaic and outdated title deed conditions.

Regarding the "houses to be erected facing the new road" condition

- The condition requires that any houses to be erected to effectively face Portman Road and is deemed no longer required due to the fact that a building plan has already been approved for the subject property (showing flats) and that this condition is no longer applicable.
- It should be noted that the approved block of flats in any event faces Portman Road (i.e. all flats face the street).
- This condition is deemed to be superfluous and is therefore also applied for be deleted.

Given the assessment above, it is clear that supporting the removal of the restrictive title deed conditions will comply with the adjudication criteria mentioned within the MPBL, LUPA and SPLUMA.

3.2.4 Relevant criteria contemplated in the development management scheme

It should be noted that the applicable development rules for the subject property are adhered to as part of this application (ie. an approved building plan exists for the new block of flats). There are no need for any departure application in this regard.

Considering the above detailed assessment and the compliant building pan, the proposal therefore complies with any relevant criteria in the MPBL.

3.2.5 The desirability of the proposed use or development

3.2.5.1 Socio-economic impact

In terms of a socio-economic impact, the following:

- Given the detailed motivation in this report relating to policy compliance; the proposal should have a positive socio-economic impact on the area.
- The proposal will result in additional residential opportunities being made available within the Bantry Bay / Sea Point area, which will have a positive socio-economic impact.

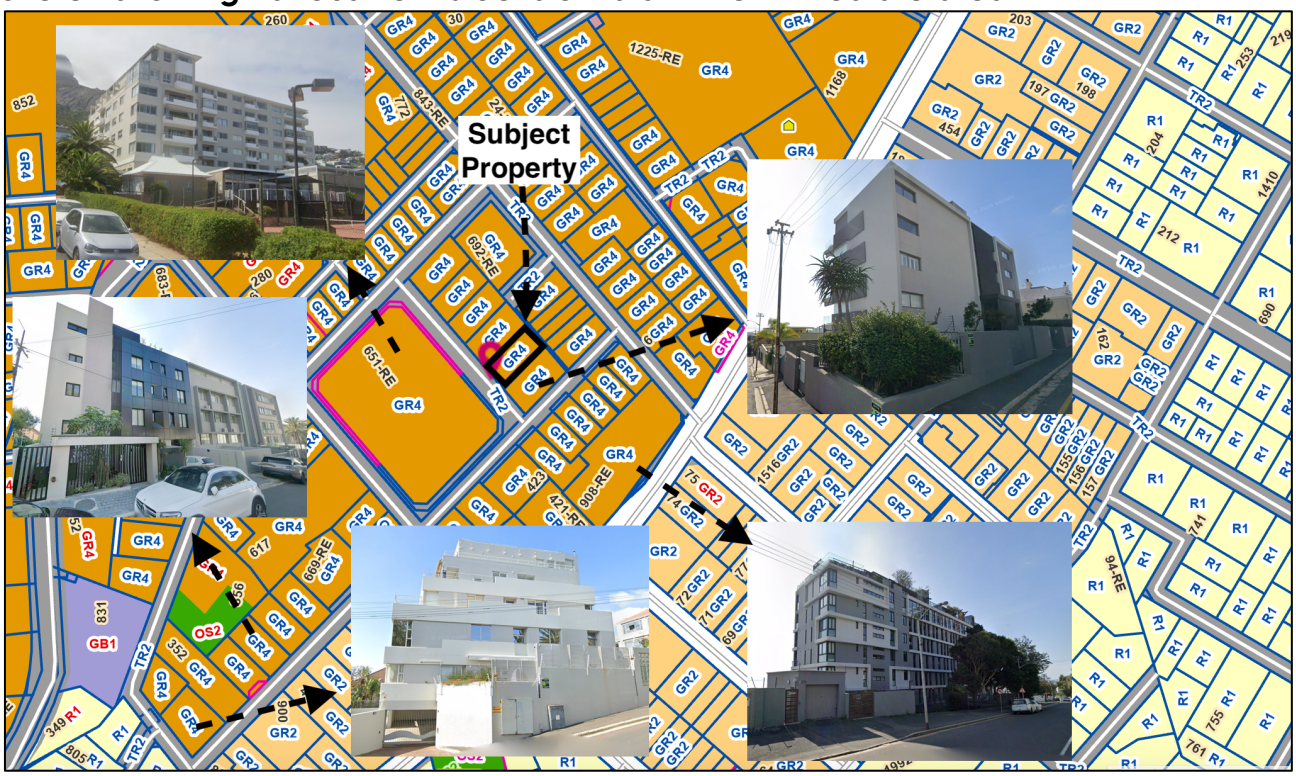
- The scale of the investment into the area, albeit at a micro scale, should have a positive socio-economic impact on the area and the larger city in terms of an increased rates base, etc.
- The proposal should have a positive socio-economic impact in terms of both temporary and permanent job opportunities being created.

3.2.5.2 Compatibility with surrounding uses

In this regard, the following should be noted:

- The use of the property remains residential in nature and is in line with the changing built form of the area, including various blocks of flats (see below).

Sketch showing various new blocks of flats in the immediate area



- The approved block of flats is compliant with the relevant MPBL development rules, i.e. no departures are required.
- A building plan has already been approved for the subject property, which construction can legally commence at any time.

3.2.5.3 Impact on external engineering services

- There is no bulk departure and the approved building plan complies with the permissible floor space. It is therefore not anticipated that there will be any impact on external engineering services.
- The proposal will not impact on any engineering services, especially when considering the contextually appropriate densification as per the relevant City policy.
- A building plan for a new 9 unit block of flats on the property has already been approved.

3.2.5.4 Impact on safety, health and wellbeing of the surrounding community

- The safety, health and well-being of the surrounding community is not directly impacted by this application.
- The proposed densification option results in additional "eyes on the streets", which have a positive safety impact.
- The approved building complies with the DMS development rules, which means that there will be no impact on the residential amenity of surrounding property owners.
- The property is effectively being developed in terms of existing rights, which should be considered when looking at any possible impact on other properties in the area.
- It is acknowledged that the views form the existing block of flats on adjacent Erf 388 will be impacted by this proposal, but the development of the subject property in terms of existing rights and development rules should be considered. This is the same rights accessed by Erf 388 when a block of flats was developed. In terms of planning law, the owners of the subject property cannot be penalised in terms of not being able to access their existing rights (in terms of the MPBL) due to the fact that an adjacent property has accessed their existing rights at an earlier date and may now be negatively impacted by the proposal.

3.2.5.5 Impact in heritage

- The property is not located in any heritage protection area.
- No heritage resources will therefore be impacted on by this proposal.
- The existing building on the subject property is not older than 60 years and therefore no HWC permit is required in this regard.

3.2.5.6 Impact on the biophysical environment

- The subject property is currently developed with an existing dwelling house and is not deemed to be environmentally sensitive.
- The property is not located in a HPOZ area.
- A building plan has already been approved for the subject property.
- Although not required, sufficient space is still available on on the property for landscaping.
- The general built form in the area is not one of a significantly leafy and landscaped area, mainly as a result of a variety of property sizes, larger buildings and sloping land, etc.
- As per the motivation, no negative impact on the biophysical environment is envisaged.

3.2.5.7 Traffic impacts, parking, access and other transport related considerations

- Given the minor nature of the proposal, the contextually appropriate densification, and considering the character of the area; the proposal will not have a negative impact on the parking and traffic situation in the area.
- The proposed vehicular carriageway-crossing is as per the approved plan, which was already assessed by the relevant City departments.
- All vehicles will be able to leave the site in a forward gear, which positively impacts safety in the area.
- The proposal complies with the on-site parking provision as per the MPBL.

3.2.5.8 Imposition of conditions to mitigate possible adverse impacts of the use or development

In terms of this submission, the motivation and considering the approved building plan; on balance no adverse impacts on the area is anticipated. Various development rules as per the MPBL is still applicable and is deemed sufficient safeguards for any possible future development.

3.2.6 Impact on existing rights

Given the legal planning requirements as stated in Section 1, the assessment above and specifically the approved building plan, it is argued that the proposal will have a limited impact the existing rights of surrounding property owners. It is essential that this proposal and required planning application be seen in the context of desirable densification and existing rights (i.e. the approved building plan).

3.2.7 Complies with the requirements of this By-Law

The application has been correctly submitted, addresses the assessment criteria contained within the MPBL and has been shown to be desirable. The proposal therefore complies with the requirement of the MPBL.

4. CONCLUSION AND REASONS FOR SUPPORT OF THE PROPOSAL

In terms of **Section 99(1) of the MPBL** an application must be refused if the application does not satisfy the minimum requirements as listed in this section. In this regard, the following should be noted:

- In terms of the applicable Table District Plan (relevant spatial development framework), the subject property is located in an area indicated for "urban development" and in close proximity of various metropolitan roads. Given that the assessment provided within this report relating to compliance with the Table District Plan, it is clear that the proposal **complies with the provisions of the Table Bay District Plan**.
- The subject property is not proposed to be rezoned and there is no floor space departure. Therefore, (considering Section 99(d)(ii) of the MPBL) the application **does not have the effect of granting the property the development rules of the next subzone**.

Given the above, the application does not fail to comply with the minimum requirements as stated in Section 99(1) of the MPBL and should therefore not be refused but supported by the decision-maker.

From the assessment contained in this report, all the relevant considerations have been addressed in detail in terms of Section 99(2) of the MPBL. Given this assessment, the reasons for support of the proposal can be summarized as follows:

- It has been argued in this report, that the proposal **is in line with and is consistent with any applicable spatial development framework**.
- The proposal has been assessed and has been shown to be **compliant with the following City policies and strategies**:
  - TOD Strategic Framework
  - Densification Policy
- The proposal **complies with the provisions contained in relevant national and provincial legislation** (i.e. SPLUMA & LUPA).
- The **deletion of the title deed condition** has been addressed and is shown to be desirable considering Section 39(5) of LUPA & Section 47 of SPLUMA
- The **relevant criteria of the DMS** have been assessed as it relates to this proposal and the impact of the proposal was considered to be negligible for the area, especially considering the policy compliance, the built character of the area and the approved building plan.

- As per the assessment contained in Section 3.2.5 of this report, **it has been shown that the proposal is desirable as per the relevant consideration criteria as stated in Section 99(3) of the MPBL.**
- It has been shown and argued in this report that the proposal **will have a limited impact on the existing rights of relevant surrounding property owners**.
- Through the assessment contained in this report, it is clear that the **proposal complies with the requirements of the MPBL**.



Ben Schoeman

ANNEXURE A

Deletion of restrictive title deed conditions contained in Deed of Transfer as follows:

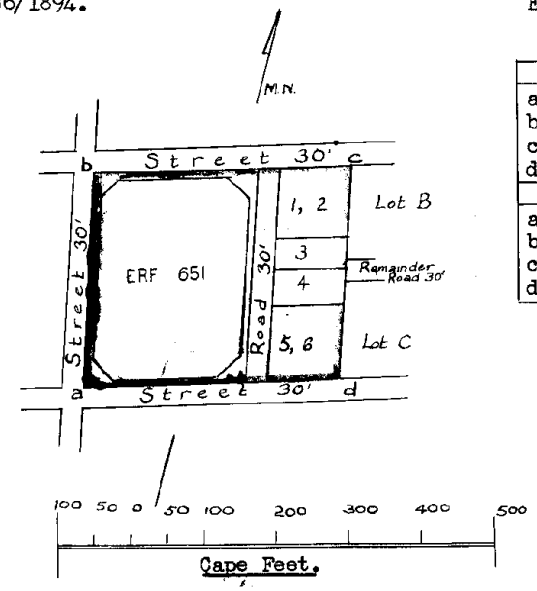
Condition B.2."That not more than one dwelling be erected on any plot and that not more than half the area of any lot be built upon"

Condition C.2. "That not more than one dwelling house shall be erected on each of the said lots. Such house to be used for residential purposes only, and the value of same to be not less than R2 000 000.00.

Condition C.3. "That the houses to be erected on the said Lots respectively in terms of the aforegoing conditions shall face the new 9,45 metre road between the said property hereby conveyed and the remaining extent of the said portion Lot A of Lots 26 to 43 (held by the Transferor by the said Deed of Transfer No. 4982 dated 11th August 1896).

S.G. DIAGRAM No. 1236/1894

The numerical Data of this Diagram are sufficiently consistent,
(Sgd) J.J. Bosman,
No. 1236/1894. Examiner.



ANGLES	
a	85. 1.30
b	94.58.30
c	85. 1.30
d	94.58.30
SIDES	
ab	301.14
bc	350.00
cd	301.14
da	350.00

*NOW ERF No. 381 BANTRY BAY

The above Figure, lettered a b c d represents 1 Morgen 129 Square Roods 26 Square Feet of Ground, situated at Sea Point in the Cape Division, being a portion Lot A of Lots 26 ... 43 of the Estate "Sea Point" transferred to on the 10th May 1858 and lastly transferred to on the 16th July, 1894.

Bounded N.W. by Street 30',
N.E. by Lots B & C & Remainder (Road 30')
S.E. by Street 30'
S.W. by Street 30'

Framed from Actual Survey, by me,
(Sgd) Hutton-Watermeyer,
Government Surveyor,
September, 1894.
Cape Town Sheet F 7

B

C

Transfer —— 5917
18th October, 1894
C. E. Lewis.

M M Hagen

27-11-1956

BH 70B
Y.133.
Y.134
381
E.D.

The following deductions have been made from this diagram.

Survey Records.	Diag. No.	Sub-division.	Area. Sq. Rds	Sq. Feet.	Transfer Date	Trf. No.	Remainder sq. ft.
	A.2607/25	Now Erf No.383 Lots Nos. 1 & 2	69	76	21.9.1925	9063	~~23471~~
	A.2608/25	Now Erf No.385 Lot No. 3	31	69	21.9.1925	9064	
	A.2069/25	Now Erf No.388 Lots Nos. 5 & 6	72	106	22.9.1925	9079	
	A.3207/27	Now Erf No.386 Lot No. 4	34	85	24.10.1927	10569	
E.213/52	7948/1952						
E 748/59	3592/1959	Erf 651	—	60376	2.5.1961	5757	Adjn 4.5.61

SUB DIVISIONAL DIAGRAM/ONDERVERDELINGSKAART,
SECT. 24 (B), ACT NO. 9 OF 1937/ART. 24 (B), WET NO. 9 VAN 1937.

OFFICE COPY

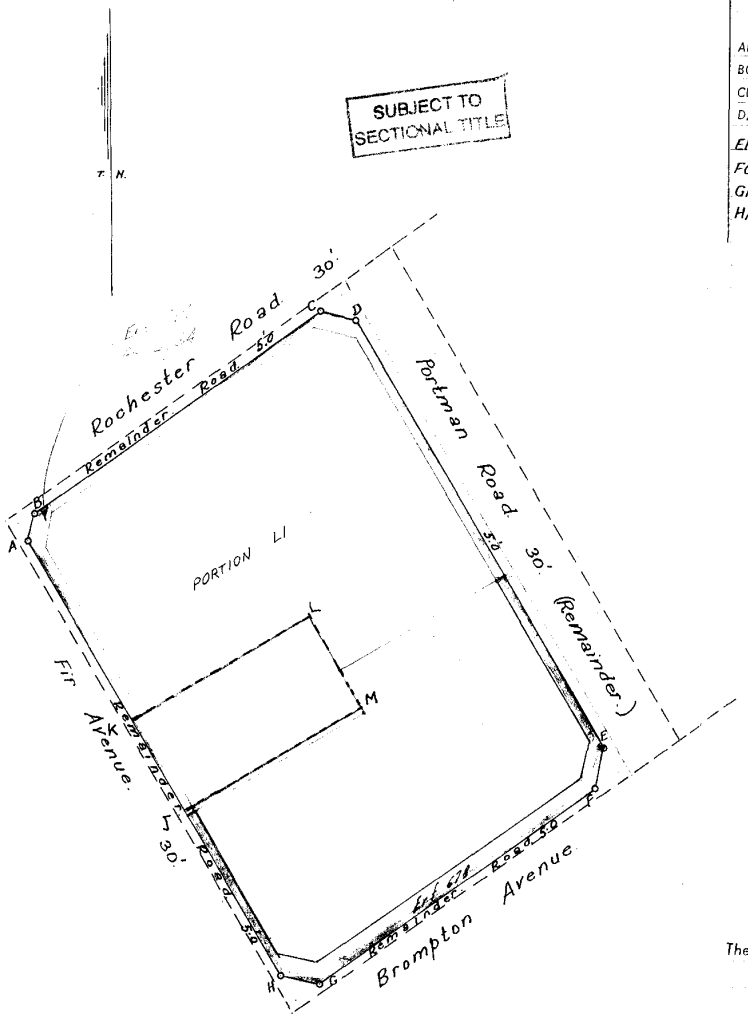
No. 3592/59

Approved

Surveyor-General.

	SIDES Caps Feet	ANGLES OF DIRECTION ° ' "		System Lo. CO-ORDINATES y	x
AB	14.73	147 · 26 · 20	A		
BC	184.45	190 · 0 · 10	B		
CD	20.29	237 · 26 · 20	C		
DE	261.16	284 · 52 · 30	D		
EF	22.10	327 · 26 · 20			
FG	179.45	10 · 0 · 10			
GH	20.29	57 · 26 · 20			
HA	266.16	104 · 52 · 30			

SUBJECT TO SECTIONAL TITLE



KLM 5

Beacon Description:
A.B.C.D.E.F.G.H.J. - ½" round iron pegs.

Scale 1:750.

The Figure A.B.C.D.E.F.G.H. represents 60376 Sq. Feet of land being

ERF 651 portion of ERF 381
BANTRY BAY.

situate in the Municipality of Cape Town.

Division of Cape. Province of Cape of Good Hope.

Surveyed in April, 1959. by me.

Land Surveyor.

This diagram is annexed to	The Original Diagram is No.	S.G. File No. 5/9183/27
Transfer Deed No. 5757	1236/1894.	
dated 2nd May, 1961	annexed to	S.R. No. E. 748/59
in favour of	D.F. 1894-71-5917.	B.H. 708/Y.133 Y.134
Registrar of Deeds.		C.T. Sht. E7. 2.112

Arterraft, C.T.

651

		REFERENCE NO. DESCRIPTION	AK PK. DEED	DEPARTMENT INITIALED
E.748/59	3593/1959	PORTION LI	14/96 @ K480 2008	WJ
—11—	—11—	The figure KLMJ represents a Servitude Area		
—11—	—11—	~~The figure KLMJ represents a cancellation of part of the Lease~~ ~~LI~~	~~K480~~ 2008	FR

Rem. 39.ft 57412

THE FOLLOWING DEDUCTION HAVE ... IN ... IN DIAGRAM.					
Survey Records.	Diag. No.	...isi n.		Deed.	
E.1206/64	4414/64	Erf 678	2964	2966/65	9/11/65
E.1206/64	4415/64	Erf 679	2798		

SECTIONAL TITLES		
SRE No.	SGD No.	SS No.
3619/2006	1123/2006	565/2007
2754/2006	823/2006	411/2009
1268/2009	388/2009	383/2009
E394/2014	D94/2014	SS401/2014
E394/2014	D95/2014	SS403/2014
E394/2014	D96/2014	SS402/2014