CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500163195

Erf 921, 3 Cambridge Avenue, Tamboerskloof

Development Management

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APPLICATION FOR AMENDMENT OF A TITLE DEED CONDITION IN TERMS OF THE MUNICIPAL PLANNING BY-LAW (AS AMEDNED) OF 2015: ERF 921 TAMBOERSKLOOF, 3 CAMBRIDGE AVE



2026-04-30

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1. INTRODUCTION

1.1 Planning application and proposal

Application is made for the amendment of a restrictive title deed condition, as listed in Section 1.4 below (and see Annexure A), in order to permit 2 dwelling houses on the property as per the approved building plan (i.e. approved building plan (Nov 2025) showing 2 dwelling houses on the property). Importantly, as per the conveyancer certificate, the restrictive title deed conditions that only allows one dwelling house on the property is not a condition enforceable by the City in terms of the Municipal Planning By-law (MPBL) (i.e. it is a historic condition imposed by the developer of certain properties in Tamboerskloof at the time) and therefore a compliant building plan could be considered and approved by the City. The building plan shows the development of a main & 2nd dwelling on the property within the permitted building envelope of one large house on the property.

The amendment of the condition will basically permit contextually appropriate densification by allowing an additional dwelling (i.e. 2nd dwelling house) on the property. **Importantly and as per the approved building plan**, the development of additional dwelling house will be achieved within the permissible building envelope as per the development rules of the Municipal Planning By-Law (i.e. no departures form the development rules are applicable). Effectively, the proposed two dwelling houses are contained within the same possible building envelope than a large dwelling house being erected on the property.

The restrictive title deed condition to be removed indicates: "That only one dwelling house shall be allowed to be erected on the property...". Although, as indicated above, this is clearly not a condition which is enforced by the City in terms of the MPBL; the owner has been advised to voluntarily apply for the amendment of the condition due to possible issues at the SG & Deeds Offices when the property is being sectionalised (i.e. registration of various sections for two owners).

The title deed condition limiting the number of dwelling houses on the property is considered outdated in nature, specifically in light of the provisions of the Municipal Planning By-Law (MPBL) and the City's policies regarding densification, built form, etc. The amendment of the condition will allow for contextually appropriate densification without negatively impacting on the area or surrounding property owners. Even if this condition is amended; considering the approved building and compliance with the development rules of the DMS; this still provides sufficient safeguards for surrounding property owners in terms of the development of the property.

1.2 Subject property / property description

The property is 609m^2 in extent and the existing building is a multi-level structure, which basically contains two dwelling houses. Vehicle access to the two dwelling houses are provided off the two adjacent street (i.e. De Hoop & Cambridge Ave) and it is very clear when considering the recently approved building plan that the building is designed to appear as one larger dwelling house. The main dwelling is 275m^2 in extent, with the 2nd dwelling being 220m^2 in extent. A 45m^2 domestic staff quarters is also located on the 1st storey of the building. Two parking bays per dwelling house are provided on the property. Two large trees were also retained on the subject property when the building was erected.

As with all surrounding properties in the area, the property is zoned R2 and is not subject to any overlay provisions within the MPBL.

Aerial view of the subject property



1.3 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 R2. However, given that the subject property is developed with only two dwelling houses, the R1 zoning rules apply.

Importantly, no changes to the approved building plan is proposed or required as part of this application.

DMS extract

LAND USES	LAND UNIT AREA (m^2)	FLOOR FACTOR	MAXIMUM FLOOR SPACE	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, private road, micro wind turbine, structure-mounted energy system and additional use rights	>2 000	N/a	1 500 m^2	N/a	10,0 m	6,0 m	6,0 m	N/a	Window and door placement, Garages, carports and outbuildings, Parking and access
ADDITIONAL USE RIGHTS Second dwelling; third dwelling; Home occupation or bed and breakfast establishment or home childcare, filming (items 21(b)(iii) and (vi) does not apply), affordable rental flat, supplementary dwelling unit, small-scale wind turbine (only for land unit areas of equal or greater than 650m^2), place of instruction (with not more than 34 children)	>1 000 up to 2 000	N/a	1 500 m^2	N/a	10,0 m	4,5 m	3,0 m		Additional use rights: home occupation, bed and breakfast establishment, second dwelling, third dwelling, supplementary dwelling unit, affordable rental flat, small-scale wind turbine, place of instruction and home childcare
	>850 up to 1 000	N/a	1 500 m^2	N/a	10,0 m	3,5 m	3,0 m		
	>350 up to 650	1,0	N/a	75%	9,0 m	3,5 m	0,0 m (12,0 m from street and 60%) and 1,5 m rest		
CONSENT USES Utility services, place of									

In terms of the relevant development rules of the **DMS**, please note the following (as per the approved building plan):

Floor Factor

1.3.1 A maximum floor space of 609m^2 is applicable to the property. As per the approved building plan, the floor space for the 2 dwelling houses and the domestic staff quarters complies in this regard. A total floor space of 540m^2 is proposed, which clearly complies with the permitted 609m^2. The approved building plan therefore **complies with the permissible floor space**.

Height

1.3.2 The building plan was clearly submitted prior to the 1 Oct 2025 MPBL amendment and therefore still reflects the 8m wall-plate and 10m top of roof height provisions at the time. Although a 9m top of building height now applies, no changes to the approved building's height were proposed as part of the approved building plan. The proposal therefore **complies with the permissible heights**.

Street boundary

1.3.3 Required street boundaries building lines of 3.5m is applicable. As indicated above, no changes are proposed to the approved building plan showing the 2 dwelling houses on the property and therefore the proposal **complies with the street setback rules**.

Common boundaries

1.3.4 As indicated above, no changes are proposed to the approved building plan showing the 2 dwelling houses on the property and therefore the proposal **complies with the common boundary setback rules**.

Parking provision

1.3.5 The subject property is located in a PT1 area, which means only one (1) parking bay per dwelling house is required. In terms of the approved building plan; two (2) parking bays per dwelling house are provided on the property given the nature of the area. The proposal therefore complies with the parking provision requirement of the DMS.

1.4.1 Application required in terms of planning law

Application is made for the amendment of a restrictive title deed condition in terms of **Sections 42(g)** of the Municipal Planning By-Law (MPBL), in order to permit the development of a main & 2nd dwelling house on the subject property (as permitted in terms of the MPBL and as per the approved building plan).

1.4.1 **Amendment of restrictive title deed condition contained in Deed of Transfer** as follows:

From

Condition "B.4. That only one dwelling house shall be allowed to the erected on the property hereby transferred with its usual outhouses (garages and the usual domestic appurtenances) the cost of such dwelling R2 000,00 that the roof of such dwelling house shall be covered with tiles of slate, and that galvanized iron shall not be used to enclose or fence the property hereby transferred without the consent of the said H C von Holdt and his successors in title or the properties transferred to the said H C von Holdt on the 4th September 1923 No. 7323.".

To

Condition "B.4. That only ~~one~~ two dwelling houses shall be allowed to the erected on the property hereby transferred with its usual outhouses (garages and the usual domestic appurtenances) the cost of such dwelling R2 000,00 that the roof of such dwelling house shall be covered with tiles of slate, and that galvanized iron shall not be used to enclose or fence the property hereby transferred without the consent of the said H C von Holdt and his successors in title or the properties transferred to the said H C von Holdt on the 4th September 1923 No. 7323.".

2. BASIC INFORMATION

2.1 Applicant and owners

The registered owners of the subject property,
have duly authorised D&S Planning Studio to make application to the City of Cape Town for the application referred to in Paragraph 1.4 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 amend a restrictive title deed condition in terms of the MPBL.

The specific condition to be amended 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 amendment of this condition satisfy the adjudication criteria as per the MPBL.

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

- As per the conveyancer certificate, the condition to be deleted was imposed by the developer at the time and therefore an application in terms of section 42(j) is not required as per the City SOP in this regard.
- It appears clear that the conditions were imposed by a developer or 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 conveyancer certificate contains a report from a land surveyor identifying all the properties effected by a similar title deed condition in the area, which was owned by the same developer. This is effectively all the properties that should be advertised to in this regard (see conveyancer certificate and report).

2.3 Surveyor General Diagram

The Surveyor General (SG) diagram is attached.

Except for the condition required to be amended as per Section 1.4 above, there are no further relevant servitudes or encumbrances reflected on the registered SG diagram that would prohibit the proposed development of the subject property as applied for.

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3. PLANNING MOTIVATION

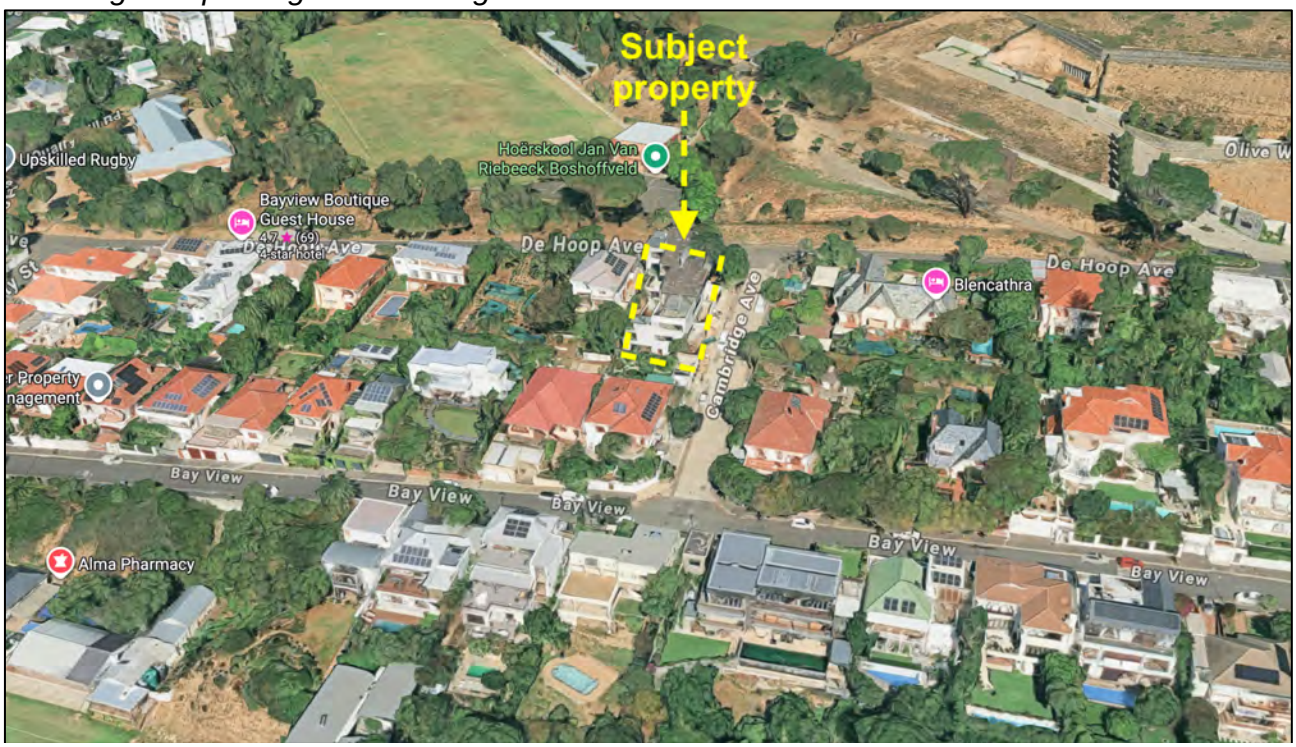
3.1 Location, surrounding land uses and character of the area

The subject property is located in the Tamboerskloof area, in close proximity to Kloof Nek Street, which connects to Cape Town CBD to the Camps Bay area and beyond.

This area is characterised by multiple storey dwelling houses with the majority of properties with erf sizes of approximately 500m² to 1000m² in extent. The area is predominantly made up of dwelling houses lining the streets, often constructed in close proximity to the street and common boundaries due to the slope in the area.

A number of erven in the larger area have, through the years, been subdivided or developed with multiple dwellings, which do not impact negatively on the character of the area. All of the surrounding properties appear to be utilised for residential purposes (i.e. dwelling houses, second dwellings, guest houses, etc) in accordance with their zoning rights (see 3D image below).

3D image depicting the existing built character of the area



The character of the area will not be compromised by the proposed development, as (1) the proposed building containing 2 dwelling houses has already been approved for the subject property, (2) all the properties in the area have the same / similar development rights, (3) a number of properties have already been or are in the process of being developed with multiple dwellings, and (4) the built form is 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, albeit being minor / small-scale densification, 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 small-scale incremental densification is appropriate.

Further to the above, the following policy statements contained within the TBDP, relating to this specific area (Sub-District 2), 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.
- Allow increased residential densities along existing and proposed public transport routes to support the viability of the routes.
- Ensure that the scale and character of new developments (in terms of bulk, form, height and architectural styling) are appropriate to their immediate context.

The 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.

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, 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

- Small scale 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.

Amendment of title deed restriction and title deed assessment

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

When certain erven in Tamboerskloof were created / subdivided, the owner / developer at the time imposed certain title deed conditions (i.e. likely conditions of sale) 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 development controls have been replaced by updated planning law and regulations, which resulted in certain built form and density changes. It should be noted that 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 portion of Tamboerskloof, which is subject to the historic conditions of sale, the following should be noted:

- There are currently approximately 117 relevant properties in this area of which 114 appears to be zoned R2.
- The built form is mostly multi-level buildings / larger dwelling houses.
- It is clear when considering the original SG layout / diagrams compared with the current layout that various subdivision, consolidations, etc occurred, which slightly changed the proposed density for the area.
- It is also clear when considering the aerial photographs, etc that a number of properties have been densified, via either subdivisions or more than one dwelling house in terms of the provisions of the MPBL. This mainly occurs within the envelope of a permitted building / dwelling house in the area.

Sketch showing the portions of Tamboerskloof which is subject to the conditions of sale (also see land surveyor report)



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 changed in the area, with dwelling houses being located slightly closer to the street & common boundaries and various subdivisions and second / double dwellings being erected in the area. 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, albeit to a minor degree, from the 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 is still sufficient to protect the built character of the area and is not far removed from the built character originally envisaged when the title deed conditions were imposed.

Considering the City's densification policy specifying the required contextually appropriate densification of all areas, it is clear that the very low-density character of the area should and is beginning to change, although the low-density character is reasonably maintained in terms of the built form. The proposed additional one dwelling unit within the envelope of a permissible building on the property will not have any negative impact in this regard.

Alignment of the proposed title deed amendment with the DMS

It is clear that the proposed amendment of the "only one dwelling house" title deed condition will better align with the DMS as follows:

- The amendment of this condition will align the title deed with the permissible density / number of dwelling units as specified in the MPBL.
- Contextually appropriate densification is encourages as per the MPBL rules and City policies
- It is clear that the City in any event does not enforce these types of "developer imposed" title deed conditions, which is clear considering the approved building plan showing 2 dwelling units on the property in line with the MPBL rules.

Other considerations is 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.
- However, a building plan has already been approved by the City for a main & 2nd dwelling house on the property.

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 my determine purchasing considerations.
- Given the 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 the larger area have been densified with more than one dwelling house per erf.
- Also, the broader character of Tamboerskloof is clearly one of a mix of dwelling sizes and typologies, which results in an interesting mix of dwellings houses and blocks of flats creating a vibrant and active community, which is a popular place to live.
- Various properties in this and larger area have had restrictive conditions removed or amended.
- Given the slope and value of the land in the area, the built form of buildings have been maximised, with very little benefit remaining in terms of historic title deed conditions.
- Given the specific proposal (i.e. approved 2 dwelling houses contained within the permitted building envelope), it is clear that the value of the restrictive condition (i.e. limiting the number of houses) will not be negatively impacted.
- As per the specific title deed assessment provided later in this report, additional dwellings are provided within the permissible building envelope, with all other development rules being maintained.

- Just considering the City's own valuation records for the area, it is clear that the very small scale incremental densification of the area 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 amendment of the specified title deed condition will increase the financial and use value of the subject property, in that it will allow an additional dwelling house to be used / sectionalised 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. 2nd dwelling within the permissible building envelope) will have no negative impact in this regard.
- It may be argued that retaining the condition (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 houses 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 begun to change in the area and the actual proposal will not result in an perceived contextually unappropriated development in the area. As indicated, this all occurs within the permissible building envelope.
- When considering the actual proposal, it is clear that the impacts on rights does not significantly exceed those than when a normal dwelling house is erected on the property.

Given the above, we are of the opinion that the removal of the restrictive condition will not result in a loss of financial or other value. The removal of the restrictive conditions will facilitate contextually appropriate densification, which will increase the municipal valuation of the property, which will add to the City's rates base.

"*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 area are negligible in relation to the condition to be removed. The

surrounding owners in the area do not gain anything significant personally by retaining conditions, which prevent the proposed development of 2 dwelling houses within the permissible building envelope on the property. 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 subdivided or developed with and basically contains more than one dwelling house on the original lots. This means that there are likely to be personal financial benefits for all 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 amendment of the condition relating to the number of dwelling houses will not negatively impact on the rights of surrounding property owners or impact on any 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 Tamboerskloof area is changing as the City densifies, especially areas near amenities, etc. In the context of the changing character of the area, 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 if the title deed condition is amended, given that additional dwelling houses will be permitted and be able to be sectionalised.
- The value of the subject property should increase, but so should the value of 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 amended, 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.

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

- If the restrictive condition remain intact, the broader social benefit will be minimal and it can be argued that the possible social benefit of amending the restrictive title deed condition and consequently allowing for additional dwelling houses 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 Tamboerskloof 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) 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.

- 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" in terms of retaining outdoor space, etc. Also, significant public open space is available in the surrounding area (such as Table Mountain National Park, various public parks, 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 boarder area character is slowly changing 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 amendment of the restrictive title deed condition as per Section 1.4 above will have a positive boarder social impact on the area and the City.
- A 2nd and 3rd dwelling are current permitted use right on properties where a dwelling house is also permitted, which alludes to the possible degree of social acceptability of such a use within this area. In this specific case only one additional dwelling is proposed within the same building envelope.

- An additional family will be able to purchase and own property in a well-located area, close to amenities and recreational activities.
- The amendment 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 amending 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 condition to be amended will not completely remove any rights relevant to the area and property owners. The rights for remaining properties will be kept intact and the amendment of the stated condition will merely allow the additional dwelling unit 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.

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 private 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.
- 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 amendment of the title deed condition to allow an additional dwelling unit 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 amendment of specifically the "one dwelling" restriction will deprive an additional family of being able to own property in this sought after area.
- It has been shown above that the amendment of the title deed restriction is in the public interest and will not have a negative impact on the rights of the possibly affected surrounding property owners.
- The title deed restriction is applied to be amended in the pre-scribed manner as per the MPBL.
- It is shown in this planning report that the limited development of the subject property via an additional dwelling unit 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, the built character of the area is slowly changing towards a more modern form of city development. 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. surrounding property owners, etc) in terms of the proposed amendment of condition 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 and the benefit to the applicant. There are substantial benefits to removing the restrictions. Any adverse impact on any owner is not substantial and there is no evidence of negative financial impact.
- Considering the above, the proposed amendment of the title deed condition cannot be considered an arbitrary deprivation of property.

Specific title deed assessment
In terms of the specific title deed condition applied to be amended, 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 small-scale densification in terms of the Council's Policy in this regard.
- The subject property is zoned R2, which permits a 2nd and 3rd dwelling "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 2 dwelling houses on the property has already been approved by the City.
- It should be noted that the "one dwelling" is not a uniform and consistent condition that is enforced on all properties in the area. This is clear from the various subdivisions, second dwellings and blocks of flats that exist in the larger Tamboerskloof area.
- 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 dwelling houses in a R2 zone will still remain and will be adhered to as part of this proposal.
- 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 dwellings is underutilised and reduced through archaic and outdated title deed conditions.
- The condition is only proposed to be amended to allow the existing two dwellings on the property, which means that it still safeguards the area in terms of the erection of a possible block of flats on the property.

Given the assessment above, it is clear that supporting the amendment of the restrictive title deed condition 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). 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 an additional residential opportunity being made available within the Tamboerskloof 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 regards, the following should be noted:

- The use of the property remains residential in nature and only one additional dwelling houses is proposed on the subject property.
- The additional dwelling house is contained within the same building envelope than any large dwelling house that could be erected on the subject property.
- A building plan has already been approved for the subject property, which plan contained 2 dwelling houses on the property.
- The proposal still complies with the applicable development rules as per the MPBL. No departures are required in this regard.

3.2.5.3 Impact on external engineering services

- There is no bulk departure and, in fact, the dwelling houses proposed complies with the 609m^2 floor space permissible on the subject property. It is therefore not anticipated that there will be any impact on external engineering services.
- Any development contribution payable due to the additional dwelling proposed will be paid.
- 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 showing 2 dwelling houses on the property has already been approved and is not being changed as a result on this application.

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 proposed building complies with the DMS development rules, which means that there will be no impact on the residential amenity of surrounding property owners.
- As per the approved building plan, the property is already being used for 2 dwelling houses, which means any possible impact on the area or surrounding community should already be apparent.

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 new / 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 building as per the approved building plan 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.
- As part of the previous development of the property, the owner insisted on retaining the two large trees on the property, which still remains.

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.
- No changes to the approved vehicular parking and access arrangements are proposed as part of this application.

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

In terms of this submission and the motivation, no adverse impacts on the area and surrounding property owners are 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 and the assessment above, it is argued that the proposal will have no impact on 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.

It is therefore believed that this proposal will have a positive impact on the area and the surrounding property owners.

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". Given that only 2 dwelling houses is proposed and 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 & including Section 48(4) of the MPBL).
- The **amendment of the title deed condition** has been addressed and is shown to be desirable considering Section 39(5) of LUPA & Sections 42(1)(c) & 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 and development within the permissible building envelope.

- 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 no 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

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ANNEXURE A

Amendment of restrictive title deed condition contained in Deed of Transfer T31010/2019 as follows:

From

Condition "B.4. That only one dwelling house shall be allowed to the erected on the property hereby transferred with its usual outhouses (garages and the usual domestic appurtenances) the cost of such dwelling R2 000,00 that the roof of such dwelling house shall be covered with tiles of slate, and that galvanized iron shall not be used to enclose or fence the property hereby transferred without the consent of the said H C von Holdt and his successors in title or the properties transferred to the said H C von Holdt on the 4th September 1923 No. 7323.".

To

Condition "B.4. That only ~~one~~ two dwelling houses shall be allowed to the erected on the property hereby transferred with its usual outhouses (garages and the usual domestic appurtenances) the cost of such dwelling R2 000,00 that the roof of such dwelling house shall be covered with tiles of slate, and that galvanized iron shall not be used to enclose or fence the property hereby transferred without the consent of the said H C von Holdt and his successors in title or the properties transferred to the said H C von Holdt on the 4th September 1923 No. 7323.".