



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

Case ID 1500125084

**Erf 1136, 21 Morningside Road,
Pinelands**

Development Management

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PROPOSED REMOVAL OF RESTRICTIVE TITLE CONDITIONS, AMENDMENT OF CONDITIONS OF TOWNSHIP ESTABLISHMENT AND DEPARTURES



ERF 1136, PINELANDS
21 MORNINGSIDE ROAD,
PINELANDS

1. Site Background

The subject property, Erf 1136 Pinelands, is located at number 21 Morningside Road corner of Union Avenue, in the Northern Suburbs of Cape Town. The site is currently zoned for Single Residential – SR1. The property is currently being used for residential purposes as a dwelling house.

The purpose of this land use application is to apply for regulation departures, the removal of title deed restrictions and amendment of the Township Establishment conditions to allow for greater utilisation of the site. The title deed restrictions restrict the property to one dwelling which is in contradiction of a number of current policies (including the densification policy and Inclusive Economic Growth Policy) and legislation.

It should be noted that there is a current Administrative Penalty Application relating to the garage extension of 15m² to the front of the property as well as a second dwelling in contravention of the title deed restriction. This application encompasses both the building work and land use contraventions. As such the necessitated applications required are listed below.

The details of this application are set out below and are as follows:

1.1 Land Use applications applied for

The application is hereby made in terms of:

- Section 42(b) of the City of Cape Town Municipal Planning By-Law, 2019 (MPBL) to permit the following departures:
 - Street Boundary of 4.722m in lieu of 5m (garage);
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 - Southwestern Common Boundary of 1.165m in lieu of 3m (garage);
 - Southwestern Common Boundary building restriction of 1.165m in lieu of 1.5m to allow for window placement;
- Section 42(g) and Section 42(j) of the City of Cape Town Municipal Planning By-Law, 2019 (MPBL) to permit the removal of the following conditions:
 - C. 1.2. - *That only one dwelling, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf;*” and
 - C.1.4 – *That no building or any portion thereof except boundary walls and fences shall be erected nearer than 15 ft. to the street line which forms a boundary of this erf. No such building or structure shall be situated within 3ft. of the lateral boundary common to any adjoining erf.*”

DESCRIPTION OF PROPOSALS

PROPOSED SECOND DWELLING UNIT

The second dwelling which is a primary right in terms of the Municipal Planning Bylaw contravenes the title deed restriction of

The structure was converted into a second dwelling unit it was an existing outbuilding which accommodated a double garage. A domestic quarter is incorporated into the layout of the garage thereby necessitating the extension of the garage and conversion of a portion thereof for domestic use.

The footprint of the second dwelling unit can be seen on the Site Development Plan measuring 69m² as submitted and the proposal will only see a negligible impact on the existing footprint.

PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS

The Title Deeds of this property contain a number of restrictive conditions which limit either the development or the use of the property to varying degrees. The Western Cape High Court granted a final order to ensure that all conditions imposed by Garden Cities be waived thus these conditions are no longer in effect within Pinelands.

Furthermore, any conditions imposed by Garden Cities for its benefits within the title deeds of properties are no longer required to be formally amended, suspended or removed in terms of the local planning by-laws. No action is therefore required within this application concerning restrictive conditions contained within the subject property's title deeds which were imposed by Garden Cities.

There are, however, a number of restrictive conditions which were imposed by, and in favour of, the Administrator of the Cape Province in terms of the Townships Ordinance 33 of 1934. These restrictive conditions are still applicable and any development on, or use of, the property is still required to conform to these restrictions. Contemporary planning by-laws have replaced the Townships Ordinance 33 and new mechanisms now control the development of properties within the City which are aligned to updated policies and legislation. Restrictive conditions imposed in terms of repealed laws often differ greatly in terms of the restrictions they place on development and land use when compared to more current legislation.

As elaborated on and motivated within this report, these restrictive conditions were imposed under a now repealed by-law, and more contemporary laws have been drafted which directly address and support updated legislation, policies and spatial plans. These updated policies take into account both historical and current issues and pressures experienced by the city and aim to address these via various provisions including strategic objectives and spatial plans at the citywide and district and local levels. A number of these restrictive conditions are more restrictive than the

development, land use and other provisions contained within the Municipal Planning By- Law, 2015, and application is hereby made to remove these conditions to allow for the property to be developed and utilised in a manner which is aligned to current laws and policies.

Motivation for the Removal of conditions C.1.2 and C.1.4 on Erf 1136, Pinelands

This motivation is submitted in support of an application in terms of the applicable provisions of the Municipal Planning By-law for the removal of restrictive title deed conditions C.1.2 and C.1.4 affecting Erf 1136, Pinelands. The purpose of the application is to permit the development of a second dwelling on the property.

Erf 1136 is situated within a well-established residential area in Pinelands, characterised predominantly by single residential dwellings. Over time, however, there has been a gradual and managed transition within similar suburban areas in the City towards accommodating additional dwelling units, in line with broader spatial planning policies that promote densification and more efficient use of urban land.

The property is of sufficient size to accommodate a second dwelling without compromising the amenity of the site or surrounding properties. Access, services, and infrastructure are adequate to support the proposed additional unit.

These conditions were historically imposed to maintain low-density, single residential character. However, such restrictions are increasingly misaligned with current planning policies and urban development objectives.

Alignment with Municipal Planning By-law Principles

The Municipal Planning By-law promotes spatial justice, sustainability, efficiency, and resilience. The removal of the restrictive conditions will:

- Enable more efficient use of well-located urban land;
- Support incremental densification within an existing serviced area;
- Contribute to spatial transformation by allowing more inclusive living opportunities within established suburbs.

Consistency with Spatial Development Frameworks

The proposal is consistent with the principles of the Municipal Spatial Development Framework (MSDF), which encourages:

- Densification along well-located residential areas;
- The accommodation of additional dwelling units to address housing demand;
- The optimisation of existing infrastructure.

Allowing a second dwelling supports these objectives without altering the essential character of the neighbourhood.

Impact on Surrounding Area

The removal of the restrictive conditions will not result in undesirable impacts on the surrounding properties:

The second dwelling will comply with applicable development parameters (coverage, height, building lines, and parking requirements);

Privacy, overlooking, and overshadowing will be carefully managed through appropriate design;

The scale and form of development will remain compatible with the existing residential character.

Infrastructure and Services

The property is already connected to municipal services, including water, electricity, and sanitation. The addition of a second dwelling will not place undue strain on existing infrastructure, as such forms of densification are anticipated and planned for by the municipality.

Socio-Economic Considerations

The Introduction of a second dwelling provides:

- Additional housing opportunities within a well-located area;
- Potential for extended family accommodation or rental income;
- Support for more sustainable and inclusive neighbourhoods.

This aligns with broader socio-economic goals of improving access to housing and promoting mixed-income communities.

Precedent and Desirability

Similar applications for the removal of restrictive title conditions to allow second dwellings have been supported and approved within the broader municipal area, where appropriate. The proposal is therefore not out of character with planning trends and reflects a desirable planning outcome.

PUBLIC INTEREST

The application is considered to be in the public interest as it:

- Promotes efficient land use;
- Supports housing delivery in established areas;
- Makes better use of existing infrastructure;
- Aligns with forward-looking planning policies.

No adverse impacts of a significant nature are anticipated that would outweigh these benefits.

The removal of restrictive conditions C.1.2 and C.1.4 on Erf 1136, Pinelands is

justified on sound planning grounds. The proposal aligns with the intent and principles of the Municipal Planning By-law and relevant spatial policies, while maintaining the amenity and character of the area.

It is therefore respectfully submitted that the application for the removal of the restrictive conditions be approved to allow for the development of a second dwelling on the property.

1.2 Site details

Erf no	Erf 1136 Pinelands
Extent of property	981m ² (as per Title Deed)
Title Deed no.	
Current Zoning	Single Residential – SR1
Current Land Use	Residential
Special/Conservation area overlay zone	N/A

1.3. Locality

Erf 1136 Pinelands is located at number 21 Morningside Road, c/o Union Avenue, in the suburb of Pinelands (please see the Aerial Locality Plan below which depicts the location of the site in more detail).

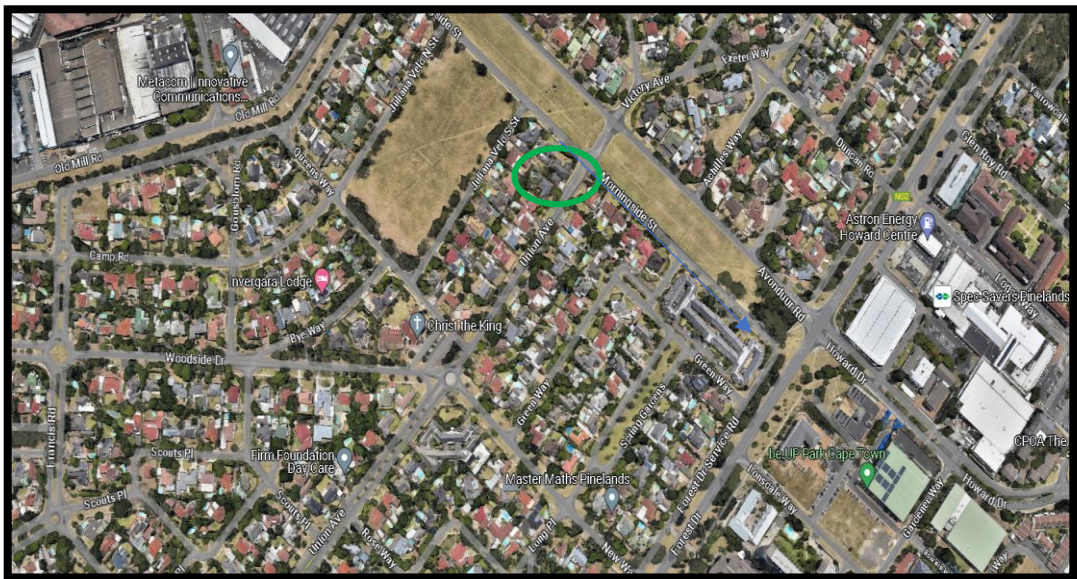
Restrictive conditions are contained within the subject property's title deed which were imposed in terms of Townships Ordinance 33 of 1934 in favour of the Administrator of the Cape Province. This application seeks to remove these restrictive conditions in the title deed to enable the property to be developed in accordance with the contemporary town planning laws which govern development throughout the Cape Town Municipal area.

The property is currently developed with an existing residential dwelling and an existing outbuilding and garage on site.

Access to the property is taken from Union Avenue via an existing carriageway crossing harbouring an 8.5m electric sliding gate further access to the site is taken off Morningside Road via an existing pedestrian gate and a second 4.3m carriageway crossing with an electric sliding gate. Pinelands is characterised as being middle income residential area, with large erven comprising large, detached dwelling houses.

The industrial area of Ndabeni is to the east of the property. The area is further characterised as being well vegetated and many of the homes enjoy majestic views of

the surrounding mountains. The photographs, below, demonstrates that the property is surrounded by large houses and various business operations.



Site location circled in green



Streetscape and surrounds of the site.

Pinelands is a well-located suburb in the greater context of the City of Cape Town. It enjoys high degrees of accessibility to major structuring routes including the N1, N2, M5 and M3 freeways which provide connections to the greater municipal area and beyond. It's location close to industrial and commercial areas and hubs make it a highly sought after suburb to reside in given its location in close proximity to places of employment and economic opportunities. The area is also well serviced with private and public amenities including an extensive public open space network, municipal departments, large shopping complexes, restaurants, coffee shops, schools and sporting facilities. The area

is well serviced in terms of external municipal engineering infrastructure which includes stormwater, sewer networks and electrical and water supply. Solid waste removal services and road networks are also well established and the City is committed to the continual upgrade and maintenance of all these services in the area.

The area is serviced by existing public transport infrastructure which provides access to the area from other locations within the City and provides residents with options in terms of mobility to the greater metropole. Pinelands location in close proximity to the city's CBD is another attribute which makes it a desirable area to reside in and the growing demand for residential opportunities in the area and for those requiring access to the CBD has necessitated the continual upgrade and maintenance of public transport infrastructure in the area.

Pinelands is primarily a residential neighbourhood and properties located within this area are predominantly zoned Single Residential 1 and contain either one, two, or three dwelling units as is permitted in terms of the DMS. Despite being a highly sought after area to reside in and its strategic location in the context of the city Pinelands remains a low to moderate density residential area. A recent decision taken in terms of the Western Cape High Court has removed the necessity of properties in the area to conform to or abide by the provisions imposed in terms of restrictive conditions in their title deeds as imposed in favour of Garden Cities. This exemplifies that the area, while still protecting its character and heritage resources, is undergoing change and development and land use is being supported in line with contemporary laws and policies. Despite this, there are still a number of restrictive conditions which still remain in force.

The area falls within the defined boundaries of the Table Bay District which seeks to uphold spatial planning provisions and directives designed to guide the future development of the area. These plans and policies are discussed and considered in greater detail below as they relate to the proposals made within this application.

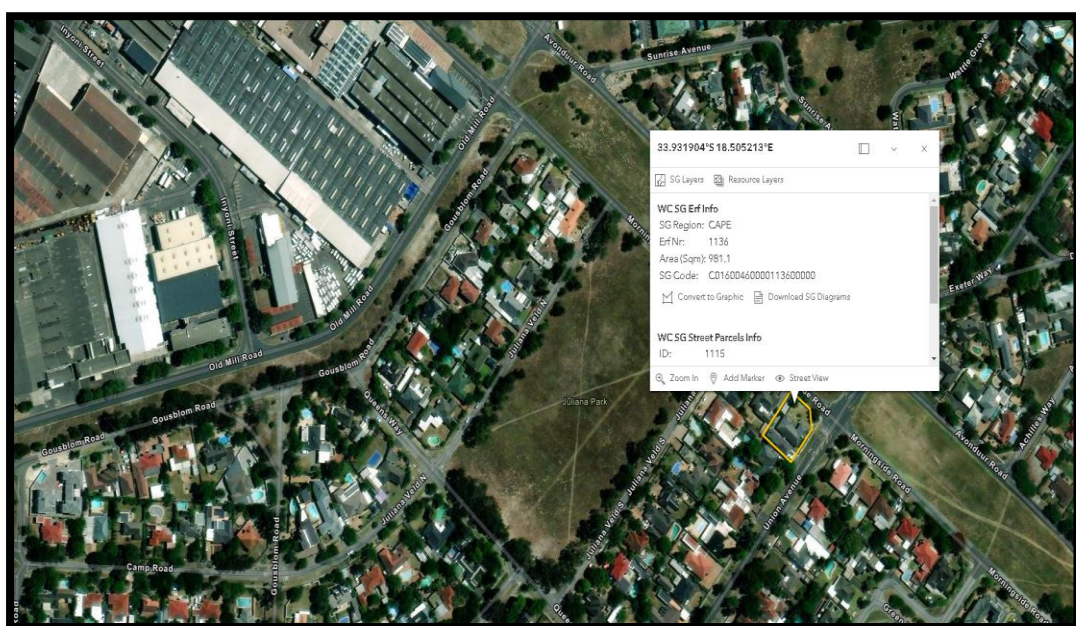


Figure 1: Adapted from the City of Cape Town's City Map Viewer

1.4 Title Deeds

The property is held under Title Deed No . The Title Deed reflects the owner as being (please refer to the attached title deed for confirmation in this regard).

1.5 Physical characteristics of premises and surrounding area

The subject property is a single residential dwelling house and shares a similar extent to the surrounding neighbours. However, there is a mixture of land uses within the broader surroundings consisting of shops (shopping complex) as well as the business and commercial uses strung along Morningside Street and Forest Drive which is located in close proximity and runs parallel.

The subject property is currently zoned for Single Residential – SR1 purposes. The surrounding area is characterized by primarily Single Residential -SR1 properties developed for residential purposes.

1.6 Subject Property and Development Proposal

The proposal is to allow for dwelling extensions to the main dwelling and outbuilding which require departures from the development management parameters applicable to the site as well as the removal of conditions contained in the title deed which hinders further development ie: second dwelling unit, extensions to the building footprint and current dwelling.

It should be noted that the property will continue to be used for residential purposes. The owner is merely trying to increase the utilization of land with the proposed.

The subject property currently has two structures sited on it, a primary dwelling unit and an outbuilding which constitutes a double garage on the ground floor. This outbuilding is proposed within this application to be converted to a second dwelling. This second dwelling unit is allowable in terms of the MPBL, 2015, but given the proximity of the structure to the common boundary, an application for a departure is required. The second dwelling however contravenes the title deed restriction hence the application for removal of the restrictive condition C.1.2..

The property is located on the corner of Union Avenue and Morningside Road and enjoys easy access to Forest Drive, the major connector route through the suburb of Pinelands. The accessibility of Forest Drive to the subject property provides high degrees of accessibility to residents to the greater metropole predominantly via the N2, M5 and M3. Forest Drive is a north-south connector route and provides access to large retail complexes in the north of Pinelands as well as to Maitland, a well-established industrial and commercial area which is increasingly becoming more of a mixed-use area. Access is also provided to Voortrekker Road, which is a well-established corridor which connects the CBD to Bellville and is characterised by a

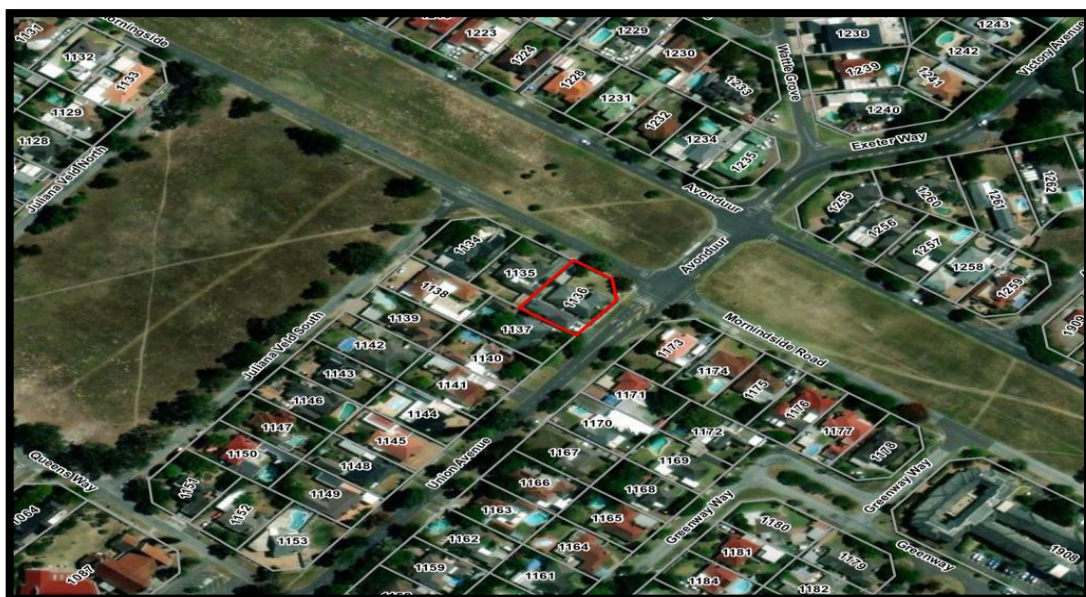
high concentration of commercial, retail and industrial activities. Forest Drive also provides access to well-established public transport routes for residents in the area. The subject property can therefore be regarded as a well located and highly desirable property to live on given its location and access to places of economic opportunity and employment and a wide variety of amenities within Pinelands along with those which are easily accessible from the area.

The property currently has two carriageway crossings, one of which will serve the primary dwelling unit taking access off of Morningside Road Union Avenue which will serve as the primary access point for the second dwelling unit.

A large portion of Pinelands is covered by a Heritage Protection Overlay Zone which has been implemented over the area to preserve the character of the area as well as to better protect conservation worthy heritage resources located on properties within the area. The subject property is not located within this overlay zone therefore the provisions of this zoning do not impact on the proposed development or land use of this property.

There are no natural or biophysical features of significance located on the property and there is no proposal herein to remove trees or other vegetation from the property. As the proposed second dwelling unit is contained within the existing footprint of an approved structure this is not necessary.

The property is zoned Single Residential 1 and contains restrictive conditions in the title deed which place further restrictions on the use of, and development on, the property. This zoning and the various restrictive conditions are discussed in greater detail in other sections within this report along with the various laws and policies which are applicable to the proposals made within this application.



The image above shows that the subject property is located within a predominantly residential neighbourhood surrounded by properties similar in size and by a comprehensive open space network.

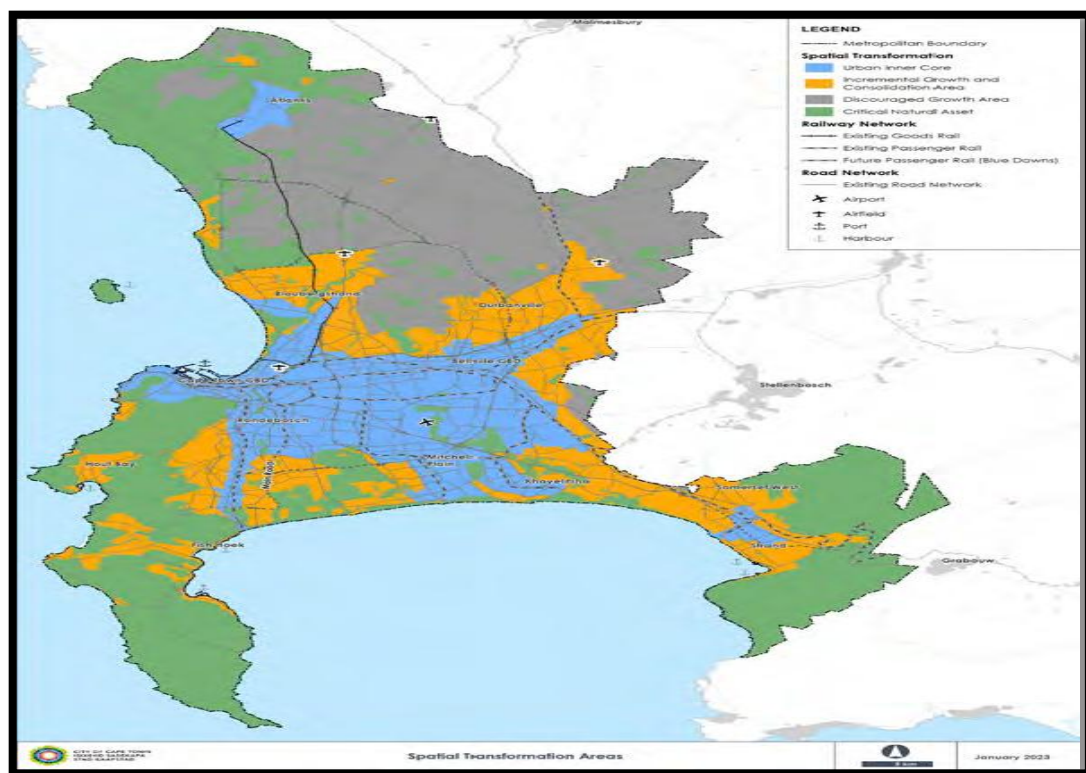
2. Assessment of forward planning policies.

2.1 Table Bay District Plan

The subject property forms part of the Table Bay District Plan. The site is within the Urban Inner Core which is an area earmarked for increased residential densities.

In terms of the Table Bay District Plan, Pinelands is earmarked for conventional urban development and, in this regard and the proposal complies with the proposals of the plan. Furthermore, the proposal is consistent with the District Plan objectives which encourage improvement of the existing built fabric.

The subject property is located within the Table Bay District for which a spatial planning policy has been drafted to guide future development in the area. The Spatial Objectives of this plan, the Table Bay District Plan, are strongly linked to the MSDF, as the spatial vision, development strategies and transformation agenda of this more high-level spatial framework for the City has to be translated to the finer scale of the District level.



The Table Bay District Spatial Development framework (above) shows that Pinelands is located in close proximity to a number of District and local nodes, and development corridors within and beyond the Table Bay District. The area falls within the Urban Development Spatial Planning Category (SPC) as depicted in light grey on the above plan. Incremental intensification is supported within these areas and the City is committed to upgrading existing engineering services. The proposal for a second dwelling unit is therefore supported in these areas and the City is committed

to the continual upgrades and maintenance of engineering services to support the desired densification and intensification of land use. The policy specifically includes the need to increase development within station precinct as an objective, which includes Pinelands.

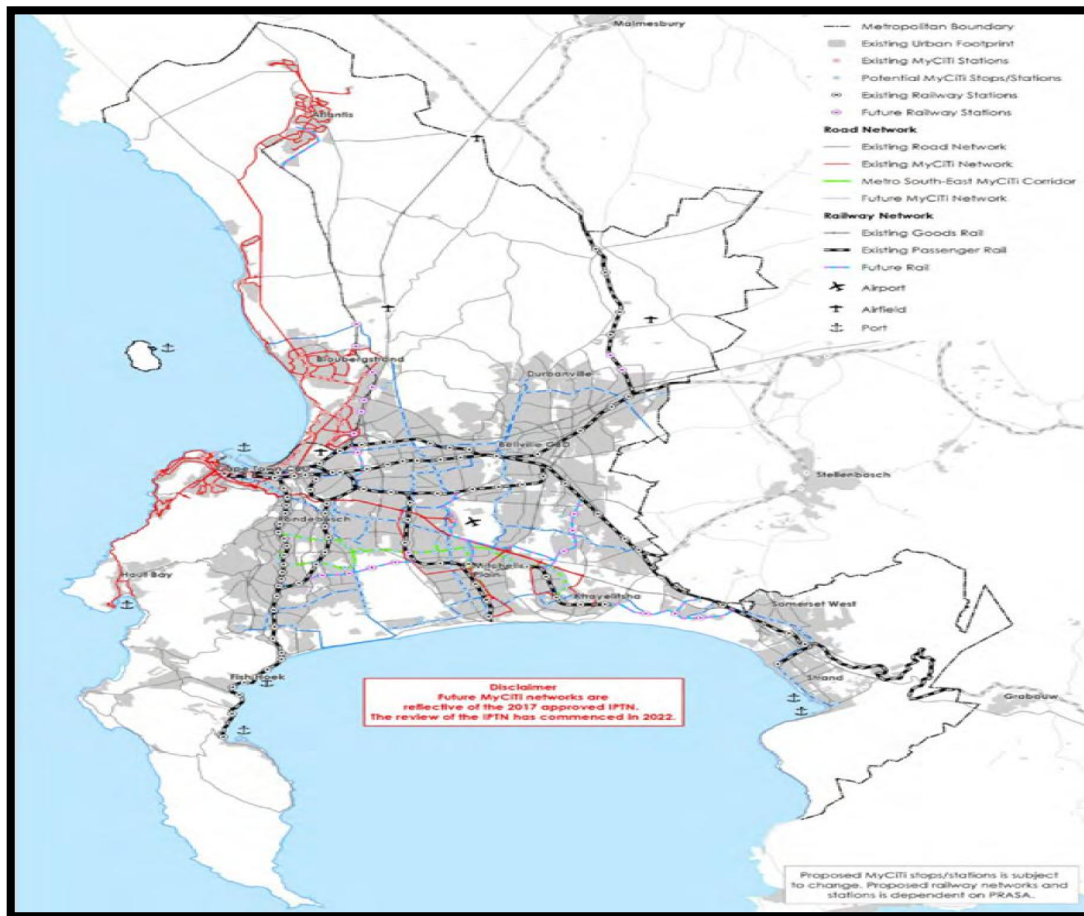
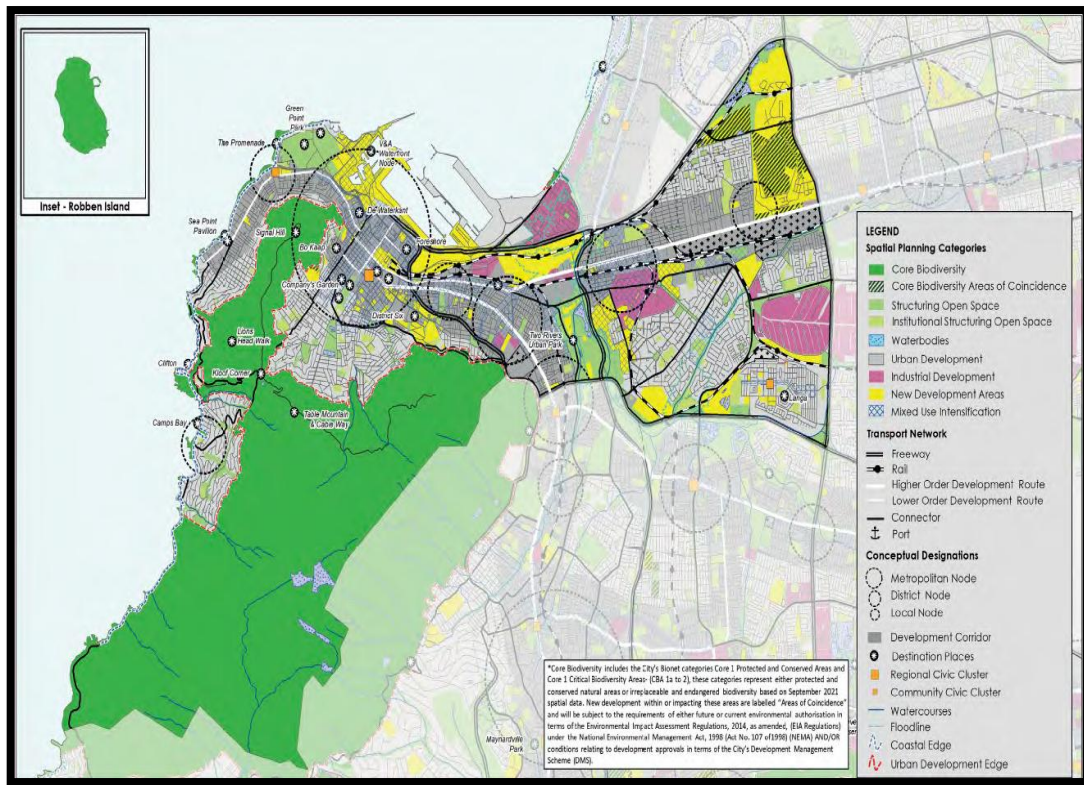
The policy identifies Pinelands as an area of heritage significance having been established in the 1920's as a Garden City with the provision of generous public space and a layout designed to radiate from a central square. It has however been noted that the subject property does not fall within the Heritage Protection Overlay Zone designed to act as a mechanism through which to protect heritage resources in the area.

The district plan provides a central vision for the area, "for Cape Town to be a city of hope for all – a prosperous, inclusive and healthy city where people can see their hopes of a better future for themselves, their children and their community become a reality. As the City government, we are focused on creating the conditions for the meaningfully faster economic growth we need to see more Capetonians lift themselves out of poverty". The strategies of the policy which are aligned with those contained with the MSDP, are designed to help achieve this vision.

Spatial Strategy 1 is to plan for employment and improve access to economic opportunities. This has been addressed within this application by indicating that the property is well located, and the provision of increased housing opportunities provides a greater number of people the opportunity to reside close to places of employment with high degrees of accessibility to economic opportunities.

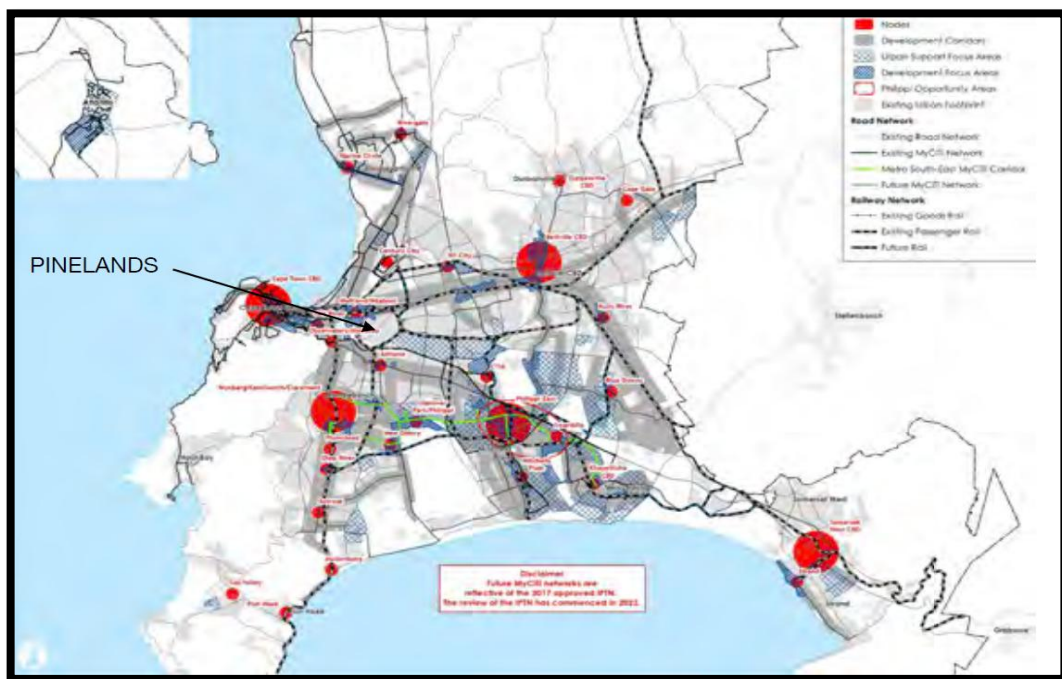
Spatial Strategy 2 addresses the need to manage urban growth in a sustainable and balanced manner. As discussed in the previous section, the proposal does not result in detrimental impacts to the natural environment, and it is well founded that densification is a means through which to promote sustainable urban growth as it reduces pressures on urban sprawl and creates an enabling environment for successful public transport systems.

MANSB is to create an inclusive, integrated, vibrant, and healthy city. By providing increased housing opportunities in an area located close to municipal, district and local nodes and development corridors more people are able to access these places more easily thus creating a more inclusive environment.

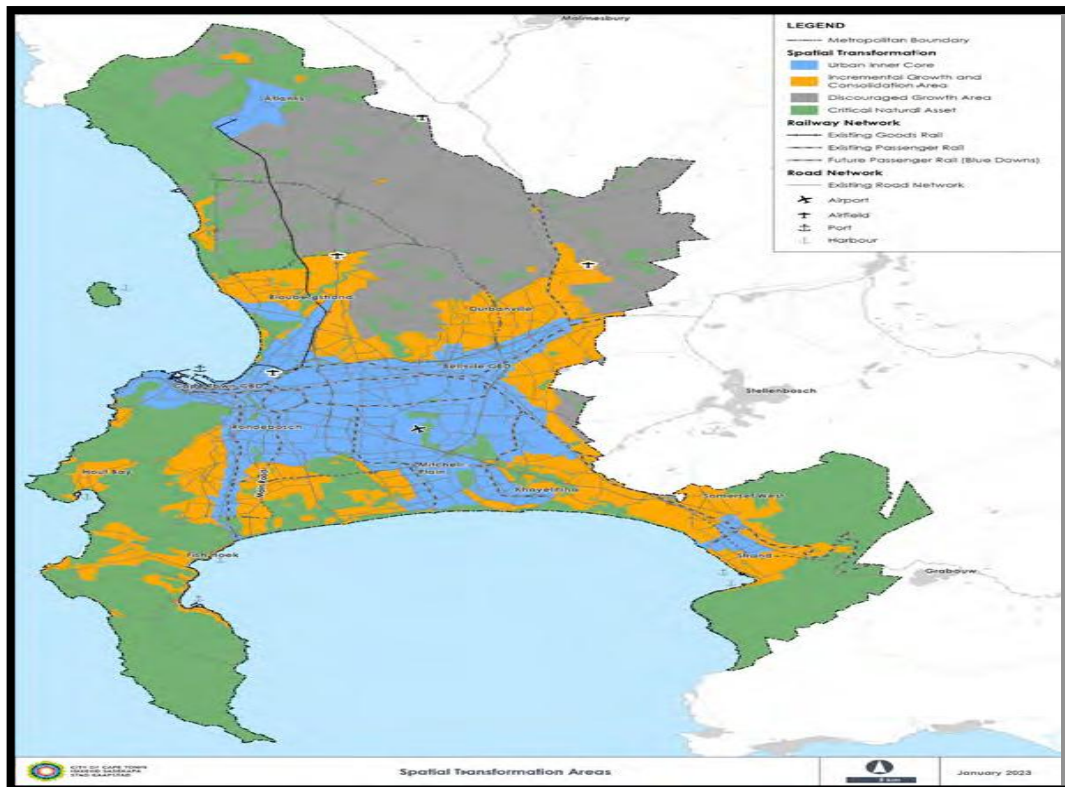


Cape Town's Transport Network Plan shows existing MyCiti Bus Routes and Passenger Rail routes in close proximity to the area which are further supported by informal public transport routes. Well established public transport infrastructure supports densification and provides residents with access to greater access to the city allowing higher degrees of accessibility to places of employment and a wide variety of amenities including healthcare facilities, schools and retail outlets.

Promoting the use of public transport supports the City's environmental objectives of reducing the use of fossil fuels, reduces pressures on public roads, reduces traffic and congestion and further bolsters the sustainability and future development of transport infrastructure.



The above image is a conceptual plan depicting the development corridors and urban nodes throughout the city. It is clear that Pinelands is an extremely well-located residential area within the context of the city given its proximity to major urban corridors and location between the Cape Town and Bellville CBD's.



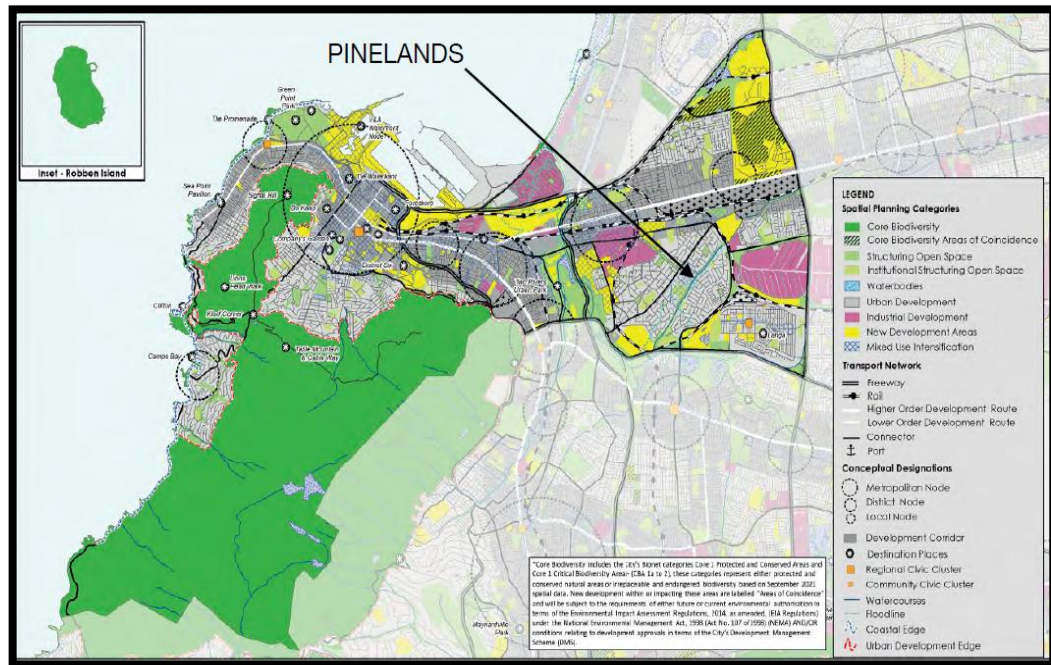
Pinelands clearly falls within the defined 'Urban Inner Core' as depicted in blue in the above image. The MSDF states that the City and public and private sectors are committed to coordinated, spatially targeted investment and land development to spatially transform and integrate the city form. Diverse and dense land uses are included as desirable spatial outcomes within these areas which will also be targeted in terms of investment into public transport infrastructure. Land use intensification is promoted and the maintenance of, and upgrades to, service delivery infrastructure is to be carried out on a continual basis to facilitate this desired intensification and densification in these areas.

It is clear that the subject property is well located in the context of the city and that the proposals made within this report are in support of the various spatial planning objectives contained therein. A second dwelling unit is a means through which to achieve densification and intensification of land use in the area. This densification will afford a greater number of people the opportunity to reside in a well-located area which directly supports **Strategy 1** of the MSDF.

Strategy 2 is also supported via densification as the proposal results in the use of underutilised well-located land close to existing public transport routes. This reduces pressures on urban sprawl thereby protecting valuable agricultural and natural land beyond the defined urban edge and creates conditions for sustainable public transport provision. The more people available to utilise public transport increases the financial viability of these systems and reduces dependancies on private transport thereby reducing the use of fossil fuels. Affording a greater number of people the opportunity to reside in a well-located area helps to support.

Strategy 3 of creating a more inclusive and integrated city.

It is clear from the above that the proposals made within this application do not jeopardise the achievement of the spatial directives of the MSDF and, in many ways, support these objectives.



2.2 SOCIAL DEVELOPMENT STRATEGY & INCLUSIVE ECONOMIC GROWTH STRATEGY

The Social Development Strategy and Inclusive Economic Growth Strategy have been considered as they relate to the proposals made within this application. Neither of these policies are expected to be negatively impacted upon as a result of the approval of this application. Additional housing opportunities in a well-located area allow for a greater number of people to reside close to work opportunities as well as established public transport infrastructure supporting the creation of an opportunity city. This has been discussed in the previous sections and it has been demonstrated how these proposals directly contribute to supporting the achievement of these policies.

2.3 DENSIFICATION POLICY

The form of densification proposed in this application is believed to be very much in line with the provisions of the Densification Policy. This policy promotes densification where appropriate in order to provide access to secure housing in well located areas and to protect the integrity of the designated urban edge. As has been discussed in this report, Pinelands is a well-located residential area in the context of the greater metropole and densification is supported in this area by both the MSDF and District Plan.

Densification is seen as a mechanism through which to promote the long-term sustainability of the City and protect valuable agricultural and natural land beyond

the borders of the city. The policy notes that a 'one size fits all' approach should not be taken to densification throughout the city and the form of densification proposed within this application is believed to be sensitive to the context of the local area.

2.4 Assessment of proposal against zoning scheme and Municipal Planning Amendment By-Law, 2019

The development of the subject property will be subject to the development controls in a Single Residential (SR1) in terms of the Development Management Scheme, City of Cape Town Municipal Planning By-Law, 2019. The details are set out below and are as follows:

Development controls	Development Management Scheme Requirements	Applied to the site	Departure required
Height	10 m to Top of Roof 8 m to Wallplate	< 10 m < 8 m	No
Street Building line setback	3.5 m	> 3.5 m	No
Street Boundary line restriction	5m	4.227m	Yes
Common boundary building line	3 m 1.5	1.165m 1.165m	Yes

Development Parameters:

These parameters pertain to structures located on a Single Residential property. The subject property measures +981 square meters in area and is therefore required to conform to development rules which pertain to its size.

Requirements for floor factor limitations are not applicable to a property of this size but there is a limitation on floor space which may not exceed 1500 square meters. Limitations on total coverage are also not linked to properties of this size. Maximum heights of buildings are 11m to top of roof and 9m to wall plate. The height of the second dwelling unit has been discussed above. Building lines are restrictive and buildings on the subject property may not be located within 3.5 meters of the street boundary and within 3 meters of the common boundary. The conversion of an outbuilding to a second dwelling unit triggers the common boundary building as is illustrated by the site development plan as drawn by JZE Architects 8 March 2021 with drawing number MO1 and project number 2105. It is noted that the existing dwelling unit is an approved structure.

Additional considerations are the placement of garages and carports, window and door placements and parking. As per a comprehensive review of the proposed building plans conducted, the necessary departures for such are applied for herein.

Second Dwelling Unit

As per the MPBL, 2015, and associated Development Management Scheme the subject property is permitted to have a primary dwelling unit, a second dwelling unit and a third dwelling.

All dwelling units are required to conform to the development parameters of this zoning and there are special provisions also included for second dwelling units.

The following describes how the proposed second dwelling unit conforms to these development rules. The total floor space of the second dwelling does not exceed that of the main dwelling unit. It is a considerable smaller dwelling unit and is clearly ancillary to the primary dwelling unit located on the property.

It must be noted, as is further elaborated on, that the second dwelling is a conversion of the outbuilding on the property. . The structure appears to conform to the height limitations placed on second dwelling units, both to the wall plate and to the top of roof. Provisions pertaining to second dwelling units which are attached to the main dwelling house are not applicable in this instance. Capacity in the area will be required to be conformed by the necessary departments but given the properties location in a well-established and serviced residential area this should not be an issue.

A building plan submitted and approved dated 11 May 2022 did not include the second dwelling and unauthorized building work associated therewith as previously believed and as such an Administrative Penalty Application was duly submitted for rectification thereof.

As per the DMS, as it relates to the subject property, the second dwelling unit is required to be setback 3 meters from the common boundary. As this structure is proposed to only be setback 1.165 meters from this southern common boundary an application for a departure has been included. A further departure for the window placement to be setback 1.165m in lieu of 1.5m is also required.

A departure from Item 22(f)(iii) of the DMS to permit the garage to be setback 4.659m in lieu of 5m from the street boundary. This departure is negligible and will see no negative effects.

As per the parking provisions contained within the DMS a total of 3 parking bays is required to be provided on the property to serve the main dwelling unit and second dwelling unit. The property currently exceeds the required parking bays needed.

3. APPLICABLE LEGISLATION FOR THE REMOVAL OF RESTRICTIVE CONDITIONS

3.1 Consideration in terms of Section 47(2)(a) and (b) of SPLUMA

Section 47 (1) and (2) of SPLUMA read as follows:

- (1) A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended.
- (2) A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be affected _
 - (a) in accordance with section 25 of the Constitution and this Act;
 - (b) with due regard to the respective rights of all those affected, and the public interest; and
 - (c) in the prescribed manner

(a) If such removal, amendment or suspension will deprive any person of property as contemplated in section 25 of the Constitution.

Section 47(1) and (2) make provisions for a title deed restriction to be reviewed for the purposes of its removal. These provisions will be adhered to, as per its application according to the Land Use Planning Act and the Municipal Planning By-Law. The deletion of restrictive conditions will not amount to arbitrary deprivation of property as set out in section 25(1) of the Constitution.

(b). With due regard to the respective rights of all those affected, and to the public interest

It is believed that rights of any party and the public interest will not be negatively impacted upon by the removal of these restrictive conditions. The public interest is currently protected by the Municipal Planning By-Laws, 2019, and the rules and regulations prescribed within the DMS.

The removal of the conditions should not be considered a deprivation of property. As indicated in this application, the proposed is consistent with the development and land use principles set out in SPLIM and LUPA, the MPBL and the DMS.

Furthermore, subject to Sections 6, 7 and 8 of SPLUMA (2013), which refer to good planning practice and procedures, Section 42 outlines the criteria that must be used by decision makers when evaluating an application and Section 47 refers to the removal of restrictive title deed conditions in particular. This application is made in accordance with the allowances of this legislation.

The provisions of both the Spatial Planning and Land Use Management Act (SPLUMA) and the Western Cape Land Use Planning Act (LUPA) have been considered as they relate to the applications contained within this report and it has

been found that no proposal made herein is in contravention of these laws.

This application is believed to promote numerous Development Principles contained within SPLUMA. The principle of spatial justice is supported through the creation of increased residential opportunities in a well-located area. The creation of a resilient community is also promoted through the provision of increased housing in a well-located area close to job opportunities and existing public transport infrastructure. Making more efficient use of land within the urban edge is regarded as a means through which to protect the integrity of the urban edge by reducing pressures which result in urban sprawl which compromises valuable natural and agricultural land on the periphery of the city. The principle of efficiency is promoted in that the proposal makes more efficient and effective use of underutilised land in a well-located area. The Development Principles are carried through into provincial legislation, LUPA, as Land Use Planning Principles. These have been considered and it is believed that the proposals made within this application support these principles in a similar manner to those described above.

Municipal Planning By-Laws, 2019, and the rules and regulations prescribed within the DMS. The restrictive conditions which have been registered over this property are older than these, more current, development regulations. The conditions were put in place to protect the character of the area, the character of which has changed significantly and in a manner which conforms to current legislation and policy. The land use rights prescribed to this property by current legislation which is informed by contemporary laws and policies are less restrictive than the restrictions contained within the title deeds. An application has been made to remove conditions restrictive to second dwellings in terms of the MPBL, 2019, and this, nor any other proposals made within this application, is expected to have a negative impact on the public interest. The public interest will continue to be protected by the MPBL and the DMS and the amendment of the stipulated restrictive conditions will allow the owner of the property to exercise the current development rights permitted by the City.

(c). in the prescribed manner if such suspension, amendment or removal will deprive any person of property as contemplated in section 25 of the Constitution.

The proposed amendment of these restrictive conditions will not result in any person being deprived of property.

3.2 Land Use Planning Act, 2014 (LUPA)

When a municipality considers the removal, suspension or amendment of a restrictive condition, the municipality must have regard to at least the following:

- a. *The financial or other values of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.*

The MPBL makes provision for three dwellings on a property zoned for single residential purposes. Thus, the removal of this condition relating to the property only having one dwelling for residential purposes is entirely consistent with the MPBL. The applicant is not qualified to comment on whether the condition impacts on property values or not. However, it is noted that numerous other properties in the broader area have additional dwellings, without negatively affecting property values. As a result, it is our opinion that removal of the conditions will result in limited, if any, impact on value. The deletion of the restrictions will enable for an additional dwelling under the single residential zone, which is considered to be in keeping with the character of the area given that a property is permitted to have three dwellings as per the new directive. The proposal is also to extend the existing dwelling. Given that the proposed use is allowed under the single residential zoning as well as the design not changing from the residential façade, there will be no decrease in value of surrounding properties. The restrictive conditions were imposed in order to maintain and preserve a strict residential character and prevent any landowner from detracting from this concept. The proposal is in keeping with the residential nature of the subject property and the surrounding area and in this regard, there is no negative impact on property values expected.

Maintaining restrictions which prohibit properties in this area restricts the ability of these properties from developing in a manner in line with current policies and laws. As the character of the area has changed significantly (increased densities) it is motivated that there remains little value in maintaining these conditions.

It should be noted that this will not have an impact on existing rights as the property will retain its SR1 zoning and is merely maximizing the development potential of the. Therefore, the applicant is of the opinion that the proposed is not only promoting intensified use of land but also promoting social integration with the surrounding land uses while at the same time contributing to a safer community with more awareness in the area. Given the above, this means that the proposed would also not have a negative impact on surrounding landowners in terms of value of land.

b. *The personal benefits which accrue to the holder of rights in terms of the restrictive condition*

The deletion of the restrictive conditions which were imposed by the Administrator does not result in a direct personal benefit to the neighbours. The surrounding property holders will not be impacted on as a result of the deletion of the restrictions and it is evident that this will not have an adverse impact on the surrounding community given that numerous other landowners have extended dwellings on their properties and increased the on-site density.

c. *The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended*

Granting the removal of the restrictive title deed conditions will enable the owner to extend the current dwelling. The property owner will achieve substantial personal benefits from the deletion of these conditions as it will allow the expansion of their development rights on the property, especially in the use of the property, as well as being limited to the development setbacks as stipulated in the current Development Scheme. This unlocks value for the owner and will benefit future owners as well.

The conditions are defunct and outdated and not in line with the MPBL. The application is also considered desirable and accords with the Table Bay District Plan. The deletion of the conditions will not only benefit the owner, but also the surrounding area and the general public.

d. *The social benefit of the restrictive condition remaining in place in its existing form*

It is not believed that there would be a social benefit of any significance to the surrounding community if the restrictive title deed conditions are kept in place, as the area is a residential area, and will lose the opportunity for the potential extension of the current dwelling and an additional dwelling. The restrictions were imposed many years back to ensure that properties do not change from a residential perspective but given that the conditions were imposed in 1940's, the implementation of the Municipal Planning By-Law allows for a greater use of land including the MSDF as well as numerous forward planning policies. Due to the lack of developable land in Cape Town the implementation of allowing 3 dwellings on a property indicates that a property should be used to its full potential. Given the aforementioned it has been clearly demonstrated that the proposed use is not only in line with the by-law and forward planning policies but also allows land use intensification.

e. *The social benefit of the removal, suspension or amendment of the restrictive condition*

There are social benefits in removing the conditions, as it will enable the better utilization of the property in terms of modern city development, improve lack of job opportunity and align with various City policies that require a more efficient use of land where appropriate. The deletion of the restrictions will have a positive social benefit given that it will promote increased awareness and contribute to a safer community. The proposal is in accordance with the Provincial and Municipal policies and considered to be a direct benefit to the area and City as a whole.

f. *Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.*

The restrictions were imposed by the Administrator (now deemed to be the City of Cape Town). The deletion of the restrictions will not remove the rights enjoyed by the City, but will increase rights, given that the proposal is in line with the City's forward planning policies and the fact that the proposed will result in increased job opportunity, which is in the direct interest of the City.

3.3 Minimum Threshold Requirements in terms of section 99(1)

This application complies with the minimum threshold requirements, as set out in section 99(1)

a. Compliance with the requirements of the Municipal Planning By-Law

The application complies with the requirements of this By-law.

b. Consistency with the MSDF

The proposed land use is consistent with the MSDF.

c. Desirability in terms of section 99(3)

As discussed below, the application is desirable as contemplated in section 99(3).

d. Development should not require departures that provide rights for the next subzone

The proposed will not have an effect of granting the property an additional dwelling or further extending the current dwelling within the Single Residential Zone.

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.

3.4 Compliance with criteria in terms of Section 99(2)

In terms of the applicable District Plan the area and subject property is designated for urban development. Given that the proposal is contained within an existing urban area and as described earlier in this report, it is clear that the proposal complies with the provisions of the District Plan. It has also been shown in this report that the proposal complies with any relevant criteria contemplated in the DMS. It has also been shown on this report that the proposal contributes positively and complies with various City Policies.

The proposal, which is minor in nature and basically allows for the further development of the property which will remain residential, will have no impact in terms of the City's Social Development Strategy and indirectly supports the Economic Growth Strategy. Given the assessment above and for the reasons as listed in 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 that the proposal will not have a negative impact on the existing rights of relevant surrounding property owners. With regards to this proposal, an assessment has been completed and compliance shown in terms of the relevant provisions of LUPA & SPLUMA. As per the application submitted and motivation provided, the applicant is of the opinion that the proposal

complies with the requirements of the By-Law.

3.5 Desirability in terms of Section 99(3)

The applicant motivates in terms of Section 99(3) of the MPBL of the extent of desirability. The following criteria of the MPBL are addressed and motivated as follows:

a. Socio-economic impacts

The proposal for departures and to remove the restrictive conditions on the subject property will have a positive impact as it will allow for additional residential stock in a desirable area, which will improve access to amenities and employment opportunities in the local area.

b. Compatibility with surrounding land uses

The proposal is compatible with the surrounding land uses as the use on the site is compatible with the surrounding residential uses. As mentioned earlier in this report the surrounding area is characterized by residential properties. Thus, the proposal is greatly compatible with the surrounding land uses. The proposal does not have a significant impact and is deemed to be in keeping with the character of the area.

c. Impact on external engineering services

It is not considered that the proposal will have any adverse impact on the adjacent services and will not have a significant impact on the bulk infrastructure demand. A development contribution will be paid should it be required.

d. Impact on safety, health and well-being of surrounding communities

The proposal will not impact on health and safety or well-being of the surrounding land owners.

e. Impact on Heritage

The subject property is not located within a Heritage Overlay Zone (HPOZ), thus there is no application required to permit development within an HPOZ.

f. Impact on the biophysical environment

The proposal will not have a significant impact on the biophysical environment. There are no conservation worthy trees that need to be removed to facilitate the proposed development. The proposal will therefore not have an adverse impact on the biophysical environment.

g. Traffic Impacts (parking, access/egress and other transport considerations).

Access to the subject property will continue to be taken from Morningside Road. The proposal does not impact on existing parking or traffic issues related to the subject property.

h. Impact on Existing rights

The rights of surrounding property owners are not expected to be negatively impacted upon as a result of the proposals made within this application.

The approval of the building line departure will permit the 2nd dwelling to be located 1.165 meters from the southwestern common boundary in lieu of the permissible 3 meters. As this structure is an existing building the impacts of the location of this building are expected to be negligible. The removal of the restrictive conditions will allow the owner of the subject property to develop the property more in line with the current Municipal Planning By-Laws.

4. Motivation in terms of Development Principles in Chapter 2 of SPLUMA and LUPA

4.1 Spatial Justice

This site is not subject to redress, nor is characterised by informality or underdevelopment. As such, it is not the direct object of this principle. However, the incremental densification of this site will improve the use of this site and accessibility to this area in the long term.

4.2 Spatial Sustainability

This proposal promotes spatial sustainability to the extent that it is allowing for a form of contextually appropriate densification and allows for more intense use of a site that is already serviced.

4.3 Spatial Efficiency

This incremental densification promotes efficiency to the extent that the site is makes use of already existing infrastructure and promotes more efficient use of resources in the form of land.

4.4 Spatial Resilience

The proposed departures and removal of restrictive title deed conditions will increase the viability of this neighbourhood in the long-term, as it allows for more than one dwelling on this site, which will increase the number of residents who are able to live in this well-located neighbourhood.

4.5 Good Administration

This application complies with all the relevant forward planning policies for the Cape Town Metro.

5 Conclusion

For the reasons set out above in this report, the proposal is therefore considered to be desirable. This proposal is desirable as it complies with the criteria of desirability in the MPBL of 2019. The proposal is deemed to be minor in nature as the proposed additions do not impact significantly on the existing rights of any surrounding neighbours and community at large. The proposed additions will provide a valuable service to the community in terms of security and awareness.

The applicant submits that the above-mentioned application will not adversely affect the surrounding area but will in fact make several positive contributions as set out herein. It is accordingly requested that the City of Cape Town, grant its approval.

This application contains all required supporting documentation as per the MPBL, 2019, as well as providing a comprehensive motivational report as per S99 of these By-Laws. We respectfully request that this application be assessed and approved.

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