



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

Case ID 1500163239

**Erf 53936, 24 Claremont Avenue,
Claremont**

Development Management

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**APPLICATION FOR REZONING AND VOLUNTARY REMOVAL OF RESTRICTIONS: ERF
53936 CAPE TOWN**

Report date: October 2026
Report version: 3

headland

town planners



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SUPPORTING DOCUMENTS UPLOADED ONTO D.A.M.S.

- Power of attorney
- Title deed
- Conveyancer's certificate
- Property diagram
- Noting sheet
- Architect's development plans and elevations
- Heritage Western Cape appeal ruling
- Land use application form

1. INTRODUCTION, LOCATION, AND CONTEXT

The property is located in Claremont (see figure 1) within an existing residential suburb in the City's Southern District. This proposal involves the rezoning of the property for the development of new residential apartments. The proposed units require no departures from the General Residential: GR2 zone height and setback parameters, in accordance with an appeal ruling from Heritage Western Cape, see 1.1.



Figure 1: Locality (Image source: City of Cape Town GIS Viewer)

1.1. Relevant pre-application heritage approvals

During a submission to Heritage Western Cape for demolition of the existing ± 72 -year-old dwelling on the property, an appeal was dismissed and the demolition approved with the following condition relevant to the built form of the replacement structure¹ (our **bold underline** for emphasis):

- The **height and setback** of the replacement building may not exceed the specifications as set out for **General Residential Sub zonings GR2** by the City of Cape Town Municipal Planning By-Law.

Therefore, while a GR4 zoning is required to deal with total floor area proposals, the proposed built form is consistent with the height and the street- and common-boundary setbacks of the GR2 zone.

Furthermore, the ruling calls for an elective design element, "*Parking should be half basement or completely underground.*"² that the applicant has included in the design.

The relevant HWC appeal ruling is submitted to DAMS for information as there are additional conditions to which the proposal must comply but do not constrain the proposed built form.

¹ Heritage Western Cape INDEPENDENT APPEAL TRIBUNAL ruling 19 July 2022. Clause 87 pages 35 & 36.

² Heritage Western Cape INDEPENDENT APPEAL TRIBUNAL ruling 19 July 2022. Clause 87.2.4 page 36.

2. APPLICATION

The following applications are submitted in terms of the City of Cape Town Municipal Planning By-law, 2025:

- for **rezoning** of the property from Residential Zone 1 to General Residential Zone 4 in terms **section 42(b)** to establish the land use rights to realise the proposed apartment building,
- for voluntary **removal of restrictive title deed conditions** in terms of **section 42(g)** at the recommendation of the City of Cape Town.

3. PROPERTY DETAIL AND CONTEXT

Table 1: Property information

Applicant	Headland Planners (Pty) Ltd
Property Number	Erf 53936, Cape Town
Street Address	24 Claremont Avenue, Claremont
Property diagram	General Plan TP 16 (1029/1932) of Claremont House Township
Extent	947m ²
Servitudes	None
Registered Owner	

Current Zoning: Single Residential 1

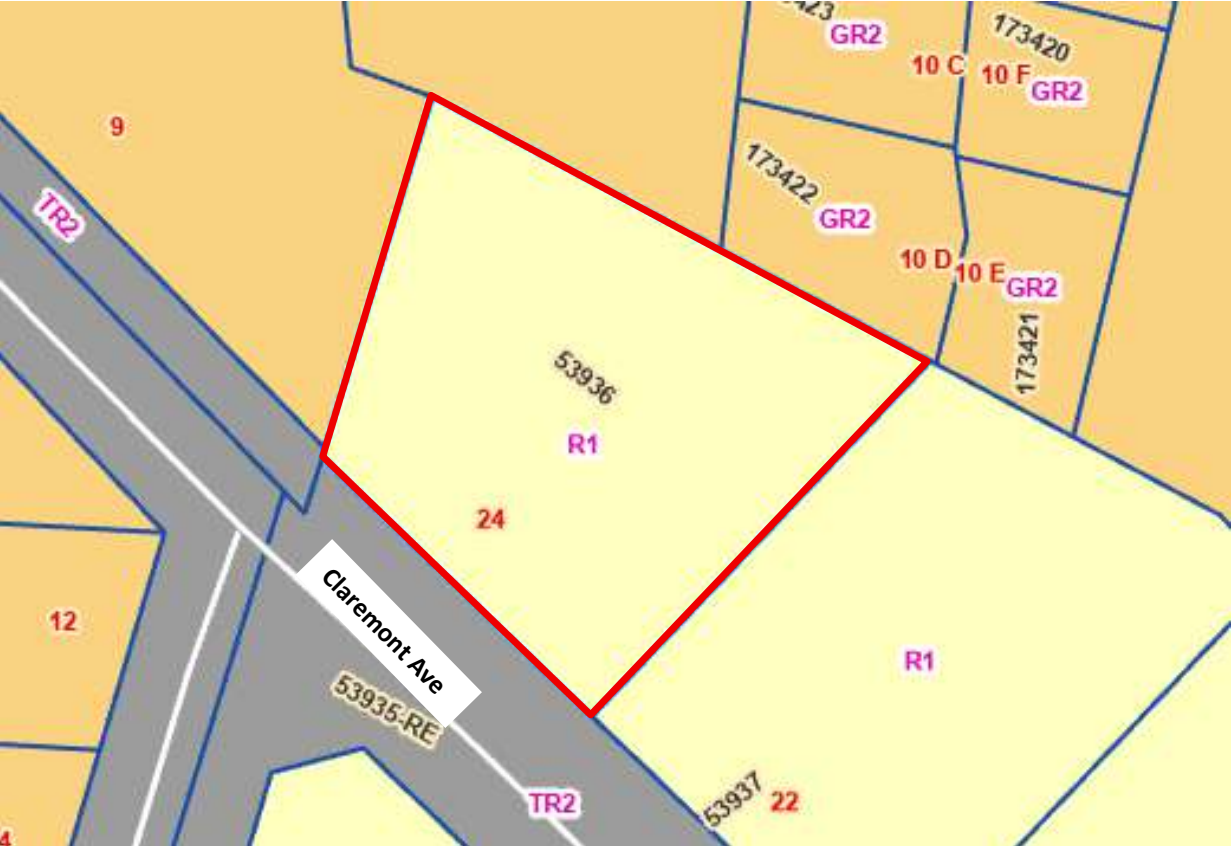


Figure 2: Current zoning (source: CoCT map viewer)

Title Deed Number(s)	
Title deed conditions	Yes, see section 4.
Current Land Use	Residential dwelling

Any unauthorised land use/ building work	No
Subject to NEMA	No
Subject to NHRA	Yes, see HWC demolition appeal ruling annexed.

4. TITLE DEED REVIEW

The title deed and historic deeds holding the property have been investigated by Graham Sonnenberg in coordination with Meyer de Waal.

A conveyancer's certificate has been produced which confirms that the conditions contained in the deed restrictive of built form and regulation were imposed prior to act 33 of 1934 and do not therefore need to be removed unless voluntarily by the applicant.

It is the intention of the applicant to remove/amend the following conditions, from Title Deed no. T47844/2007 and carried through to Title Deed no. T49671 of 2018 as a result of the execution of a deceased estate, voluntarily:

- To **delete** condition B. (c): "That not more than one dwelling, together with the necessary outbuildings and appurtenances, be erected on the erf and that not more than one half the area of the erf be built upon."
- To **delete** condition B. (d): "That no building shall be erected within 10 feet from any street line that forms a boundary to the erf."

A motivation for the amendment and removal of restrictive conditions is included in section 8.1.2.

5. DEVELOPMENT PROPOSAL

5.1. Proposed apartments

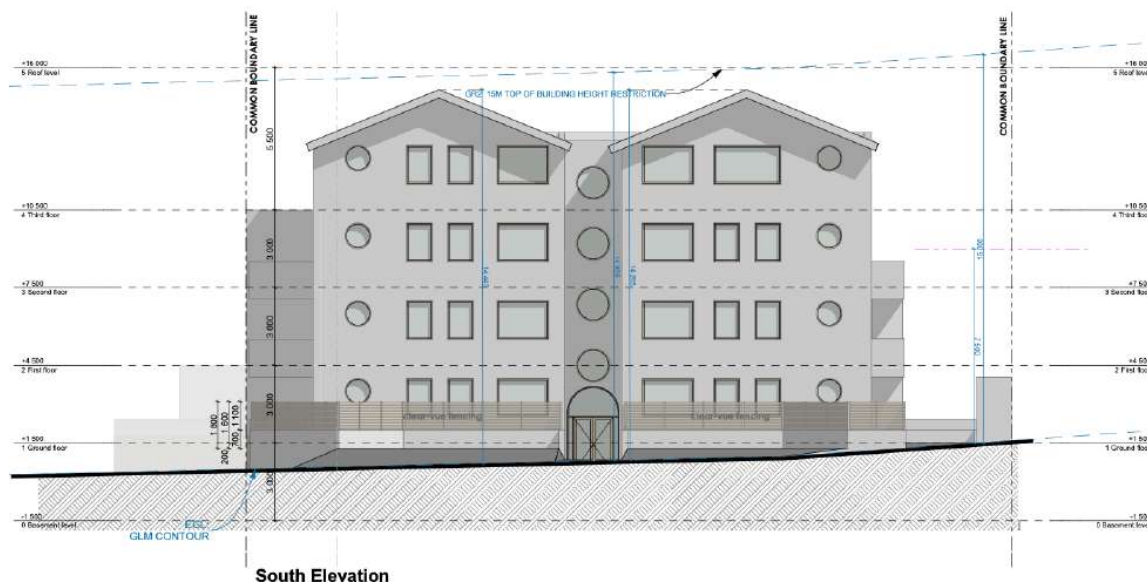


Figure 3: South (Claremont Avenue) elevation of the proposed apartment building (source: Simos Architects)

A 4-floor (including ground floor) apartment building is proposed on the property, in keeping with the appeal judgement of Heritage Western Cape from a set-back and height perspective, containing 16 dwelling units. Parking and service areas are located in a basement, ramp accessible from Claremont Avenue.

The apartments range between one bedroom studio units, two-bedroom units, 3-bedroom units. The following figures illustrate the proposed floor plates from basement parking to the proposed third floor.



Figure 4: Basement parking and ground floor plates (source: Simos Architects)



Figure 5: First and second floor plates (source: Simos Architects)



Figure 6: Third floor and roof level plates (source: Simos Architects)

5.2. Traffic, Access and Parking

A traffic statement is not required for this proposal since it does not meet the threshold for a traffic related study. I.e. 50 peak hour trips, the requirement for a traffic impact assessment (TIA) or the change in land use that requires site development plan approval which would trigger a site traffic assessment (STA).

Access remains from the same location as the existing driveway on Claremont Avenue with a single lane $\pm 2.7\text{m}$ wide CWC leading to the basement parking area which will be signal controlled. The following elements are also designed into the structure:

- 13m of stacking is provided from the kerb line to the automated and signal-controlled security gate access to the basement parking,
- pedestrian access is via Claremont Avenue centrally located to two off street parallel parking bays,
- the parking is located in a basement below existing ground level to be consistent with the HWC ruling.

See figure 7 for pedestrian and vehicle access as well as parking configurations.

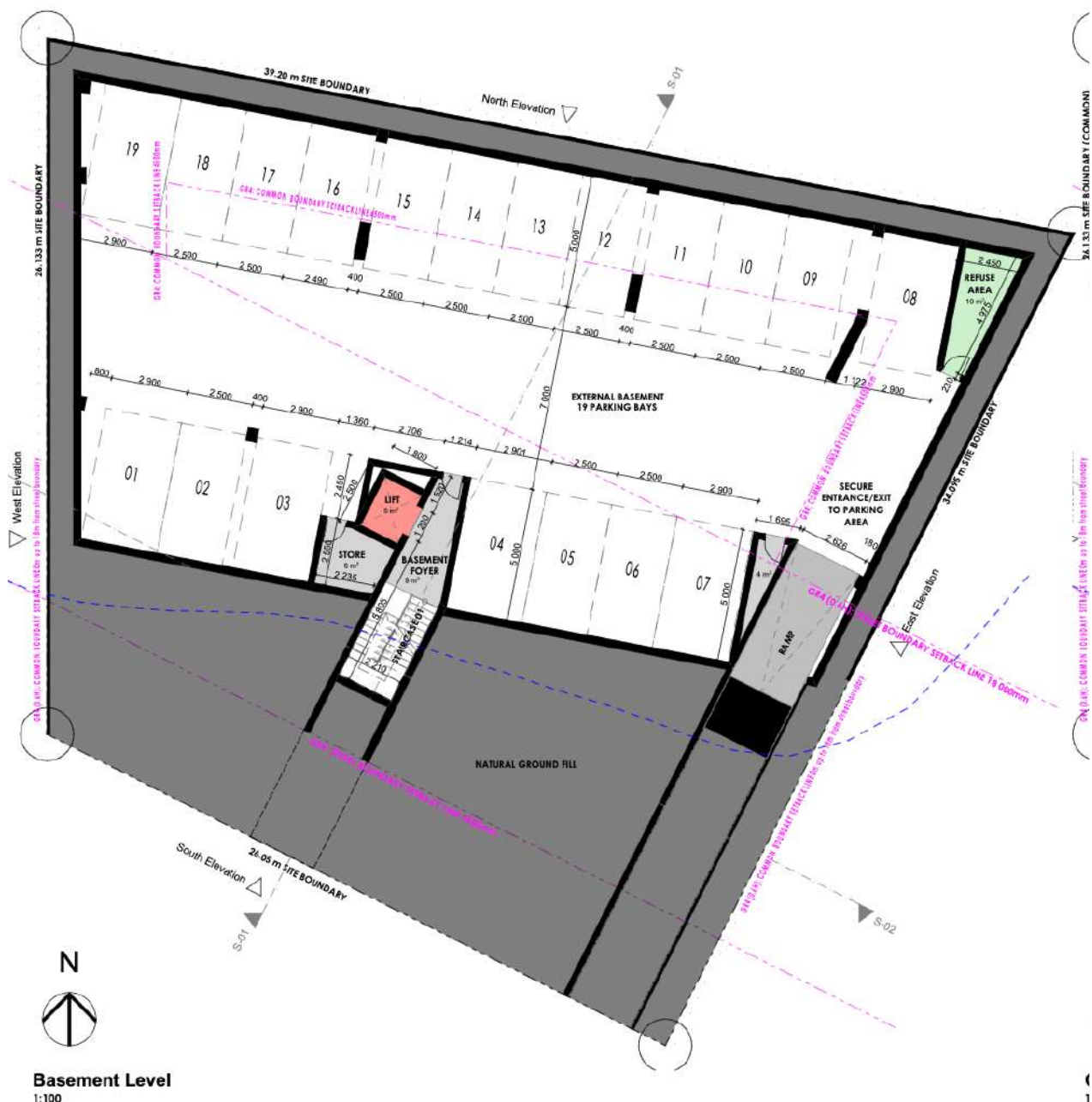


Figure 7: Access and basement parking (source: Simos Architects)

5.3. Boundary Treatment and Landscaping

Site boundaries are to be treated with a combination brick and mortar boundary walls and fences to regulation.

Landscaping is informed by the HWC appeal ruling with regard to trees and planting. A landscaping plan must be made a condition of approval indicating compliance, where necessary, to the HWC appeal ruling conditions.

The following elements, extracted from clause 87 of the ruling, should be used when establishing the landscaping of the development:

- greenery around all the edges;
- Mature trees of stature to be identified and retained; and
- side edge should be planted substantially alongside boundaries.

5.4. Refuse Room

A refuse room is provided to hold refuse bins in compliance with the DMS. Refuse bins will be placed kerbside on the scheduled day of collection by Municipal waste management vehicles.

6. MOTIVATION AND DESIRABILITY

6.1. Compliance with any applicable municipal spatial development framework (MPBL, section 99 (1)(b))

6.1.1. City of Cape Town Municipal Spatial Development Framework (MSDF), 2023

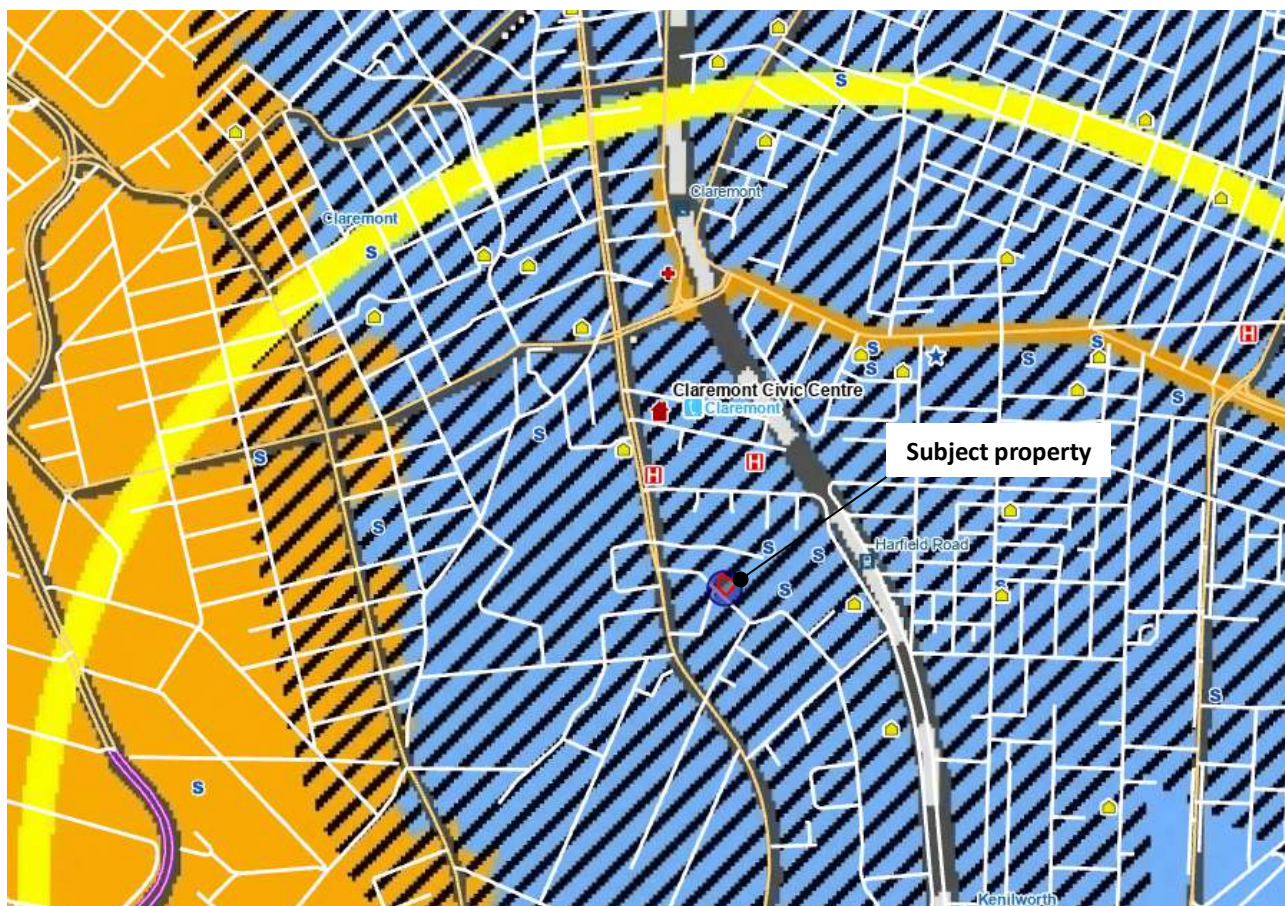


Figure 8: Extract from the MSDF

The MSDF locates the site within the Urban Inner Core (UIC) spatial transformation area where densification, intensification of urban development and urban regeneration is prioritised. The following table unpacks the policy statements of the MSDF for the UIC and provides compliance statements:

Table 2: MSDF compliance analysis

SPATIAL STRATEGY 1: PLAN FOR EMPLOYMENT AND IMPROVE ACCESS TO ECONOMIC OPPORTUNITIES	
Prioritise inclusive economic growth	Compliance statement
P1. Plan for the alignment, sequencing and implementation of infrastructure programs to secure confidence and certainty for private and public sector investment.	Not applicable at this scale, the property complies by virtue of its location within the urban inner core where the necessary investment on infrastructure projects to support densification are being made by the Municipality. DCs payable in respect of the development (if approved) contribute to ongoing funding of infrastructure programs.
P2. Support and encourage investment (private & public) through improved access information, cross-sectoral planning and institutional efficiency.	Not applicable, this is a function of the City. The property is not within a UDZ.
P3. Introduce land use policy reform and mechanisms that will support the development and growth of small businesses and township economies (both formal and less formal).	Not applicable neither small business nor new townships are being developed.
P4. Prioritise and promote inclusive economic growth through innovation and sustainable industrialisation and ensure that well-located, well-performing and established industrial areas are protected and preserved.	Not applicable, not an industrial development.
P5. Promote Cape Town as a globally competitive, diversified and productive city that supports a consolidated regional economy.	Complies, the proposal fully supports the City's vision for the UIC in the intensification and regeneration of existing urban areas that have excellent access to the mobility grid and economic areas (Claremont CBD development node).
Integrate land use, economic activities and transport planning that support the sustainable operation of the public transport network.	
P6. Plan and prioritise for the expansion of the integrated public transport service, informed by the Integrated Public Transport Network (IPTN) and the City's Integrated Transport Plan (CITP).	Complies, locating higher density residential development nearby the Main Road (M4) transport route.
P7. Plan and implement sustainable, high quality and human-scale public realm in and around transit precincts. These precincts must be legible and accessible to all and include universal access and non-motorised transport facilities and a public environment that is vibrant, inclusive and safe.	Not applicable, the property is not located within an identified transit precinct.
P8. Support a strategic approach to parking allocations to encourage use of public transport.	Parking provision is regulated by the DMS, to which regulations the proposal complies.
P9. Plan for incremental land use intensification and diversification in support of inward growth predicated on the public transport infrastructure, as outlined in Table 5.6	Complies, the development proposal will result in the continued diversification of residential opportunities with excellent access to public transport. Table 5.6 focusses new rights acquisition on the UIC, with a targeted focus on metro nodes such as the Claremont CBD node in which the property is located. The development will assist to achieve the MSDF density guideline of >600 du/ha within metro nodes.
P10. Leverage and support the optimisation of ports and harbours as important coastal access points and national economic drivers.	Not applicable, neither in a port nor a harbour.

SPATIAL STRATEGY 2: MANAGE URBAN GROWTH, AND CREATE A BALANCE BETWEEN URBAN DEVELOPMENT, FOOD SECURITY AND ENVIRONMENTAL PROTECTION	
Enhance the city’s unique assets, value of heritage resources, scenic routes and destination places.	
P11. Identify, conserve and manage heritage resources and cultural landscapes.	Complies, the development is controlled to a large extent by a ruling of the Heritage Western Cape appeal authority which has considered heritage impacts and laid out conditions to ensure that the immediate heritage indicators are adhered to.
P12. Provide for cultural and social practices and events to promote spatial justice and spatial integration.	Residents of the new development will rely on institutions and facilities for social and cultural practices within the surrounding urban fabric.
P13. Protect and enhance scenic route sightlines and places of scenic value, including destination places.	Not applicable, not on a scenic route.
P14. Provide efficient access to destination places where potential exists, especially in or near areas of high social need, in support of economic inclusivity and spatial integration.	Not applicable, not within a destination place.
Enhance the city’s unique assets, value of heritage resources, scenic routes and destination places.	
P15. Enable resource-efficient land development by leveraging the protection of renewable resources to improve cohesion between natural environmental resources and inclusive economic growth.	The property is entirely transformed urban area without any sensitive environmental systems that require consideration. Mature trees will be retained in accordance with the HWC appeal conditions.
Appropriately protect the citizens of Cape Town from risk areas and activities.	
P16. Direct urban growth away from risk areas and activities.	Not applicable, no risk areas.
P17. Avoid inappropriate urban growth and development in risk areas (fire, flooding, heat exposure, poor air quality and noise pollution).	
Appropriately manage land development impacts on natural resources, green infrastructure and critical biodiversity networks.	
P18. Increase efforts to protect and enhance biodiversity networks at all levels of government, with the public and private sector and private sector.	The property is entirely transformed urban area. It does not contain any mapped environmental systems or biodiversity networks/resources that require consideration. The development complies by virtue of its function in intensifying existing urban areas to reduce pressure on areas with sensitive biodiversity and food production functions.
P19. Plan for, and mitigate the impacts of urban development on water resources and encourage water-sensitive design responses.	
P20. Promote risk-averse and sustainable urban development along the coast, in accordance with the coastal development edge.	
P21. Support food-sensitive planning that supports the food system value chain, from production, processing, and distribution to access, consumption and waste management.	
P22. Not applicable to the UIC spatial transformation area.	n/a
Encourage integrated settlement patterns.	
P23. Support the integrated intensification and diversification of land uses in identified areas, supportive of inward spatial growth, economically and incrementally.	Complies. The property is located within the UIC and within an identified metro-level node (Claremont CBD) where development intensification is specifically focussed. <i>(continues overleaf)</i>

	The current area is a mix of residential typologies and supplementary land uses (Greenfield Girls' Primary School), indicating the spatial vision of the City being put into practise in the metro node.
P24. Ensure urban development contributes to a safety and wellbeing for all.	The development complies with the spatial vision for the City and densification targets for the UIC. In assessing and imposing conditions of approval, the City will ensure that the development complies with this policy guideline.
Continue to transform the apartheid city	
P25. Support and enable programmes to enhance and facilitate access to land and housing supply in the City acknowledging that access to social and community facilities and well-functioning public open spaces are important for redressing and integration.	The development is proposed within an existing urban area, replete with excellent access to social and community facilities and well-functioning public open spaces. In this regard the development complies by enabling densification and as a result better use of existing public spaces and community resources.
P26. Transform and integrate historically marginalised areas and informal settlements into spatially integrated neighbourhoods that enable economic and social opportunities for residents.	Not applicable, not within a historically marginalised area.

6.2. Subject to subparagraph in Section 99(1)(d)(ii), in the case of an application for a departure to alter the development rules relating to permitted floor space or height, approval of the application would not have the effect of granting the property the development rules of the next subzone within a zone (MPBL section 99(1)(d)(i)).

No departure from the proposed GR4 zone floor space or height regulations is proposed. Height is governed to the GR2 regulations and is therefore consistent.

6.3. Approval of an application for a departure to alter the development rules relating to permitted floor space or height that does not exceed 10% of the maximum height or floor space of the existing subzone does not trigger the minimum threshold requirement (MPBL section 99(1)(d)(ii)).

No departure from the proposed GR4 zone floor space or height regulations is proposed. Height is governed to the GR2 regulations and is therefore consistent.

6.4. Compliance with any applicable spatial development framework (MPBL section 99(2)(a))

6.4.1. Southern District Plan, 2023



Figure 9: Extract of Southern District Plan - Subdistrict 3: Mowbray to Muizenberg

The property is situated within an area defined as 'existing urban development' in the Southern District Plan. The proposal is compliant with the district plan in terms of the provision of residential infill development within existing urban areas.

In respect of spatial development objectives at a district level, the following table unpacks the southern district plan's subdistrict 3 development guidelines as they apply to the development proposal:

Table 3: Southern district plan compliance analysis

General supporting guidelines	Statement of compliance
1) Emphasis must be placed on development intensification and densification in urban node areas and between these along development corridors, primarily Main Road development corridor but also Klipfontein Road, Imam Haroon / Chichester Road, and Ottery / South Road development corridors coming in from the east. There should be a special emphasis on land in CBD areas and abutting development routes and within easy walking distance from these (± 5 min walking time = ± 400 m).	Complies. The development is located within the Claremont CBD metro-node, it is ± 150 m from Claremont Main Road.
2) Existing and incipient urban nodes should be reinforced with mixed land uses actively supported. Business development outside of the nodes (i.e. business intrusion into residential areas), unless otherwise stated in council policy, is generally not to be encouraged.	Complies, in providing a mix of residential unit sizes in the local area and a higher intensity of land use within the node. No commercial development is proposed.
3) P3 is not applicable to the typology of residential development proposed.	n/a
4) P4 is not applicable to the typology of residential development proposed.	n/a
5) The extent of the CBDs of urban nodes must generally be contained to protect the exclusively residential areas surrounding them. These residential areas, as well as development corridors linking between them, should be reinforced by increasing their residential densities. However, respect for surrounding character, good design, visual impact and positive interface with the street are critical.	Complies, only residential development is proposed.
6) Residential densification is encouraged in all areas but should be context-specific, and guided by available service and infrastructure capacity. This may require that densification occurs in an incremental step by step manner over time rather than in a massive 'big-bang' step.	Complies, the area has seen recent intensification and the proposal follows this lead whilst remaining constrained by contextual factors such as heritage.
7) Encourage and prioritise, possibly through incentives, residential development within or in close proximity to urban nodes within the sub-district that caters for a wider range of income groups and housing types (for the elderly, young, single-person households and low-income workers) and builds more inclusive, sustainable and resilient communities. This should include all areas/suburbs but most particularly in or near nodes, with greatest potential arguably being municipal/state-owned land and most particularly already identified restitution sites.	The proposal offers a variety of unit sizes, however because it is limited by factors such as the heritage ruling means that there is also a limit to the number of units available to maintain the financial viability of the project vs the cost of land and the reduction in total built form that is available on the property.

8) In the context of a growing and adapting city, in some areas consolidation of historical sense of place is required, while in others proactively creating new character is required.	In this sense the proposal is a balance of both, finding an opportunity to respond to forward growth but retaining clear limits to which the growth may be restricted in order to retain a historical sense of place. This is the compromise directed by the HWC appeal ruling.
9) Carefully balance urban intensification and densification with urban conservation of significant conservation-worthy buildings and precincts in urban node and development corridor areas. Key areas in this respect are already declared heritage protection overlay zone areas (HPOZ areas as reflected in the DMS) as well as recommended additional potential HPOZ areas.	The property is not within an HPOZ, and the building has been approved for demolition subject to conditions imposed upon a replacement structure. These conditions are demonstrably adhered to by the proposal.
10) The character of urban areas outside of urban nodes and development corridors should in general not be subject to significant change.	The property is located within a metro node.
11) Integrating open space with urban development is viewed as an important opportunity, particularly with quality urban public spaces where open space coincides with high intensity urban areas (e.g. eastern edge of Maynardville; river corridors intersecting with Main Road corridor).	Given the urban context, the development is well linked to existing POS such as Arderne Gardens (ca. 250m walking distance away).
12) To manage future flooding events in urban catchment areas of concern, further densification of a site / area should generally not result in simultaneous reduction in impervious surface area of that site / area.	Stormwater management matters will be dealt with during departmental circulation of the application and during detailed engineering design stage. Site stormwater management will be discharged into the existing public stormwater system.
13) Carefully manage existing well-located industrial areas to protect light industrial use space while permitting where appropriate additional uses such as wholesale retail, office, and even residential in well-located peripheral parts (provided the industrial uses are not unduly compromised) to create more productive vibrant areas.	Not applicable, not an industrial area or proposed industrial development.
14) In identified high intensification urban areas underserved by (accessible) public open space any redevelopment of public property, including community zoned space, should aim to address this deficiency as part of the process. This includes lower Kenilworth and Plumstead in particular.	Not applicable, no redevelopment of public land is proposed.
15) Public transport and non-motorised movement needs to be proactively embraced and supported. Support the development of safer streets throughout the district, but especially along key routes serving schools, colleges, and UCT as a means to improve urban living and reduce peak-hour (education-related) traffic congestion. This should include ensuring improved surveillance from adjacent buildings (re-height, orientation, and visually permeable boundaries), pedestrian-friendly/focused road inter-sections, 'drop and ride' areas and safety officers at peak periods along key routes, and creativeness with street trading / restaurant street seating etc.	The development will contribute to improved surveillance over Claremont Avenue. The wider area is already well serviced by public transport, and NMT infrastructure and DCs will aid in future interventions by the City to improve public and NMT facilities.

16) Where alternative (bypass) routes exist increase traffic calming or temporary street closures where necessary along routes with high potential for NMT, and particularly linking through local business areas (e.g. restaurant strips such as 2nd Avenue Harfield village) to leverage both local business and NMT.	Claremont Avenue is not a bypass route.
17) Within the core economic and institutional hub area between Mowbray and Wynberg within proximity of UCT and Claremont (as key hubs of activity): i. support higher residential densification and diversification; ii. plan to ensure adequate future infrastructure provision, including for public transport provision; iii. plan for and encourage quality NMT, public spaces and places; and iv. Ensure a special focus on quality buildings and associated pavement areas in the high streets through these urban nodes.	The development proposal, within the Claremont metro-node, responds well to these targets. Higher residential densification and diversification of unit typologies is created, DCs will contribute to future infrastructure projects, all within the ambit of a development that is controlled by a ruling of the appeal authority at Heritage Western Cape.

6.5. Compliance with relevant criteria contemplated in the development management scheme (MPBL section 99(2)(b))

The general residential zones promote higher-density residential development, including blocks of flats. Different development rules apply to different sub-zonings, particularly with regard to height and floor space, in order to accommodate variations of built form. GR4 caters for flats of medium height and floor space.

The primary use rights (our bold underline for emphasis) are:

*“dwelling house, second dwelling, third dwelling, group housing, boarding house, guest house, **flats**, private road, filming, electric vehicle charging stations, micro wind turbine, structure-mounted energy system and open space.”*

Table 4 provides an analysis of the GR4 development rules and the proposal’s compliance with each parameter.

Table 4: Building compliance with SR1 development parameters

GR4 Development Parameters	Permitted	Proposed
Site extent		947m ²
41(a) Coverage	60% (586.2m ²)	38% (364 m ²) COMPLIANT
41(b) Floor Factor	1.5 (1420.5m ²)	1.48 (1402m ²) COMPLIANT
41(c) Max height	24m from EGL to top of building	15m (GR2 height parameter restricted by HWC conditions) COMPLIANT
41(e)(i) Street boundary building line for points up to 25m above EGL	4.5m	4.5m COMPLIANT
41(e)(i) Common boundary building line for points up to 25m above EGL	4,5 m or 0,6 H (0,0 m up to 15,0 m in height where intersecting a street boundary, for a distance of 18,0 m measured perpendicular from such street boundary) 41(e)(aa) noting that the symbol ‘H’ means the height in metres of the point concerned above the ground floor.	For portions of the building outside of the 15m perpendicular from the street the building is compliant with the setback requirements of the GR2 zone (which are the same as the GR4 zone up to 15m in height) - Ground floor @ 4.5m: 4.68m COMPLIANT - First floor @ 4.5m: 4.68m COMPLIANT - Second floor @ 5.4m: 5.4m COMPLIANT - Third floor @ 7.2m: 8.7m COMPLIANT

Refuse Room	<p>CALCULATION METHOD: volume of bins: $f(g) \times FA/100 = \text{volume (m}^3\text{) / week}$ number of bins: $4 \times \text{bins} / \text{m}^3$ area: number of bins $\times 1.106\text{m}^2$</p> <p>APARTMENTS (Ground, 1st, 2nd & 3rd floor): $= (0.1405 \times 1265) / 100$</p> <p>TOTAL VOLUME: $= 1.777325 \text{ m}^3 / \text{week}$ NUMBER OF BINS: $= 1.777325 \text{ m}^3 \times 4 = 7.1093 \text{ m}^3$ TOTAL REFUSE AREA: $= 7.1093 \text{ m}^3 \times 1.106 = 7.862886 \text{ m}^3$</p> <p>TOTAL REFUSE AREA REQUIRED = 8m^2 TOTAL REFUSE AREA PROVIDED = 10m^3</p> <p>The proposed refuse room complies with items 145 (a) – (d). COMPLIANT</p>	
Retaining structures (section 126)	126 (a) no earth bank, retaining structure, column, suspended floor, other device or series of such devices shall be constructed that enables a ground floor of a building to be raised more than 1,5 m above existing ground level, provided that where such raising takes place, the height thereof shall still be measured from existing ground level	Retaining structures drop basement below EGL, ground floor is not raised as a result of retaining structure. COMPLIANT
	126 (b) no earth bank or retaining structure used for holding back earth or loose rock, whether associated with a building or not, shall be constructed to a height of more than 2 m above existing ground level;	The retaining structure is built below EGL. COMPLIANT
	126 (c) no series of earth banks or retaining structures shall be constructed to a cumulative height of more than 2,5 m above existing ground level, unless an approximately level area of at least 2 m wide is incorporated between successive embankments or retaining structures for every 2 m of cumulative height.	No series of earth banks or retaining structures is proposed. COMPLIANT
Boundary walls (Section 136B)	(a) Street boundary wall – 2.1m from EGL	Maximum 1.8m above EGL COMPLIANT
	(c) A common boundary wall must not exceed 2,5m H when measured from the lowest EGL on either side of the wall to the top of the boundary wall.	2.5m maximum brick and mortar boundary wall COMPLIANT
	(e) Security devices (spikes, barbed wire, razor wire or electric fences) must not exceed 1m H measured from the top of a boundary wall.	Max 1m (5 strands) of electric fencing will be installed atop the boundary walls)
	(f) Walls >1m from EGL and within 4,5m of intersection of 2 streets creating an angle <135° must be visually permeable	N/A, no intersection.
	(g)(bb) Walls facing public street > 1,5m from EGL must be min 25% permeable	Claremont Avenue boundary wall above 1,5m: 25% permeability COMPLIANT

Off-Street Parking PT1 Areas	1 bay per apartment + 0,25 bays per apartment for visitors = 1,25 bays/apt 16 apartments x 1,25 = 20 bays	21 bays COMPLIANT
Site access & exits (Section 140)	(1)(b) No vehicular ingress or egress may be closer than 10m from an intersection (as defined by the prolongation of street boundaries). Proposed: ±11m from closest road edge of Crescent Road and ±18m from centreline of Crescent Road COMPLIANT	
	(2)(a) Motor vehicle carriageway crossings shall be limited to one per site per public street or road abutting the site; (b) if street boundary is more than 30m second CWC permitted provided distance between is > 12m Proposed: One CWC at 2.7m wide COMPLIANT	
	(c) The minimum and maximum width shall be 2,4m & 8m respectively. Proposed: 3.6m wide CWC COMPLIANT	
	45(A) Vehicle access to the property must be from an adjacent road reserve of at least 9m wide. Proposed: Claremont Avenue: 13m COMPLIANT	

6.6. Compliance with any applicable policy approved by the City to guide decision making (MPBL section 99(2)(c))

6.6.1. City of Cape Town Urban Design Policy, 2024

The proposed development does not require assessment in terms of the Urban Design Policy (development categories which will be subject to the policy) because it does not require a site development plan in terms of the MPBL.

Viz. UDP statement “6. where Site Development Plans are required for the following group of applications:
d. developments of more than 12 residential units;”

All urban form and heritage related aspects are controlled by the heritage western cape appeal ruling, to which the development is compliant. An SDP is not submitted for approval, only a set of plans, sections and elevations which illustrate DMS compliance and compliance with the heritage ruling aspects.

6.6.2. City of Cape Town Densification Policy, 2012

The proposal aligns with the principles of the densification policy which prescribes medium to high density development in areas with existing transport routes (the property is ±150m from Main Road), social services, employment opportunities and civic facilities.

The proposed densification application satisfies this objective by increasing the potential for infill development that will support and utilise the existing infrastructure and services in the area while maintaining the necessary controls on the building that were established by Heritage Western Cape to mitigate impact on the area character.

7. Impact on Existing Rights (MPBL section 99(2)(e))

No impact. The restrictive title deed conditions are imposed in terms of repealed legislation (see section 4) and only require removal on a voluntary basis, which the applicant is doing in good faith and at the recommendation of the City. Should any neighbouring properties title deeds contain the same/similar restrictions, they are afforded the same option of voluntary removal by the City’s RoR standard operating procedure and section 42 of the MPBL in an application process.

Regarding restrictive conditions of title and town planning regulation, two judges of the High Court at Cape Town in a recent decision that binding in this division (i.e. the Western Cape Province) in the matter of *Petra Walker v The City of Cape Town*³, determined that **restrictive conditions of title are an outmoded form of town planning**. That binding

³ *Petra Walker v The City of Cape Town, Mayor of Cape Town and Folkes Holding (Pty) Ltd* case number 12975/2022 coram: Samela J et de Waal AJ (19 February 2024)

expression by the court needs to be applied when considering whether to remove or amend restrictive conditions of title.

Due to the approach of the City's RoR standard operating procedure and the above case law, the removal and amendment of the restrictive conditions will not have any material impact on the rights of any third party.

8. Other considerations prescribed in relevant National or Provincial legislation (MPBL section 99 (2) (g))

8.1.1. Compliance with Development Principles in SPLUMA and LUPA

Section 7 of the Spatial Planning Land Use Management Act (SPLUMA) and section 59 of the Western Cape Land Use Planning Act (LUPA) prescribe five development or planning principles that all new developments should consider, namely: spatial justice, spatial sustainability, efficiency, good governance and spatial resilience. The proposed development contributes to these principles in the following ways:

- The proposal promotes **spatial justice** by proposing a higher density on the property and enabling the use of the property for the provision of more housing opportunities within a metropolitan node.
- This development is **spatially sustainable** in that it accommodates new residential options and supports the efficient use of municipal infrastructure and amenities in the area.
- This development promotes **efficiency** in that it maximises the use of a well-located brownfield property to provide 16 residential opportunities where there was previously only one. In doing so, urban sprawl is discouraged at the periphery of the City's urban areas.
- The development of this site promotes the principle of **resilience** in that it adds to the diversity of residential options available to the market.
- **Good administration** is a function of the government and is only applicable to this proposal insofar as the City manages the development process and retains transparency and equitable access to information to all stakeholders in accordance with the law.

8.1.2. Assessment of the deletion of restrictive title deed conditions

Regarding the assessment of the deletion of restrictive title deed conditions, the following must be considered in relation to the decision criteria as set out in the Land Use Planning Act, no. 3 of 2014 ("the LUPA"):

The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as owner of a dominant tenement:

- The restrictions control use and built form on the properties which is controlled by the land use regulations contained in the MPBL and DMS. The financial value therefore lies in the ability to develop the property in line with the expectations of land usage in terms of the current law rather than that of regulation within title deeds of a century ago. Which is a negligible amount, given the restrictive conditions are not enforceable and the development may proceed without removing them according to the CoCT RoR SOP.
- Local government planning is an exclusive local government function, with regard to which, LUPA is merely supporting legislation. These provisions are, at best, supportive in nature and subordinate to the MPBL and DMS provisions especially 99(3) of the MPBL.
- Regarding restrictive conditions of title, the applicant responds to LUPA section 39 in the context of the Walker Judgement (see section 7 above re: outmoded development rules).
- The restrictive conditions of title, which the applicant seeks to remove or amend, are supporting provisions limiting the number of dwellings on any particular erf to one dwelling with outbuildings and controlling setbacks from boundaries.
- By removing the conditions related to number of dwellings, built upon area, and building line restrictions voluntarily, the applicant expresses an excess of caution to ensure the correct (DMS) regulations are applied.

The personal benefits which will accrue to the holder of rights in terms of the restrictive conditions:

- The City of Cape Town is the holder of rights, to which the preferred regulation vehicle is the DMS. It would be in the interest of the City to remove the restrictions so that their regulations may be applied.
- This applies to both the restrictive conditions concerned, as they are development rule-based conditions.

The personal benefits which will accrue to the person seeking the removal, suspension, or amendment of the restrictive conditions if they are removed, suspended, or amended:

- The removal of the conditions will allow the person seeking their removal to develop the properties, which will add value to the property and contribute to a more efficient use of urban land.
- The applicant will achieve the personal benefit as it will allow for the development as envisaged and in line with the land use rights sought.

The social benefit of the restrictive conditions remaining in place in their existing form:

- Given the restrictions do not require mandatory removal, the social benefit of them remaining in place is insignificant.
- That simply prevents densification from taking place, and prevents the sale of units, operation of bodies corporate and development of multi-dwelling buildings in areas earmarked for these uses.
- There is little or no social benefit to this, as what must then be relied on is historic owners improving single dwellings.
- This is unlikely to happen with significant investment, as other dwelling units are developed to benefit community.
- There is little social benefit in retaining the status quo which, in the areas in which it has been retained, has led to a lack of investment.

The social benefit of the removal, suspension, or amendment of the restrictive conditions:

- The social benefit of the development lies in the ability of the properties to generate employment opportunities through their construction and operational phases. Moreover, the ongoing appropriate land use intensification of existing urban areas allows for a more efficiently functioning City, deriving more tax revenue from its urban land which allows for upliftment projects and initiatives in areas of need.
- While the restrictions do not need to be removed, it is important that we depart from the usage of title deed restrictions to regulate land use and built form where the City has developed modern statutes for regulating development in Cape Town in the MPBL and DMS. Removing the conditions allows for this distinction between archaic regulations and up to date, contextually relevant methods of regulation to be followed.

The social benefits in removing the conditions are the following:

- Increased vitality of the neighbourhood through the addition of the opportunity in a high amenity area nearby urban opportunity:
 - Better utilisation of the property in terms of modern City development.
 - Contribution to the prevention of urban sprawl.
 - Improved efficiency of infrastructure and provision and public transport provision.
 - Alignment with various of the City's policies which require more efficient use of land and appropriate densification.

- Increased security of the public through increased densification.
- Enabling more residents to obtain access to the social amenities of the area and supporting the social fabric through investment, development and upliftment.
- The removal and amendment of the title deed conditions support the development and land use planning principles set out in SPLUMA and LUPA.
- For example, the proposal will support the principles of spatial sustainability by creating more efficient use of land within the constraints of existing infrastructure.
- The social benefit of removing and deleting some of the restrictive conditions will lead to a more efficient and more sustainable built environment and this outweighs the social benefits of retaining such conditions in the title deed / not amending same.

Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of those rights:

- The rights will be entirely removed.
- It is worth noting that they will continue to enjoy the rights conferred on them by the MPBL and the DMS. Specifically (and importantly) the development remains within the purview of DMS section 190(3) to the Municipal Planning By-Law in respect of the approved building form prior to consolidation.
- These rights are furthermore controlled by the democratic outcome of the HWC appeal ruling in respect of built form.
- Section 47(a) of SPLUMA states *“if the removal, amendment or suspension will deprive any person of property as contemplated in section 25 of the Constitution, then you have due regard for the respective rights of all those affected and to the public interest”*.
- This application does not affect any rights of any other parties to property in terms of section 25(1) of the Constitution.

8.1.3. Consistency with section 42(1)(c) of SPLUMA

Section 42(1)(c) and its subsections, as required for the decision maker to consider, are as follows:

(i) The public interest

The wider public benefit, established in respect of the provision of additional housing stock, generation of jobs during the construction and operation of the development, better use of well-located and well-serviced land, a positive effect on the area's amenity and safety, is weighed against the potential impact on immediately neighbouring properties which has been mitigated by compliance with the rulings of the heritage appeal committee.

The outcome is considered to be nett positive and specifically aligned to the City's spatial planning and policy goals.

(ii) The constitutional transformation imperatives and the related duties of the State

These are effectively the spatial transformation goals of the City which have been discussed in section 8.1.1 above, which the proposal has been demonstrated to be consistent with. The proposal's consistency with the MSDP, the metro level spatial transformation plan, is the test the SPLUMA requires and which has been demonstrated as consistent.

(iii) The facts and circumstances relevant to the application

In determining whether the overall development will have a positive effect, the decision maker has been presented with the information required by the MPBL, demonstrated consistency with policy, and compliance with requirements established in the previous heritage process.

(iv) The respective rights and obligations of all those affected

No real rights of any third party are impacted upon by the proposed **voluntary** removal of restrictive conditions which are already controlled by the MPBL and DMS. In terms of impact on the surrounding area, this has been mitigated by an accepted level of restriction by the heritage process, democratically undertaken with I&APs, to establish the level to which the site can be appropriately developed.

The obligation of those persons, understood to be affected by the development of the site, is to abide alongside the developer by the rulings imposed to ensure mitigation of impact.

(v) The state and impact of engineering services, social infrastructure and open space requirements

This aspect has been discussed in the consistency argument and analysis of the MSDF and district plan. The area is well serviced, and DCs payable will contribute to ongoing maintenance and upgrade of local infrastructure, provision of public social spaces and upkeep of existing open spaces.

(vi) Any factors that may be prescribed, including timeframes for making decisions

This is a function of the administration of the City and guided by the MPBL.

8.1.4. Consistency with section 47 of SPLUMA

The proposed removal of restrictions does not deprive any person of property, in accordance with section 25 of the Constitution. The application is submitted and processed in terms of the prescribed requirements of the MPBL, and with due regard to the public interest.

9. Evaluation of Desirability (MPBL section 99(3))

Socio-economic impact (99 (3) (a)): The proposal will have a positive socio-economic impact as this application will provide for the development of 16 new dwelling units in an extremely accessible location. There will be immense socio-economic benefits associated with the construction phase in the provision of employment and during the operational phase due to the provision of additional housing opportunities in a highly accessible neighbourhood close to economic, social and civic amenities and opportunities.

Compatibility with surrounding land uses (99 (3) (d)): The proposal is highly compatible, as has been established by its compliance with the City's MSDF and district plan as well as the retained residential land use, which is shared by the neighbouring properties.

The true compatibility lies in the self-evident benefits of the proposed building design overlooking Claremont Avenue on the 1st, 2nd, and 3rd floors, as shown in figure 12 where active and passive surveillance of the public realm is improved.

Figure 13 gives an indication of building offset from neighbouring properties, retaining a similar amount of space around the structure (or more) as is the case with neighbouring properties. Neighbouring properties are protected by the GR2 regulation setback-compliant structure, a condition of the HWC appeal ruling.

A pitched roof design element takes a cue from residential dwellings in the area.

As a condition of approval, detailed landscaping will provide screening of the building to the neighbours which will supplement the existing mature vegetation which already exists on common boundaries of neighbouring properties.

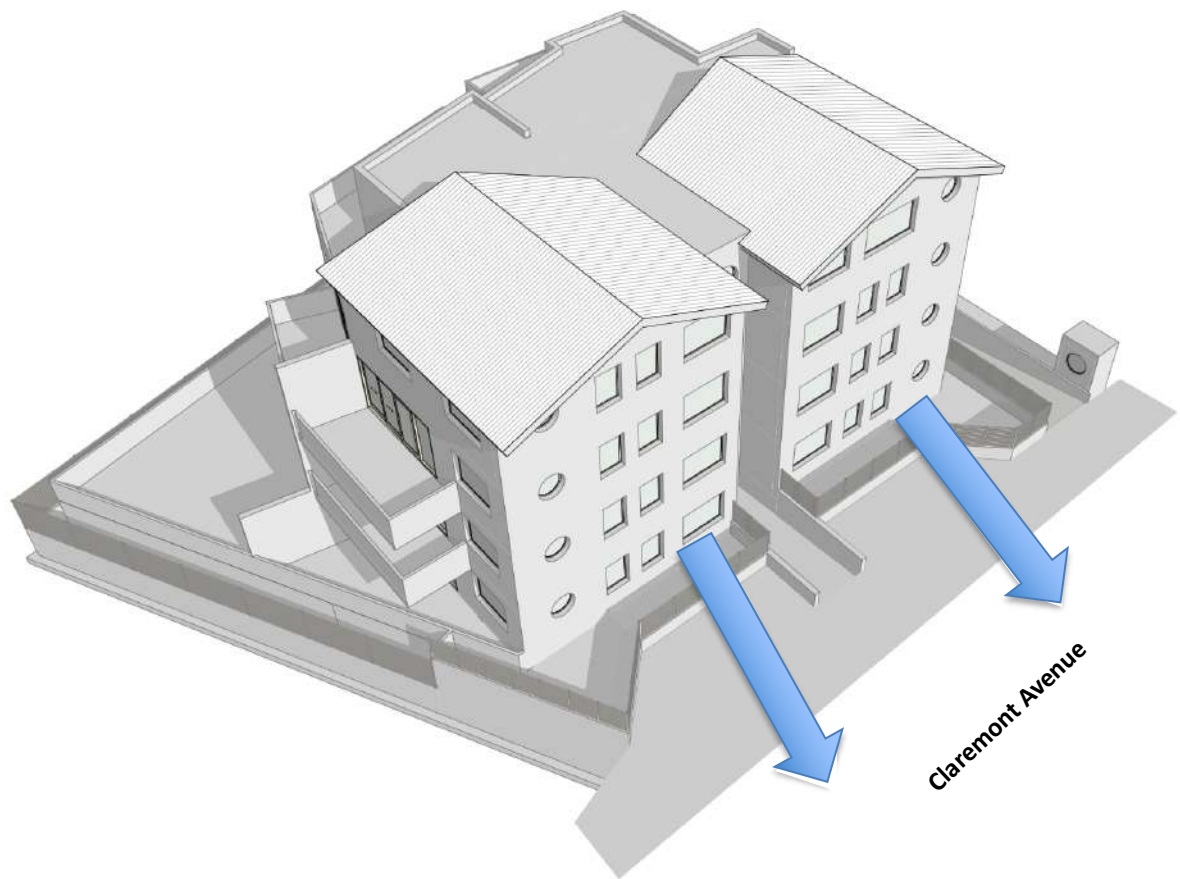


Figure 10: 3D model of the street elevation illustrating surveillance of Claremont Avenue (source: Simos Architects)



Figure 11: Roof plan with neighbouring context (source: Simos Architects)

Impact on external engineering services (99 (3) (e)): There is sufficient supply within the existing infrastructure services to support the additional dwelling units. DCs payable will support City led infrastructure upgrade projects in the local area, where necessary.

Impact on safety, health and wellbeing of the surrounding community (99 (3) (f)): The proposal will have significant positive impacts through passive surveillance of the street from since the units are street facing (refer to figure 12). Further to this, the increase in residents on this property means that there will be more pedestrian and vehicle movement to and from the property thereby activating the street and improving the perception of safety.

Impact on heritage (99 (3) (g)): The existing dwelling on the property is ±72 years old and graded 3C on the City's heritage register. The proposed development has been well vetted at a provincial heritage level where the demolition of the existing dwelling was approved. Certain conditions were imposed upon the replacement structure, which are listed below and compliance indicated:

Table 5: Analysis of compliance with heritage appeal ruling

Appeal ruling condition (clause 87.1 "The significance of the heritage resources does not warrant retention of the existing building on the property at 24 Claremont Avenue and demolition of the property is approved subject to the following conditions:")	Statement of compliance
87.1 (a) The height and setback of the replacement building may not exceed the specifications as set out for General Residential Sub zonings GR2 by the City of Cape Town Municipal Planning By-Law	Compliant. the height of the structure does not exceed the 15m GR2 height restriction and the setback provisions (up to 15m in height) of the GR4 zoning rules is the same as that of the GR2 rules which are adhered to. See section 6.5, table 4.
87.2.1 Large monolithic building form and massing to be avoided.	Complies. The building façades are faceted and set back at higher levels to ensure that the GR2 setback requirements are met.
87.2.2 The building must be sited orthogonally along the street interface, with greenery around all the edges and setback from all common boundaries to retain a sense of the existing urban building footprint patterns and similar coverage.	Compliant. The building is sited orthogonally along the Claremont Avenue Street boundary with the 4.5m setback observed. Edges are to be greened, and a landscaping plan imposed as a condition of land use approval to this end. Proposed coverage is 38% which is less than the R1 zoning would permit for a dwelling maximising the permissible floor area and setback requirements of the zone.
87.2.3 Street interfaces to comply with City policy.	Complies. The building boundary treatment does not depart from any of the regulations of the DMS.
87.2.4 Mature trees of stature to be identified and retained. Garden spaces around the building must be accessible from ground floor units. Parking should be half basement or completely underground. The side edge should be planted substantially alongside boundaries.	Complies Mature trees are to be retained and identified on a landscape plan imposed as a condition of land use approval. Ground floor units will have external access to garden areas. Parking has been "sunk" into the EGL to create a basement parking area.
87.2.5 The side boundary façades must mediate between the apartment block and single dwelling houses scales.	Compliant The façades of the buildings which face neighbours (common boundary façades) are set back to the GR2 regulation which allows the building to recede away from neighbouring dwellings as it gains height.
87.2.6 The architecture should be contemporary in intent and expression. Forms or visually disturbing components	Compliant The building is of contemporary design and excludes the elements described by the informant.

must be avoided i.e., no large floating horizontal expressions, be this windows, balconies or roof eaves “wrapping”.

87.2.7 The windows/openings in walls on south and north sides should be designed to minimise compromising neighbours garden privacy.

Compliant windows on the north façade are well set back from the neighbouring boundaries and partly obscured by low balcony walls. No impact on neighbours’ privacy is expected.

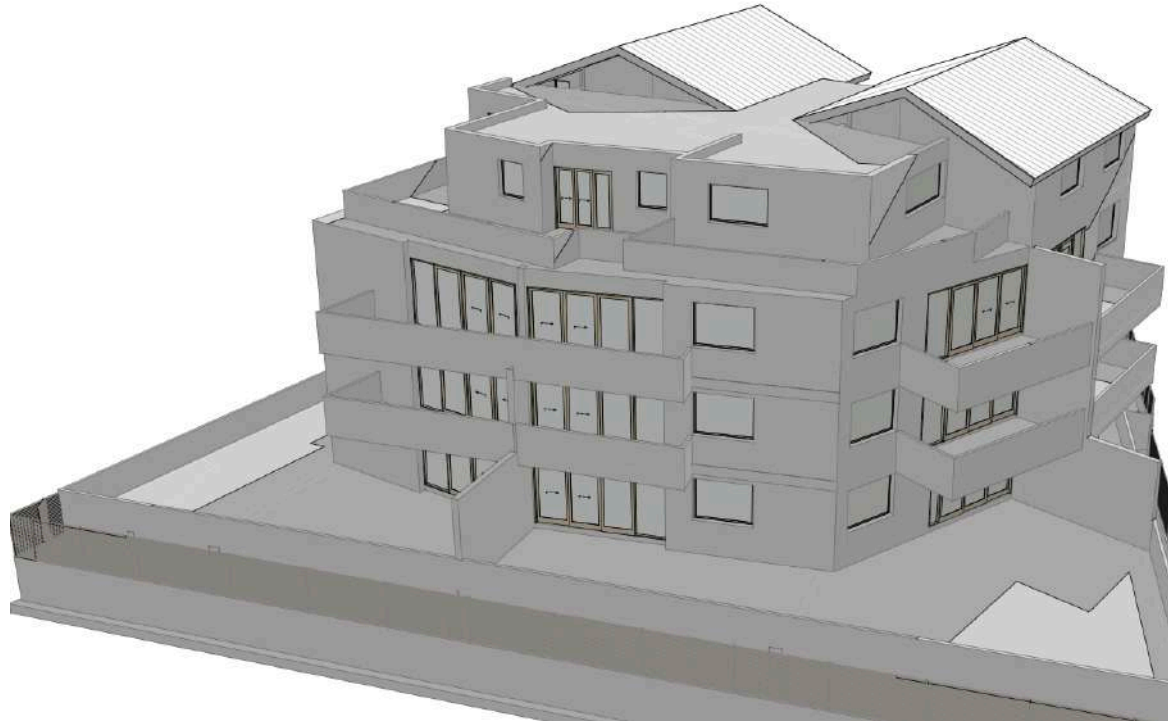


Figure 12: North elevation 3D AXO view (source: Simos Architects)

The southern (street) façade is set back 4,5m from the street and will improve surveillance over the public realm but not impact on neighbours’ privacy on the opposite side of Claremont Avenue. Mature trees in the road reserve further obscure direct neighbours’ properties. No balconies are proposed on the southern façade.

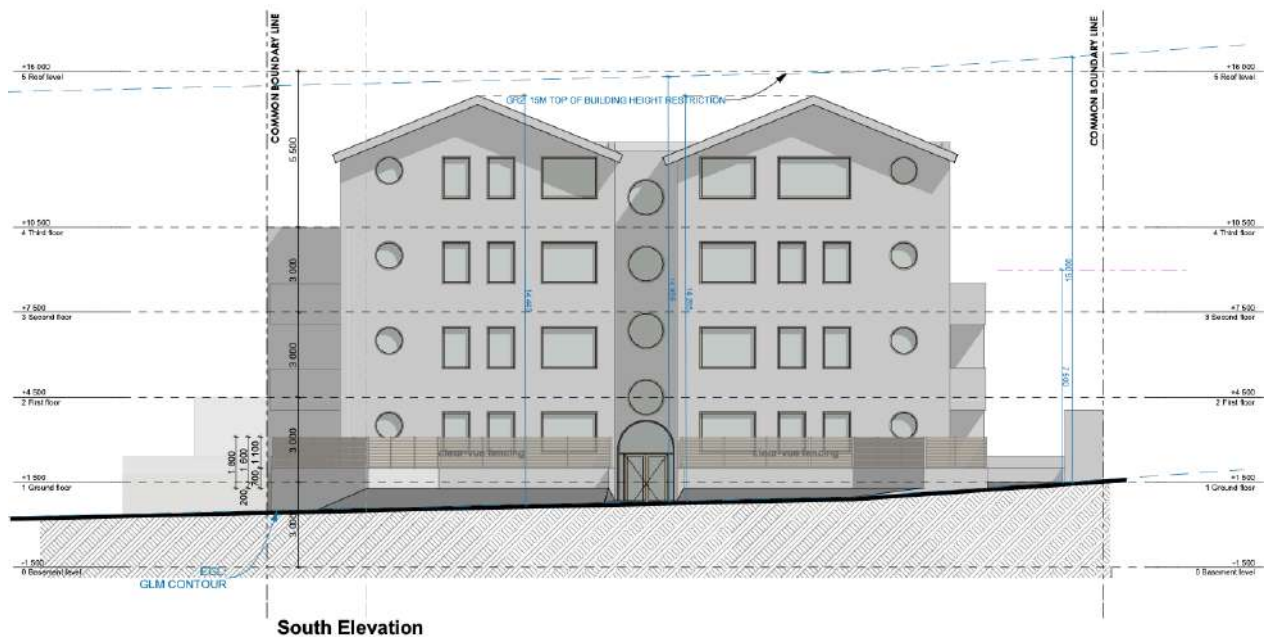


Figure 13: Southern (Claremont Avenue) elevation (source: Simos Architects)

The ruling of the appeal authority at HWC has been uploaded to DAMS as supplementary information for consideration.

Impact on biophysical environment (99 (3) (h)): The site is entirely transformed from an environmental perspective and has no significance in terms of the City's Biodiversity Network. Mature trees are to be retained as much as possible and incorporated into detailed landscaping proposals enforced as conditions of approval.

Traffic impacts, parking, access and other transport related considerations (99 (3) (i)): All portions will gain access from a communal entry access and egress from Claremont Avenue with 13m of stacking distance between the CWC and the signal-controlled security gate. The traffic impact is not significant, and the off-street parking requirement has been satisfied.

(99(3)(j)) Imposition of Mitigating Conditions: The applicant welcomes appropriate conditioning of the development, including specifically the imposition of a detailed landscape plan as a condition of approval.

Landscaping is the final intervention established on a development once construction has been completed and implementation of landscaping will not be undertaken until such time as the required rights are granted. Therefore, detailed landscaping design is an unnecessary expense to incur prior to approval and is better suited to be imposed as a condition to a land use approval granted.

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