CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500171095

Erf 1671, 11 Chas Booth Avenue, Camps Bay

Development Management

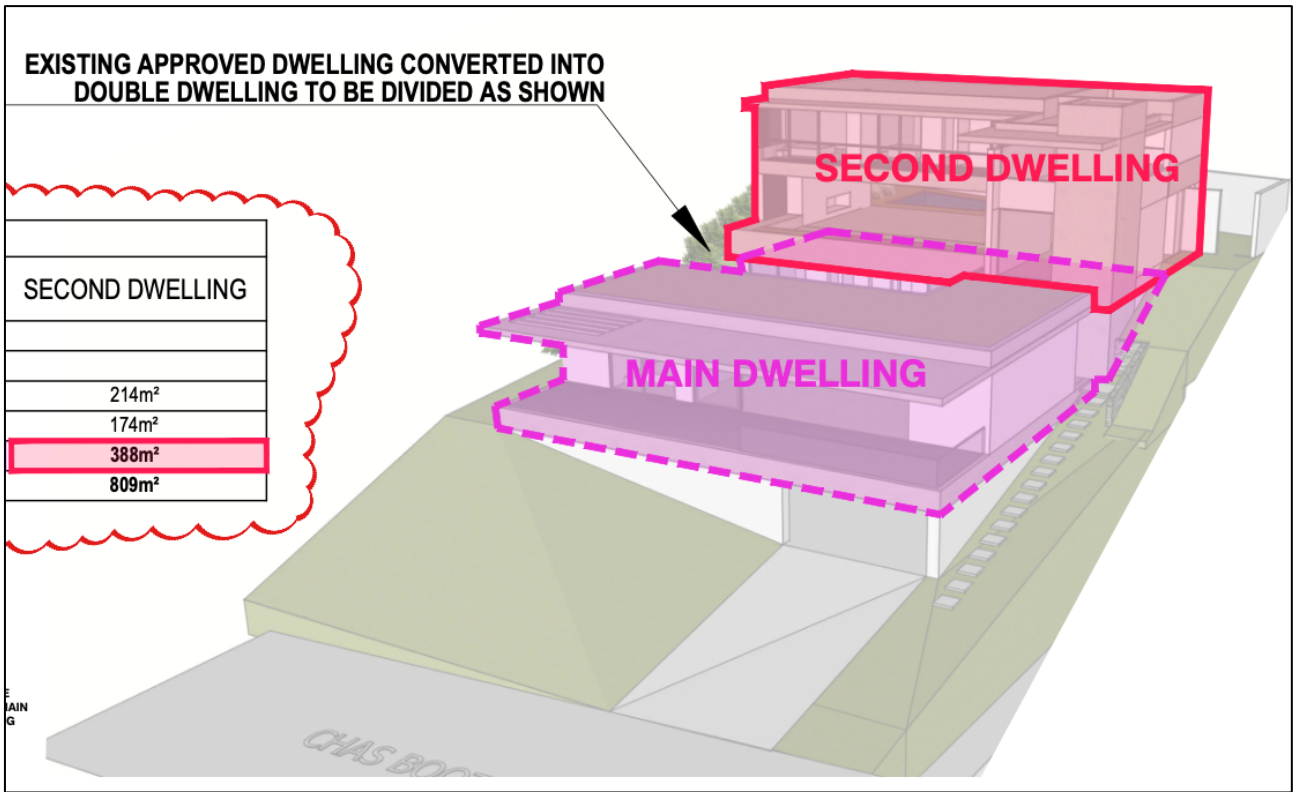
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PLANNING STUDIO

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APPLICATION FOR REMOVAL OF TITLE DEED AND DEEMED APPROVAL CONDITIONS IN TERMS OF THE MUNICIPAL PLANNING BY-LAW (AS AMENDED) OF 2015: ERF 1671 AMPS BAY, 11 CHAS BOOTH AVE



2026-09-15

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1. INTRODUCTION

1.1 Background, planning application and proposal

Application is made for the amendment & removal of restrictive title deed conditions, as listed in Section 1.4 below (and see Annexure A), in order to permit the development of 2 dwelling houses on the property as per the submitted development plan. **Importantly**, the proposed 2 dwelling houses (i.e. main & 2nd and dwelling) are wholly contained within the recently approved building envelope on the subject property for a dwelling house (see approved building plan attached). Only very minor internal additions and alterations are planed to the approved building to allow for the 2 dwelling houses within the same previously approved building envelope. The additions & alterations are not visible at all in terms of the approved façades of the building.

The property will be developed as follows:

- A basement parking area is proposed, which allows for 2 vehicles (i.e. 2 on-site parking bays per dwelling house) on the property. Access to this basement parking area is off Chas Booth Ave to the west, which access has been previously approved (see approved building plan). Only a minor new internal wall is proposed within this basement area to provide for 2 storerooms, one each per dwelling house.
- The approved 1st storey contains the main dwelling house on one level, with only very minor internal additions & alterations to close-up a staircase leading to the approved upper levels and create a new utility room.
- The 2nd dwelling is contained on the approved 2nd and 3rd storeys, with again very minor internal additions & alterations to separate this dwelling from the main dwelling below.
- As indicated, these changes are very minor in nature and has no impact on the area or surrounding properties.

The amendment & removal of certain title deed conditions will basically permit contextually appropriate densification by allowing one additional dwelling house (i.e. 2nd dwelling houses) on the property. **Importantly, and as per the approved building & new development plans submitted**, the development of an additional dwelling house will be achieved within the permissible building envelope as per the development rules of the Municipal Planning By-Law (i.e. no departures form the development rules are applicable). Effectively, the proposed 2 dwelling houses

are contained within the same possible building envelope than a large dwelling house being erected on the property (as is evident from the approved plan).

The title deed conditions are considered outdated in nature, specifically in light of the provisions of the Development Management Scheme (DMS) and the City's policies regarding densification, built form, etc. Dealing with the conditions will allow for contextually appropriate densification without negatively impacting on the area or surrounding property owners. Even if conditions are removed; considering the approved building and compliance with the development rules of the DMS; this provides sufficient safeguards for surrounding property owners in terms of the development of the property

1.2 Subject property / property description

The subject property is relatively large at 1120m^2 in extent and is currently improved with modest mainly single storey dwelling house. Chas Booth Ave abut the subject property, which currently provided vehicular access to the existing double garaging. Various larger walls and retaining structures exist along the street façade of the property. Some landscaping exist on the subject property, especially along the north and south common boundaries. As per the approved building & new development plan provided, the property currently slopes significantly downwards from its eastern to western boundaries (i.e. 13m).

3D view of the subject property



1.3 Development Management Scheme (DMS) assessment

The Municipal Planning By-Law (MPBL) and associated DMS are applicable to the subject property. The subject property is zoned R1 and is also subject to the Camps Bay & Bakoven Local Area Overlay (i.e. LAO/9), which limits any development of the subject property to no more than 3 storeys in height, which the proposal complies with given its stepping up the slope.

The R1 development rules for erven between 1000m^2 and 2000m^2 applies to the subject property. The applicable development rules are therefore as follows:

DMS extract

Land unit area (m²)	Floor factor	Maximum floor space	Coverage	Maximum height above existing ground level		Street boundary building line	Common boundary building line
					To top of building		
>2 000	N/a	1 500 m^2	N/a		10,0 m	6,0 m	6,0 m
>1 000 up to 2 000	N/a	1 500 m^2	N/a		10,0 m	4,5 m	3,0 m
>650 up to 1 000	N/a	1 500 m^2	N/a		10,0 m	3,5 m	3,0 m

In terms of the relevant development rules of the **DMS** and considering the approved building plan and new development plan submitted, please note the following:

Floor Factor

1.3.1 A maximum floor space of 1500m^2 is applicable to the property. As per the development plan provided, the floor space for the new dwelling houses clearly complies in this regard. A total floor space of only 809m^2 (as per the approved plan) is proposed, which clearly complies with the permitted 1500m^2. The main dwelling is 391m^2 in extent, with the 2nd dwelling being slightly smaller at 388m^2 as required in the MPBL. The proposal therefore **complies with the permissible floor space**.

Height

1.3.2 The approved building plan complied with the permitted 10m height from the EGL and no changes to the height of the building is now proposed. The proposal therefore **complies with the permissible heights**.

1.3.3 Also, in terms of the Camps Bay Overlay provision, the building can only be 3 storeys in height and complies in this regard. The building has been stepped up the slope (see Section A-A), with the main dwelling effectively being a single storey dwelling (i.e. with a basement storey below) and the 2nd dwelling being 3 storeys in height as permitted in terms of the Camps Bay Overlay Zone.

Street boundary

1.3.4 A required street boundary building line of 4.5m is applicable. As per the development plan submitted, the proposal significantly complies with the required 4.5m street building line and no changes are required from the recently approved plan. **The proposal therefore complies with the street boundary setback rules of the MPBL.**

Common boundary

1.3.5 A three-meter (3m) MPBL common boundary building line is applicable to the various common boundaries of the subject property. As per the development plan submitted, the proposal complies with the required 3m common building lines. **The proposal therefore complies with the common boundary setback rules of the MPBL.**

Parking provision

1.3.6 The subject property is located in a PT1 area, which means only one (1) parking bay per dwelling house is required. In terms of the development plan provided, 2 parking bays per dwelling house is being provided. **The proposal therefore complies with the parking provision requirement of the DMS.**

Second dwelling development rules

1.3.7 In terms of the Item 25(A) rules of the MPBL, the following should be noted:

- The total floor space of the 2nd dwelling does not exceed the total floor space of the main dwelling
- The 2nd dwelling is contained within the same approved building as the main dwelling and is designed to appear as a single dwelling house
- The property will be developed on a sectional title basis and is not applied to be subdivided.
- Any applicable DC's required to permit the 2nd dwelling will be paid.
- An affordable rental flat is not being proposed.

1.4 Applications required in terms of planning law

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

1.4.1 Amendment of restrictive title deed & deemed approval conditions contained in Deed of Transfer as follows:

From
Condition E.5.(b): "it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith"

To read:
Condition E.5.(b): "it shall be used only for the purpose of erecting thereon ~~one~~ **two** dwelling**s**, together with such outbuildings as are ordinarily required to be used therewith"

1.4.2 Deletion of restrictive title deed & deemed approval conditions contained in Deed of Transfer as follows:

Condition E.5.(c): not more than half of the area thereof shall be built upon.

Condition E.5.(d): no building or structure, or any portion thereof, except boundary walls or fences shall be erected nearer than 7,87 metres to the street line which forms the boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority an outbuilding not exceeding 3,05 metres in height, measured from the floor to the wall plate, may be erected within the above prescribed rear space and within the above prescribed lateral space for a distance of 9,45 metres from the rear boundary.

On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf.

2. BASIC INFORMATION

2.1 Applicant and owner

The registered owner of the subject property, i.e.
have duly authorised D&S Planning Studio to make application to the City of Cape Town for the application referred to in Paragraph 1.4 above, and to act as the Applicant in this and related matters.

2.2 Title deeds and restrictions

The subject property is held in Deed of Transfer

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

The specific conditions to be deleted / amended currently permits only one dwelling house, limits the built upon area and specifies certain setbacks on the property and are deemed superfluous given the requirements of the MPBL and DMS, It will be shown later in this report that the deletion / amendment of these conditions satisfy the adjudication criteria as per the MPBL.

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

- It appears very clear that the conditions to be amended / deleted were imposed by the Administrator in terms of Ordinance 33 of 1934. Therefore, an application in terms of section 42(j) is also required as per the City SOP in this regard.
- It appears clear that the conditions were not imposed by a developer or by a statutory body in terms of an Ordinance that predates the Townships Ordinance No 33 of 1934.
- The conditions are not traditional servitudes, but a restrictive conditions as defined in the SOP.
- The general plan relating to the specific township to which the conditions apply are attached to this application.

2.3 General Plan

The Surveyor General (SG) General Plan (GP) for the Camps Bay Township Extension No 2 are attached.

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

3. PLANNING MOTIVATION

3.1 Location, surrounding land uses and character of the area

The subject property is located within the Camps Bay area, with this specific area being characterised by relatively large erven, improved mostly with large dwelling houses, although a number of blocks of flats are also located within the larger area. A number of erven in the area have, through the years, been either subdivided or developed with second dwellings (i.e. sectionalised), which do not impact negatively on the character of the area. All of the surrounding properties appear to be utilised for residential purposes (i.e. dwelling houses, second dwellings, guest houses & flats) in accordance with their zoning rights (see 3D image below).

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



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

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

3.2.1 Any applicable Spatial Development Framework

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

The proposal, albeit being minor / small-scale densification, is considered to comply with the overarching objectives and strategies specified within the PSDF.

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

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

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

The Table Bay District Plan (TBDP - 2023)
The Table Bay District Plan indicates that the subject property is located is very close proximity or just outside of the Camps Bay Local Node, which nodes are defined as: "An area characterised by the intensity (density), mix (diversity) and clustering of urban activities and land use found within them.". The specific area in which the subject property is located is indicated for "urban development", where small-scale incremental densification is encouraged.

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

- Facilitate the taking up of existing rights in a way that allow sensitive interfaces between different building scales, forms and land uses.
- Retain variety in built form and residential densities and protect the diversity of housing types in the area.
- Encourage medium density, lower rise built fabric on higher slopes and retain green character closer to the mountain interface.
- Support increased residential densities along public transport routes and in the vicinity of public transport stops.
- Retain 10m façade height limit and the relevant DMS height limit in Camps Bay.
- Maintain the aesthetic character and destination value of the Atlantic Seaboard.

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

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

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

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

Council's Cape Town Densification Policy
The Densification Policy recognises the need for appropriate densification across the City to promote longer-term sustainability of Cape Town's natural, urban and rural environments. The Densification Policy identifies various Density Priority Zones, with the subject property being located within such a zone.

It has been shown in this report that the proposal will not have a negative impact on the built character of the area or surrounding property owners' rights, thereby complying with the Densification Policy requirement for contextually appropriate densification.

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

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

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

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

Principle of efficiency

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

Principle of spatial resilience

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

Principle of good administration

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

3.2.4 Relevant criteria contemplated in the development management scheme

Criteria as per Section 48(4) of the MPBL for title deed removal applications
When considering Removal of Restrictions applications, the MPBL indicates that the City must have regard to (1) whether the result would better align with the DMS, (2) the decision making criteria in Section 99 of the MPBL and (3) Sections 42(1)(c) & 47 of Spatial Planning and Land Use Management Act (SPLUMA). In this regard and taking cognisance of the above-mentioned legislation, the following should be considered:

(Note: The decision-making criteria in Section 99 of the MPBL is addressed in detail elsewhere in this report.)

Alignment of the proposed title deed removal & amendment with the DMS
It is clear that the proposed application will better align with the DMS as follows:
- The removal & amendment of the conditions will align the title deed with the permissible density / number of dwelling units and development rules as specified in the MPBL.
- Contextually appropriate densification is encouraged as per the MPBL rules and City policies
- By amending the "only one dwelling conditions" the title deed will now also allow a main & 2nd dwelling on the property in line with the MPBL rules.
- The amendment of the condition will not allow a block of flats on the property, given the still R1 zoning of the property, thereby protecting the area's built character.
- The deletion of the title deeds setback and built upon provisions will ensure alignment with the setback and coverage rules of the DMS, ensuring less red tape and aligning the legislation. Significant setbacks will still apply to the subject property and in terms of the common boundary; this is similar or even more restrictive that the title deed common and rear boundary setback provisions.

Section 42(1)(c) of SPLUMA
- As argued above, allowing contextually appropriate densification is in the public interest.
- The application allows for the densification of a privately owned property and therefore does not relate to private land.
- The application has no impact on the constitutional transformation imperatives and related duties of the state.

- This motivation deals in detail with the facts and circumstances relating to this application, which application is considered negligible in terms of any impact on the area and surrounding property owners.
- This motivation considers all respective rights & obligations of all parties affected.
- Given the approved building plan, there will be no unduly impact on any engineering services. The proposal will also have no impact on any social infrastructure or open space requirements. Sufficient social infrastructure and open space amenities are available in this and the larger area, which ca easily absorb this minor small scale contextually appropriate densification of the property.
- All prescribed factors in the MPBL and other legislation have bene addressed as part of this report.

Section 47 of SPLUMA

- It is clear that the deletion of the title deed condition to allow additional dwelling units on the property will not deprive any person in the area of property as contemplated in Section 25 of the Constitution. The proposal will not be considered a deprivation of property.
- However, it could be argued that not allowing the amendment of specifically the "one dwelling" restriction will deprive additional families of being able to own property in this sought after area.
- It has been shown above that the amendment / deletion of the title deed restrictions are in the public interest and will not have a negative impact on the rights of the possibly affected surrounding property owners.
- The title deed restrictions are applied to be amendment / deleted in the pre-scribed manner as per the MPBL.
- It is shown in this planning report that the limited development of the subject property via an additional dwelling unit within the permissible DMS envelope should not have a negative impact on the area and supports contextually appropriate densification in the area. Support of this proposal will therefore be in the public interest and in the interest of the area.
- Although the title deed and land use conditions restrict the number of dwellings, built upon and street and common building lines, the built character of the area is changing towards a more modern form of city development. It has been argued that the social benefits of low-density suburbia are becoming outweighed by the social benefits of a more resource efficient, dense and compact urban fabric.
- The proposed development will make more residential opportunities available in the area without detracting from the visual or residential appeal of the area.

- It is clear that there is no infringement of Section 25 of the Constitution. SPLUMA, LUPA and the MPBL constitute laws of general application. All three laws empower municipalities to remove and amend restrictive title deed conditions.
- The City will ensure (in terms of procedural fairness) that the application is advertised to all parties (i.e. township property owners, etc) in terms of the proposed deletion of condition and invite their comment.
- As motivated in detail above, the perceived personal benefits conferred by the title deed conditions on the immediate local residents is outweighed by the wider social benefit of removing the restrictive conditions and the benefit to the applicant. There are substantial benefits to removing the restrictions. Any adverse impact on any owner is not substantial, if anything, and there is no evidence of negative financial impact.
- Considering the above, the proposed removal of the title deed condition cannot be considered an arbitrary deprivation of property.

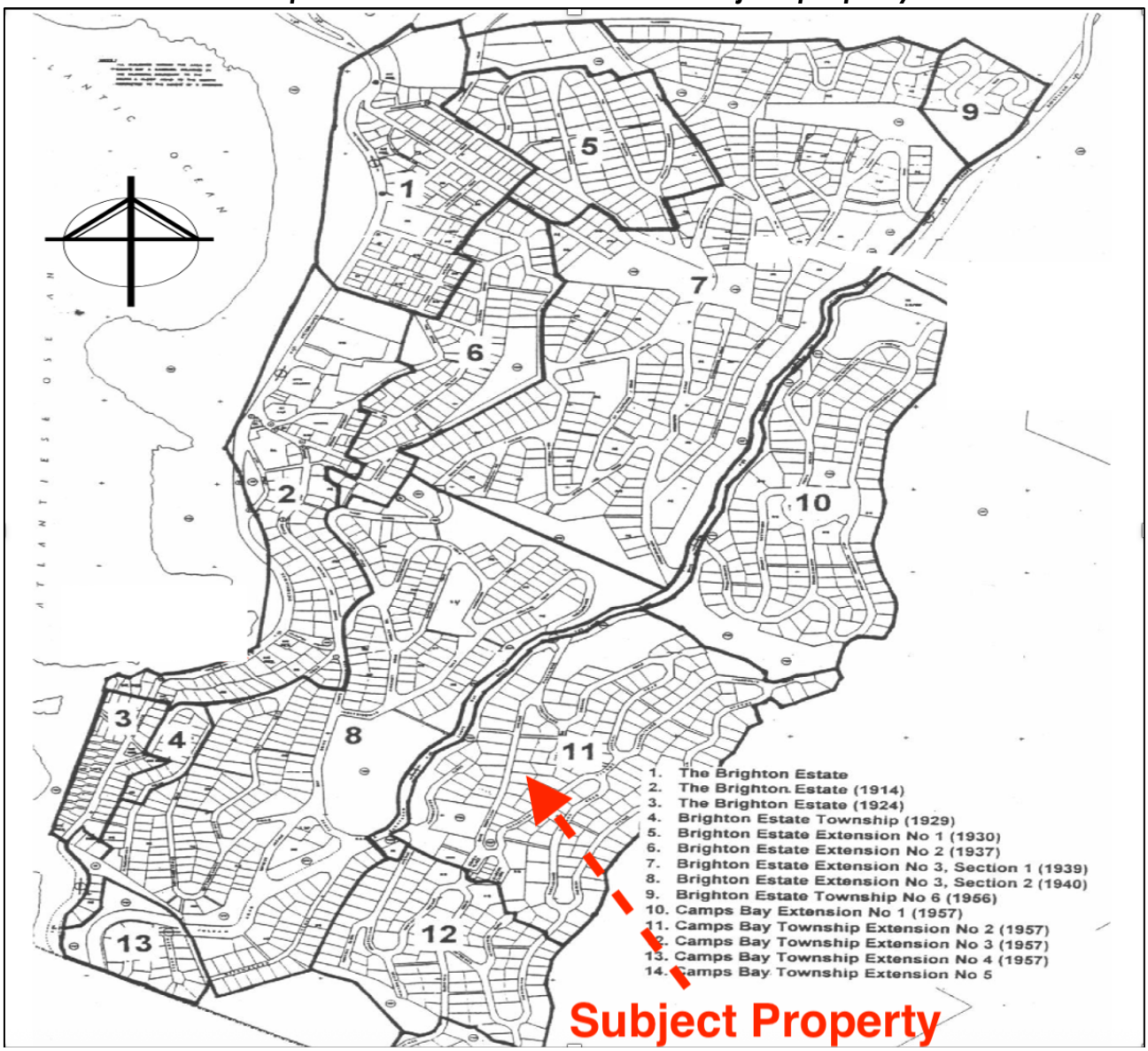
General title deed assessment

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

When this portion of Camps Bay was established (see General Plan for the Camps Bay Township Extension No 2), both the developer and the Administrator of the Cape imposed title deed conditions to basically serve the purpose of guiding the urban form of the area. Historically, the conditions (when read together) resulted in a certain built form and lower density development, which has changed over the years. It should be noted that the Administrator and sometimes the developer or the City historically imposed conditions specifying certain setbacks, limiting the number of dwelling houses and limiting the built upon area to achieve a certain look and feel in a township. The impact of the application on these specific conditions is further expanded on below.

It should be considered that the Camps Bay Township Extension No 2 originally contained approximately 193 erven, of which most are residential erven.

See extent of townships below and location of the subject property



It is clear when considering various properties in this area, especially the immediate area, that a significant number of properties contain larger buildings (i.e. not complying with the one-half built upon title deed condition), have been subdivided or developed with more than one dwelling house and also not complying with the street and common boundary setbacks title deed provisions. The built form in the area, as envisaged as part of the title deed conditions, has therefore definitely started to change.

When considering this Camps Bay Township, the following should be noted:

- There are currently approximately 180 residential erven in this township
- The built form is mostly multi-level buildings cascading down the slope from east to west.
- Most of the erven contain dwelling houses, considering the mostly R1 zoning of the area.
- Numerous properties in this area have either been subdivided or contain more than one dwelling house on the property.
- Numerous properties contain dwelling houses that exceed the one-half built upon and street & common boundary setback provisions.
- Also some blocks of flats are located in the township area, which is low scale buildings and not impact negatively on the area.
- Various other properties have also been sectionalised to allow for more than one dwelling house on the properties, for example 20 Chas Booth Ave.

Through the modernising of the area, the changing land use system and the development of various spatial and built form policies, etc by the City of Cape Town, the built form has changed in the area, with dwelling houses being located slightly closer to the street boundary and various second / double dwellings being erected in the area, as well as subdivisions approved. The land in the area is very expensive, resulting in owners wanting to utilise every possible square meter of land to extract the value. As per the built character of the area description earlier in this motivation and considering the proposal, it is clear that there is a move away, albeit to a minor degree, from the character envisaged within the now outdated title deed conditions. This is in line with specifically the City's densification policy and also considers the City's Urban Design Policy. The MPBL and DMS is still sufficient to protect the built character of the area and is not far removed from the built character originally envisaged when the title deed conditions were imposed.

Considering approved subdivisions and more than one dwelling on properties in this township area, it is clear that the very low-density character of the area is beginning to change, although the low-density character is reasonably maintained. Permitting 2 dwellings on the subject property within the envelope of a permissible / approved building will not have any negative impact in this regard.

Regarding the "one dwelling" condition

- The condition permitting only one dwelling on the subject property is seen as limiting contextually appropriate small-scale densification in terms of the Council's Policy in this regard.
- The subject property is zoned R1, which permits a 2nd and 3rd dwelling "as of right" and considering the character of the area can be seen as an appropriate built form for the area. However, only one additional dwelling house is proposed in this regard and is contained within the approved building envelope.
- It should be noted that the "one dwelling" is not a uniform and consistent condition that is enforced in all properties in the area. This is clear from the various subdivisions and second dwellings that exist in the larger area, which were constructed either as a result of historic approvals or as a result of the lack of enforcement of specific title deed conditions.
- Amendment of this condition will not change the possible built envelope of any buildings on the subject property. All the DMS development rules relating to dwelling houses in a R1 zone will still remain and will be adhered to as part of this proposal.
- In the context of the built character of the area, approved additional dwellings in the area and the Council's Densification Policy, it is not deemed appropriate that existing rights for a 2nd dwelling is underutilised and reduced through archaic and outdated title deed conditions.

Regarding the building line conditions

- The conditions relating to building lines are superfluous given the provisions contained within the DMS, which are (for most part) similar or more restrictive than the title deed conditions.
- A 7.87m street setback is considered to be unreasonable and resulting in an inappropriate built form for the area. Numerous, if not most properies in the area does not comply in this regard.
- Considering the sloping terrain in the area, the 7.87m street setback is generally impractical and results in significant difficulties in pedestrian and vehicle access to the property.
- A 4.5m setback for the building from the street boundaries still remain, which is considered appropriate for the area.
- The required 3m DMS common boundary building lines are more restrictive than the 1.57m rear boundary setback mentioned in the title deed. This is also similar to the required 3.15m common boundary setback for the lateral boundaries.
- The removal of the title deed setback restrictions will result in the more efficient use of the property. The efficient use of land is a policy that is promoted by both the City of Cape Town and the PGWC.

- It is further also evident that a number if not most of dwelling houses in the area already contravene the 7.87m street line setback condition with either garages or buildings. As indicated above, this is likely due to the practicalities of the sloping terrain in the area.

Regarding the built-upon condition

- The recently approved building, as well as the current proposal, complies with the "one half" built upon condition. However, this condition is not aligned with the MPBL rules and may result in an additional administrative burden in future, if (for example) additions and alterations are planned for the building that complies with the MPBL rules. Aesthetic additions that may positively impact the area, such as outdoor pergolas, or even pool changes, etc may be planned by the future owners, which would then result in another lengthy title deed process, which cannot be considered reasonable.
- Considering the MPBL rules and coverage basically being determined based on setbacks, etc; even if this built upon condition is removed, the likely coverage of the property will still be restricted by the building lines and will likely still be less than 65%, which cannot be considered unreasonable for the area.
- This restriction is deemed unnecessary red tape, not aligned with the DMS and not required due to the restrictions and rules within the DMS.
- The "not more than half the area thereof shall be built upon" restriction is archaic in nature, with the new DMS not specifying any coverage restrictions. This is due to the other provisions relating to setbacks, floor space, etc acting as a natural "limiter" to the possible footprint of any additions and alterations on the subject property. Therefore, it is not deemed appropriate that this condition not be deleted, as this will just perpetuate unnecessary red type.
- When one considers the required street and common boundary setbacks relating to the subject property and if the maximum allowable footprint is utilised in term of the DMS, which is seldom the case, the coverage of any building will still not be more than likely approximately 65% or so.
- The permissible possible coverage when considering the DMS provisions cannot be considered unreasonable for the area, especially if the built form and built character of the area are considered.
- The floor space of any buildings on the subject property is limited in terms of the DMS and any possible future development on the subject property will still be limited to this same provision.

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

3.2.5 The desirability of the proposed use or development

3.2.5.1 Socio-economic impact

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

- Given the detailed motivation in this report relating to policy compliance; the proposal should have a positive socio-economic impact on the area.
- The proposal will result in additional residential opportunities being made available within the Camps Bay area, which will have a positive socio-economic impact.
- The scale of the investment into the area, albeit at a micro scale, should have a positive socio-economic impact on the area and the larger city in terms of an increased rates base, etc.
- The proposal should have a positive socio-economic impact in terms of both temporary and permanent job opportunities being created.

3.2.5.2 Compatibility with surrounding uses

In this regards, the following should be noted:

- The use of the property remains residential in nature and only one additional dwelling house is proposed on the subject property.
- The additional dwelling house is wholly contained within the same building envelope than any large dwelling house that could be erected on the subject property.
- A building plan has already been approved for the subject property, which indicates to the possible building envelope currently permitted on the property. Only very minor additions & alterations are required to allow for the 2 dwelling houses on the property.
- Given the only internal additions and alterations proposed, the impact on surrounding properties and the area is therefore minimal, if any.
- The subject property is located within an area of Camps Bay where some larger block of flats also exists in unison with the mostly dwelling houses.
- The proposal still complies with the applicable development rules as per the MPBL. No departures are required in this regard.

3.2.5.3 Impact on external engineering services

- There is no bulk departure and, in fact, the dwelling houses proposed signifivaly complies with the 1500m^2 floor space permissible on the subject property. It is therefore not anticipated that there will be any impact on external engineering services.

- Any development contribution payable due to the additional dwellings proposed will be paid.
- The proposal will not impact on any engineering services, especially when considering the contextually appropriate densification as per the relevant City policy.

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

- The safety, health and well-being of the surrounding community is not directly impacted by this application.
- The proposed densification option results in additional "eyes on the streets", which have a positive safety impact.
- The proposed building complies with the DMS development rules, which means that there will be no impact on the residential amenity of surrounding property owners.

3.2.5.5 Impact in heritage

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

3.2.5.6 Impact on the biophysical environment

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

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

- Given the minor nature of the proposal, the contextually appropriate densification, and considering the character of the area; the proposal will not have a negative impact on the parking and traffic situation in the area.
- The proposed vehicular carriageway-crossing is as per the approved plan, which was already assessed by the relevant City departments.
- All vehicles may be able to leave the site in a forward gear, which positively impacts safety in the area.
- More than sufficient on-site parking has been provided to satisfy both the MPBL rules and market requirements.

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

In terms of this submission and the motivation, no adverse impacts on the area and surrounding property owners are anticipated. Various development rules as per the MPBL is still applicable and is deemed sufficient safeguards for any possible future development.

3.2.6 Impact on existing rights

Given the legal planning requirements as stated in Section 1 and the assessment above, it is argued that the proposal will have no impact on the existing rights of surrounding property owners. It is essential that this proposal and required planning application be seen in the context of desirable densification and existing rights.

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

3.2.7 Complies with the requirements of this By-Law

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

4. CONCLUSION AND REASONS FOR SUPPORT OF THE PROPOSAL

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

- In terms of the applicable Table District Plan (relevant spatial development framework), the subject property is located in an area indicated for "urban development" and within the metropolitan road. Given that only 2 dwelling houses is proposed and the assessment provided within this report relating to compliance with the Table District Plan, it is clear that the proposal **complies with the provisions of the Table Bay District Plan**.
- The subject property is not proposed to be rezoned and there is no floor space departure. Therefore, (considering Section 99(d)(ii) of the MPBL) the application **does not have the effect of granting the property the development rules of the next subzone**.

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

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

- It has been argued in this report, that the proposal **is in line with and is consistent with any applicable spatial development framework**.
- The proposal has been assessed and has been shown to be **compliant with the following City policies and strategies**:
  - TOD Strategic Framework
  - Densification Policy
- The proposal **complies with the provisions contained in relevant national and provincial legislation** (i.e. development principles of SPLUMA).
- The **amendment & deletion of the title deed conditions** have been addressed in detail and shown to be consistent with the criteria as per Section 48(4) of the MPBL, including Sections 42(1)(c) & 47 of SPLUMA.

- Removal and amendment of the title deed conditions will ensure **improved alignment of the restrictive title deed conditions with the development rules as per the DMS**.
- As per the assessment contained in Section 3.2.5 of this report, **it has been shown that the proposal is desirable as per the relevant consideration criteria as stated in Section 99(3) of the MPBL.**
- It has been shown and argued in this report that the proposal **will have no impact on the existing rights of relevant surrounding property owners**.
- The proposal is contained within the MPBL permissible building envelope.
- Through the assessment contained in this report, it is clear that the **proposal complies with the requirements of the MPBL**.



Ben Schoeman

ANNEXURE A

Amendment of restrictive title deed & deemed approval conditions contained in Deed of Transfer as follows:

From
Condition E.5.(b): "it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith"

To read:
Condition E.5.(b): "it shall be used only for the purpose of erecting thereon ~~one~~ **two** dwelling**s**, together with such outbuildings as are ordinarily required to be used therewith"

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

Condition E.5.(c): not more than half of the area thereof shall be built upon.

Condition E.5.(d): no building or structure, or any portion thereof, except boundary walls or fences shall be erected nearer than 7,87 metres to the street line which forms the boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority an outbuilding not exceeding 3,05 metres in height, measured from the floor to the wall plate, may be erected within the above prescribed rear space and within the above prescribed lateral space for a distance of 9,45 metres from the rear boundary.

On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf.