



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

**Case ID 1500147129**

**Erf 35697, 91 Winter Crescent,  
Surrey Estate**

**Development Management**

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# PROPOSED REMOVAL OF RESTRICTIVE TITLE CONDITIONS, AMENDMENT OF CONDITIONS OF TOWNSHIP ESTABLISHMENT AND RELATED DEPARTURES ERF 35697, WINTER CRESCENT, SURREY ESTATE, ATHLONE

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DECEMBER 2024

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## **1. Site Background**

The subject property, Erf 35697 Surrey Estate, is located at number 91 Winter Crescent in the Southern Suburbs of Cape Town in the Cape Flats District. The site is currently zoned for Single Residential – SR1. The property is currently being used for residential purposes as a dwelling house.

The purpose of this land use application is to apply for the removal of title deed restrictions and amendment of the Township Establishment conditions to allow for greater utilisation of the site.

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

### **1.1 Land Use applications applied for**

The application is hereby made in terms of:

Application in terms of Section 42(g) of the Municipal Planning By-Law, 2015 as amended 2025, for the removal of:

- Condition B.3.(b)
- Condition B.3.(c)

o B.3.(b) – It shall be used for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith.

o B.3.(c) – Not more than half the area thereof shall be built upon.

Section 42(j)

Application in terms of Section 42(j) of the Municipal Planning By-Law, 2015 as amended 2025, for the amendment of Condition B.3.(d).

o B.3.(d) – No building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4,72 metres to the street line of this erf nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf. Where provisions of the Town Planning Scheme for the Municipal area of Cape Town are more restrictive than the provisions contained in this condition, the provisions of such scheme shall apply. On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf.

Application for the following departures in terms of Section 42(b) of the Municipal Planning Bylaw:

- Height departure for 6.583m and 6.673m i.l.o 4m in height within the 3m building on the south and east building lines.
- Second dwelling to be built 1.570m from the 3m South common boundary
- Second dwelling to be built 1.858m from the 3m East Common boundary

- Departure in terms of Item 140(2)(a) to permit an additional carriageway crossing measuring 4.8m.
- Departure in terms of Item 142(2)(b) to permit two carriageways crossings 9,694m i.l.o 12m apart.

### 1.1 Site details

|                                               |                                       |
|-----------------------------------------------|---------------------------------------|
| <b>Erf no</b>                                 | Erf 35697 Surrey Estate               |
| <b>Extent of property</b>                     | 605m <sup>2</sup> (as per Title Deed) |
| <b>Title Deed no.</b>                         |                                       |
| <b>Current Zoning</b>                         | Single Residential – SR1              |
| <b>Current Land Use</b>                       | Residential                           |
| <b>Special/Conservation area overlay zone</b> | N/A                                   |

### 1.3. Locality

Erf 35697, Surrey Estate is located at number 91 Winter Crescent close to the suburb of Athlone, (please see the Aerial Locality Plan below which depicts the location of the site in more detail).



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

#### **1.4 Title Deeds**

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

#### **1.5 Physical characteristics of premises and surrounding area**

The subject property is a single residential dwelling house and shares a similar extent to the surrounding neighbours. However, there is a mixture of land uses within the broader surroundings consisting of public open space – Durr Road Park, Place of Instruction and various small business operations.

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

#### **1.6 The Development Proposal**

The proposal is to allow for dwelling extensions (main dwelling) as well as a two storey second dwelling which require the removal of multiple conditions in the title deed which hinders further development i.e. extension to the current dwelling. The extensions can be seen as depicted on the site development plan as drawn by JZE Architects with project number 2401 dated 5 March 2024,

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

Motivation in terms of the various departures applied for:

The following points make reference to the need for the various boundary line departures required:

- To facilitate an upgrade to the living conditions of a growing family.
- To heighten security for the site as a whole on the side common boundaries thereby eliminating any negative spaces and to avoid trespassing on the site and for ease of security with lockable gates among other security measures.
- Majority of the surrounding houses have been designed being close to the site on either side's respectively, similar to this proposed design, therefore precedent in this regard does exist and caters for not only aesthetic purposes, but also for security reasons.
- It was attempted to design the proposed within the building line parameters, but due to the extent of the site etc this was not possible. It is the clients wish to utilize the site to its full potential.
- The design was completed in the most efficient and effective way and with the budget of the client in mind.
- The proposal gives minimal affect to the surrounding neighbours, does not infringe on their rights to comfortable living and has minimal impact on the surrounding area as a whole.

- The site is situated in an area which is known for having crime & the maid's quarters is designed so that it encloses the majority of the site from side to side without having to incorporate a boundary wall, in doing so it would secure the site.
- Majority of the surrounding houses have been designed with it being built quite close to the end of the site on either side's respectively, similar to this proposed design, therefore there are plenty of precedent studies, not only for aesthetic purposes, but also for security reasons as stated above.
- The second dwelling will have very little to no impact on the surrounding neighbours.
- The proposed design was done in the most efficient way possible without going beyond the client's budget.

Title Deed Restriction B.3.(b) "It shall be used for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith."

- The proposed additions & alterations are to previously approved structures. The Main Dwelling is proposed to be extended on the First Floor only, so the Existing Footprint will remain the same and by no way affecting the existing coverage.
- The Second Dwelling is proposed to accommodate two storey's in order to keep the dwellings similar in style and to make effective utilization of land available. The design and lay out of both the main dwelling and second dwelling take into consideration the comfort of the residents by way of assuming enough space for contented and secure living.
- In order to fully utilize the property, it is necessary to remove this condition.

Title Deed Restriction B.3.(c) – "Not more than half the area thereof shall be built upon."

- The existing structures are previously approved. It is highly unlikely that this restriction can be imposed on the owners as this clause may have been included in the parent erf many years ago when the site may have been much bigger and this restriction would have then made better sense but due to economic changes and the fact that the erven which had been subdivided are now much smaller, it is motivated that the removal of this condition is deemed necessary.
- The proposed coverage is compliant.
- The extension was designed in a manner to conform with the existing surrounding area.
- By having the second dwelling built in a similar manner to the main dwelling will pose to be aesthetically pleasing as well as ensure that the proposed design does not stand out but rather assume a complete design to the eye.
- The proposed height departure will allow for a design that compliments the main dwelling and existing surrounds making it aesthetically pleasing.

Title deed restriction - B.3.(d) – “No building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4,72 metres to the street line of this erf nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf. Where provisions of the Town Planning Scheme for the Municipal area of Cape Town are more restrictive than the provisions contained in this condition, the provisions of such scheme shall apply. On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf”.

- The position of the of the building necessitates the need for the removal of this condition,
- The departures are not excessive, and the removal thereof will not detract from the character of the area, in fact most of the plots are similar in size and many erven in the surrounds have seen alterations and extensions similar to the proposed.

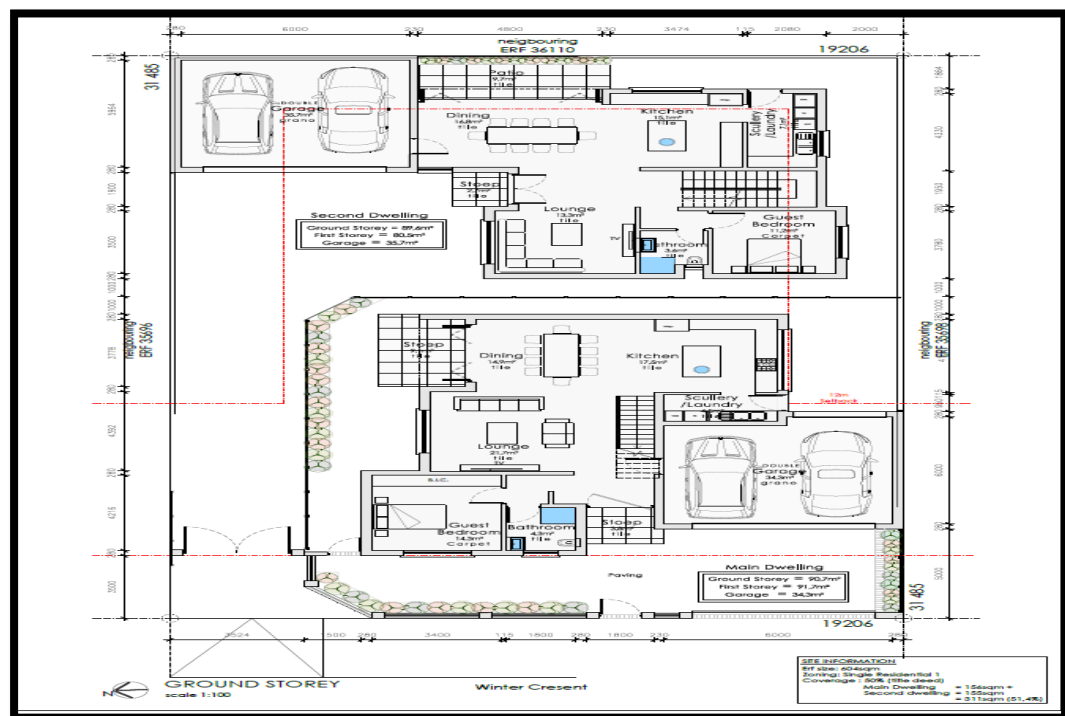


Image depicting the Ground storey proposal

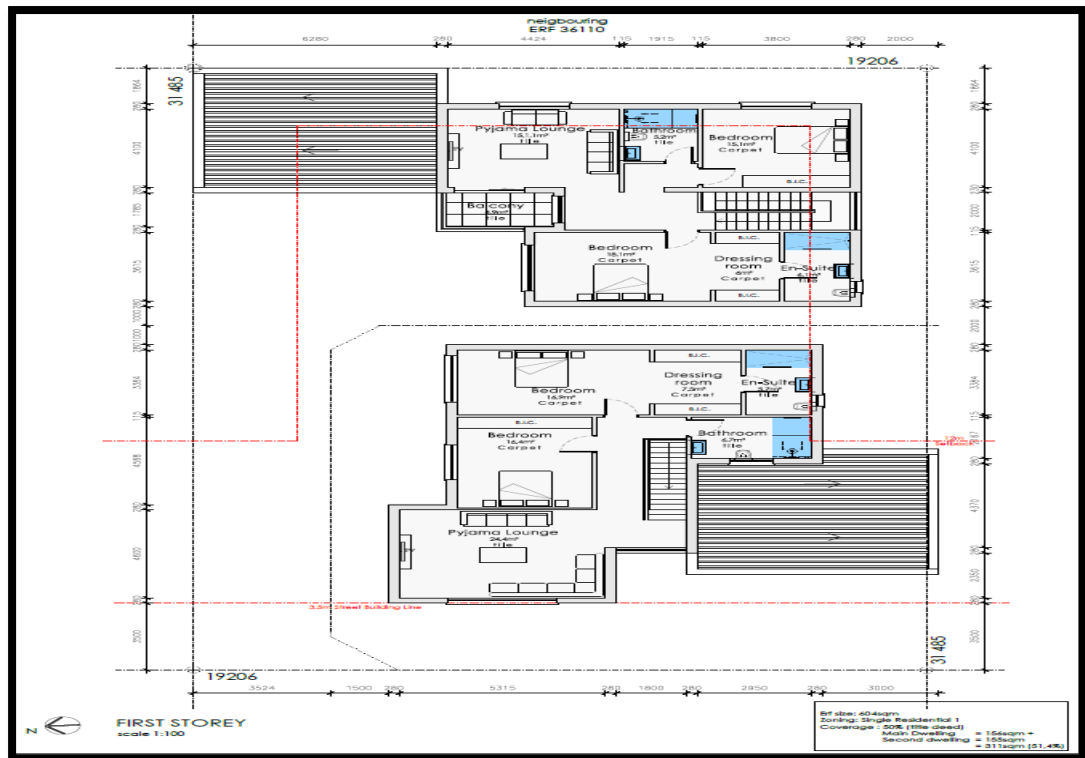


Image depicting the first-floor proposal

#### Motivation for the permanent regulation departures:

'Permanent departure' means the right to use land otherwise than in accordance with the development rules of the zoning applicable to the property in terms of Section 42 (b) of the City of Cape Town Municipal Planning By-Law 2015 and the City of Cape Town Municipal Land Use Scheme, 2021.

- Height exceeding 4m on the south and east 3,0m building line (6.583, 6,140m & 6.673)
  - A common boundary building line of 3m applies on all common boundaries. Any building permitted through a departure closer than 3m from the common boundary will be limited to 4m in height (note that 22(f) permits garages, carports and outbuilding to a certain extent). Any building permitted through a departure on the common boundary within the first 12m measured perpendicular from street boundary will have a height as per the 'Table of floor factor, floor space, height and building lines in Single Residential Zoning 1'
  - The departures being requested are not excessive.
  - The owner wishes to utilize he's site to its full potential and have the proposed in line with the needs of the family for long term living.
- Application for a departure in terms of item 140 of the Municipal Planning Bylaw to allow for an additional carriageway crossing.
  - The additional carriageway crossing is required to accommodate

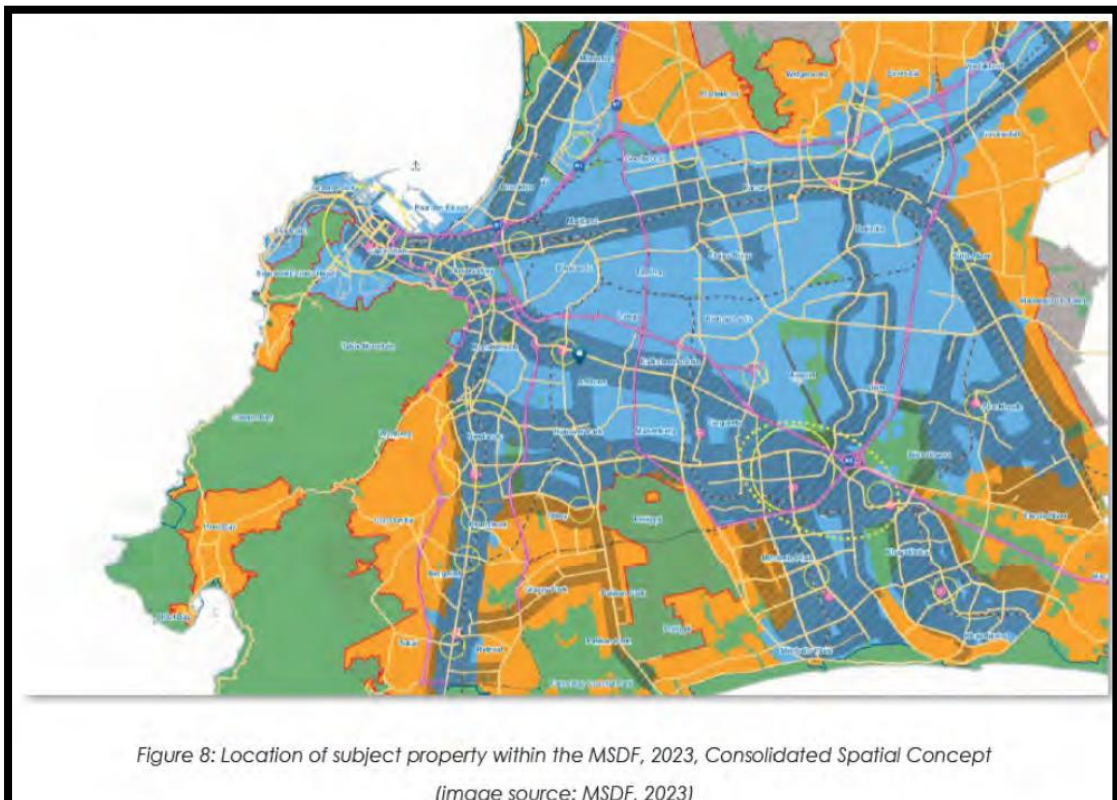
increased vehicle storage. This will affect ease of movement and facilitate better traffic flow.

- The additional cwc would allow the applicant to optimize the use of the available frontage and improve access to the site.
- A wider carriageway crossing can improve visibility for vehicles entering and exiting the property, enhancing overall safety.
- The municipality may encourage more flexible or wider carriageway crossings to accommodate growing urban areas or facilitate higher-density development.
- The additional carriageway crossing will contribute to the overall improvement of local infrastructure.
- A precedent has been set whereby there are properties in Winter Crescent with two carriageway crossings already. (Two houses from the subject property).

## 2. Assessment of forward planning policies.

### **Municipal Development Framework, 2023**

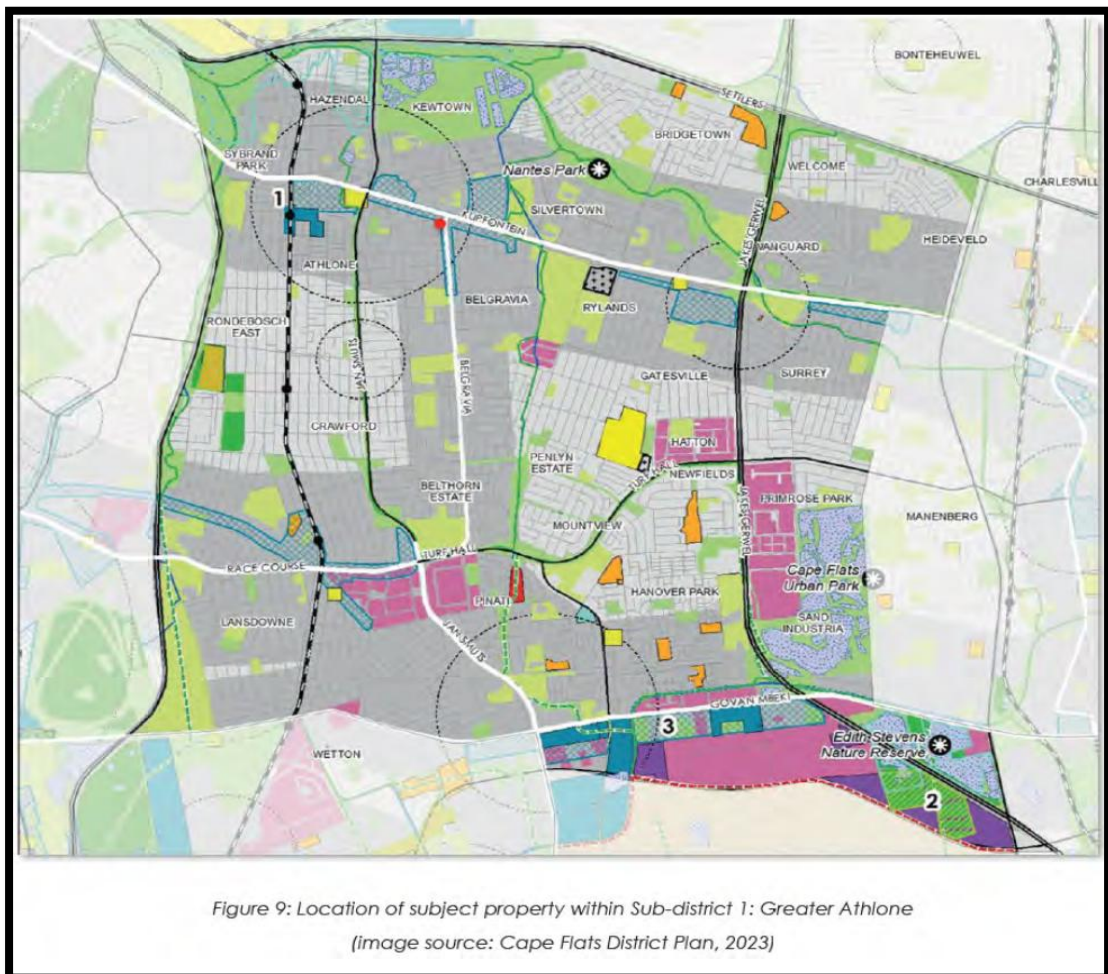
As per the Municipal Spatial Development Framework, 2023 the subject property is located within the Urban Development Edge; within the Urban Inner Core; within a Development Corridor; within a District Node; and within close proximity to a Regional Civic Cluster.



## 2.1 Cape Flats District Plan

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

The subject property is located in Subdistrict 1: Greater Athlone, within the Cape Flats District Plan, 2023. As per this District Plan, the subject property is located within a District Node; within a Mixed-Use Intensification area; and along one of the Higher/Lower Order Routes & Development Corridors.



### District Node

The subject property is located within the most prominent district node in this Sub district, namely the Cape Flats CBD. This node is identified as a development focus area; and high-intensity and mixed-use activity is promoted within this node. One of the spatial development objectives for this Subdistrict is to reinforce the Cape Flats CBD as a vibrant business district. Additionally focus should be on improving these key areas within the (Athlone) CBD through intensification, redevelopment and upgrade and links to the station and Klipfontein Road. This should result in private sector response in regeneration of this area into major urban nodes in the district for

intensification, redevelopment and upgrade.

### **Mixed Use Intensification area**

The subject site is located within a Mixed-Use Intensification area on Winter Crescent. These areas are where further intensification and diversification of existing land uses are supported or where appropriate redevelopment to a mix of land uses is actively encouraged by the City. Furthermore, the city supports high-density mixed residential typologies in all areas of mixed-use intensification; and encourages greater land use intensification of an appropriate combination of land uses.

### **Densification Policy, 2012**

The Densification Policy, 2012, outlines the following considerations for densification. Infrastructure capacity should be a consideration for all forms of densification. Additionally for medium to high levels of densification the following should be considered: access to public transport systems (existing and planned); land use integration (located near places of employment, social services and community facilities); access and proximity to public open spaces (should have access to urban open spaces, recreational green spaces and/or natural open space).

The Densification Policy, 2012, outlines the areas/locations targeted for different types of densification. The subject site is located in close proximity to the Klipfontein development route which is targeted for 75-175 du/ha (net) density and 3-7 storeys. Additionally, the subject site is located within the Athlone CBD district node which again is targeted for 75-175 du/ha (net) density and 3-7 storeys.

### **Urban Design Policy, 2013**

The desired underlying urban structure is based on the Athlone CBD district Node, the Klipfontein corridor and the Belgravia Road mixed-use intensification area. The proposed development enhances this urban structure by creating intensified and diversified land use within the node and along the corridor.

## **2.2 Assessment of proposal against the Development Management Scheme and Municipal Planning By-Law, 2015 as amended 2025**

The development of the subject property will be subject to the development controls in a Single Residential (SR1) in terms of the Development Management Scheme, City of Cape Town Municipal Planning By-Law, 2015 as amended 2025 are set out below and are as follows:

| <b>Development controls</b> | <b>Development Management Scheme Requirements</b> | <b>Applied to the site</b> | <b>Departure required</b> |
|-----------------------------|---------------------------------------------------|----------------------------|---------------------------|
|                             |                                                   |                            |                           |

|                                          |                                                                                                       |                 |     |
|------------------------------------------|-------------------------------------------------------------------------------------------------------|-----------------|-----|
| <b>Height</b>                            | 10 m to Top of Roof<br>8 m to Wallplate<br>height restriction<br>within 3m common<br>boundary setback | < 10 m<br>< 8 m | Yes |
| <b>Street Building line<br/>setback</b>  |                                                                                                       | > 3.5 m         | No  |
| <b>Common boundary<br/>building line</b> | 3m – south<br>common<br>3m – east<br>common                                                           | 1.570<br>1.858  | Yes |
| <b>Coverage</b>                          | 50% titled deed                                                                                       | 50%             | No  |

### 3. APPLICABLE LEGISLATION FOR THE REMOVAL OF RESTRICTIVE CONDITIONS

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

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

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

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

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

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

Furthermore, subject to Sections 6, 7 and 8 of SPLUMA (2013), which refer to good planning practice and procedures, Section 42 outlines the criteria that must be used by decision makers when evaluating an application and Section 47 refers

to the removal of restrictive title deed conditions in particular. This application is made in accordance with the allowances of this legislation.

### **3.2 Land Use Planning Act, 2014 (LUPA)**

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

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

The MPBL makes provision for three dwellings on a property zoned for single residential purposes. Thus, the removal of this condition relating to the property only having one dwelling for residential purposes is entirely consistent with the MPBL. The applicant is not qualified to comment on whether the condition impacts on property values or not. However, it is noted that numerous other properties in the broader area have additional dwellings, without negatively affecting property values.

As a result, it is our opinion that removal of the conditions will result in limited, if any, impact on value. The deletion of the restrictions will enable for an additional dwelling under the single residential zone, which is considered to be in keeping with the character of the area given that a property is permitted to have three dwellings as per the new directive. Given that the proposed use is allowed under the single residential zoning there will be no decrease in value of surrounding properties. The restrictive conditions were imposed in order to maintain and preserve a strict residential character and prevent any landowner from detracting from this concept. The proposal is in keeping with the residential nature of the subject property and the surrounding area and in this regard, there is no negative impact on property values expected.

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

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

The deletion of the restrictive conditions which were imposed by the Administrator does not result in a direct personal benefit to the neighbours. The surrounding property holders will not be impacted on as a result of the deletion of the restrictions and it is evident that this will not have an adverse impact on the

surrounding community given that numerous other landowners have extended dwellings on their properties and increased the on-site density.

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

Granting the removal of the restrictive title deed conditions will enable the owner to maximise the land to its full potential by way of creating a comfortable and safe living environment. The property owner will achieve substantial personal benefits from the deletion of these conditions as it will allow the expansion of their development rights on the property, especially in the use of the property, as well as being limited to the development setbacks as stipulated in the current Development Scheme. This unlocks value for the owner and will benefit future owners as well.

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

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

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

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

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

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

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

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

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

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

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

#### **b. Consistency with the MSDF**

The proposed land use is consistent with the MSDF. The proposed development is asking for an increase in density less than the minimum density supported by the MSDF in this location. This application is therefore asking for less rights than what the MSDF envisions for this site, and is therefore conservative but consistent with the MSDF, 2023

#### **c. Desirability in terms of section 99(3)**

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

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

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

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

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

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

The proposal, which is minor in nature and basically allows for the further development of the property which will remain residential, will have no impact in terms of the City's Social Development Strategy and indirectly supports the Economic Growth Strategy. Given the assessment above and for the reasons as

listed in this report, it has been shown that the proposal is desirable as per the relevant consideration criteria as stated in Section 99(3) of the MPBL. It has been shown that the proposal will not have a negative impact on the existing rights of relevant surrounding property owners. With regards to this proposal, an assessment has been completed and compliance shown in terms of the relevant provisions of LUPA & SPLUMA. As per the application submitted and motivation provided, the applicant is of the opinion that the proposal complies with the requirements of the By-Law.

### **3.5 Desirability in terms of Section 99(3)**

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

#### **a. Socio-economic impacts of the Proposed Departures and Amendment of Conditions of Township Establishment**

The subject property, Erf 35697 Surrey Estate, measures approximately 605m<sup>2</sup> in extent and is situated at 91 Winter Crescent within an established residential neighbourhood of Surrey Estate. The proposal seeks to facilitate extensions to the existing dwelling and the construction of a two-storey second dwelling through the amendment of the Conditions of Township Establishment and associated departures.

The proposal represents a modest and contextually appropriate increase in the utilisation of a well-located urban property already serviced by municipal infrastructure. The development will increase residential accommodation opportunities on the property while remaining consistent with the residential character of the area. The proposed second dwelling supports the City's objectives of urban infill development and land use intensification within the Urban Inner Core and Mixed-Use Intensification Area identified in the Cape Flats District Plan.

The proposal will also encourage continued investment in the property, contribute to the local economy through construction-related expenditure, and increase the long-term value and productive use of the site. No adverse socio-economic impacts are anticipated as the development remains residential in nature and does not introduce activities likely to generate nuisance impacts on the surrounding community.

#### **b. Compatibility with surrounding land uses**

The subject property is zoned Single Residential Zone 1 (SR1) and is located within a predominantly residential neighbourhood characterised by single and double-storey dwelling houses. The surrounding area has evolved over time through additions, alterations and extensions to existing homes, resulting in varying building forms and setback relationships along Winter Crescent.

The proposed development does not introduce a new or incompatible land use. The property will continue to function exclusively for residential purposes, with the proposed second dwelling being a land use contemplated within the

broader intent of residential development. The proposed building design has been configured to complement the existing dwelling and surrounding built form while utilising available land more efficiently.

The requested departures, namely the encroachment into the south and east common boundary setbacks and the associated height departures, are considered compatible with the prevailing development pattern in the area where numerous properties have been developed with building footprints located closer to common boundaries than originally contemplated under historic township conditions. The proposal therefore reinforces the established residential character of Surrey Estate rather than detracting from it.

**c. Impact on existing rights of Neighbouring Property owners**

The requested departures will permit the second dwelling to be located approximately 1.570m from the southern common boundary and approximately 1.858m from the eastern common boundary in lieu of the required 3.0m setbacks. The proposal also requires height departures to allow portions of the building to attain heights of approximately 6.583m, 6.240m and 6.673m within the setback areas where a height limitation of 4.0m applies.

Notwithstanding these departures, the proposal has been designed to minimise impacts on adjoining owners. The encroachments are relatively modest and remain confined within the subject property. The proposed development will not alter access arrangements to neighbouring properties nor prevent the reasonable use and enjoyment of adjacent erven.

The development remains residential in nature and therefore will not generate traffic, noise, pollution or operational impacts beyond those ordinarily associated with a dwelling house. Furthermore, the proposed building height remains significantly below the maximum height parameters normally applicable within SR1 zoning. The departures are therefore not expected to result in any material infringement of neighbouring owners' rights to privacy, amenity, light or ventilation.

The proposal accordingly strikes an appropriate balance between the applicant's right to develop the property and the rights of adjacent landowners.

**d. Assessment of the Requested Building Line and Height Departures**

The requested departures are necessary to accommodate a two-storey second dwelling on the property while ensuring a functional internal layout and efficient use of the available land area. Given the size and configuration of the erf, strict compliance with the prescribed setback and height provisions would significantly constrain the development potential of the property and limit the ability to provide a well-designed residential environment.

The reduced setbacks of 1.570m and 1.858m from the southern and eastern common boundaries respectively are not excessive when viewed in the context of the existing urban form of Surrey Estate. The departures remain substantially greater than a zero building line and continue to provide separation between buildings and adjoining properties.

Similarly, the proposed height departures relate only to portions of the second dwelling situated within the setback area. While heights of 6.583m, 6.240m and 6.673m are proposed in these areas, the overall building remains a conventional two-storey residential structure and does not establish an overbearing or dominant presence within the streetscape. The design remains consistent with other double-storey dwellings evident within the surrounding neighbourhood.

The requested departures are therefore considered reasonable, site-specific and directly related to achieving a practical residential design while maintaining compatibility with neighbouring development.

**e. Desirability of the Amendment of Conditions of Township Establishment**

The amendment of the Conditions of Township Establishment is necessary to remove outdated development limitations that no longer reflect current planning objectives or development trends within Surrey Estate. The original conditions were imposed in a significantly different planning environment and do not adequately support contemporary principles of urban efficiency and appropriate residential intensification.

The subject property is located within the Urban Inner Core, a Development Corridor, a District Node and a Mixed-Use Intensification Area where municipal policy encourages more efficient utilisation of well-located urban land. The proposed amendment will enable development of the property in a manner that is better aligned with these planning objectives while retaining its residential function.

Importantly, the amendment will not alter the zoning of the property, introduce an incompatible land use, or create unacceptable impacts on surrounding properties. Instead, it will facilitate a residential development outcome that remains consistent with the character of Winter Crescent and the broader Surrey Estate area. The amendment of the Conditions of Township Establishment is therefore considered both necessary and desirable as it enables the reasonable development potential of the property to be realised while advancing the City's objectives of urban consolidation, residential intensification and efficient use of existing infrastructure.

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

The proposal will not impact on health and safety or well-being of the surrounding landowners. The window placement on the common boundaries are more than 1.5m away and does not pose any negative impact relating to safety or health and well-being of the surrounding community owners.

The proposal will not impact safety, health and wellbeing of the surrounding community due to the limited scale and compatible use and form. The building plan will comply with the NBR regulations to ensure structures are structurally sound

**g. Impact on Heritage**

The subject property is not located within a Heritage Overlay Zone (HPOZ), thus

there is no application required to permit development within an HPOZ. No impact on heritage is foreseen as the removal of the restrictive condition does not detract or add benefit for heritage purposes.

#### **h. Impact on the biophysical environment**

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

The property is located in an urban area, therefore no adverse impact on the biophysical environment is foreseen.

#### **i. Traffic Impacts (parking, access/egress and other transport considerations).**

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

The site is located in a Standard area but has the characteristics of a PT area which is defined as an area where the use of public transport is promoted, and Council considers the provision of public transport inadequate (PT1 area) / good (PT2 area).

The site is well served by public transport in the form of minibus taxis and Golden Arrow buses which frequent the Belgravia Klipfontein Road public transport corridors. Public transport is easily accessible and all public transport facilities are located within comfortable walking distance of the site. An alternative to public (and private) transport, is the ever-present on demand e-hailing taxi services such as Uber and Bolt shall improve accessibility to the site as an additional mode of transport. Parking is provided in accordance with Chapter 15 of the Municipal Planning By-law.

The exiting vehicle access is to remain in the same position. Therefore, no traffic related problems in the area are foreseen.

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

#### **4.1 Spatial Justice**

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

#### **4.2 Spatial Sustainability**

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

site that is already serviced.

#### **4.3 Spatial Efficiency**

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

#### **4.4 Spatial Resilience**

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

#### **4.5 Good Administration**

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

**Below are the Factors in terms of section 39(5) of LUPA that need to be considered in the process of finalizing the application and reaching a decision:**

Section 39(5)(a): the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.

We are of the opinion that the restrictions enclosed in the title deed negatively impact of the owner's ability of financially enhance the value of his/her property by the inability to further develop thereon. This in term has a negative effect on the surrounding properties and their owners as well due to the property value not being increased by further development thereof.

Section 39(5)(b): the personal benefits which accrue to the holder of rights in terms of the restrictive condition;

None of the property owners adjacent to the property under discussion hold rights of servitude over the same property and they therefore have no real rights. The owners will therefore not be affected by the proposal as set out.

Section 39(5)(c): the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;

The removal of the restrictive conditions will enable the owner effective utilization of the property in a well-designed and streamlined manner, in keeping with the character of the area and in this instance, enhancing the area in its built form.

Furthermore, the removal of the restrictive conditions will not only enable more efficient use of land under discussion and be beneficial to the property owner as well as surrounds.

Section 39(5)(d): the social benefit of the restrictive condition remaining in place in its existing form;

The restrictions noted on the Title Deed are a major hindrance for the owner in his ability to develop his property as well as for the township on a whole as the possibilities of population densification decreases as well as development in order to aid securing private property in a well achieved manner.

Section 39(5)(e): the social benefit of the removal, suspension or amendment of the restrictive condition; and

The removal of the restrictive title deed conditions will have a positive social benefit given that it will result in residential densification within an existing urban area. The proposal is in line with and gives effect to approved Provincial and Municipal policies.

Section 39(5)(f): whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

The removal of the restrictive title deed conditions will not result in the complete or even partial loss of rights by the City of Cape Town. This is since the owner will have to pay not only application and advertising fees to, the City, but scrutiny fees involved in the development approval.

This is seen as a benefit to the City of Cape Town and not a disadvantage.

#### **Factors in terms of section 47(2) of the SPLUMA:**

- Restrictive title deed conditions do not vest neighbouring homeowners with rights to property as contemplated by Section 25 of the Constitution
- The removal of restrictions does not constitute an expropriation because the state does not acquire any property rights via this process
- The conditions to be removed do not constitute servitudes or contractual rights. They are limitations on the use of land imposed in the public interest.
- Neighbouring owners may have an interest in the restrictions, but it does not vest them with any private rights to property as contemplated by section 25 of the Constitution.

## **5 Conclusion**

For the reasons set out above in this report, the proposal is therefore considered to be desirable. This proposal is desirable as it complies with the criteria of desirability in the MPBL of 2019. The proposal is deemed to be minor in nature as the proposed additions do not impact significantly on the existing rights of any

surrounding neighbours and community at large. The proposed additions will provide a valuable service to the community in terms of security and awareness.

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

**JZE Architects**