



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500163968

**Erf 1195, 2 Hove Road,
Camps Bay / Bakoven**

Development Management

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APPLICATION DEPARTURE, AND THE AMENDMENT OF A RESTRICTIVE CONDITION OF TITLE

**ERF 1195
NO 2 HOVE ROAD
CAMPS BAY
CAPETOWN**



APRIL 2026 Rev

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1. BACKGROUND AND BRIEF

I have been commissioned by _____ the owner of Erf 1195 at No 2 Hove Road, Camps Bay, to submit planning applications in terms of the Municipal Planning Bylaw (MPBL), in order to gain approval for the simple conversion of a portion structure on the property to a second dwelling unit. This report serves as the motivation for this application. An application for an Administrative Penalty has been made to the City and is in the process of being finalised. This is a resubmission of an application made to which acceptance was refused in April 2026.

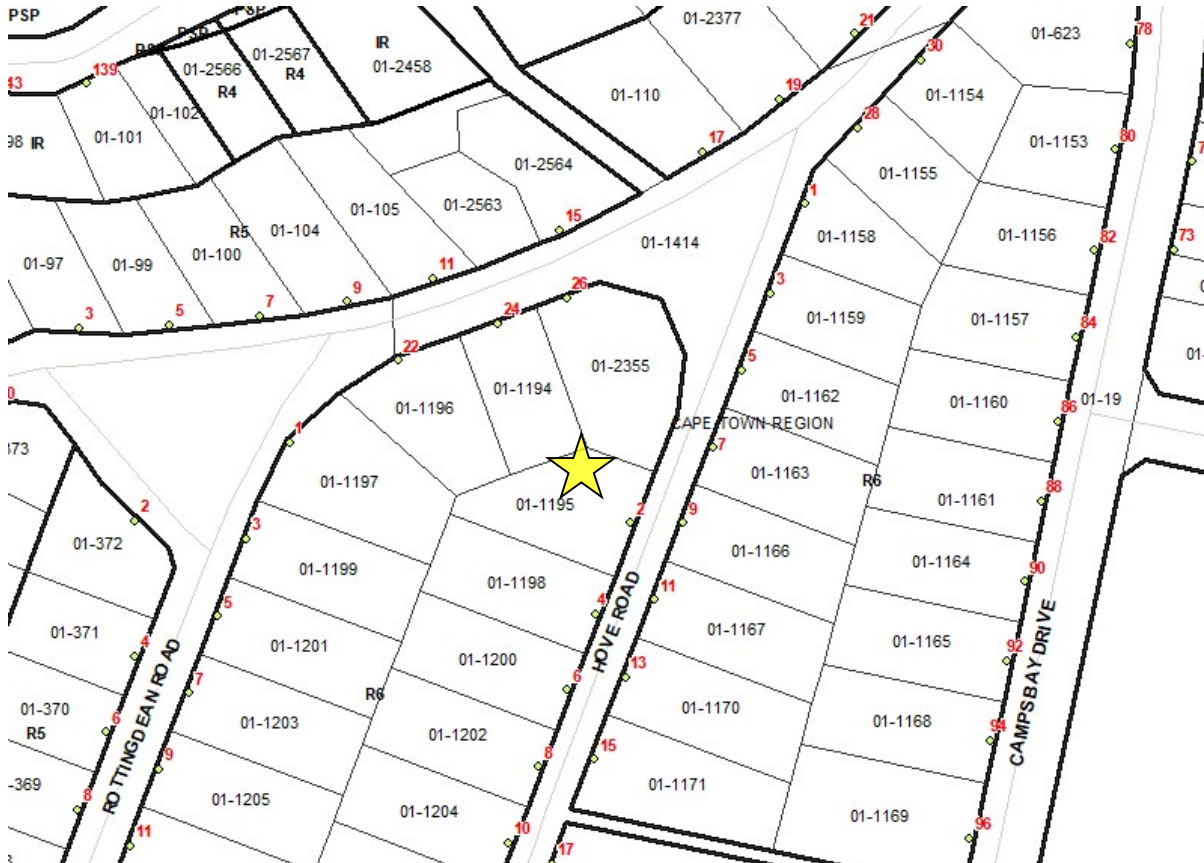


Figure1: The property in question in Camps Bay.

2. THE APPLICANT

The property concerned is registered in the names of _____ who has appointed **David Richard Saunders** to submit the relevant planning application on his behalf. A Power of Attorney is attached hereto as **Annexure A**.

3. THE PROPERTY AND LOCALITY

The property concerned, Erf 1195, No 2 Hove Road, Camps Bay, is situated on the lower western side of Hove Road (see **Figure 1**: a Locality Diagram and **Figure 2**: an Aerial Photo). Hove Road Avenue runs in a north to south direction. The property is surrounded by properties all zone General Residential GR 2, with most developed with large two and even three-story dwelling houses.

The property is 798m² in extent.

A Locality Plan is also attached to this Report as **Annexure B**.

4. SURROUNDING LAND USE

The context is entirely residential in character. The immediately surrounding properties are developed with freestanding two and three storey dwelling houses. Figures 3 to 6 below provide an indication of the nature of the surrounding environment.



Figure 2: The position of the property in Camps Bay.



Figure 3: The property in question.



Figure 4: Looking north up Hove Street in Camps Bay.



Figure 5: Looking south down Hove Road in Camps Bay.



Figure 6: The properties across the road.

5. ZONING

The property is zoned **General Residential Zone GR2**. In terms of Item 21 of the Development Management Scheme (DMS), the property may be developed with a dwelling house, a second dwelling house, a third dwelling unit, and a private road. All the immediate surrounding properties are zoned General Residential GR2. An extract of the zoning map is provided below – see **Figure 7** below. In terms of Item 42 of the DMS, the single dwelling development parameters apply to this proposal. These are:

The following uses are primary uses: dwelling house, second dwelling, group housing, boarding house, guest house, flats, private road and open space.

The following uses are permitted with 'consent': utility service, place of instruction, place of worship, institution, hospital, place of assembly, home occupation, shops, hotel, Conference facility, rooftop base telecommunication station and veterinary practice.

Floor factor: 1500m²
 Permitted Height: 9m (wall plate) 11m (top of roof)
 Required setbacks (building lines): street - 3.5m
 Common - 3m

Parking: Dwelling house – 2 bays per dwelling unit.

The site is subject to the development parameters contained in Item 190 of the DMS. These development parameters are:

- (1) No building within the Camps Bay and Bakoven area shall exceed three storeys in height.

There are no other pertinent land use or zoning considerations. The property is not situated in a proposed or proclaimed Heritage Protection Overlay Zone. The site has not been the subject of a rezoning or consent application and there are no land use conditions attached to the property.



Figure 7: The Zoning of the Property and the immediate surrounds.

6. LAND USE RESTRICTIONS IN TERMS OF THE TITLE DEEDS

A copy of the relevant title deeds of erf 1195, in the City of Cape Town, are attached as **Annexure C**. A Conveyancer's Certificate is attached as **Annexure D**. The title deeds contain a restrictive condition of title which needs to be addressed in order to gain approval for the second dwelling. Application is made to amend one of the restrictive conditions of title namely (B 1 (b)) in order to permit a second dwelling on the property.

7. APPLICABLE PLANNING POLICY

The following planning documents are pertinent and should be considered when assessing this application:

7.1 The Development Facilitation Act (the DFA)

The DFA discourages urban sprawl and promotes the optimal use of infrastructure and resources.

7.2 Provincial Spatial Development Framework (PSDF) 2005

The PSDF is prepared at a provincial level and therefore sets out important principles which inform decision making at a local level. The most applicable principle in this case is:

- **Densification**, especially around urban core areas and corridors, is seen as mandatory.

7.3 The City of Cape Town Densification Policy – 2012

This Policy promotes incremental densification and the redevelopment of land at higher densities. The policy is intended to guide decision-making with regards to density related applications. In this regard it promotes higher-densities:

- on vacant and underutilised land/sites throughout the built area of the City;

- on activity routes;
- in areas of high public transport accessibility;
- within mixed use areas.

7.4 Cape Town Spatial Development Framework (the CTSDf) 2023

The CTSDf recommends, amongst other things, that:

- urban sprawl to be contained through densification of specific areas and the encouragement of maximum use development within urban areas;
- intensified residential development be encouraged in urban areas with great accessibility to facilities and infrastructure;

7.5 The Table Bay District Plan

The TBDP recommends, amongst other things:

- the support of incremental densification over time of urban areas where appropriate.

8. THE PROPOSAL

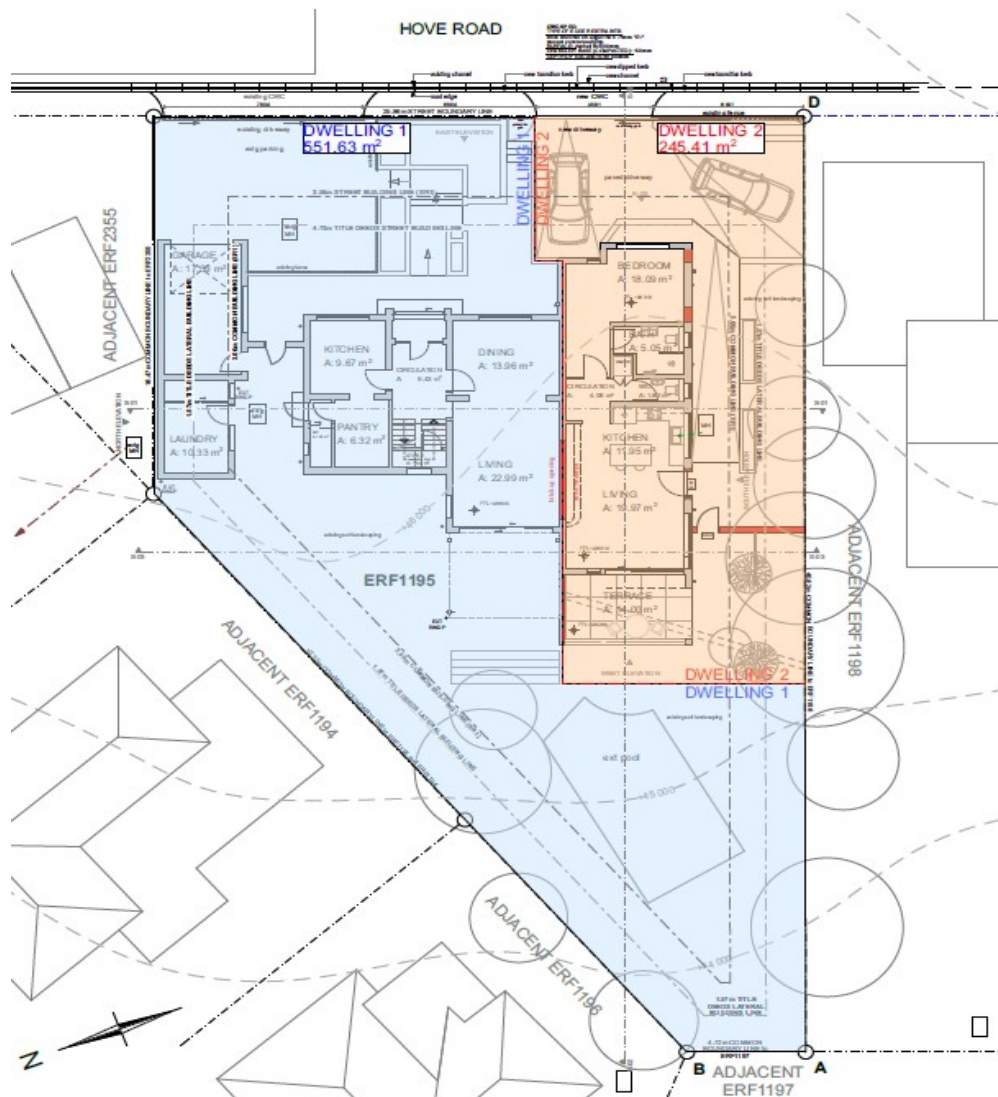
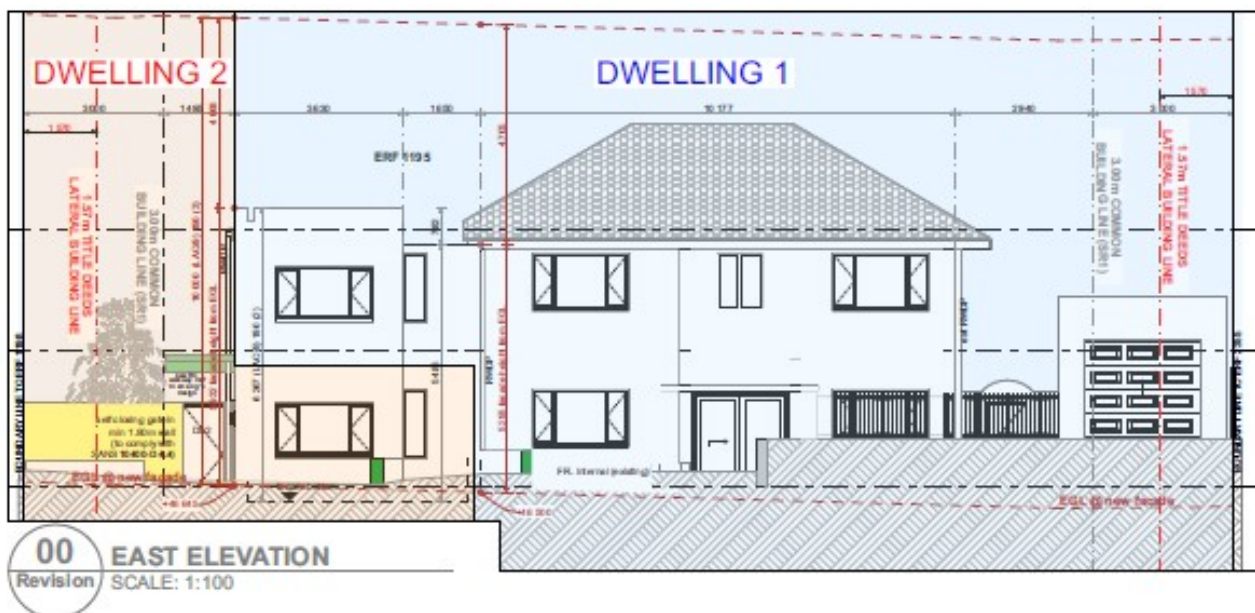
Please note that all the changes to the building, which are minor, are internal. There are NO external changes to the building which is in accordance with approved plans

It is proposed to amend the restrictive condition relating to the limitation of one single dwelling unit on the property. The Site Development Plan ('SDP') has been prepared by ROBERT HORST ARCHITECTS and is attached hereto as **Annexure G**.

The proposal entails the conversion of a portion of an upper floor of an existing building into a separate dwelling unit. This dwelling unit complies with all the DMS requirements pertaining to a second 'dwelling unit'.



Figure 8: The ground floor of this portion of the building has been converted into a 'second dwelling unit'.



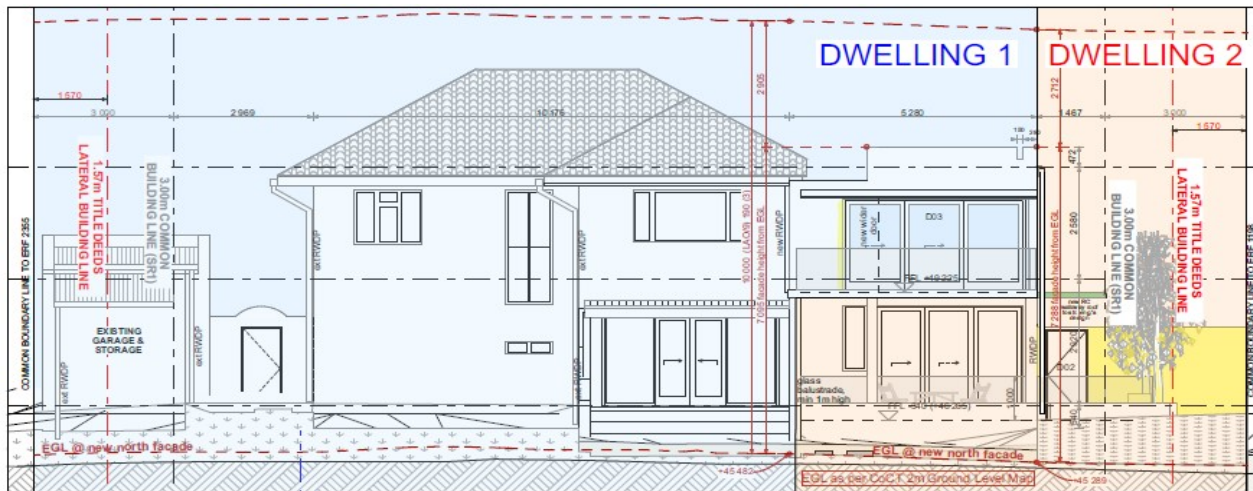


Figure 11: The elevation facing the southern common boundary

9. THE APPLICATION

Application is hereby made for the following:

9.1 Departure from:

Item 140(2)(a) of the Development Management Scheme (DMS)

To permit two permit two carriageway crossings on a site exceeding 30m in length.

9.2 The amendment of the following restrictive condition contained in Title Deed 1610/1987, in terms of Section 42(g) and 42(j) of the Municipal Planning Bylaw:

Condition B 1(b)

That only one dwelling unit, together with such outbuildings as are ordinarily required to be used therewith be erected on this erf, save as provided in condition (c) hereof

To read as follows:

That only a dwelling unit, and a second dwelling unit, together with such outbuildings as are ordinarily required to be used therewith be erected on this erf, save as provided in condition (c) hereof

NOTE: The planning application forms are attached to this report as **Annexure F**.

10. RESOLVING OUTSTANDING ISSUES

Acceptance of the previous application submitted was refused in April 2026 - see attached **Annexure I** for Refusal letter. The following matters were considered to be outstanding:

1. It is noted that a revised motivation has not been submitted considering the issues raised in the preapplication meeting regarding SPLUMA and LUPA. Additionally, the motivation report indicates the deletion of restrictive condition on page 8 and also indicates the amendment of the condition. Please discuss the policy requirements in more detail including but not limited to the Densification Policy etc. Please clarify the points raised and correct the motivation report.
2. Please clarify if Section 42(j) is also being applied for as it is ticked off on the application form and not mentioned in the report. Please provide an updated application form and power of attorney with the correct applications being applied for.
3. The incorrect application has been applied for regarding the CWC. Item 140(a) is applicable to the property and not Item 140(b) as the street boundary does not exceed 30m.

All these matters have been addressed in the revised Motivation which forms part of this new application.

11. THE DECISIONMAKING CRITERIA

Section 48(4) of the Municipal Planning By-Law states that the Council must have regard to Section 99 of the By-Law, as well as Sections 39(5) and 59 of the Western Cape Land Use Planning Act 3 of 2014 (“LUPA”) and Sections 7 and 47 of the Spatial Planning and Land Use Management Act 16 of 2013 (“SPLUMA”) when considering the proposal.

10.1 Adjudication criteria in terms of Section 99 of the By-Law

Section 99 of the MPBL relates to the “criteria for deciding applications”, and reads as follows:

(1) An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements –

(a) ...

(b) the proposed land use must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible;

(c) ...

(d) (i) subject to subparagraph 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; (ii) the 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.

(2) If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision maker must consider all relevant considerations including, where relevant, the following –

(a) any applicable spatial development framework;

(b) relevant criteria contemplated in the development management scheme;

(c) any applicable policy approved by the City to guide decision making;

(d) the extent of desirability of the proposed land use as contemplated in subsection (3);

(e) impact on existing rights (other than the right to be protected against trade competition);

(f) in an application for the consolidation of land unit –

(i) the scale and design of the development;

(ii) the impact of the building massing;

(iii) the impact on surrounding properties; and

(g) other considerations prescribed in relevant national or provincial legislation. which includes the development principles as contained in section 7 of the Spatial Planning and Land Use Management Act, 2013 (Act no. 16 of 2013).

(h) whether the application complies with the requirements of this By-law.

(3) The following considerations are relevant to the assessment under subsection 1(c) of whether, and under subsection (2)(d) of the extent to which, the proposed land use would be desirable –

(a) socio-economic impact

(b) ...

(c) ...

(d) compatibility with surrounding uses;

(e) impact on the external engineering services;

(f) impact on safety, health and wellbeing of the surrounding community;

(g) impact on heritage

(h) impact on the biophysical environment;

(i) traffic impacts, parking, access and other transport related considerations; and

(j) whether the imposition of conditions can mitigate an adverse impact of the proposed land use.

As stated above, the City is empowered by law to remove / suspend / amend restrictive conditions where necessary as reasonably required and with appropriate motivation in order to accommodate the changing needs of property owners and the everchanging changing built form of the urban environment. When considering deletion of restrictive title conditions, Section 48(4) of the MPBL requires the City to have regard to Section 39(5) of the Land Use Planning Act (LUPA) and Section 47 of the Spatial Planning and Land Use Management Act (SPLUMA). The application for amendment of a restrictive title condition, as listed in Section 9 above, is therefore evaluated in terms of the criteria stipulated in the aforementioned legislation, which are as follows:

Section 99(2) of the MPBL requires the decision maker to consider that an application comply with applicable policies and strategies approved by the City. This application complies with the following City policies:

- The application complies with the principles of the MSDF as the property is situated within the area earmarked as a Consolidated Growth Area. This means that intensification of land uses can be supported, depending on the availability of service capacity. The application at hand offers a very modest doubling of density within an existing building.
- The application almost complies with all the criteria contained in the DMS. A minor departure is required for a second carriageway crossing. This is not considered to be problematic
- The application complies with applicable policies and strategies approved by the City, namely:

Table Bay District Plan (TBDP)

The application complies with the following principles of the TBDP:

- The two dwellings improve the passive surveillance of the street boundary.
- This is an appropriate form of densification considering that there are 2 dwellings which have been constructed in the envelope of the approved dwelling house. There will be no visible change to the streetscape whatsoever.

Integrated Development Plan (IDP)

- The application will enhance the passive surveillance of the street and will therefore contribute indirectly to general public safety.

Densification Policy

- Residential development and appropriate densification serves the public interest and is therefore desirable. Social and Economic Development Strategies. The application offers a doubling of unit density on a property with no visible change whatsoever.

10.2 Section 39(5) of LUPA

Section 39(5) of LUPA

Subsequent to the creation of the Township, zoning schemes were established to regulate development and forward planning policies were established to promote a new vision for development around Cape Town. It is noted that these policy changes have promoted a very different built form as well as densities, to what was originally intended. The character of this part of Camps Bay has changed and the proposal is entirely in keeping with the surrounding environment.

a) Financial and other value of rights.

The surrounding area has numerous examples of title deed (and DMS) encroachments in it. It is assumed that, these structures are the result of successful applications for the removal or amendment of the relevant title restrictions. This suggests that property owners assign little value to the such restrictions in the light of evolving residential requirements. It is worth noting that properties in Camps Bay have high financial worth; and it goes without saying that well-developed properties with few and reasonable value, and properties with fewer development limitations by nature have higher market value than those with a high degree of development limitations. Properties with fewer development restrictions therefore boost investment value and it follows that this leads to an increase in rates collected by the City. It is however important to not that it is not the intention to remove the said condition but rather to amend it to accommodate very modest structure within the building line setback. The said condition and the development parameters contained in the DMS will continue to afford adequate protection to surrounding properties. It can therefore be stated with certainty that the amendment of the relevant condition in the title deed will not result in a loss in financial or other value of rights.

Furthermore, the township has evolved substantially since the restrictive conditions were first imposed and that the current built form of the area reflects a range of approved departures, title deed amendments and site-specific responses to the challenging topography of Camps Bay. The amendment sought is limited in scope and relates to existing structures on a single property rather than to a broad relaxation of the restrictive condition. Furthermore, the amendment will not remove the restrictive condition in its entirety but merely amend its application in respect of the identified structures.

b) Personal benefit which accrues to the holder of rights (other properties in the township). "Personal benefits" refers to both adjacent property owners as well as other property owners in the township, where such benefits stemming from title deed setbacks is largely aimed at achieving appropriate privacy buffers. In this case it is proposed to merely amend the condition to permit an existing building (which now falls foul of the condition merely due to the change in use of the structure). Given this, the amendment of the said condition will have absolutely no negative impact on the rights of any of the surrounding property owners.

The restrictive condition provides certain benefits to property owners through the regulation of the placement of structures on properties, these benefits must be considered within the context of the existing development pattern of the area, which has evolved substantially over time. It is important to note that a number of properties within Camps Bay have been developed in a manner that differs from the original intentions of the restrictive conditions, whether through approved departures, title deed amendments or site-specific responses.

c) Personal benefits which will accrue to the person seeking the removal (property owner). The amendment of the condition will facilitate the approval of an additional dwelling unit which will result in an increase in the value of the property. It will enable the owner to construct a new dwelling house which will comply with the DMS and title deed building lines.

The relevant consideration is whether the benefit accruing to the applicant is reasonable when weighed against the impacts on neighbouring owners, the broader public interest and the applicable planning framework. In this regard the amendment will provide a legitimate benefit to the owner without resulting in unacceptable impacts on neighbouring properties, the character of the area or the public interest. The personal benefits accruing to the applicant should therefore be considered reasonable in the case of this application.

d) Social benefit of restrictive conditions remaining.

There will be no social benefits, should the restrictions remain in place. The fact that several properties have structures constructed additional dwellings than otherwise permitted

in the title deed conditions shows that the intended character of the area has already changed.

The retention of the restrictive condition provides some social benefit through the continued protection of setback areas and the preservation of the historical development pattern of the township. These benefits must however be considered in the context of an area that has evolved over time and no longer reflects the development form that existed way back in the 1930's when the restrictive conditions were originally imposed. The amendment sought is limited and relates to the existing structure. This will not alter the residential character of the property or broader area. Furthermore, the property will remain subject to the remaining title deed restrictions and the development controls contained in the MPBL and DMS. Given this, the social benefit associated with retaining the restrictive condition in its existing form is limited and is outweighed by the benefits associated with the limited amendment proposed. This amendment will facilitate the efficient use of the property in accordance with existing planning policy.

e) Social benefit of removing the restrictive conditions.

The amendment will facilitate the regularisation of existing development and support the efficient utilisation of an already developed residential property within an established urban area. The amendment is limited in scope and does not alter the underlying residential nature of the property or remove the restrictive condition in its entirety. Furthermore, the proposal is consistent with broader planning objectives that encourage the efficient use of land and sustainable urban development within existing serviced areas.

f) Will the removal remove all rights enjoyed by the beneficiary or only some of those rights? The application does not seek the removal of all restrictive title deed controls applicable to the property, but rather a limited amendment to accommodate specific existing structures. The remaining restrictive title deed conditions will remain in force and effect, and the amendment will not alter or remove any restrictive conditions applicable to other properties within the township.

10.3 Section 47 of SPLUMA

A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended. In this regard, it is proposed that the relevant condition pertaining to side and street setbacks be amended in order to allow for three existing minor structure to be approved. All other conditions, contained in the relevant title deed, will remain intact. Section 47 of SPLUMA also makes specific reference to Section 25 of the Constitution which relates to the arbitrary deprivation of property and the rights associated therewith. In this regard, that the applicant has assessed the impact of the amendment and it is deemed that this amendment will not result in the arbitrary deprivation of rights. The proposed amendment is also not considered procedurally arbitrary as the relevant applications have been made in terms of the MPBL; and the application will be advertised to the relevant interested / affected parties. Section 47(2) of SPLUMA states that, an amendment of restrictive title condition must be:

- In accordance with Section 25 of the Constitution.
As noted above, the proposal adheres to this legislation.
- With due regard to the respective rights of all those affected, and to the public interest.
The proposal satisfies this requirement.
- Made in the prescribed manner.
The application for amendment is made in terms of the MPBL and follows the due processes as prescribed therein.

Accordingly, the proposed amendment is in accordance with both Section 47 of SPLUMA and Section 25 of the Constitution as it will not result in the arbitrary deprivation of property or rights associated therewith.

10.4 Item 25A of the Development Management Scheme

The proposal complies with all the conditions contained in Item 25A that are applicable to a second dwelling.

12. THE MOTIVATION

The application complies with the following relevant considerations:

- The application is consistent with the Provincial Spatial Development Framework (PSDF) as it supports more compact settlement footprints to minimise environmental impacts, reduce costs and time impacts of travel and to enhance financial sustainability with regard to the provision and maintenance of infrastructure, facilities and services.
- The application is consistent with the newly approved MSDF and its Policies. The property is in an area designated as an “Incremental growth and Consolidation Area”.
- The application complies with relevant criteria contemplated in the DMS, i.e. the proposal is desirable when assessed in terms of the adjudication criteria set out in Section 99.
- The proposal is consistent with the various Council Policies.
- The proposed land use is considered desirable as the proposal will increase the residential desirability of the property. In terms of land use the proposal is considered to be highly compatible with the area as the proposal is compatible with many other similar structures in the street scape that makes up Hely Hutchinson Avenue.
- It is believed that the application will not have any negative impacts on existing rights. No impact is expected on the abutting neighbours as the building exists and the application is merely to change its internal use. Given the position of the property and the width of the street boundary, the proposed departure required is not considered to be out of character with the built form of the area.
- The application represents a moderate and appropriate increase in density.

Section 99(3) deals with desirability and considerations that are relevant to the assessment under subsection (1) of whether, and under subsection (2) of the extent to which, the proposed land use would be desirable. The approval of the application is desirable for the following reasons:

(a) Socio-economic impact

The removal of the restrictions will enable the more efficient use of the land, a scarce and expensive resource – especially along the Atlantic Seaboard, and will have a positive impact on the municipal valuation of the property concerned as well as the surrounding properties. Furthermore, employment opportunities will be created during the construction.

(b) ...

(c) ...

(d) Compatibility with surrounding uses

The use of the property will remain residential, and the proposed development will be entirely compatible with the surrounding uses.

(e) Impact on the external engineering services

There will be no impact on external engineering services. Sufficient infrastructure exists on the site and the proposed additions will not have a material impact. The application will no doubt be circulated to the City’s relevant service branches for comment.

(f) Impact on safety, health and wellbeing of the surrounding community.

The proposed development of the property will not have a negative impact on the safety of surrounding area. The proposal will not have any negative impact on the health or well-being of the neighbours.

(g) Impact on heritage

The property is not situated in a Heritage Protection Overlay Zone. The proposal will not impact on any heritage resources. The existing buildings on the property are less than 60 years old.

(h) Impact on the biophysical environment

The application is for conversion of a portion of an existing building. The application will therefore not have a negative impact on the biophysical environment.

(i) Traffic impacts, parking, access and other transport related considerations Adequate parking exists. The proposal will not have any impact on the traffic flow in Hove Road.

(j) Whether the imposition of conditions can mitigate an adverse impact of the proposed land use

If Council deems it necessary, conditions of approval could be imposed to mitigate any potential adverse impacts of the proposal

13. CONCLUSION

It has been demonstrated above that the application satisfies the adjudication criteria set out in SPLUMA, LUPA and the MPBL. The proposal accounts for responsible development that aligns with the principles of Cape Town's Municipal Spatial Development Framework, the Table Bay District Plan and the promotion of appropriate land use intensity. Furthermore, it is believed that the application is a desirable one and that approval will not result in a negative impact on the safety and welfare of the members of the community, or on the preservation of the natural and developed environment.

I trust that you will find the application acceptable and that your Council will grant the requested departure and amend the restrictive condition in question.

DAVE SAUNDERS

APRIL 2026