



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

Case ID 1500127780

Erf 837, 21 Rhodes Drive, Constantia

Development Management

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1. GENERAL INFORMATION

1.1 INTRODUCTION

AHG Town Planning was appointed by the owner of Erf 837, Constantia to apply on his behalf for the subdivision of the property, in order to allow him to separately alienate the additional portion created in the future. The application also entails a permanent departure from the development rules, as well as the consent of the municipality in terms of certain title deed restrictions and the removal of certain Title Deed conditions to enable the cancelation of servitudes.

The purpose of the report is to outline the proposed subdivision and motivate the various aspects involved to obtain the approval of the City of Cape Town Municipality.

1.2 LOCALITY

Erf 837 is situated at No. 21 Rhodes Drive in Constantia. A Locality Plan is included.

The site falls within the jurisdiction of the City of Cape Town Metropolitan Municipality.

1.3 TITLE ASPECTS

The property is held on terms of Deed of Transfer .

1.3.1 PROPERTY DESCRIPTION

ERF 837 CONSTANTIA, IN THE CITY OF CAPE TOWN, CAPE DIVISION,
PROVINCE OF THE WESTERN CAPE

1.3.2 CONVEYANCER CERTIFICATE

A Conveyancer Certificate was prepared by Dunster Attorneys and is included.

1.3.2 SIZE

The property is **7 321 m²** in extent.

1.3.3 OWNERSHIP

The property is registered in the name of

(Power of Attorney included)

1.3.4 MORTGAGE BONDS:

A bond is registered against the title of this property in the name of Investec. The approval from the bondholder was obtained and is included in this application.

1.3.5 TITLE DEED CONDITIONS:

There are certain title deed conditions restricting the proposed subdivision and or use of the land which require consent from the Controlling Authority in terms of Act 21 of 1940 and others, which refers to water pipeline servitudes which need to be removed from the Title Deed. Also refer to Par. 2.4 of this report.

The following conditions require **consent** from the Controlling Authority in terms of Act 21 of 1940:

D. *PORTION CB, a portion of the farm WITTENBOOMEN, measuring 4,0913 hectares, of which the property hereby transferred forms a portion, is SUBJECT to the following special conditions contained in Deed of Transfer No. , imposed for its own benefit by the Divisional Council of the Cape (the Controlling Authority under Act 21 of 1940) when approving of such Transfer, namely:*

- (1) The land, a share wherein is held hereunder, may not be divided without the written approval of the Controlling Authority as defined by Act 21 of 1940.*
- (2) Not more than two dwellings together with such outbuilding as are ordinarily required to be used in connection therewith, shall be erected by the Transferees or their successors in title, except with the approval of the controlling authority as defined by Act 21 of 1940.*

G. *SUBJECT to the following conditions imposed by Controlling Authority under Act 21 of 1940 when approving of the subdivision and contained in Deed of Transfer No. 8989/1952*

- (1) The land may not be subdivided without the written approval of the Controlling Authority as defined by Act 21 of 1940.*
- (2) Not more than one building for use as a residence, together with such outbuildings in connection therewith as the Controlling Authority may specifically approve which outbuildings may include quarters for domestic staff and/or such buildings as may be needed in connection with bona fide farming operations, shall be erected without the prior consent of the Controlling Authority.*
- (4) No building or structure whatsoever shall be erected within a distance of 94,46 meters from the centre line of Rhodes Drive without the written approval of the Controlling Authority as defined in Act No. 21 of 1940.*

The following conditions require **removal/deletion** from the Title Deed:

F. *(4) ENTITLED to a right in perpetuity during such time as water is available at point A on Diagram No. 935/50 of Portion 43 aforesaid:*

- (a) To utilise that portion of the existing $\frac{3}{4}$ pipeline marked AB on the said Diagram No. 935/50 and BC on Diagram No. 936/50 of Portion 44 hereby transferred, jointly with the owners and their successors in title of Portion 43 and Portion 45 aforesaid.*
- (b) To take one-third ($\frac{1}{3}^{rd}$) share of all such water as is available from time to time at point C on the pipeline, it being understood that the costs of installing a meter at*

points A or C if necessary and of maintaining repairing and replacing same shall be paid unequal share by the owners of Portions 43 (44 and 45 respectively).

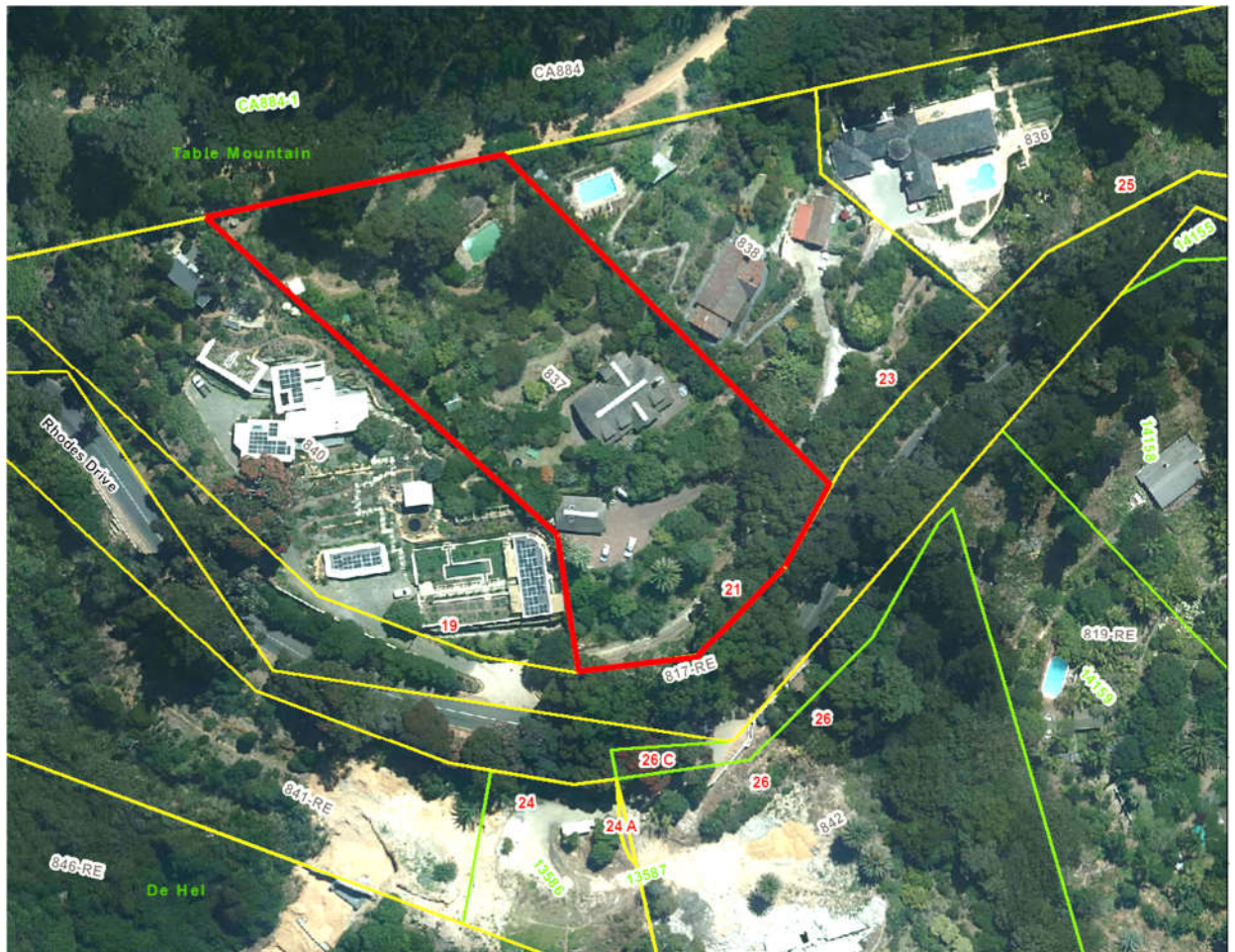
- (5) *ENTITLED to a right of access limited to ,94 meters as aforesaid between the point A and B on the diagram of Portion 43, No 935/50 aforesaid, for purpose of maintenance and repair.*
- (6) *SUBJECT to a right of access limited to ,94 meters from either side of the pipeline for the purpose of maintenance and repair.*
 - (a) *Between the points B and G on said diagram 936/50 of Portion 44 hereby transferred, in favour of C Harding and his successors in title as owners of Portion 45 aforesaid;*
 - (b) *Between the points BC and CH on the said diagram 936/50 of Portion 44 hereby transferred, in favour of the owners and their successors in title of Portion 43 held as aforesaid.*
- (7) *SUBJECT to the special condition that ownership and the responsibility for maintenance and replacement of the pipeline above referred to shall devolve upon the owners of Portion 43, 44 and 45 aforesaid as follows:*
 - (a) *between the points A and B on diagram 935/50 of Portion 43 aforesaid and B and C on diagram 936/50 of Portion 44 hereby transferred by owners of Portions 43, 44 and 45.*
 - (b) *between the points C and H on the said diagram 936/50 of Portion 44 hereby transferred and H and E on Diagram 935/50 of Portion 43 aforesaid, solely by the owner of said Portion 43.*
 - (c) *Between the points C and G on diagram 936/50 of Portion 44 hereby transferred, by the owners of Portion 44 and 45 in equal shares.*
 - (d) *Between the points G and D on diagram 937/50 of Portion 45 aforesaid, solely by the owner of the said Portion 45.*

Although some of the above restrictions provide for entitlement, the application entails the cancellation of the water pipeline servitudes physically transversing the application site, whether subject to or entitled to, because of the physical alignment over the property, or access thereto. This application however **does not** entail the cancelation of the right of the property, or property owner, or his successors in title to obtain or utilise water from the source located at or near Point A on the SG diagrams. Therefor it is **imperative** that condition F (3) be retained to ensure that the right to the water, in whichever way it is delivered to the property, is retained.

1.4 EXISTING ZONING AND LAND USE

In terms of the City of Cape Town Municipal Planning By-Law, 2015, Schedule 3: Development Management Scheme (DMS), Erf 837 is zoned “**Single Residential 1: Conventional Housing**”.

The property is currently developed with a residential dwelling and outbuildings.



The above aerial photo shows the property in the contexts of its surrounding environment

1.5 SURROUNDING ZONING AND LAND USE

The application site is located within a residential area. Abutting the application site on the east, west and south sides are single residential erven. The Table Mountain Nature reserve borders the property on the Northern boundary.

2. THE APPLICATION

2.1 APPLICATION I.T.O. PREVAILING LEGISLATION

In terms of the City of Cape Town Municipal Planning By-Law, 2015, Schedule 3: Development Management Scheme (DMS), Erf 837 is zoned “**Single Residential 1: Conventional Housing**”.

- *Application is made in terms of Section 42(d) of the City of Cape Town Municipal Planning By-Law, 2015 for the subdivision of Erf 837, Constantia.*
- *Application is made in terms of Section 42(b) of the City of Cape Town Municipal Planning By-Law, 2015 for Permanent departure from Item 177(2) Development Management Scheme (DMS).*
- *Application is made in terms of Section 42(g) of the City of Cape Town Municipal Planning By-Law, 2015 for the removal of restrictive title deed conditions.*
- *Application is made in terms of Section 42(h) of the City of Cape Town Municipal Planning By-Law, 2015 for the consent of the Controlling Authority in terms of restrictive title deed conditions.*
- *Application is made in terms of Section 42(i) of the City of Cape Town Municipal Planning By-Law, 2015 for consent from the City i.t.o. Item 136A of the Development Management Scheme (DMS).*

2.2 SUBDIVISION

As mentioned, this vast property consists of a dwelling house, normal outbuildings and a pool area located in the top northern portion. The remainder of the property is vacant.

It is proposed to subdivide the property into two (2) portions, as follows:

- Proposed Portion 1, measuring **2 961m²**,
- leaving a remainder, measuring **4 360 m²** in extent.

Please refer to the subdivision plan included.

The proposed subdivision will be accessible via a right of way servitude with a minimum width of 5m wide as shown linking to the existing driveway (which is also a right-of-way servitude) serving several properties with access to Rhodes drive.

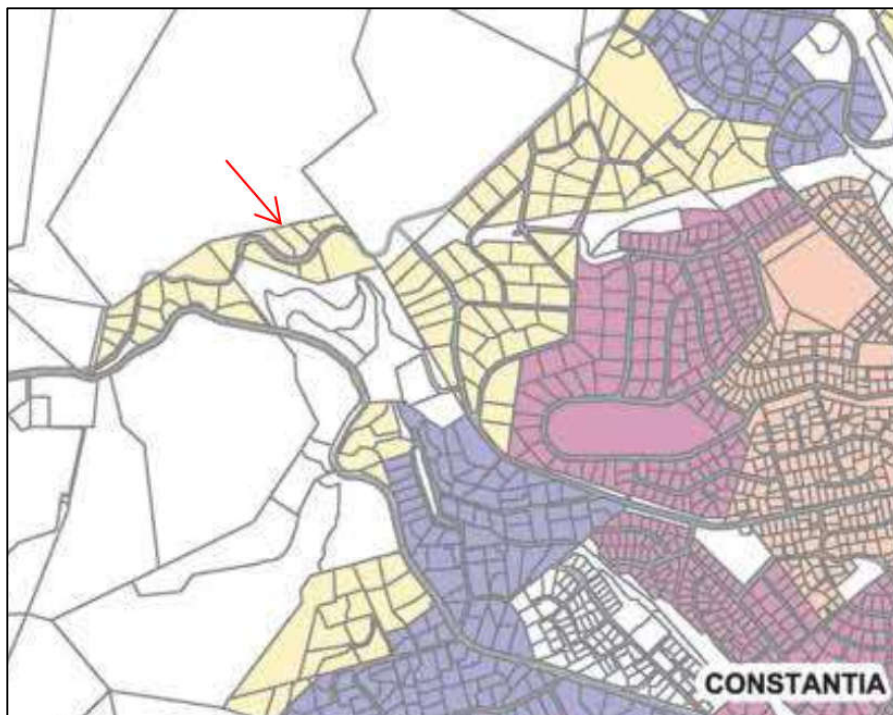
The subdivision application will also include the registration of a 1,5m servitude for a water pipeline indicated as “Aabx” on the subdivision plan. The property has historic rights to water from a source located just outside of the property near point A on the sketch plan and the route of the said pipeline needs to be protected for future access to the water source for the remainder. Similarly, another 2,5m wide servitude, indicated as “xcdeFG” on the subdivision plan will be created in favour of Portion 1 for the purposes of municipal water supply and also to accommodate a future sewer line.

Although there is currently no specific development proposal available for the proposed Portion 1, the owner would like to sell the subdivided portion to prospective buyer. The included site plan is an indicative draft proposal and meant for discussion purposed only.

2.3 DEPARTURE

The property is subject to the provisions of Item 177 of the Development Management Scheme (DMS) with reference to Specific provisions: Constantia – Tokai Local Area (LAO/3).

Under the provisions of Item 177(2) “No subdivision of land zoned Single Residential (SR1) shall be permitted with an erf size of less than the minimum erf size specified in Plan LAO/3.”



The above is an extract from Plan LAO/3 and the application site indicated with the red arrow.

According to Plan LAO/3, the property is designated as part of an area with minimum erf sizes of 8000m².

Application is this made to depart on a permanent basis from this Item to allow for the subdivision of this property to create the two portions of 2961m² (Portion 1) and 4360m² (Remainder) respectively.

2.4 RESTRICTIVE CONDITIONS

As set out in Par. 1.3.5 above, there are certain title deed conditions restricting the subdivision and or use of the land which require approval from the Controlling Authority in terms of Act 21 of 1940.

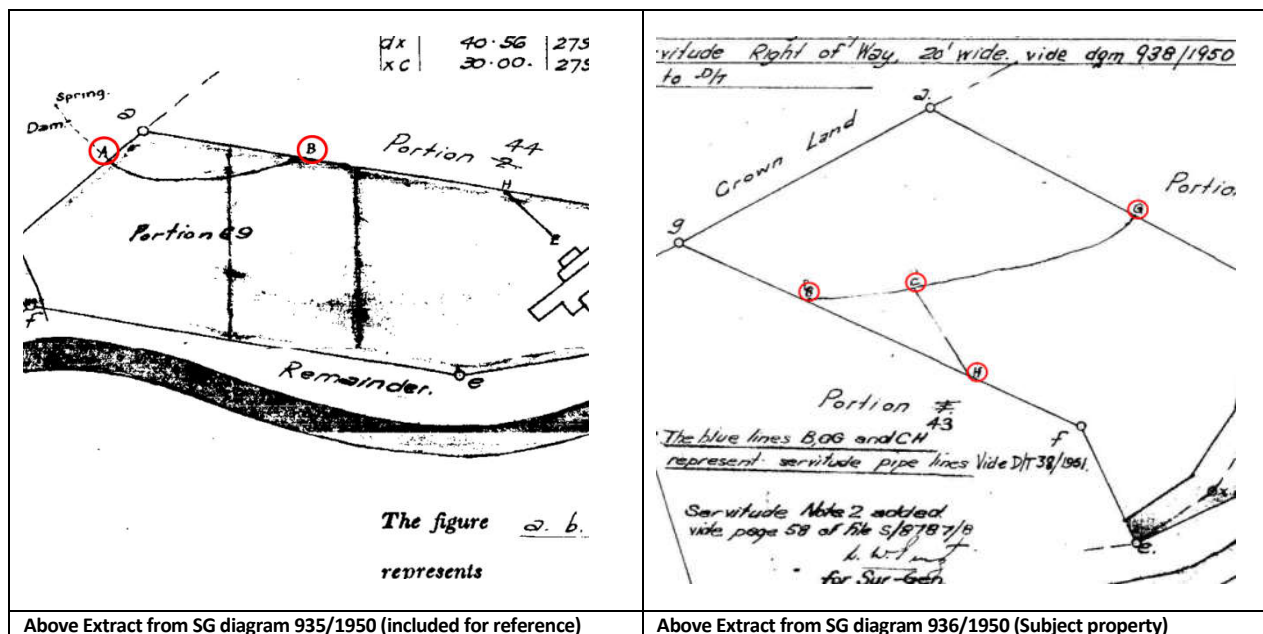
Condition D(1) and D(2) on pages 2 and 3 and G(1); G(2) and G(4) on pages 4 and 5 of specifically requires the consent of the “Controlling Authority” for the subdivision and restrict the number of dwellings which may be erected on the land.

Section 45(6) of SPLUMA makes provision that “Where a condition of title,...provides for a purpose with the consent or approval of the administrator, a Premier, the Townships board or any **controlling authority**, such consent may be granted by the municipality and such reference to the administrator, a Premier, the Townships board or **controlling authority** is deemed to be a reference to the municipality.”

Following from this legislative mandate, the City of Cape Town Municipality will be able to grant the necessary consents for the subdivision in terms of the said Title Deed conditions. Further, the approval of the Controlling Authority is sought to enable the owner to erect **at least 2 dwellings on each of the**

proposed land-units after the subdivision, which is in line with the requirements of the Development Management Scheme.

Conditions F(4) (a) and (b); F(5); F(6) (a) and (b), as well as F(7) (a) to (d) on pages 3 and 4 of T56193/2015 refers to servitudes for water pipelines depicted on SG Diagram No. 936/1950 (See extract below) and No. 935/1950 (Adjacent Erf 839 – just included for reference to point A described in the title deed conditions).



These old pipelines (A-B-C-D-H) are no longer in use, since the water pipes which these 3 properties use for the water to which they have historic rights to, have been rerouted along the northern boundary of the three properties concerned about 7 years ago. Therefore, the position of these old servitudes will only impede the placement of a dwelling house on the proposed subdivision. Application is thus made for the deletion of these conditions and the cancellation of the servitudes.

As stated previously, although some of the above restrictions provide for entitlement, the application entails the cancellation of the water pipeline servitudes physically transversing the application site, whether subject to or entitled to, because of the physical alignment over the property, or access thereto. This application however **does not** include the cancelation of the right of the property, or property owner, or his successors in title to obtain or utilise water from the source located at or near Point A on the SG diagrams. Therefor it is **imperative** that condition F (3) be retained to ensure that the right to the water, in whichever way it is delivered to the property, is retained.

The conveyancer and land-surveyor appointed will attend to the cancelation of these servitudes in the Deeds Office and the Office of the Surveyor General, once approval has been granted for the deletion of the conditions from the title deed. See conveyancer certificate included.

2.5 CONSENT

Item 136A of the Development Management Scheme States that “*Except with the consent of the City, no person shall use or occupy an outbuilding before the erection of the building to which it is an outbuilding.*”

The proposed subdivision may result in the Pool house, located on the proposed subdivision (technically an outbuilding) being “used” before the erection of a dwelling on the property. The owner does not intend to demolish the pool house but rather retain it for possible use by a future owner together with the pool, or have the future owner decided for himself to either retain or demolish the pool house and or pool. For this reason, the owner requires the **consent from the City in terms of Item 136A** for the pool house to remain and be “used” prior to the erection of a new dwelling on the proposed subdivision.

3. MOTIVATION

3.1 OVERVIEW AND NEED FOR DEVELOPMENT

As stated above the owner plans to sell the newly created portion to a potential investor who can design and build a new residential dwelling(s) thereon.

The subdivision will have no adverse effect on the amenity and character of the area. The new subdivision and future dwelling(s) will also not be visible from Rhodes Drive due to the dense vegetation and the gradient difference between the road and the position of the subdivision. Similar densities are found directly adjacent to the application site. (Refer to the aerial photo under Par 1.4 of this report.)

It is also clear from the examples below that other similar subdivisions have already taken place in the vicinity of the application site on which new and exclusive dwelling houses have been construction in this area. The table below illustrates some obvious **existing and very recent precedents** in Constantia which have taken place in the past and where similarly a departure from the minimum erf size in terms of the overlay zone would have been required.

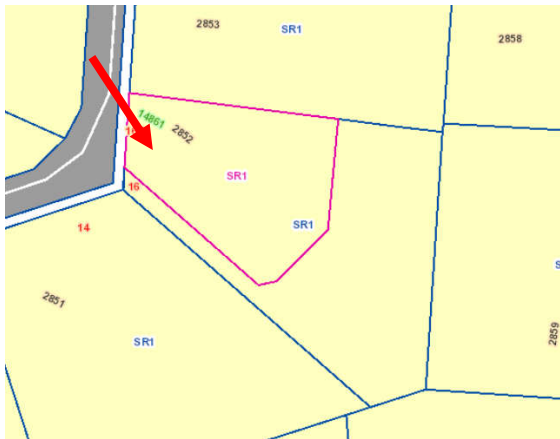
COCT Map viewer	LAO/3
 Erf 799: Subdivided into 4144m² & 4149m² (2017)	 Designation: Min. erf size 8000m²



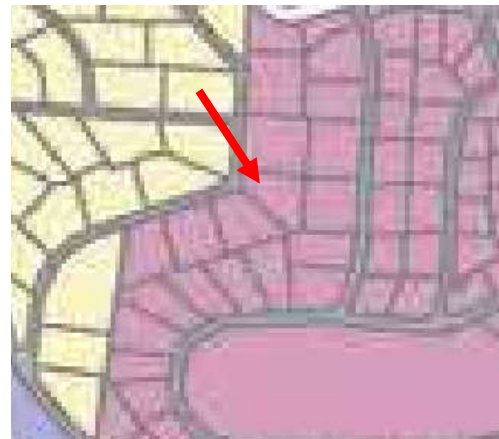
Erf 8170: Subdivided leaving a remainder of 4056m² (2023)



Designation: Min. erf size 8000m²



Erf 2852: Subdivided into 3119m² & 4116m² (2023)



Designation: "no further subdivision"



Erf 3379: Subdivided into 6 portions ranging between 580m² & 900m² (2024)



Designation: Min. erf size 1350m²

Constantia and the surrounding areas are very sought-after neighbourhoods, and developable vacant residential land is in demand due to its excellent and unique location on the back slopes of Table Mountain, next to the Nature reserve with amazing views over the valleys below and large parts of False Bay.

It is also a well-documented fact that the Western Cape is receiving an influx of people settling here from elsewhere in the country to enjoy a better lifestyle, due to various reasons. This semigration trend of also high-income families has also significantly increased the demand for residential properties in Constantia and surrounding areas.

From a densification point of view, the idea to subdivide some of these very large properties within the existing build area, without significantly altering the character of the particular area, rather than developing new township areas is also very encouraging, placing less pressure on developing agricultural areas outside the existing urban edge.

The Development Management Scheme (DMS) currently place the following restrictions on the existing Erf:

- Height to Wall Plate: 9m. Height to top of the roof: 11m
- Building line: Street 6m, Common boundary: 6m
- Maximum floor Space: 1500m²

Both of the portions created after subdivision will result in land-units larger than 2000m², therefore in terms of the DMS, the above development rules will also apply to both land-units individually after subdivision. In terms of these rules and given the size of the properties created no departures from the height or building lines are foreseen at this stage. However, the Guidelines contained in the Southern District Plan basically aims to limit the combined “post-subdivision” floor area on both portions to a total of 1500m². Refer to **Par. 3.3.4** of this report.

As previously stated, there is currently no final development proposal available for the proposed subdivision (the Site plan included is only in concept and for illustrative purposes), since it is the intention of the owner to sell the new land-unit to a prospective buyer. We therefore propose the inclusion of a condition of approval to limit the combined total floor area on both portions to 1500m² (basically 750m² for each of the land-units), **but with a provision** that the City **may increase** the floor area on both portions, **subject** to the consideration and approval of a **Site Development Plan**.

Similarly, the owner is applying for the rights to ultimately construct **2 dwelling units on each of the portions** created. Again, this is in line with the development rules in the DMS (which allows up to 3 dwelling units), but to balance the rights i.t.o. the DMS and the Guidelines contained for the overlay zone in the Southern District Plan a condition requiring the approval of an SDP, prior to any building plan approval, is proposed.

3.3 DESIRABILITY OF THE PROPOSED DEVELOPMENT

Section 99 of the City of Cape Town Municipal Planning By-Law, 2015 states the criteria that should be considered for deciding applications. The following considerations are relevant in terms of Section 99 for the assessment of whether the proposed land-use would be desirable –

City of Cape Town Municipal Planning By-Law, 2015 Section 99 Criteria / Considerations:		Check box	Notes:
(1) An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements –			
(b)	The proposed use or development of land 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	✓	Southern District Plan Table 18 – point 2: The subdivision application in general is consistent with the SDF. Southern District Plan Table 18 – point 7(ii) and 7(iii): Deviations are desirable and motivated. Refer aspects under Par 3.3.4 of this report
(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	N/A	No application for a departure to alter the development rules of the existing SR1 zoning applicable.
(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;	✓	City of Cape Town District Spatial Development Framework The Southern District Plan. Sub-District 2: Bishopscourt / Constantia / Tokai Refer Par 3.3.4 of this report
(b)	relevant criteria contemplated in the development management scheme;	✓	The following Departure and Consent required: • a departure from Item 177(2) of the DMS as per this application. • consent from the City i.t.o. Item 136A of the DMS as per this application
(c)	any applicable policy or strategy approved by the City to guide decision making, which includes the Social Development Strategy and the Economic Growth Strategy;	N/A	
(d)	the desirability of the proposed use or development of land as contemplated in subsection (3);	✓	See Subsection 3 below.
(e)	impact on existing rights (other than the right to be protected against trade competition);	✗	None foreseen. The development proposal is consistent with character of the surroundings and in-line with the SDF and were required proper mitigation measures could be introduced to limit negative impacts
(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	N/A	No Consolidation
(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).	✓	Refer Par 3.2.2 and 3.2.3 of this report
(h)	whether the application complies with the requirements of this By-law.	✓	The application is in-line with the requirements of the By-Law
(3) The following considerations are relevant to the assessment under subsection (2)(d) of the desirability of the proposed use or development of land –			

(a)	economic impact;	✓	At this stage the application merely seek to create another cadastral entity and the economic impact i.t.o. construction of new dwellings etc. will only be known once a final SDP has been compiled for the subdivision, but never the less, there will be an economic advantage to both the owner in the sale of the new subdivision and also to the City in terms of DC's and future property taxes and the provision of services to the new entity.
(d)	compatibility with surrounding uses;	✓	Highly compatible. Similar densities and developments have been approved in the immediate vicinity. See Par 3.1 indicating some existing precedents.
(e)	impact on the external engineering services;	✓	Engineering services are available – refer Par 3.3.7 of this report for detail
(f)	impact on safety, health and wellbeing of the surrounding community;	✓	There is a positive impact for creating an additional cadastral entity with moderate densification in the area. It brings with it people, families and activities and any new dwelling(s) will also bring an enhancement in the security of the area i.t.o. monitoring etc.
(g)	impact on heritage;	✓	Although the existing dwelling could be in the region of 60 years old, the proposed subdivision will not impact on the house at all, and no changes are proposed to the existing dwelling
(h)	impact on the biophysical environment;	✓	The impact on the environment will largely be limited to this residential property which will include some site clearance and earthworks on the property. No negative impacts outside of the property on the surrounding biophysical environment and the natural areas are foreseen at this stage.
(i)	traffic impacts, parking, access and other transport related considerations; and	✓	The proposed subdivision will have a limited impact on additional trip generations, parking and related aspects have been considered in the application, refer Par 3.3.1 of this report
(j)	whether the imposition of conditions can mitigate an adverse impact of the proposed land use.	✓	The imposition of any well-directed conditions could mitigate any negative impacts, specific conditions have been proposed to address noncompliance with the Southern District Plan, refer Par 3.3.4 of this report
(4) An application in respect of an existing use or construction work which has commenced in contravention of this By-Law must be dealt with in terms of section 130.			N/A
(5) No decision required to be made in terms of this By-Law may be delayed pending the creation of a policy to guide decision-making on the matter.			N/A

3.3.1 ACCESSIBILITY & PARKING

The existing Erf shares a driveway with the adjoining properties with a single point of access on Roads Drive. This driveway is protected in a right-of-way servitude in favour of the properties concerned.

It is proposed that similarly, the proposed subdivision shall be accessible from this driveway and that a new right of way servitude with a minimum width of 5 m will be created as indicated taking into account the slope of the property. This route was delineated by a professional engineer, refer the report by DeVS – SiVEST Consulting Engineers included in this application.

The routing of this access servitude for the new subdivision will not affect existing engineering services or existing buildings and will allow for the optimal routing keeping in mind the contours and acceptable gradients along this roadway.

In terms of parking provision, the zoning scheme requires two parking bays per dwelling house. Given the size of the proposed subdivision, this requirement can easily be complied with.

3.2.2 SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (SPLUMA)

Section 7 stipulates principles that apply to spatial planning, land development & land use management. Under the principles of spatial sustainability and efficiency:

- Under the principle of spatial sustainability that: spatial planning must (*inter alia*) protect prime and unique agricultural land and promote land development in locations that are sustainable and limit urban sprawl and result in communities that are viable.
- Under the principle of efficiency that: land development optimises the use of existing resources and infrastructure.

The location of the property within the existing build up area of Constantia ensures that the proposed development is compliant with these principles. Densification of existing properties within the urban development boundary where existing infrastructure and municipal services are available eliminate further urban sprawl and encroachment of the build-up area onto agricultural land and valuable green open spaces.

Section 47 of SPLUMA states some Criteria / Considerations regarding an application for the removal, suspension or amendment of a restrictive condition –

Spatial Planning and Land Use Management Act, 2013 Section 47 Criteria / Considerations:	Notes:
(1) A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended.	Hence, the reason & purpose for this application.
(2) A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be effected— (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 to 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.	The application will in no way deprive any person of property as contemplated in section 25 of the Constitution. The reason for the removal of the pipeline servitudes is only affecting the routing of the waterlines over the property and not the right to the water from the source enjoyed by any of the properties involved.
(3) A Municipal Planning Tribunal considering an application to remove, amend or suspend a restrictive condition is not liable to compensate any person for any loss arising from or related to a decision made in good faith and in terms of this Act to remove, amend or suspend a restrictive condition.	It is highly unlikely that any person may suffer any loss arising the consideration of this application by the MPT. The reason for the removal of the pipeline servitudes is only affecting the routing of the waterlines over the property and not the right to the water from the source enjoyed by any of the properties involved.
(4) Notice of an application to remove, amend or suspend a restrictive condition which operates for the benefit of the State must be in writing and given in the prescribed manner to the organ of state which is responsible for the administration of the law or the performance of the function to which such condition relates.	The restriction to be removed is not for the benefit of state.
(5) An applicant at whose instance a restrictive condition is removed, amended or suspended in terms of this Act, must, within the prescribed period and in the prescribed manner, apply to the Registrar of Deeds concerned for the appropriate recording of such removal, amendment or suspension, and the Registrar of Deeds must in the prescribed manner record such removal, amendment or suspension	Once the application is approved and promulgated in the Provincial Gazette, an attorney will attend to the removal of the condition in the Title Deed in the Office of the Registrar of Deeds.

3.2.3 WESTERN CAPE LAND USE PLANNING ACT, 2014. (LUPA)

Chapter 6 stipulates principles that apply to land use planning. Under the principles of spatial sustainability:

land use planning should (*inter alia*) —

- (i) promote land development that is ***spatially compact***, resource-frugal and within the fiscal, institutional and administrative means of the relevant competent authority in terms of this Act or other relevant authority;
- (ii) ensure that special consideration is given to the **protection** of prime, unique and high potential **agricultural land**;
- (vi) promote land development in locations that are sustainable and ***limit urban sprawl***;

Under the principles of spatial efficiency:

- (a) land development should ***optimise*** the use of ***existing resources, infrastructure***, agriculture, ***land***, minerals and ***facilities***;
- (b) integrated cities and towns should be developed, whereby—
 - (i) the social, economic, ***institutional*** and physical aspects of land development is integrated;
 - (ii) land development in rural and urban areas in support of each other is promoted;
 - (iii) the ***availability*** of ***residential*** and ***employment opportunities*** in ***close proximity*** to, or ***integrated*** with, each other is ***promoted***;
 - (iv) a ***diverse combination*** of ***land uses*** is ***promoted***;
 - (v) the phenomenon of ***urban sprawl*** in urban areas is ***discouraged*** and the development of ***more compact towns*** and cities with ***denser habitation*** is promoted;
 - (vi) historically distorted spatial patterns of settlement are corrected; and
 - (vii) the quality and functionality of the public spatial environment is promoted;

The above selected extracts, with relevant ***emphasis added***, indicates the support and legislative requirement for well-planned and coordinated densification. This application is therefore deemed compliant with these legislative principles.

Controlled densification through subdivision of fairly large and underutilised properties (as in this case) is in line with these principles. Densification of existing properties within the urban development boundary where existing infrastructure and municipal services are available eliminate further urban sprawl and encroachment of the build-up area onto agricultural land and valuable green open spaces.

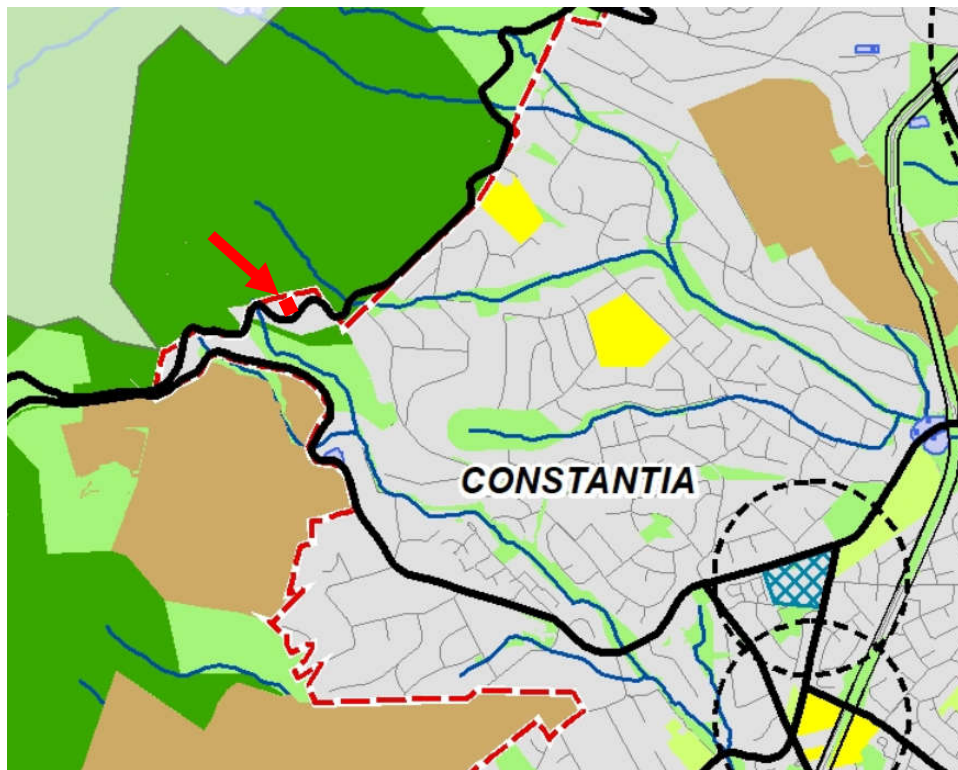
Section 39(5) of LUPA states some Criteria / Considerations that the City must regard in the evaluation of an application for the removal, suspension or amendment of a restrictive condition —

Western Cape Land Use Planning Act, 2014 Section 39(5) Criteria / Considerations:		Notes:
(5) 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 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;	The Conditions to be removed refer to the routing of old water lines over the property and not the right to the water itself from the source enjoyed by any of the properties involved. The water supply from the source has been rerouted some years ago and the servitudes transversing the application property has become redundant.

(b)	the personal benefits which accrue to the holder of rights in terms of the restrictive condition;	The benefit which the property(s) enjoy to the source of the water is not affected, only the routing over the property.
(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 personal benefit for the owner, seeking the removal of the said condition, only lies in the fact that the current routing of the redundant servitudes restricts the development of the erf due to the location of the servitudes, the benefit therefore lies in the fact that it will open up possibilities for instance to place a dwelling or other building in this areas, which is currently not possible.
(d)	the social benefit of the restrictive condition remaining in place in its existing form;	There is in our opinion no social benefit of this particular restriction (servitude) remaining in place and similarly, there will also be no Social benefit if this particular restriction is removed, since it only affects the routing of the water lines and not the right to the source of the water.
(e)	the social benefit of the removal, suspension or amendment of the restrictive condition; and	
(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.	No, the right the property(s) have to the water from the source will remain.

3.3.4 CITY OF CAPE TOWN DISTRICT SPATIAL DEVELOPMENT FRAMEWORK

In terms of the District Spatial Development Framework, the Southern District Plan, the property falls in Sub-District 2: Bishopscourt / Constantia / Tokai and is indicated as “Urban Development” and is located within the Urban Development Boundary.



Above: Extract from: SDF plan depicting the location of the application site

The following is noted under Table 18 Report under “Supporting Land Use Guidelines” for this area:

*2. Future growth should generally be restricted in the upper valley, and guided primarily into the existing village (local) nodes. In recognition of the **need for densification** and also declining household sizes, densification, particularly by means **of small-scale, low-impact subdivision** and second/third dwellings, **is supported**.*

It is noted that, in general terms, the above guideline supports the subdivision proposal.

7. In order to retain the unique and internationally desirable character areas and landscape qualities in Bishopscourt, Constantia, Tokai (and Zwaanswyk), specific additional development-related recommendations should apply to parts thereof. This includes the following:

i.

*ii. In general, residential areas further than $\pm 400\text{m}$ ($\pm 5\text{-minute walking distance}$) from urban nodes **may be subdivided**. However, where such subdivision results in a property significantly below the minimum erf size associated with the local area minimum erf size overlay zone, **the resultant development** of such property should be **limited to the permissible rights consistent with the overlay zone restrictions**.*

With regard to Item 7(ii) above, the following aspects requires further motivation since the proposed development will result in non-compliance with the *guidelines* of Southern District Plan. The following aspects motivates the reasons where deviation from these guidelines will still result in a desirable outcome:

Density: In terms of Density, the “pre-subdivision” permissible rights restrict the property to 3 dwelling units. (The Title Deed restricts the property to 2 Dwelling units i.t.o. Condition D(2) and 1 Dwelling Unit i.t.o. Condition G(2), unless otherwise approved by the Controlling Authority).

We believe (and therefor apply) that allowing **at least 2 dwelling units** on each of the portions “post-subdivision” will be a desirable outcome to balance the rights i.t.o. the Development Management Scheme (which will theoretically allow for 3 dwelling units on each portion “post-subdivision”) and the Guidelines contained for the overlay zone in the Southern District Plan. This will not negatively impact the character of the surrounding area, nor the rights of any adjacent property owner, and a condition requiring the approval of an SDP, prior to any building plan approval can significantly mitigate any possible undesirable outcomes.

Floor Area: In terms of Floor area, the current “pre-subdivision” permissible rights restrict the property to a maximum of 1500m².

In the absence of a specific (final) development proposal on the proposed subdivision (the included site plan is an indicative draft proposal and meant for discussion purposes only), and the uncertainty of the future development needs of a prospective buyer on this property, the following proposal is made to align the Guideline contained in the Southern District Plan (which basically seeks to limit the combined “post-subdivision” floor area on both portions to a total of 1500m²), with that of the Development Management Scheme (which will allow 1500m² on each of the individual portions “post-subdivision”). We propose the inclusion of a condition of approval to limit the combined total floor area on both portions to 1500m², **with a provision** that the City **may increase** the combined floor area, subject to the consideration and approval

of a Site Development Plan. This can significantly mitigate any possible undesirable outcomes and again balance the standard rights of the DMS with that of the Guidelines contained for the Overlay Zone in the Southern District Plan.

Hard Surfacing: Item 7(iii) of the Guidelines contained in the Southern District Plan seeks to Limit maximum hard surfacing (including roofing, paving). This should be 500 m² or 40%, whichever is greater, on erven 1 000 –2 000 m², 750 m² or 30%, whichever is greater, on erven > 2 000 m².

Since both the portions created after the proposed subdivision will be greater than 2 000 m², a maximum area of 888m² and 1308m² of hard surfacing will be allowed respectively for the subdivision and proposed remainder in terms of this Guideline.

For two reasons in particular, there should be a mechanism created to deviate from this guideline, while still keeping any hard surfacing to a minimum. Consideration must be given that the property (proposed Remainder) is impacted by a right-of way servitude providing access to also the adjacent property (Erf 838). The estimated surface area of this access road (excluding the existing driveway of the subject property falling outside of this servitude area) is 300m². The second reason is that the proposed subdivision will be accessible via a fairly long right of way servitude which will require (due to the relative steep gradient) a hard surface driveway in excess of 80m long (depending on where future garages will be located on the subdivision).

If the maximum area of hard surfacing is calculated based only on functional / usable erf size (excluding the new and existing driveways and existing Servitude Roads etc.), it could be possible to adhere to this guideline, but again, given the uncertainty in the absence of a specific development proposal on the proposed subdivision, we propose that **the maximum area of hard surfacing be considered based on the submission of a Site Development Plan** and taking into consideration the limitations mentioned above.

3.3.5 THE CAPE TOWN DENSIFICATION POLICY, 2012

The Cape Town Densification Policy stipulates 16 policy statements which should guide all density-related land use decisions. The following table aims to measure the current application against these principles.

Policy Statement		Notes:
1	The City aims to achieve a minimum average gross base density of 25 du/ha in the next 20 to 30 years, and will aim for a higher gross base density thereafter.	The current density on the property is 1,4 du/ha. The proposed density (with 2 du per proposed subdivision) will be 6,8du/ha (Ptn. 1) and 4,6du/ha (Rem.). This is still far below the base density which the City aims for but deemed desirable in the context of the area.
2	The City will promote densification in all areas. However, importantly, a 'one size fits all' approach will not guide density decisions. Higher levels of densification will be encouraged at specific spatial locations, particularly in areas with good public transport accessibility, at concentrations of employment, commercial development and/or social amenities, and in areas of high amenity, e.g. at coastal nodes. Small-scale incremental densification should be permitted across the city, where appropriate and feasible in terms of infrastructure availability.	Following from the proposed densities discussed above, the proposed subdivision is not located in a location where very high levels of densification can be promoted. Although Constantia could be classified as an area of "high amenity", the current densification application will rather fit the description of "Small-scale incremental densification" which is permitted across the city, where appropriate and feasible in terms of infrastructure availability. Sufficient infrastructure is available and / or can be provided, refer Par 3.3.7 of this report.
3	The intensification of all types of land uses, not just residential land uses, should be encouraged, and a better mix of land uses should be supported.	This application is only for residential intensification.
4	Cape Town as a city is not defined by its urban or built skyline, and it is not intended for this to be the case in future. The mountain skylines and views of the sea are the defining elements that make Cape Town unique, and views of them must continue to be protected from inappropriate built form through,	This application will not result in any tall buildings or structures that impair for instance the mountain skylines and / or views of the sea, in fact this property enjoys tremendous views from its vantage point and any houses constructed on this property will

	for instance, the application of the Tall Buildings Policy, when approved.	have uninterrupted views over valleys below and large parts of False Bay.
5	A variety of erf and dwelling sizes are to be promoted within any one area. On smaller erven, the urban rather than suburban model of development should be encouraged. A design framework/precinct local plan may be required to guide the densification of properties larger than one hectare.	It is clear from the extract from Plan LAO/3 under Par 2.3 of this report that the area consists of fairly large properties and the application site forms part of an area with minimum erf sizes of 8000m ² according to the said Density Policy. Although some subdivisions below this minimum area have been allowed, this application will further aid in the realisation of this principle to promote a variety of erf and dwelling sizes within any one area
6	The determination of the appropriate location, height, scale, form and orientation of a higher-density development in a particular location should be guided by the density decision-making framework. The following factors must be considered: • Generic considerations for densification related to the suitability of the area for land use intensification, such as surrounding land use character; access to public transport; proximity to places of employment, services and social facilities; proximity to public open space, and infrastructure availability (existing and planned) (see table 4). • The spatial locations targeted for different types of densification as per this policy (see table 5). • The applicable policy frameworks, namely the CTSDF, district level SDPs and local spatial plans, density plans and urban design policy. • Contextual informants related to the development application and its immediate surroundings, such as the natural environment, land use, built and heritage character, infrastructure availability and capacity, and socio-economic considerations, should determine the densities appropriate in a specific location (see table 6).	It should be noted that the subdivision does not constitute higher-density development. The proposed density (with 2 du per proposed subdivision) will be 6,8du/ha (Ptn. 1) and 4,6du/ha (Rem.) respectively, which still constitutes a very low density.
7	The City will proactively encourage densification in density priority zones (DPZs) and urban civic upgrade areas, as defined in the box opposite. Different packages of incentives may be applied in different locations. The packages could include land use measures (e.g. overlay zones, class rezoning and the relaxation of building lines, authorising enhanced bulk, reduced parking and public open space provisions), financial mechanisms (e.g. adjustments to developer contributions, property rates and/or planning application fees), and procedural improvements (e.g. streamlining application procedures) (see annexure 1)	The application site does not fall in a priority zone (DPZs) or an urban civic upgrade area.
8	The densities proposed on greenfield sites within and outside the existing built fabric should, as far as is appropriate, align with the densification spatial location criteria and density guidelines described in the Densification Policy (see table 5)	It is noted that this application is not a 'greenfield development outside the existing built fabric'
9	When local/density plans are prepared, minimum height and/or maximum height and density parameters/guidelines must be set	It is noted that this application is not part of a process to prepare future guidelines.
10	Generally speaking, the gross density of formal housing in subsidised housing areas is higher than in other parts of the city. Challenges in some of these areas include the monotonous mono-functional form of the subsidised housing developments, their spatial location, and the number of informal backyard dwellings. The City will investigate, promote and support urban design as well as financial and institutional mechanisms that support multi-storey/more suitable forms and locations of subsidised housing, in order to achieve better city form and higher-quality, sustainable living environments.	It is noted that this application is not part of a 'subsidised housing' scheme.
11	The City should proactively encourage the development of state-owned land within the urban fabric. This land should be developed in a way that facilitates spatial integration and the intensification of land uses.	It is noted that this application is not located on 'state-owned' land.

12	The notion of separate water and electricity meters and refuse and sewerage charges where there is more than one dwelling unit on a property is supported.	Separate service connections and metering will be provided to the newly created cadastral entity and individual houses.
13	Informal settlements and subsidised housing areas that are too densely settled to make their upgrade feasible may require the relocation of some households to alternative sites and/or the use of creative design and financing solutions	The application site does not form part of an Informal settlement or subsidised housing area.
14	'Live' information systems need to be put in place to monitor the take-up of infrastructure capacity and to guide density-related decision making.	In a case where a single subdivision is evaluated, or an SDP with accompanying building plans and the issuing of occupation certificates should provide enough 'Live' information to evaluate the take-up of infrastructure capacity.
15	In higher-density areas (where the net density is >50 du/ha), the provision of open space should focus on accessibility rather than provision per person	It is noted that the application will not result in densities anywhere near to 50 du/ha.
16	In selected instances – such as in major commercial areas and along development routes, activity routes and activity streets– maximum parking standards related to the accessibility of public transport should be considered. The provision of on street parking, especially for a proportion of the visitor parking required by group housing/flats, should be encouraged where circumstances permit (see annexure 3).	The application does not fall in this category of development and onsite parking provision can easily be accommodated in this case.

3.3.6 VELDFIRE RELATED PLANNING GUIDELINES

According to the Veldfire and Related planning Guidelines, the environment in which a particular development is proposed, can intensify or reduce veldfire risk to the particular development and as such, the following general principles should be applied according to the said guidelines:

Policy Statement		Notes:
1	Developments should not be allowed where environmental constraints preclude necessary risk reduction measures e.g. provision of adequate access, clearing of vegetation or necessary fire infrastructure, or where other mitigating measures cannot be provided.	The existing property is bordering the Table Mountain national park. An existing fire trail / fire road is located directly north of the boundary of the property with the park and various other fire trails / Fire roads is also located higher up all with good access to public roads.
2	Developments should not be allowed on slopes steeper than 1:4, or where water pressure will be inadequate to control a fire on the slope behind the development.	The average slope of the site is 1:4 measured from the highest point down to the servitude driveway. Sufficient provision will be made for adequate water pressure to any future dwelling constructed on the site.
3	Development should not be allowed in forested areas, especially where removal of trees to reduce fire risk will significantly alter the cultural landscape, unless specific conditions exist on the site which may justify the development and / or remedial measures can be implemented to lower the fire risk.	Careful consideration will be given to the removal of any mature trees for the purpose of placing a dwelling house on the site. The management of vegetation and forested areas on the side of the national park is the prerogative of SANParks and the relevant departments. It should be noted that the application property is within the build area of the city and inside the urban development boundary and similar developments are located adjacent to the application site.
4	Adequate provision should be made in site planning and road layout to accommodate additional stormwater after fire-events, especially on steep slopes. Refer to the Guidelines for stormwater management on slopes adjacent to natural areas.	The access road to the proposed subdivision will be designed by a qualified engineer, taking into account stormwater management considerations.
5	Consideration should be given to the erodibility of slopes above a proposed development. Erodibility maps should be consulted where these are available and developed where they are not.	Again, the slopes behind the application site are managed by SANParks and the relevant departments. The proposal entails only for 2 additional dwellings on the proposed subdivision and will not affect the slopes above the property.

3.3.7 AVAILABILITY OF ENGINEERING SERVICES

The application site is connected to existing municipal service infrastructure and the application will have little additional service capacity requirements. New service connections will be provided for the additional portions created.

Although the existing dwelling use mostly water from the stream which they have rights to as per the title deed, there is also a municipal water connection. The existing water line runs from the water meter in the RoW Servitude along the fence line up to the tank behind the garage and from there to the house. It is proposed that water supply to the proposed subdivision follow the same route and from there continuing up the fence line to the subdivision. For this reason, a 2,5m wide servitude is to be registered in favour of the proposed Subdivision.

The existing dwelling (proposed Remainder) is served by 2 septic tanks since municipal sewer is not available. For the proposed subdivision, it is proposed that a conservancy tank be installed which will be serviced by a private contractor. Should municipal sewer become available in future, a sewer line can be installed in the same servitude to connect with a future municipal service.

Electricity is supplied by the Municipality and a new connection will be provided for the proposed Subdivision.

3.3.8 IMPACT ON THE ENVIRONMENT:

The proposal merely entails the subdivision of this fairly large residential property into 2 portions which will be in line with the character of the surrounding area. It is our opinion that this limited densification on this large property will be in line with the character of the area and doesn't trigger any processes in terms of prevailing Environmental Legislation.

3.3.9 PUBLIC PARTICIPATION

The adjacent property owners will be notified of the proposed subdivision and other actions applied for and a notification to this effect will also be published in a local newspaper as per the requirements of the By-law.

Any neighbour who feels that their rights are affected will have an opportunity to make a representation or lodge an objection.

4. SUMMARY AND CONCLUSION

Application is made for the subdivision of the property, in order to allow the owner to separately alienate the additional portion created in the future. The application also entails a permanent departure from the development rules, as well as the consent of the municipality in terms of certain title deed restrictions and the removal of certain Title Deed conditions to enable the cancelation of servitudes.

The information provided supports the fact that the proposed subdivision will be desirable, and that the approval of this application will not have a negative impact the unique character and amenity of the area.

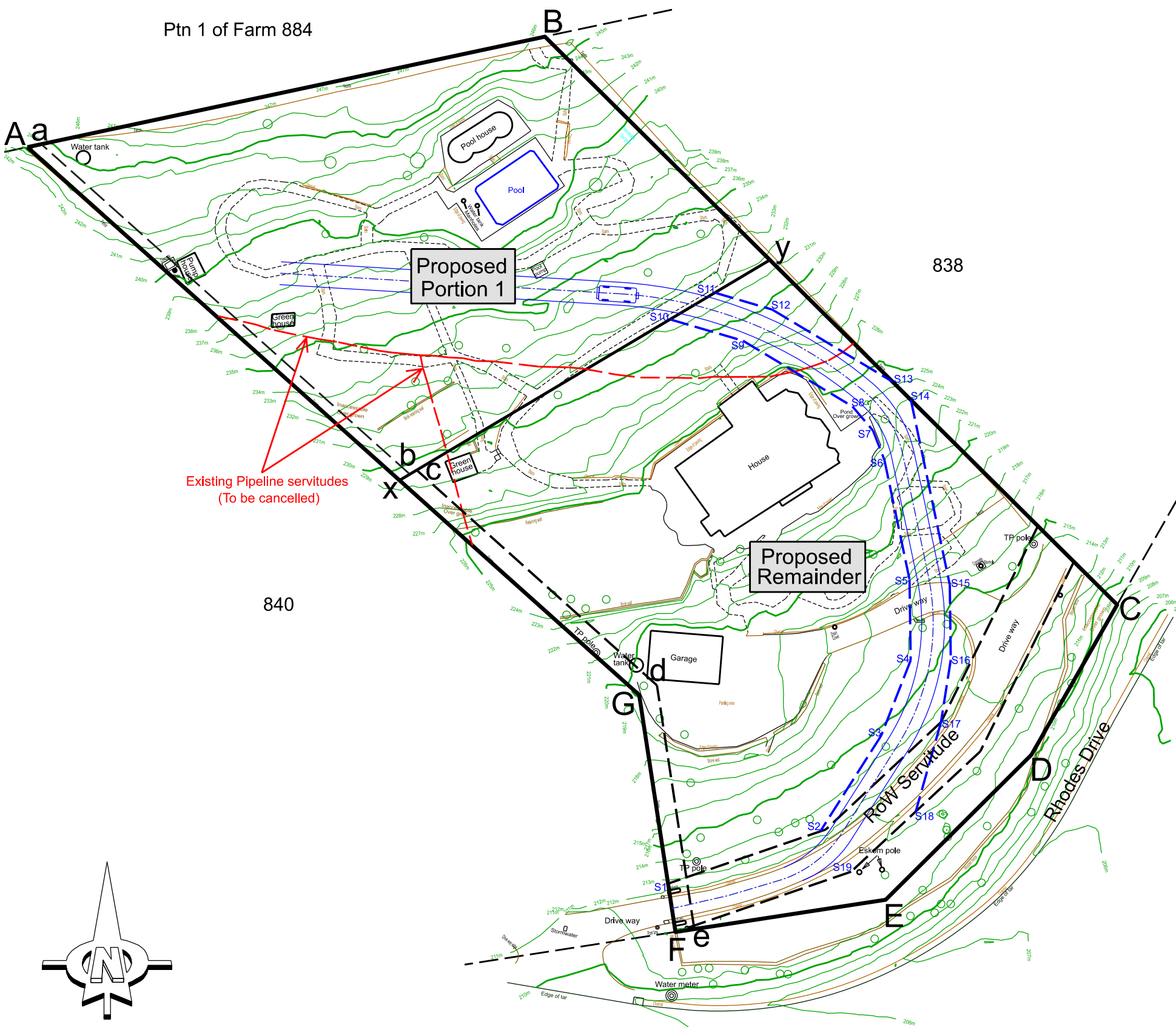
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Report prepared by:

LEON JUBILIUS *Pr. Pln*

Reg. no. A/1061/1998

13 April 2026 (amended report)



PROJECT:
**Proposed Subdivision
Erf 837 Constantia**

- Notes:
1. The figure "ABCDEFGG" represent Erf 837 Constantia, measuring 7 321 m².
 2. Proposed Subdivision:
 - 2.1 The figure "AByx" represent the proposed subdivision (Portion 1) measuring 2 961 m²
 - 2.2 The figure "xyCDEFG" represent the proposed Remainder measuring 4 360 m²
 3. The figure "S1, S2, S3, S4, S5, S6, S7, S8, S9, S10, S11, S12, S13 S14, S15, S16, S17, S18, S19, F" represent a proposed right-of-way servitude in favour of the proposed Portion 1 of Erf 837, with a minimum width of 5m .
 4. The figure "Aabx" represent a proposed 1,5m wide servitude for a water pipeline in favour of the proposed Remainder of Erf 837
 5. The figure "xcdeFG" represent a proposed 2,5m wide servitude for general services in favour of the proposed Portion 1 of Erf 837 .
 6. All sizes and dimensions are approximate and subject to final survey.
 7. The property falls under the jurisdiction of the City of Cape Town Metropolitan Municipality.

CLIENT:

PLAN NO: Erf 837 Rev 5 Date: 16 July 2026

ahG Town Planning
Town and Regional Planners

PO Box 2992
Somerset West
7129