



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

Case ID 1500143355

Erf 5673, 61 Edward Street, Hout Bay

Development Management

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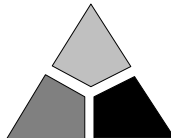
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ERF 5673, 61 EDWARD ROAD, HOUT BAY: APPLICATION FOR THE
DELETION OF TITLE DEED CONDITIONS AND DELETION OF
CONDITIONS OF EXISTING APPROVAL IN TERMS OF SECTIONS 42(g),
AND 42(j) RESPECTIVELY OF THE CITY OF CAPE TOWN MUNICIPAL
PLANNING BY-LAW, 2015, AS AMENDED

MEMORANDUM OF MOTIVATION

Amended 01 July 2025

Prepared for submission to the City of Cape Town
On behalf of the owner by M A Smith



M A Smith
Town and Regional Planner

3 Earl Street Hout Bay

1. INTRODUCTION

- 1.1 Application is hereby made to delete two title deed conditions pertaining to Erf 5673 Hout Bay (the subject property) and two conditions of existing approval in terms of section 42(g) and 42(j) respectively of the City of Cape Town Municipal Planning By-law (MPBL), 2015, as amended.
- 1.2 The purpose of the application is to permit the addition of a second storey to the existing dwelling house on the property.
- 1.3 The title deed conditions to be deleted both relate to maximum height and are as follows:

Condition C. 1. of Deed of Transfer

'Any dwelling or outbuilding or any trees planted on this erf shall be subject to a height restriction of 37.00 metres as measured from mean sea level to final roof height except for chimneys.'

Condition C. 2. of Deed of Transfer

'Boundary walls and fences on this erf shall not exceed 1,1m height or the height of the existing wall or fence on the adjoining property, whichever is the lowest.'

- 1.4 The above conditions were imposed by the Regional Services Council when approving the subdivision of Erf 5663 Hout Bay - Hout Bay Extension No. 30 Township - in terms of Ordinance 15 of 1985 (LUPO) of which the subject property forms a part.
- 1.5 Application is also duly made to delete the condition of existing approval deemed to have been granted in terms of LUPO.

2. OWNERSHIP AND PROPERTY DETAILS

2.1 Title Deed Ownership and Extent

2.1.1 The property is owned by _____ held by Deed of Transfer No. _____.

2.1.2 The property is 887m² in extent.

2.2 Locality and Character of the Area

2.2.1 The property is situated at No 61 Edward Street, in Beach Estate, Hout Bay in an area of Hout Bay characterized by medium-size houses on relatively small erven.



Figure 1: Location of the subject property in Hout Bay

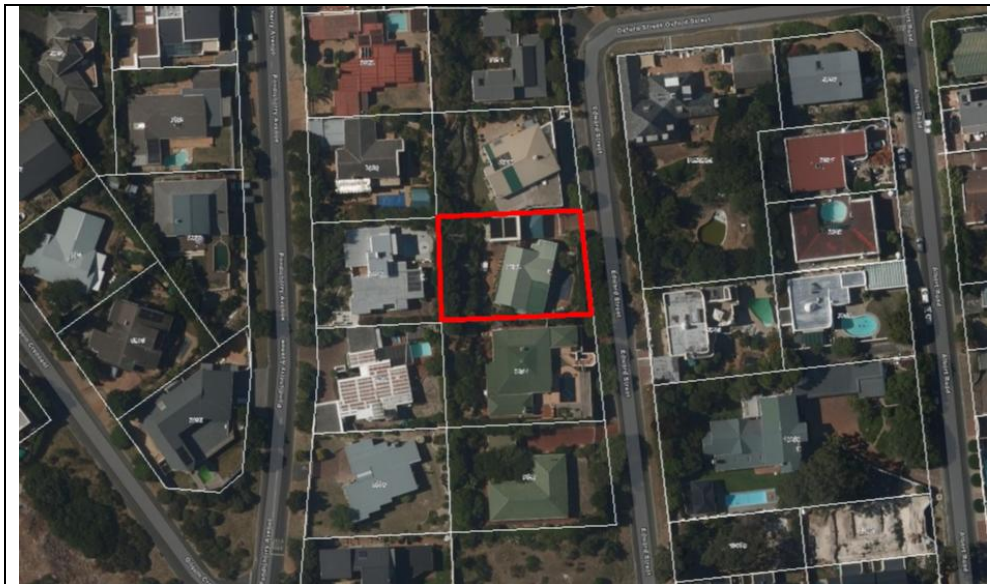


Figure 2: The Site

2.3 Title Deed Conditions

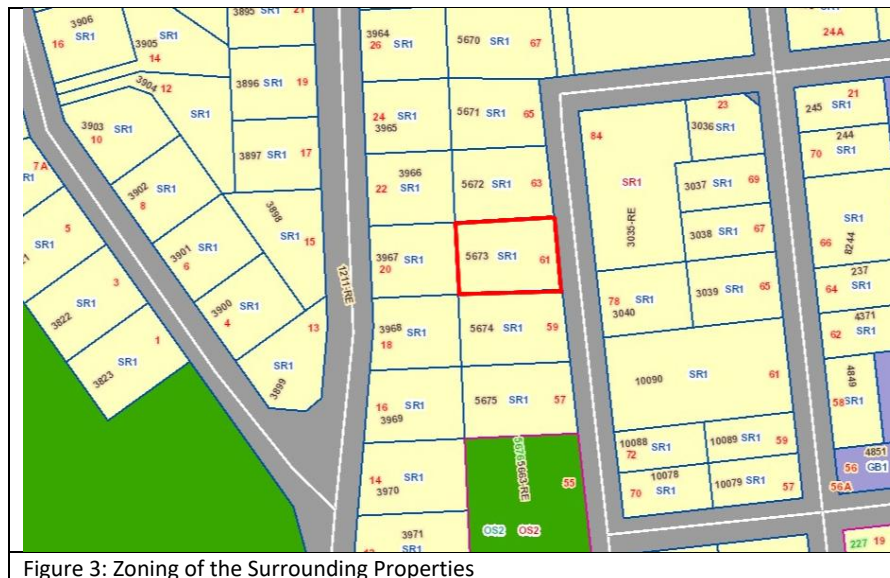
- 2.3.1 There are two restrictive conditions of title contained in the deed of transfer of the property, one which limits the height of all structures to 37 metres above mean sea level and the other the height of perimeter walls and fences to 1,1m. Application is therefore made to delete these conditions in terms of section 42(g) of the MPBL.
- 2.3.2 A conveyancer's certificate which confirms the above statement, and which specifies the beneficiaries of the conditions has been submitted with the application documentation - See Section 4.2

2.4 SG Diagram

- 2.4.1 The property is framed by SG Diagram No 5054/1990, with a cadastral extent of 887m².
- 2.4.2 The property derives from the subdivision of Erf 5663, giving rise to 12 SR1 erven. The Remainder comprises a park zoned OS2 and portions of public roads zoned TR2.

2.5 Zoning

- 2.5.1 The property is zoned *Single Residential 1 (SR1)* in terms of the Development Management Scheme of the Cape Town MPBL. It is surrounded by erven zoned SR1.
- 2.5.2 There is a no minimum erf size specified for the subject property in the Hout Bay Local Area Overlay Zone (LAO/11)



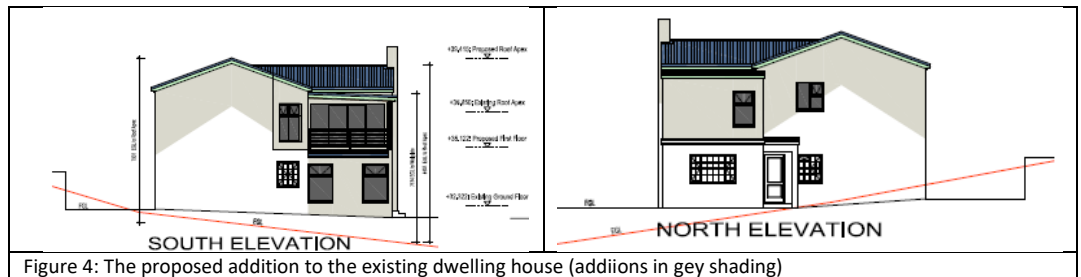
2.6 DMS Development Rules

- 2.6.1 The existing property complies with all the development rules in the DMS (*maximum floor space, building lines, height, and parking*).
- 2.6.2 Approved building plans have been submitted with the application documents.

2.7 Mandate

- 2.7.1 M. A. Smith is authorized to submit this application on behalf of the registered owner by virtue of the Power of Attorney submitted with this application.

3. THE PROPOSAL (SEE BUILDING PLAN)



- 3.1. The proposal is to add a second storey to the existing dwelling house.
- 3.2 The height of the dwelling house after the addition will be 39,415m above mean sea level (Condition C.1 of the title deed restricts the maximum height to 37m above mean sea level). It will be 7,134m and 8,495m respectively from existing ground level to the wall plate and to the top of the roof.
- 3.3 It is notable that the DMS prescribes a maximum height of 9m and 11m respectively from existing ground level to the top of the roof for SR1 erven of this size. Therefore, although it will be 2,415m higher than what the title deed condition permits, it will be 2,505m lower than that permitted by the DMS.
- 3.4 The additions include three new bedrooms with en-suite bathrooms and a living area on the second storey. On the existing first storey one of the bedrooms will be changed to a TV room.
- 3.5 The proposed additions to the existing dwelling house do not trigger any departures from the Development Management Scheme.

4. MOTIVATION

4.1 Planning Policies

4.1.1 *Provincial Spatial Development Framework*

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

4.1.2 *Municipal Spatial Development Framework*

The property is in a transformation area identified in the MSDF as an *incremental growth and consolidation* area where the City is committed to servicing existing communities and where new development is encouraged subject to the availability of services. According to the MSDF, the emphasis should be on the diversification of mono-use residential areas and incremental intensification via, inter alia, double dwellings, third dwellings and rezonings, subject to engineering services capacities being available.

The proposal supports the MSDF's Policy 23, which promotes appropriate land use intensification.

4.1.3 *The District SDF: The Southern District Plan – (Sub-District Hout Bay to Llandudno)*

One of the supporting development guidelines for the Hout Bay/ Llanduno sub-district states: *The provision of a wider variety of urban forms and residential opportunities within the above identified future growth areas, to which an increasing range of people can have access, is encouraged.*

The proposed enhancement of the subject property is generally in line with this statement within the Southern District Plan

4.1.4 *The City of Cape Town Densification Policy*

The proposal is generally in line with the principles of the densification strategy for the City of Cape Town.

4.1.5 *Inclusive Economic Growth Strategy*

The Inclusive Economic Growth Strategy recognises that inclusive economic growth can contribute to the alleviation of existing poverty and inequality, as well as the improvement of livelihoods for current and future generations of Cape Town. The priority is to address these challenges through improved collaboration between the city, the private sector, and other spheres of government to identify and implement sustainable solutions. Temporary employment opportunities will be created during the construction of the second storey of the dwelling house. Therefore, it can be concluded that the proposal is in line with the objectives of the IEGS as it enhances sustainable inclusive economic growth.

4.2 Proposed deletion of title deed conditions (and condition of existing approval)

4.2.1 The title deed of the property contains two restrictive conditions.

Condition C.1. states: *'Any dwelling or outbuilding or any trees planted on this erf shall be subject to a height restriction of 37.00 metres as measured from mean sea level to final roof height except for chimneys.'*

Condition C.2. states: *'Boundary walls and fences on this erf shall not exceed 1,1m height or the height of the existing wall or fence on the adjoining property, whichever is the lowest*

- 4.2.2 It is considered that these conditions are outdated and redundant and were notarized in the deeds of the properties derived from the subdivision of Erf 5663 25 years ago (in 1990).
- 4.2.3 The beneficiaries to these conditions are all the registered owners of properties derived from the subdivision of Erf 5663 – See Conveyancer's Certificate.

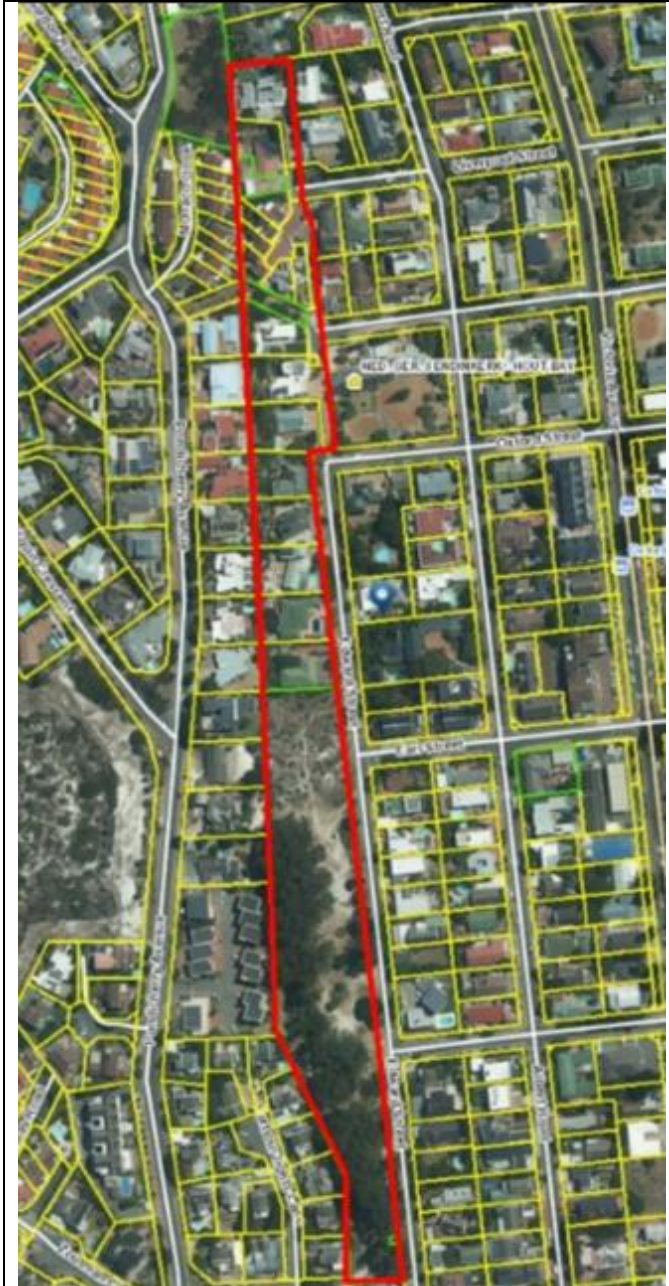


Figure 5: The erven within the red outline comprise the properties derived from the subdivision of Erf 5663, including RE-5663 which comprises a park and roads

- 4.2.4 Since then some of these erven have become duplex townhouses on GR1-zoned land.

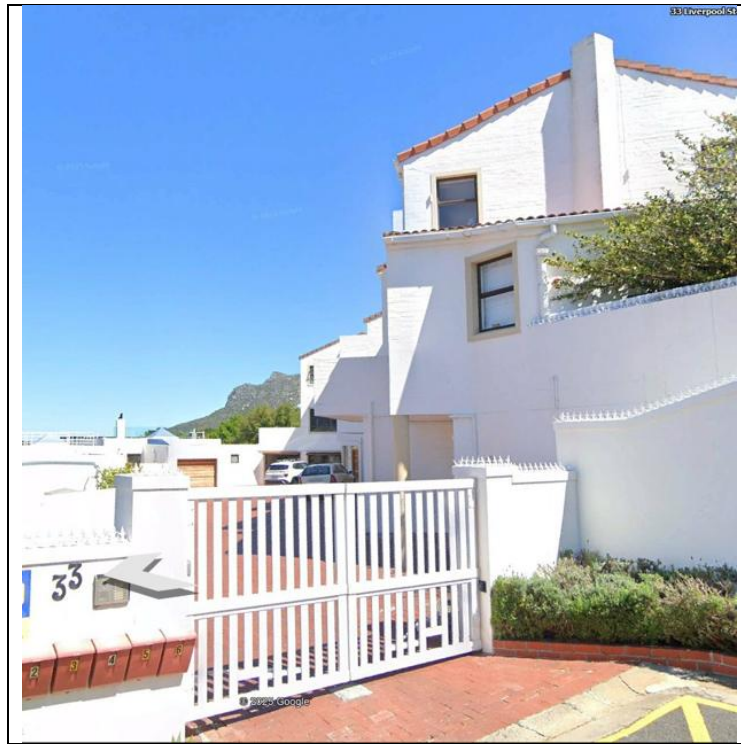


Figure 6: Duplex townhouse units on Erf 5871

- 4.2.5 Many of the houses erected on the SR1-zoned properties in this area have dwelling houses higher than what Condition C.1 permits (including Erf 5672 which abuts the subject property to the north) and the trees (Eucalyptus) on RE-5663 are approximately 15m higher than that permitted. Many of the perimeter walls are also higher than 1,1m. The DMS prescribes a maximum height of 2m for these.

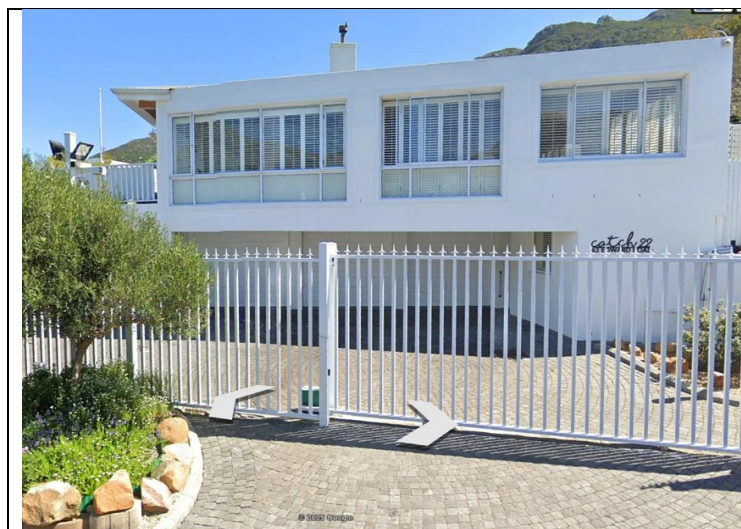


Figure 7: Double storey dwelling house on Erf 5672

- 4.2.6 Section 39(5) of the Land Use Planning Act (LUPA) states that ... “when a municipality considers the removal, suspension or amendment of a restrictive condition, the municipality must have regard to at least the following:” – (points of motivation will be listed under each of these headings)

“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.”

Since the financial rights of the beneficiaries to the condition are tied up in their properties, the question needs to be asked whether a double storey dwelling house as proposed, and which complies with the maximum height prescribed by the DMS, will detract from the financial value of their properties. This is difficult to determine, but it is doubtful that this will be the case since there are many houses in the area which already have double-storey dwelling houses.

Given that other areas with a similar character and similar property values do not have these title deed conditions, it can be argued that these conditions have limited value.

“The personal benefits which accrue to the holder of rights in terms of the restrictive conditions.”

The personal benefits to the holder of rights relate indirectly to the character of the area. There are many double-storey houses on properties derived from the subdivision of Erf 5663 (as depicted in figures 6 & 7 above). Similarly, there are many boundary walls in the area which are higher than 1,1m, and therefore it is doubtful that the character of the area will be negatively affected by deleting the conditions.

“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 benefits to the applicant are substantial since the proposed additions will enhance her property and add value to her property.

“The social benefit of the restrictive condition remaining in place in its existing form.”

‘Social’ is defined as ‘of relating to society and its organisations’. The question is what is the benefit of the right to society? “Society” comprises the neighbours, the township, the local residents and broader society. Should the conditions not be deleted the status quo on the property will remain. There will be no social benefit to the conditions remaining. It must be noted that these title deed conditions were imposed in an era before zoning schemes came into use in Cape Town

It is further considered that the social benefit of the restrictive condition remaining in place in its existing form is negligible. The maximum height of structures and boundary walls is now controlled by the Development Management Scheme (DMS) of the Municipal Planning By-Law.

“The social benefit of the removal, suspension or amendment of the restrictive condition”; and

There will be no direct social benefit to deleting the conditions.

“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 deletion of the condition in the title deed will not remove all the rights of the property owners in this area. They still benefit from the development rules in the DMS.

4.3 Compliance with Section 99 of the MBPL

4.3.1 It is considered that this application meets the minimum requirements of Section 99 (1) of the MPBL as follows:

‘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.’

This application is for a simple dwelling house addition which is consistent with the MSDF.

‘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 will not have the effect of granting the property the development rules of the next subzone within a zone and 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.

This is not applicable.

4.3.2 Section 99 (2) of the By-law states that 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:

Any applicable spatial development framework

This is discussed in section 4.1 of this report.

Relevant criteria contemplated in the development management scheme

All the relevant criteria in the DMs have been discussed in section 2.6 of this report. The property complies with all the development rules in the DMS, and after the proposed addition will still comply with all the development rules for SR1 erven of this size.

Any applicable policy or strategy approved by the City to guide decision making, which includes the Social Development Strategy and the Economic Growth Strategy

The proposal is compliant with all relevant policies and strategies approved by the City to guide decision making, as discussed in section 4.1 of this report.

The desirability of the proposed use or development of land as contemplated in subsection (3)

See section 4.3.3 below

Impact on existing rights (other than the right to be protected against trade competition)

The proposal will not impact significantly on existing rights. The development rules for each portion will not change. The proposal is to simply permit a second storey to be added to the existing dwelling house. The height of the addition will be well below the maximum height permitted in the DMS. It is considered therefore that the impact on the existing rights of other property owners will be limited.

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*

This is not applicable.

Other considerations prescribed in relevant national or provincial legislation, which includes the development principles as contained in S7 of the Spatial Planning and Land Use Management Act, 2013 (Act no. 16 of 2013).

This is discussed in section 4.4 of this report.

Whether the application complies with the requirements of this By-law

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

- 4.3.3 The following considerations are relevant to the assessment under subsection 2(d) of the desirability of the proposed use or development of land:

(i) socio- economic impact

The socio-economic impact will be positive, providing enhanced residential accommodation in a relatively well-located area.

(ii) compatibility with surrounding uses

The proposed use is entirely residential and is compatible with surrounding land uses.

(iii) impact on the external engineering services

There will be no impact on external engineering services.

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

The impact on the safety, health and wellbeing of the surrounding community will be limited only to the building on site, which will be carried out safely.

(v) impact on heritage

There will be no impact on the heritage of the area. The suburb is an ordinary residential suburb with no recognized heritage aspects, and the property and existing building also do not have any heritage-worthy elements. The subject property is not situated in a HPOZ.

(vi) impact on the biophysical environment

There will be little impact on the bio-physical environment. No existing trees will be affected by the proposal.

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

There will be no impact on traffic and parking.

(viii) whether the imposition of conditions can mitigate an adverse impact of the proposed use or development of land

It is not considered necessary for council to impose mitigatory conditions since there will be no adverse impact (as demonstrated above).

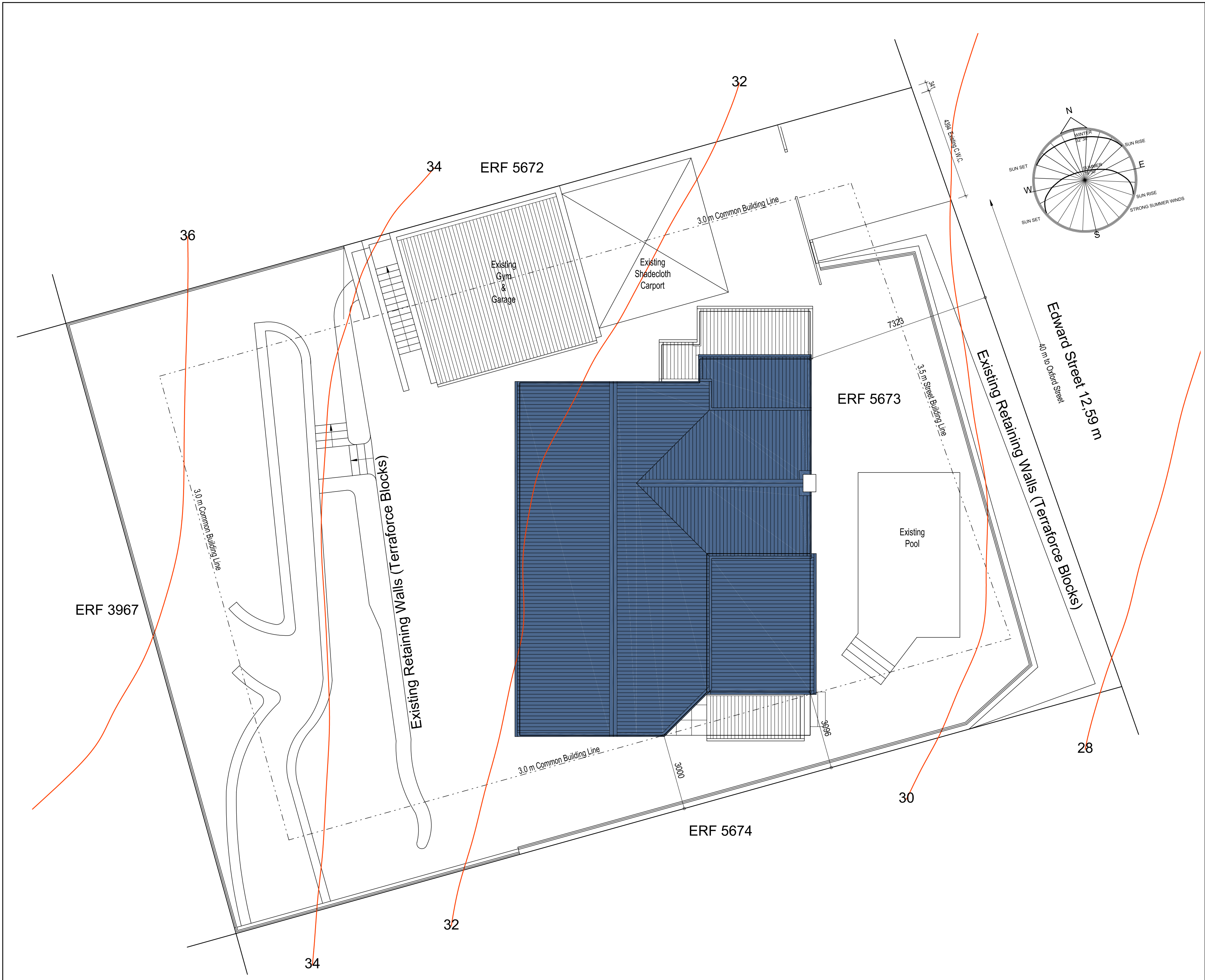
4.4 Development Principles Contemplated in SPLUMA and LUPA

In terms of the provisions of LUPA and SPLUMA, land development must be consistent with the principles of spatial efficiency, spatial sustainability, spatial justice, spatial resilience, and good administration. Given the nature of the proposal, it is argued that the development is in line with a few principles.

Contextually, the proposed addition of a second storey to the existing dwelling house is in line with the principle of spatial efficiency, as the property owners will efficiently use the available land. As regards the principle of good administration, it is argued that the application complies with the submission requirements of the MPBL. The proposal has been motivated in terms of the decision-making criteria of the MPBL and the development principles of SPLUMA and LUPA. Furthermore, all the relevant internal departments, as well as interested and affected parties will have an opportunity to comment on the application. The comments will be considered during the decision-making process.

In view of the above, it can be concluded that the development proposal is in line with some of the development principles of SPLUMA and LUPA.

It is considered that this application has merit, and it is therefore respectfully requested that it be recommended for approval.



No.	Date	Revision	Initial

SJF
STEPHEN J. FORSTER
PR ARCH (REG NO 7580)

Project	PROPOSED ADDITIONS & ALTERATIONS TO DWELLING ERF 5673 HOUT BAY		
Client			
Drawing	PLANS: SITE & ROOF		
Scale	1:100	Drawn	SJF
Checked		Date	9 July 2025

Drawing No. **5673/AD/SP/2**

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