



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500156303

Erf 505, 53 De Wet Road, Bantry Bay

Development Management

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Date: 9 December 2025 (as amended 19/05/2026)

Ref: 11476 (Cor van der Merwe)



PROPOSED REMOVAL OF RESTRICTIONS & DEPARTURES: ERF 505 BANTRY BAY AT 57 DE WET ROAD

1. INTRODUCTION

The proposal is to construct three dwellings (a main, second and third dwelling) on the property, which is a vacant site. This report will demonstrate that the proposal is considered desirable and consistent with approved City planning policies, and that it is not believed that there will be any material impact on the area or on existing rights.

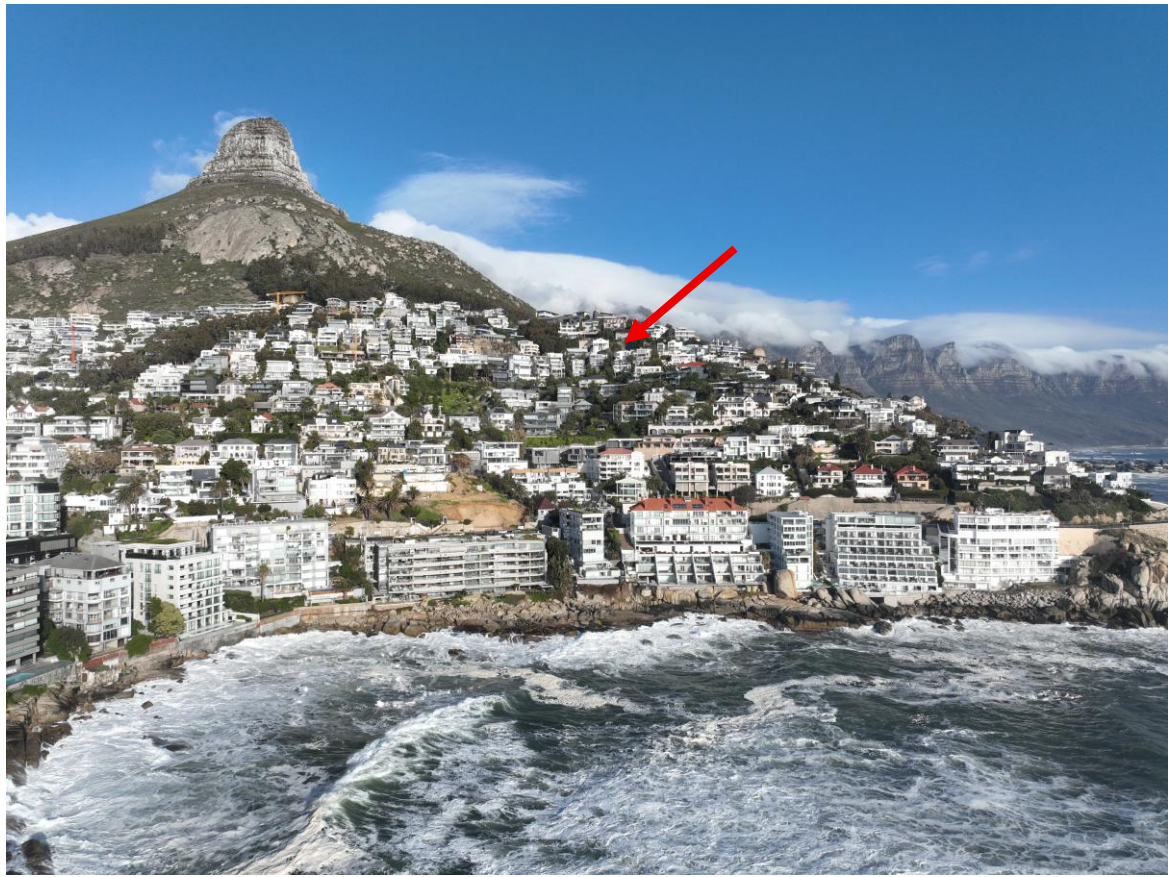


Architect's render of the proposed building

The applications are made in terms of Section 42 of the City of Cape Town Municipal Planning Amendment By-law, 2025 (the "By-Law"):

- 1.1 Section 42(g): The **removal** of Conditions E.2, E.3, F.(2) and F.(3) from Deed of Transfer
- 1.2 Section 42(b): **Permanent departures** from the provisions of the Development Management Scheme (DMS).

The details of the above-mentioned land use applications will be set out later in this report.



The location of Erf 505 on the upper reaches of Bantry Bay

The following documents are submitted with the application:

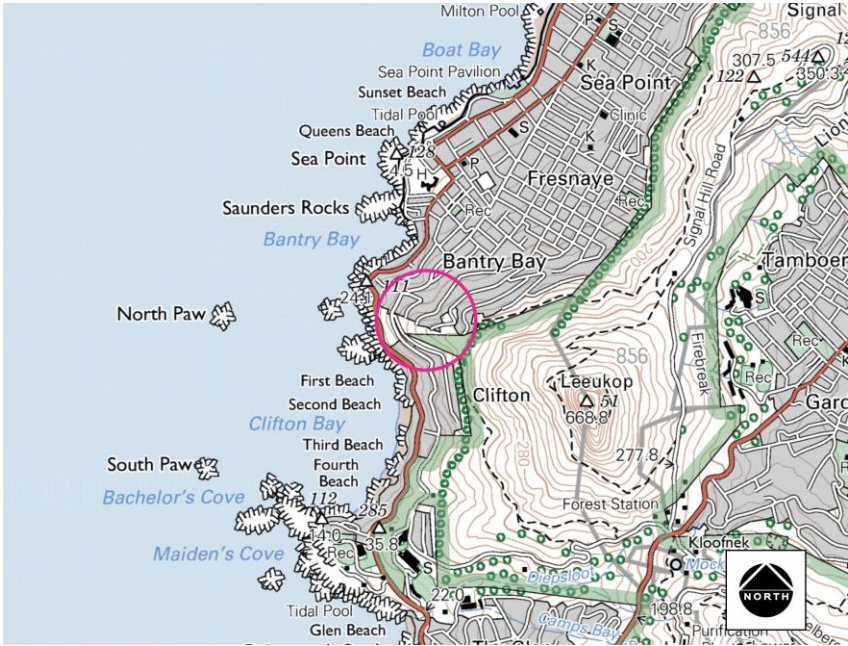
- Power of Attorney, Company Resolution & CIPC Report
- Copy of the title deed
- General Plans (1901 Botany Bay Estate & 1928 Bantry Bay Township)
- Conveyancer's Certificate
- Proposed plans as prepared by **BDA Architectural Studio**
- Record of pre-application consultation
- Application form

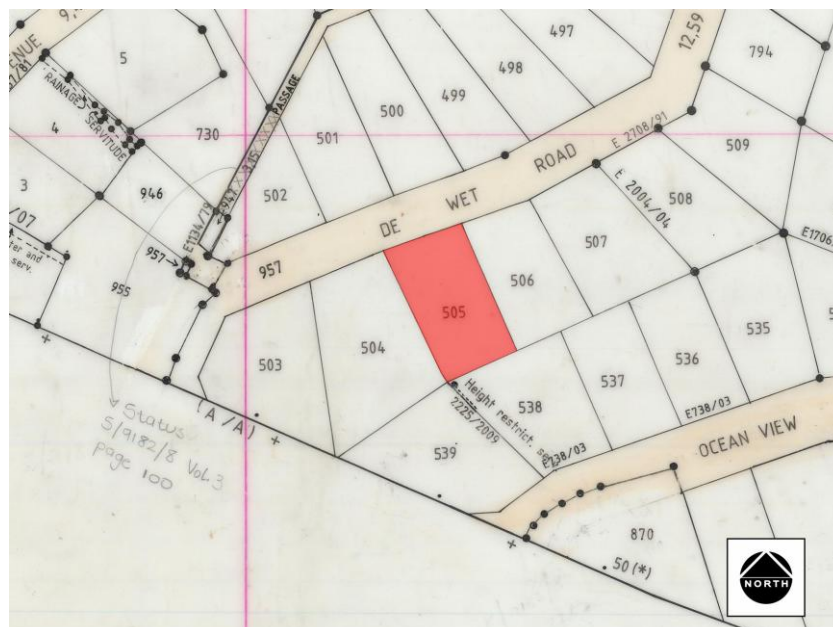
2. THE PROPERTY

Erf 505 Bantry Bay measures 768m² in extent and is zoned Residential Zoning 1: R1. It is located on the southern (upper) side of De Wet Road in Bantry Bay – the third last property before the cul-de-sac. The site forms part of the *Bantry Bay Township* which was established in 1928, originally described as “Lot HD”, and which land was a portion of the *Botany Bay Estate* as shown on the 1901 diagram.

The township as a whole is characterised by multi-storeyed, imposing buildings comprising large single dwelling houses, and with many properties also having been improved with 2nd and even 3rd dwellings. The buildings are, without fail, multi-storeyed structures due to the extreme topography of the area. The result is that, as the dwellings step up the steep slopes, the upper dwellings invariably have unimpeded views over the dwellings immediately below them (or across a road – on the lower side). Bantry Bay as a whole, and this portion of the township in particular, is characterised by luxurious dwellings, and which are primarily orientated to the north-west to take full advantage of the spectacular views of the Atlantic Ocean.

The locality map, aerial photo, zoning map and noting sheet of the property are below.





Properties zoned R1 allows a main dwelling house as a primary right, and a 2nd and 3rd dwelling as additional use rights (subject to compliance with Item 25A and 25B of the DMS).

3. TITLE DEED CONDITIONS

When the Bantry Bay Township was established (in 1928), no town planning scheme existed for Cape Town. The subdivision of the Estate was approved subject to conditions that were imposed in favour of “all owners of property in Botany Bay Estate” (Conditions E), and imposed “in regard to Bantry Bay Township with the sanction of the Administrator” (Conditions F). These conditions were registered in the title deeds of the erven to regulate the development of the erven in particular and the township in general.

As indicated on the Conveyancer’s Certificate submitted with the application, the property is subject to conditions which prescribe as follows:

- Condition E.2. No more than one house shall be built on each lot and no dwelling house to be built shall be inconsistent with the environment.*
- Condition E.3. Each house shall be used only as a dwelling house.*
- Condition F.(2). That a space of not less than 4,72 meters in width be left in front of all lots fronting or abutting on High Level Road, 15,74 metres, and the roadway marked Thoroughfare. That space of not less than 3,13 metres in width be left in front of all lots fronting or abutting on any of the three roads, 12,59 metres. Such space may be utilised as gardens or forecourts.*
- Condition F.(3). That not more than one dwelling be erected on any one lot without the written consent of the Council of the City of Cape Town, and that not more than one-third of the area of any one lot be built upon.*

Conditions E.2, E.3, F.(2) and F.(3) are to be removed from the title deed to enable the construction of the proposed three dwelling units.

In terms of the City’s Standard Operating Procedures document of January 2017, the conditions in Paragraph E are Category 1.2 (developer’s restrictive) conditions which were imposed in favour of all owners and tenants in the Botany Estate, whereas the conditions in Paragraph F are Category 1.3 conditions given that they were imposed by a government body in terms of the Townships Ordinance No. 13 of 1927 which predates Ordinance 33 of 1934.

The proposed removal of the conditions is “voluntary” and the application is in terms of Section 42(g) of the By-Law.

The Botany Bay Estate comprises the whole area indicated on SG Diagram No. 1399/1901, while Erf 505 falls in Lot HD as indicated on the plans, above. (Lot HD is a portion of Botany Bay Estate). In terms of Condition E.5 and F.(8) the application must be advertised to all registered owners and tenants in the whole of the former Botany Bay Estate (including the Bantry Bay Township).

4. DEVELOPMENT PROPOSAL

- It is proposed to develop the vacant site with three dwelling houses in one building (a main, 2nd & 3rd dwellings).
- The proposed building comprises of six (6) storeys. The lowest is not a basement but the ground floor* (first storey).

*For the purposes of the application we will refer to the respective storeys as the “Ground floor, first floor, second floor” etc. in accordance with the confirmation from the Council’s Head: Land Use Management (Mr Schalk de Jager), e-mail dated 19 August 2025, whereby it was confirmed that the annotation of the levels is as per the above (the correspondence can be made available if required).

- Ground floor:
 - ❖ Parking garage (9 vehicle bays & 2 motorcycle bays) accessed via one carriageway crossing (CWC),
 - ❖ Guard house (approximately 20m²)*, plus refuse bin area,
 - ❖ Pedestrian access entrance and fire escape stairs along the western common boundary, and
 - ❖ Pedestrian internal staircase, lift, and store rooms.

*The guard room in itself is only approximately 6.4m² in extent, with the other 13.5m² comprising of a bathroom and the entrance to the room (from the refuse bin area).
- First floor:
 - ❖ Second dwelling (floor space approximately 387m²).
- Second floor:
 - ❖ Third dwelling (floor space approximately 360m²).
- Third & Fourth floors:
 - ❖ Main dwelling (floor space approximately 443m²).
- Fifth floor:
 - ❖ Roof with solar panels, solar battery storage and drying yard.

With respect to the title deed and DMS, the following:

4.1 Title deed:

- The title deed conditions as set out further above are proposed to be removed. These relate to the following:
 - ❖ Number of dwellings
 - ❖ Building lines (street boundary only)
 - ❖ Built-upon of one-third the area of the erf, which represents approximately 256m² for the property.
- It is noted that De Wet Road measures 12.59m in width and as such the 3.13m street boundary building line applies.

4.2 DMS:

4.2.1 Item 21: Land use (compliant)

The proposed main dwelling is a primary right and the proposed 2nd and 3rd dwellings are permitted additional use rights on the R1-zoned property.

4.2.2 Item 22(b): Floor space (compliant)

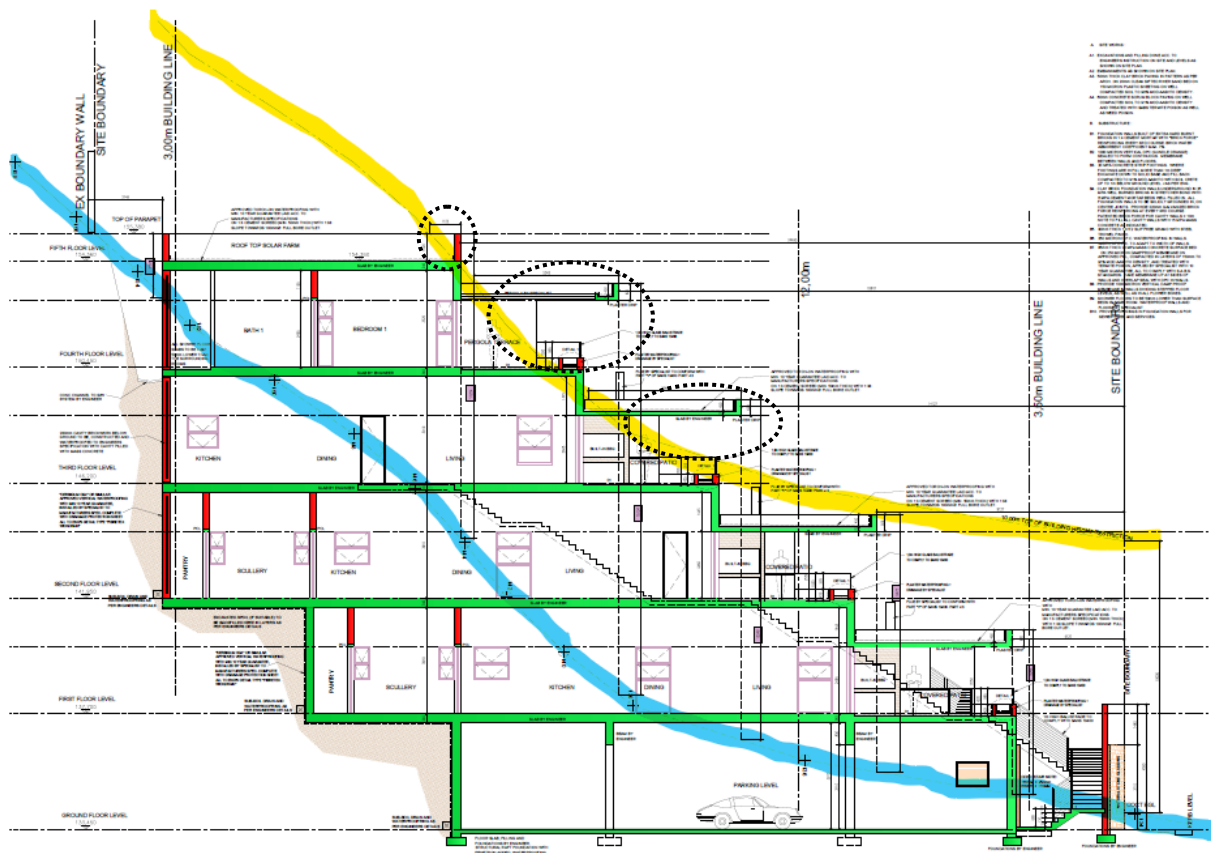
The total proposed floor space is approximately 1239m² and complies with the permissible floor space of 1500m².

4.2.3 Coverage

Not applicable.

4.2.4 Item 22(c)(i): Height (departure)

The prescribed height for buildings on erven larger than 650m² is 10m to the “top of building” as measured from the existing ground level (EGL). The EGL is the City of Cape Town’s 2m contours as per the Ground Level Map, as indicated on the plans. The building requires height departures for the “top of building” on the 3rd, 4th & 5th floors (refer to Section CC, below). The blue line represents the 2m EGL as per the Ground Level Map and the yellow line represents the permitted height line of 10m above the EGL).



Section CC: Proposed height departures above 10m from the EGL, on the 3rd – 5th floors

4.2.5 Item 22(c)(ii): Height (departure)

The prescribed height for buildings, beyond 12m from the street boundary and within 3m of a common boundary, is 4m above the EGL. Portions of the proposed building within that space exceeds heights of 4m above the EGL and require departures.

4.2.6 Item 22(c)(iii): Height (compliant)

Notwithstanding Item 22(c)(ii), within 12m from the street boundary and within 3m of a common boundary, the permitted height is 10m. The ground, 1st and 2nd floors (including those floors' roofs) are all within 12m from the street boundary but lower than 10m in height above the EGL. No departures are required.

4.2.7 Item 22(d): Building lines (departures)

- The property is subject to 3m common boundary building lines. The proposed building is within these building lines and require departures.
- The fire escape staircase (uncovered) along the western common boundary has a small landing with a balustrade mid-way between the ground and the first floors (next to the street boundary). Although not covered, this "opening" is regarded by the Council as needing a setback departure, whereas the staircase in itself also requires a setback departure.
- The property is subject to a 3.5m street boundary building line (for the dwellings). The main building complies with the building line; however, a fire escape staircase and an architectural feature are at 0m from the street boundary and require a departure.
- A garage is required to be 3.5m from the street boundary. The proposed garage is at 3.5m and is compliant.
- A guard room (gate house) of 5m² and with a height of 3m from the floor to the highest point is permitted within the 3.5m street boundary building line. Given that the proposed gate house is approximately 20m² in extent, it is not permitted as of right but requires a street boundary building line departure.
- The refuse bin room is permitted within the 3.5m street boundary building line, and it is also permitted within the common boundary building line if it does not exceed a height of 3.5m from the EGL to the top of building and exceed a width of 6.5m when viewed from the street boundary. In the event, the refuse room measures approximately 4.2m in height from the EGL to the top of building (its roof), and hence it requires a common boundary building line departure.

4.2.8 Items 25A & 25B: Second & Third dwellings (compliant)

The proposed 2nd & 3rd dwellings comply with the criteria in these Items, including with sub-sections (a) which relate to the permitted floor space of these dwellings in relation to the floor space of the main dwelling.

4.2.9 Item 126: Raising of ground (complies)

No raising of ground is proposed.

4.2.10 Items 137 & 140: Parking and access (compliant)

With the site being in a PT1 Area, 1 parking bay per dwelling house is to be provided (total of 3 bays). In the event, 9 on-site parking bays, plus 2 motorcycle bays, are provided, and there is thus no departure.

One CWC is proposed - measuring 4.88m wide, which is compliant.

5. THE APPLICATION

5.1. Removal of title deed conditions

In terms of **Section 42(g)** of the By-Law, to remove the following conditions from Deed of Transfer T17898/2024:

- Condition E.2. No more than one house shall be built on each lot and no dwelling house to be built shall be inconsistent with the environment.*
- Condition E.3. Each house shall be used only as a dwelling house.*
- Condition F.(2). That a space of not less than 4,72 meters in width be left in front of all lots fronting or abutting on High Level Road, 15,74 metres, and the roadway marked Thoroughfare. That space of not less than 3,13 metres in width be left in front of all lots fronting or abutting on any of the three roads, 12,59 metres. Such space may be utilised as gardens or forecourts.*
- Condition F.(3). That not more than one dwelling be erected on any one lot without the written consent of the Council of the City of Cape Town, and that not more than one-third of the area of any one lot be built upon.*

5.2. Departures from the DMS

In terms of **Section 42(b)** of the By-Law, application is made for the following departures from the provisions of the DMS:

- 5.2.1 From Item 22(c)(i) to permit the height of the building to be 15.134m in lieu of 10m from the EGL to the top of the building.
- 5.2.2 From Item 22(c)(ii) to permit portions of the building, beyond 12m from the street boundary and within the 3m east common boundary building line, to be 12.321m in lieu of 4m in height from the EGL to the top of the building.
- 5.2.3 From Item 22(c)(ii) to permit portions of the building, beyond 12m from the street boundary and within the 3m west common boundary building line, to be 13.258m in lieu of 4m in height from the EGL to the top of the building.
- 5.2.4 From Item 22(d) to permit the proposed building (fire escape, architectural feature/roof portion & gatehouse) to be 0m in lieu of 3.5m from the street boundary.
- 5.2.5 From Item 22(d) to permit the proposed refuse room to be 0m and the proposed building to be 2m in lieu of 3m from the east common boundary.

- 5.2.6 From Item 22(d) to permit the proposed building to be 2.4m in lieu of 3m from the south common boundary.
- 5.2.7 From Item 22(d) to permit the proposed fire-escape staircase to be 0.8m and the proposed building to be 2m, in lieu of 3m, from the west common boundary.
- 5.2.8 From Item 22(e)(i) to permit the proposed “opening” on the landing to be 0.8m in lieu of 1m from the west common boundary (although the landing is mid-way between the ground floor and the first floor, since it is within the space between the floor and “ceiling” of the ground floor, it is deemed to be part of the ground floor and not the first floor).

6. ADJUDICATION CRITERIA

Section 48(4) of the By-Law, as amended, states that the Council must have regard to the following when deciding an application for the removal, suspension or amendment of a restrictive condition, as well as when assessing the proposed departures:

- (a) whether the result would better align with the development management scheme (DMS);
- (b) the decision-making criteria in section 99*; and
- (c) sections 42(1)(c) and 47 of SPLUMA.

*This includes references to Section 7 of SPLUMA and Section 39(5) of LUPA.

6.1 Adjudication criteria in terms of Section 48(4)(a) of the By-Law

The proposed removal of the restrictive conditions will have the result that the development of the property is more aligned with the DMS (which permits three dwellings, and also has no restriction on the property with respect to coverage (or built-upon)). The proposal is thus consistent with this criterium.

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

6.2.1 Motivation in terms of Section 99(1) of the By-Law

The application complies with the following minimum threshold requirements:

- (a) The proposed land use is **consistent with the Municipal Spatial Development Framework (MSDF)** and no deviation from it is required. The property is situated in the “Urban Inner Core”, and the proposal will help to create a more compact city and the better utilisation of the site. This form of land use densification and intensification are aligned with the MSDF, and should be encouraged and supported.
- (b) The principle of “granting the property the development rules of the next subzone within a zone” is not applicable.

6.2.2 Motivation in terms of Section 99(2) of the By-Law

The application complies with the following relevant considerations:

- (a) Applicable Spatial Development Frameworks
 - The application is consistent with the **Provincial Spatial Development Framework (PSDF)** as it supports higher densities in existing urban areas which is already serviced, more compact

settlement footprints to minimise environmental impacts and optimises infrastructure, reduce costs by improving financial sustainability with regard to the provision and maintenance of infrastructure, facilities and services.

- The application is consistent with the **MSDF** and its Policies. The erf is in the Inner Urban Core which has as its principle the following: *“The City, public, and private sectors are committed to coordinated, spatially targeted investment and land development to spatially transform and integrate the city form”*. Effectively, the City must prioritise investment and “incentivise” private sector development. The proposal complies with the main spatial strategies of the MSDF which are to build an inclusive, integrated and vibrant city, to manage urban growth, to plan for employment, and to improve access to economic opportunities through incremental and sensitive land use intensification and densification.
- With respect to the **Table Bay District Plan**, its guidelines prescribe that within existing developed urban areas such as Bantry Bay, land use intensification should be guided by available infrastructure capacity, neighbourhood density and character, proximity to job opportunities and social facilities, and access to public transport. The existing character of the area must be considered as an informant to development proposals.

The site is in “Sub-District 1: Atlantic Sea Board Suburbs Area”. The property is situated in the area identified for “urban development” and is within the Urban Development Edge.



The proposal to develop 3 dwellings is considered to be consistent with the Plan as it will *inter alia* ensure an appropriate built form and land use to achieve a quality environment (the proposed building will be in character with the surrounding built environment with respect to the scale, massing, envelope, height and appearance of the buildings). Approval of the application will ensure a variety in built form and housing options in a highly sought-after neighbourhood, and is considered to be an incremental and sensitive form of in-fill densification (and at the same time not having any material impact on the surrounding properties or area – primary due to the steep gradient of the area).

(b) Relevant Criteria in the DMS

The application complies with relevant criteria contemplated in the DMS; all necessary documents as required by the City are submitted with the application and the proposal considered desirable when assessed in terms of the adjudication criteria.

(c) Applicable strategies and policies

The City's MSDF must be implemented through various approved strategies and policies, with which the proposal complies:

- ❖ **Inclusive Economic Growth Strategy (2021):** The proposal is consistent with the aims of this Strategy, namely it represents private investment and contribute to economic growth – especially in an existing urban area. The growth of the economy will help to create and preserve existing jobs which will have a positive impact on the lives of the construction workers when the building work is undertaken (temporary employment). However, permanent jobs will also be created post-construction as the proposed owners will employ house staff, including security guards to man the gatehouse.
- ❖ **Social Development Strategy (2013):** The proposal is consistent with the SDS. The SDS articulates the role of the City of Cape Town in promoting and maximising social development, the latter which is understood – broadly – as the overall improvement and enhancement in the quality of life. The proposal will, for example, help to create a safer area by increasing the number of people/families residing in the area.
- ❖ **Environmental Strategy (2017):** Residential densification and land use intensification of properties within the urban edge contributes to the containment of urban sprawl which complies with the vision of this strategy to enhance, protect and manage Cape Town's natural and cultural resources for long term prosperity, in a way that optimises economic opportunities and promotes access and social wellbeing.
- ❖ The proposal complies with the City's approved **Densification Policy** which aims to achieve a minimum average gross density of 25 du/ha across the City as a whole and which states that densification must *inter alia* be achieved by way of permitting subdivisions, second dwellings, third dwellings, or flats.

Residential densification within established urban areas is desirable for the following reasons:

- Efficient use is made of land which is an increasingly scarce resource, especially in a popular area (the property is in close proximity to a range of economic, institutional and recreational facilities and infrastructure the City has to offer).
 - More efficient use is made of existing municipal infrastructure.
 - Urban sprawl is contained which contributes hugely toward environmental sustainability.
 - Densification facilitates the gradual restructuring of the City which is vital in terms of social, economic and environmental sustainability; a compact urban form is an essential pre-condition for well performing cities.
 - Residential densification is in the interest of the general public and the development of townships throughout the City.
- ❖ **Transit Oriented Development Strategic Framework (TOD):** The vision for the TOD for Cape Town is to progressively move toward a compact, well connected, efficient, resilient urban form and movement system that is conducive to economic and social efficiency and equality

whilst providing cost effective access and mobility, with the least possible negative impact on the environment. The proposed form of densification in principle supports the above.

Since the proposed development is to create three luxury dwellings, it is unlikely that the future owners/occupants would make use of public transport services e.g. the MyCiTi bus, staff to be employed at the premises is expected to use the bus (or taxis), so that the proposal is still considered to be consistent with the TOD.

(d) Desirability of the proposed use or development of land

The application is desirable, as contemplated in Section 99(3) of the By-Law. This aspect will be addressed further below.

(e) Impact on existing rights

It is not believed that there will be any negative impact on existing rights, as discussed below:

- All the properties in the Township (except for the erven lower down the slopes – along Victoria Road etc.) are zoned R1 and have can be developed with 3 dwellings as of right.
- Most of these properties are also larger than 650m² in extent, meaning that they have the same existing rights with respect to the DMS compared to Erf 505. The proposed departures are not believed to impact on the existing rights of these other properties, or to preclude their owners to exercise their own existing rights.
- A large number of the properties in the township, including in the immediate vicinity as the subject erf, have been improved with buildings which required departures (e.g. common & street boundaries; height; coverage; floor space) as well as the removal/amendment of title deed conditions.

With respect to the individual components of the application:

❖ Removal of conditions:

The proposal represents the sensitive densification and efficient use of the property in a contextually appropriate location. The proposal to construct three dwelling houses is considered desirable and respects the established built fabric and character of the surrounding area (e.g. with respect to the building's scale, height, footprint, envelope, proximity to boundaries, architectural style, quality of design, and appearance). Residential densification within established urban areas is desirable for a number of reasons, as already set out above.

Conditions have been amended and removed from the title deeds of a very large number of properties within Bantry Bay to enable residential densification and land use intensification. The character of the township has clearly not been established by the title deed restrictions alone, but also by developments which have been achieved following the amendment or removal of conditions from the title deeds.

❖ Common boundary setbacks:

The building is proposed to be within the eastern, southern and western 3m common boundaries. Given the extreme gradient of the area, all the dwellings have been developed over multiple levels.

This has the result that houses situated up-slope completely look over their neighbours' houses which are situated down-slope. The steep terrain therefore means that, in this instance and in this particular area, the spectacular sea views from the higher-lying properties are not dependent on the "view corridors" (for such views) which are normally provided along the common boundary building lines (and which normally play a more important role in relatively flatter areas). The proposed common boundary building line departures will not have any impact on views.

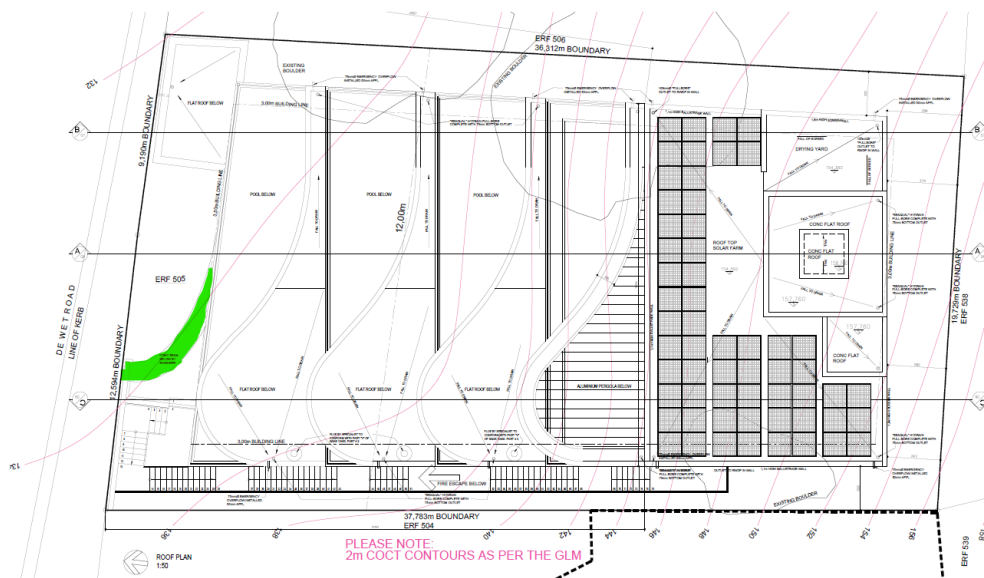
For the same reasons as above, the proposed common boundary departures will not have any impact on the neighbours' privacy.

The property, at approximately 22m wide, is relatively constrained if the full 6m common boundary building lines (on the eastern and western sides) are to be adhered to. A more efficient and desirable building can be developed with the proposed departures. The proposed departures are not considered material or onerous, and will still allow sufficient space for perimeter planting to take place.

It is noted that a refuse room is, in principle, permitted within the common boundary building line, subject to its height not exceeding 3.5m from the EGL to the top of building (the roof of the refuse room). It must be acknowledged that, although the EGL slopes, these 2m contours are hypothetical levels as they do not represent the actual level of the ground. The measurement of the height of the refuse room is therefore based from a highly theoretical level, and the actual refuse room will be lower than what the proposed departure suggests. Either way, the proposed refuse room and its departure will not have any impact on the abutting property from a view, privacy or over-shadowing point of view, and it will also have no impact on the street (it is permitted within the street boundary building line in terms of Item 121 of the DMS).

❖ Street boundary setback:

The proposed dwelling (the main building) complies with the 3.5m street boundary building line. A relatively small portion of the roof on the ground floor (which serves as an architectural feature) is within the street boundary building line. This however forms part of the attractive design of the building and has no impact.



Extract from roof plan with portion of roof requiring a departure, indicated

The proposed gatehouse and garage, which both require departures, are not believed to have any material impact on the street scape (the area is characterised by most of the properties having structures within the building line which is a direct result of the steep terrain), will not impact on road

safety or sight distance, and will allow sufficient stacking space off-street for cars to enter the garage door (or to wait off-street before joining the traffic flow – which is very low in any event given that De Wet Road is a cul-de-sac and the subject property is the third erf from the end of the street).

❖ Height:

For the reasons already mentioned above, the proposed height departures are not believed to have any impact on existing rights.

- The proposed building increasing steps back from the street boundary as it increases in height. The departure relating to the top of building above 10m above the EGL only apply to portions of the building on the 3rd – 5th storeys. These stories are situated further than 12m from the street boundary – towards the rear of the site (and thus closer to the erven to the south of the site, meaning that those neighbouring properties are even less affected). By contrast, the proposed building, within 12m from the street, is not only *further* than permitted from the 3.5m street boundary building line, but it is also *lower* than the permitted height.
- The dwellings directly behind Erf 505 (i.e. Erven 538 & 539) are situated significantly higher than the proposed dwelling (with the highest point being 158.76m amsl – the stair and liftwell leading to the roof, and which is approximately 5.6m wide). The houses on the two rear erven are respectively at approximately 172m amsl and 171m amsl (with their respective entertainment/pool terraces at approximately 162m amsl and 161m amsl). The lower-lying entertainment areas of these two properties are thus approximately between 2.3m and 3.3m higher than the highest point of the proposed building, and means that there is no impact.

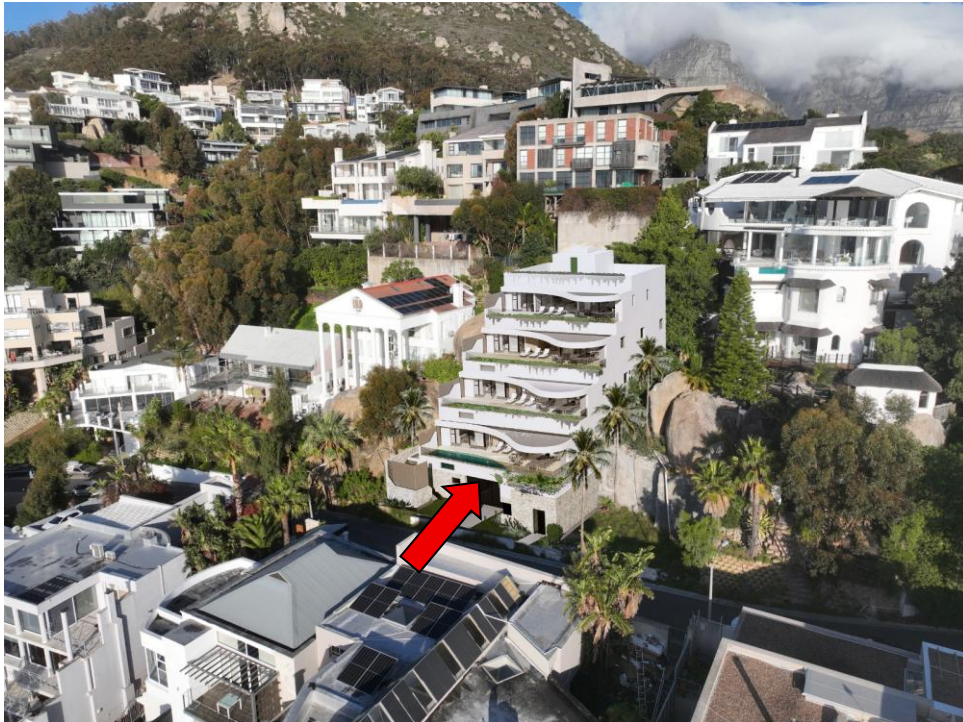
The dwelling on Erf 504 is at approximately 163m amsl.

Erf 538 (Nr 1.); Erf 539 (Nr. 2); Erf 504 (Nr. 3); Erf 506 (Nr. 4); Erf 505 – subject erf (Nr. 5).



- The proposed development is illustrated at the hand of the 3D renders, below, which demonstrates that the proposed building will comfortably fit into the surrounding built environment, and be compatible with the character of the area.

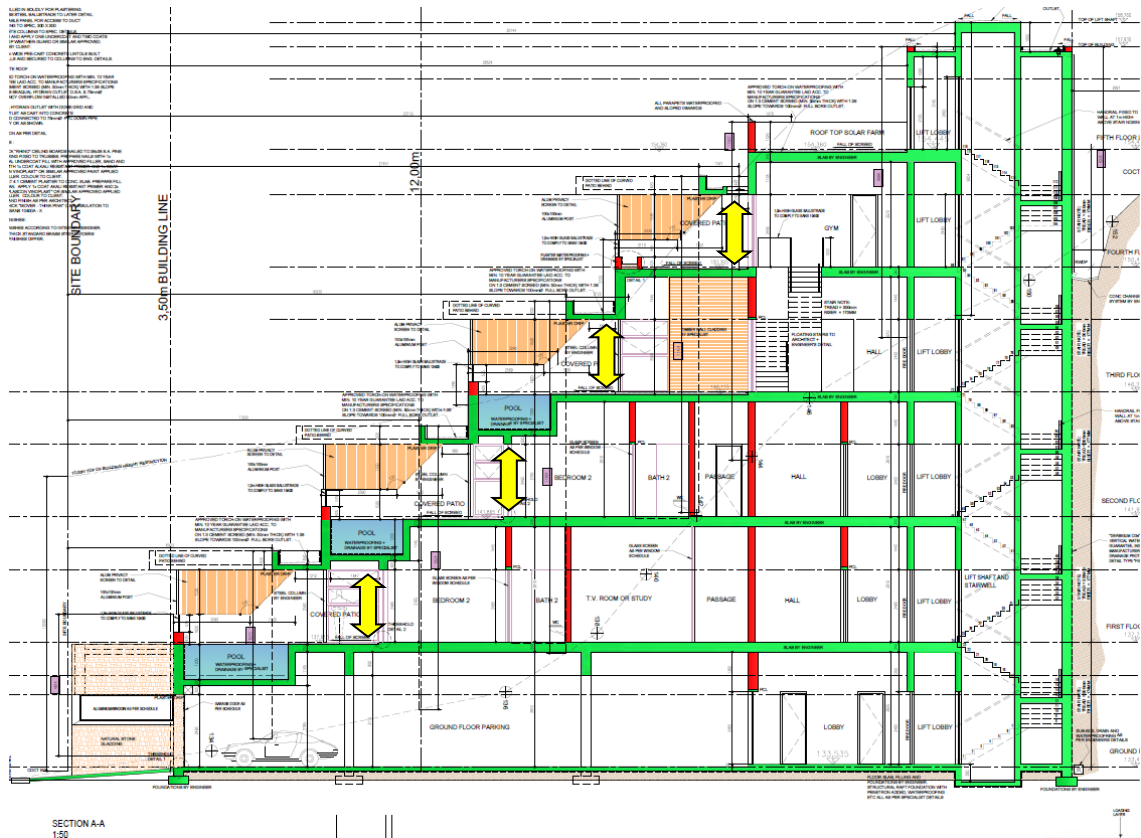
Importantly, it must be remembered that the proposed building increasingly steps “away” from the street as it increases in height. There is thus no perceived “over-bearing” impact on the street due to this incremental stepping-back of the building as it “hugs” the slope of the mountain (refer to the image below).



Artist's render of the proposed building within the surrounding urban context

The building, within at least the first 12m from the street boundary, is considerably *lower* than the permitted 10m height above the EGL (refer to East and West Elevations). So instead of the building rising vertically upwards to a height of 10m at 3.5m from the street boundary, it is both lower and increasingly stepping away even from the 3.5m street boundary building line, which is considered desirable and which mitigate the potential impact of the height departures.

- The proposed height departures are primarily the result of the specific roof design (specifically aimed to maximise the aesthetic appearance of the building), which has portions thereof curving closer towards the street boundary on the western part of the erf, but then these roof portions curve away from the street boundary towards the rear of the erf (from approximately the middle of the site towards the east) – refer to the roof plan below. The point made is that the proposed height departures only relate to certain roof portions of the building, and not the entire roof(s) of each storey, or the entire building. This curvilinear shape of the roofs (which is deemed highly attractive) which increasingly steps away from the street boundary at each successive storey, is considered to be desirable, sympathetic (to the area, views, and the street scape), and will not have any impact on existing rights.



Section AA: note the relative low head height below the pools.

- The dwellings on either side of Erf 505 (Erf 504 – to the west, and Erf 506 – to the east) are orientated to face away from Erf 505; their main orientation and thus views are towards the west and the north-east, respectively). In addition, any west-facing views from Erf 506 is obstructed by the large granite boulder which immediately abuts that dwelling to the west, and which is on the common boundary (with Erf 505). The above aspects are demonstrated on the images below. For ease of reference the respective erven are numbered as follows:



6.2.3 Motivation in terms of Section 99(3) of the By-Law

In terms of this sub-section, the proposal is desirable for the following reasons:

(a) Socio-economic Impact

The proposal will enable the more efficient utilisation of the property, an increasingly scarce and expensive resource in a highly sought-after and affluent neighbourhood where the land values are some of the highest in the city (if not the country). It is not considered desirable or logical to restrict, in 2025, the development of these high-valued erven to one dwelling only, or to a “built upon” area of only one-third – conditions that were imposed between 125 and 98 years ago.

It will add much-needed housing stock in the city, and create more variety in housing types (i.e. smaller units) for people seeking smaller (and more affordable) dwellings in an appropriate and well-located area. This is considered as a positive social and economic impact.

The more efficient utilisation of the erf will ensure a better return on the investment made by the owners of the land which is positive from their perspective, whereas the development will mean a dramatic rise in the municipal valuation of the property and hence considerable additional rates and taxes for the city (compared to the existing vacant site’s valuation and rates).

The existing, partially excavated and vacant site is unsightly and undesirable from a fire risk and anti-social perspective. The development of the property with the proposed modern, attractive and luxurious dwellings will benefit the neighbours in particular as well as the area as a whole, and will therefore also positively impact them (and the area) from a socio-economic perspective.

The proposal will create employment opportunities during and after construction which will have a positive economic impact on those parties involved.

Since the proposal is considered desirable and without any material impact on existing rights of the surrounding property owners it is also considered to have a positive socio-economic impact on the neighbouring properties (due to a lack of negative impact).

(b) Compatibility with Surrounding Uses

The subject property is zoned R1 and will be used for residential purposes (the same as all the other properties in the area). Many of those properties have been improved by means of departures from the provisions of the DMS and/or after their title deed conditions have been removed or amended.

The proposal is considered to be entirely consistent and compatible with the land uses, built form and character of the surrounding area.

(c) Impact on External Engineering Services

It is not believed that there will be any undue impact; however, the proposal will be circulated to the relevant service branches for comments.

A Development Contribution will be payable for the second and third dwelling houses.

(d) Impact on Safety, Health & Wellbeing of the Surrounding Community

It is not believed that the proposal will have any undue impact on the surrounding community in this regard. On the contrary, the proposed increase in dwelling units is considered to have a positive impact on the overall safety of the area because of the relatively higher levels of people movement in the area, and thus higher levels of direct and indirect surveillance which generally deter anti-social behaviour.

More compact cities lead, in principle, to more viable communities and more sustainable cities, which benefit everyone.

The proposed gatehouse will ensure 24/7 security at street level, which is desirable and will positively impact on security.

(e) Impact on Heritage

The property is not situated in a Heritage Protection Overlay Zone and there is no structure on the site. There is thus no impact on heritage.

(f) Impact on the Biophysical Environment

It is not believed that there will be any negative impact on the biophysical environment of the area. No mature trees will be removed as the site is relatively devoid of any substantial vegetation (due to the rocky nature thereof and the large boulders).

(g) Traffic, Transport, Parking and Access

There will not be any impact on traffic, parking and access:

- More on-site parking will be provided than required by the DMS; there is no parking departure.
- There is only one CWC, and which complies with the permitted width (maximum of 8m).
- Are cars can turn around on-site and exit in forward gear.
- Sufficient stacking space will be provided between the kerb and the garage door to enable cars to safely exit the street (while waiting for the door to open) or to wait off-street before entering the driving surface.
- In principle, the proposal is consistent with the TOD.

(h) Mitigation

It is not believed that it is necessary for any special conditions of approval be imposed (in the event that the application is supported); however, the Council may impose reasonable and relevant conditions if it deems appropriate to do so.

6.3. Motivation in terms of LUPA and SPLUMA

The proposal is consistent with the above legislation as demonstrated below:

6.3.1 Section 59 of LUPA & Section 7 of SPLUMA

- The proposal will help to limit urban sprawl and to create a more spatially compact city which is within fiscal, institutional and administrative means. This is consistent with the principle of social sustainability.
- This will help to protect prime agricultural land on the outskirts of the city and will have a positive impact on the environment. This is consistent with the principle of environmental sustainability.
- The proposal promotes land development in a contextually appropriate location which forms part of an existing urban area and will optimise the use of available land (an increasingly scarce resource – especially in the inner-City) – principle of spatial sustainability.
- The proposal will optimise the use of existing infrastructure and encourage/support the use of public transport facilities, thereby curbing costs for the Council, developers and ultimately the general public. This is consistent with the principle of social efficiency.
- The creation of more compact cities and curbing the necessity to provide infrastructure for an ever-increasing metro, the saving of such money can be utilised to improve the lives of the previously disadvantaged by acquiring and/or developing land for those communities where required. Contextually speaking, appropriate densification and intensification of land use, such as what is proposed, will cumulatively help by taking pressure off from development elsewhere which normally drives the poor to the edges of the city. Low density urban areas closer to places with good opportunities inevitably displaces other people to worse located land. This is consistent with the principles of social justice.
- The property is vacant, and it is thus entirely undeveloped and under-develop with regard to its existing rights. The proposal is not an attempt to acquire additional floor space over and above what is permitted on the site (the proposed floor space is less than permitted). The application is thus to make more efficient use of the land primarily within existing rights (especially with regard to the DMS). This is the principle of spatial resilience.
- The proposed densification of the area will ensure that the community will become more viable e.g. greater security (more surveillance) and more people to sustain facilities such as schools and to support the existing public transport in the area.
- The proposal directly supports the Densification Policy and the principles of the TOD, as well as statutory documents e.g. the District Plan, MSDF etc.

6.3.2 Section 59 of LUPA & Section 7 of SPLUMA

As aspects contained in Section 39(5) of LUPA and Section 47 of SPLUMA must be considered against the background of approved planning policies and the vision for the City as adopted by Province and the City.

6.3.2.1 Policy guidelines

Granting of the application to remove the title deed conditions will enable the construction of three dwelling houses on the subject erf. This is a more efficient use of the land which is in accordance with approved City and Provincial policies and frameworks, all of which encourage a more compact, efficient and sustainable city where the utilisation of available resources is optimized.

The limitation of only one house and a built-upon restriction of one-third only on erven within the Bantry Bay Township, as well as the restrictive street building lines, are considered as being onerous, unnecessary, unreasonable, and undesirable, in light of the fact that land is a scarce resource and that residential densification is encouraged throughout the City by all the approved planning policies and documents. To limit the optimal use of Erf 505, which is situated in a suburb with some of the highest land values in the City, and especially in 2025, is not considered reasonable or logical.

The restrictions have been removed from the title deeds of a large number of erven in the Bantry Bay Township, and where the area is characterised by large, multi-storeyed and luxurious dwellings (including 2nd and 3rd dwellings). It is evident that the established built character of the township has not been achieved by complying with the title deed conditions, and it is submitted that the removal of the conditions from the title deed for Erf 505 will enable a development which will respect and be in character with the built environment of the area.

6.3.2.2 Section 39(5) of LUPA

- (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;

It is our opinion that the conditions currently have a negative financial value to owners and tenants of properties within the Botany Bay Estate and the Bantry Bay Township for the reasons set out further below.

The relevant conditions stem from between 125 and 98 years ago, and were imposed at the time when the Botany Bay Estate and the Bantry Bay Township were respectively created. At the time, the township developers intended the suburb to have a very particular “look and feel”, and deemed it “desirable” to impose these restrictions to control aspects such as the built form (of buildings), land uses (i.e. one dwelling only), the density of the township, to restrict structures around dwellings, and even the extent to which buildings could be “built upon” the land. This was particularly done because no zoning schemes existed at that time in order to execute such “controls” and to regulate the manner in which erven develop. With the arrival of zoning schemes (which are far more in touch – or aligned, with modern planning principles and property developments) they have largely taken over the “role” of controlling property development from title deeds.

The erstwhile title deed conditions aimed, at the time of the creation of these properties, to provide some form of financial or other values to the holders of the rights in a “tangible” manner, e.g. what kind of character the township will have with regard to aesthetics, the number of people who could reside in the suburb, potential noise and traffic levels that can be expected, etc. In other words, the then owners could have, potentially, found some financial or other value (whether positive or negative) as a result of the “look and feel” of the township and which could have determined the utility and desirability of the township to a person. In this case, the alleged value of the rights relates to a residential area with a certain built form, aesthetic (including its appearance), and density that were envisioned. In the event, as has been pointed out, the

Township has developed over the past 100 years to have a very different character and appearance than originally envisaged.

Restrictions have been removed from the title deeds of many properties in the township over the years without negatively affecting property values in the area; on the contrary, the property values in the Bantry Bay Township have never been higher. In addition, there are other areas along the Atlantic Seaboard with a similar character and property values as Bantry Bay, which areas are not subject to these conditions and where developments for increased density and land use intensification have similarly not negatively affected property values in those areas.

Given that the proposed development will be entirely in character with the surrounding built environment it is not believed that there will be any undue impact on the financial or other values of the rights of the beneficiaries.

With respect to the individual conditions:

One House/Dwelling & Built-Upon

It is unlikely that the restrictions relating to the “one house/dwelling only” and “built upon” currently add any **financial** value to the owners of properties within this Township. These conditions restrict the ability to develop larger houses and additional residential opportunities in a well-located area, notwithstanding that the DMS and forward planning policy all make provision for densification in this area. By retaining these conditions, the City would not be able to adequately respond to the market needs of well-located housing in Cape Town. Such retention of conditions is also considered to be contrary to the City’s own approved Policies and other legislative frameworks.

Indeed, Section 48(1)(4)(a) of the By-Law (which deals with the “removal, suspension or amendment of restrictive conditions”) was specifically amended (on 1 October 2025) to read as follows (underlining is our emphasis):

The City must consider the following, when deciding an application for removal, suspension or amendment of a restrictive condition—

(a) whether the result would better align with the development management scheme;

The proposed removal of these conditions is entirely consistent with the above as it would mean that the development of the erf is “better aligned” with the DMS.

This proposal for incremental densification would also be more aligned with the density and character of the surrounding properties, which values still remain extremely high. In addition, a number of properties in the area have had their title deed conditions removed/amended to enable the development of multiple dwellings and larger built-upon footprints, and there is no evidence that the surrounding properties’ values dropped as a result.

The removal of the conditions, especially the condition relating to the number of dwellings, will add significantly to the City’s rates income and will have a positive impact on the values of surrounding properties.

The Building Lines

The purpose of the 3.13m street building line (which applies to this erf) was to ensure that buildings were setback from the street to establish a particular street character, with gardens and forecourts. The proposed building (the main bulk of it) is 3.5m from the street boundary (as per

the DMS); relatively minor structures e.g. a guard room, refuse yard, and fire escape staircase, are proposed within the title deed and DMS street boundary building line. This means that the intended character of this title deed restriction will largely still be achieved as only minor structures (on the ground floor/first storey only) are proposed within this 3.13m area, with the rest of this space being used for forecourts and gardens (and a drive-way to the garage).

- (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;

These restrictions relate to the principle of and perceived density of an area, or, in other words, the character of the area. This application to amend and remove these conditions would change this personal expectation of low residential density. However, the character of the area is not considered to be of a “low density” but rather a medium-to-relatively high density one, given the extent of the surrounding built environment (large, multi-storeyed houses in close proximity to each other).

These unrealistic personal expectations (of a low density area) need to be considered against the ever-changing urban form of the City and growing housing pressures. The changing needs of the modern city as well as homeowners have resulted in the increased need for denser properties. As such, it is noted that the original intended character of this township has already changed a long time ago towards a more compact and denser pattern. In general, developments are now increasingly regulated by good quality urban design and form rather than the preservation of unrealistic low densities, especially along this part of the Atlantic Seaboard where land values are some of the highest in the country.

The proposal is not believed to have any undesirable impact on the established built character of the area and as such, it will not impact negatively on the public or surrounding property owners. The character of the area has clearly not been established as a result of complying with the title deed restrictions, given that many if not most of the buildings in the township do not comply with the conditions as originally imposed on the erven in the early part of the 1900’s.

The personal benefits accruing to individual owners are negligible as they do not gain anything significant by personally keeping these conditions in place to restrict multi-unit developments. It is considered that none of the registered owners or tenants in the Botany Bay Estate and Bantry Bay Township gain anything personally by having the conditions preventing more than one dwelling house on the subject property, to permit more than one-third built-upon, or to remove the building lines restriction (all of which is now regulated by the DMS).

With the proposed development being compatible and in character with the surrounding built environment, it is not believed that the proposed removal of the conditions will have any impact, and nobody stands to gain anything by preventing the proposed development.

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

Granting the application will enable the property to be developed to be more in line with its existing rights (especially with respect to the DMS) and thus more efficiently. This will optimise the investment made by the owner.

Approval of the proposal will have a significant personal benefit for the owner of the premises by unlocking the full development potential of the property, and would enable the owner to rent out or sell (if a sectional title scheme is opened) the proposed 2nd and 3rd dwellings.

- (d) the social benefit of the restrictive condition remaining in place in its existing form;

It is our opinion that there will be no social benefits should the restriction remain in place. A “social benefit” implies the wider public, or society as a whole. Since the relevant conditions restrict the number of dwellings to one dwelling only, limit the permitted “built-upon” area of the erf, and restrict the development with respect to building lines, there is no apparent benefit to society if the conditions are retained, especially considering the nature, appearance and character of the existing surrounding built environment (where many, if not most, of the properties have been relieved of the same/similar title deed conditions, and have been improved over the building lines, etc.)

The retention of the “building lines” conditions would be at odds with the rest of the properties in this area. However, the removal of this condition will still not result in the entire building being developed closer to the street boundary which would impact on the intended character.

It is not believed that society will gain anything if these conditions remain in place. It stands to reason that there is likewise no undue impact on society if the conditions are removed.

If the conditions are not removed, the property can only be developed with one relatively small dwelling house, which would be considered as being out of character with the surrounding area, non-consistent with approved Council policy and frameworks, and an under-utilisation of the high-value land in a highly appropriate location.

Notwithstanding the removal of these conditions the development potential of the erf will still be further controlled by other mechanisms (e.g. the DMS) and will not result in impacts on the local or wider society.

It is not believed that society will gain anything if these conditions remain in place. It stands to reason that there is likewise no undue impact on society if the conditions are removed.

- (e) the social benefit of the removal, suspension or amendment of the restrictive condition; and

These restrictive conditions were imposed about 100 years ago when there were fundamentally different development requirements and availability of resources. At that time, planning and development was controlled in very different ways, and Cape Town was not subject to its current population and development pressures. Different concepts of appropriate and desirable land use prevailed. It should therefore come as no surprise that, many years after the title deed conditions were first imposed, residents are seeking to change some of the controls imposed through the restrictive title deed conditions (as they are indeed allowed to do in terms of the current and applicable legislation mechanisms).

The deletion of the restrictions will have a positive social benefit given that it will enable a desirable, attractive and upmarket development within the area. Incremental densification (i.e. “in-fill” development) within the established area – and especially of an existing vacant property, is considered to have social benefits. Bantry Bay is one of the most popular suburbs on the Atlantic Seaboard, with a high demand for housing stock. The proposal will add additional housing stock and a wider variety of housing options, which carry social benefits.

The better utilisation of the property in terms of modern urban development and without materially impacting on existing or other rights is also considered to be a positive social benefit.

The removal of the restrictive conditions will enable the creation of two additional housing opportunities (i.e. a second and a third dwelling, in addition to the permitted main dwelling house) in an area that is well located with respect to good economic, institutional, social and recreational opportunities, and in relative close proximity to public transport facilities. More compact urban environments have positive social impacts e.g. it limits urban sprawl, protect and optimise resources and infrastructure, create safer and more sustainable/viable communities, benefits the environment (less traveling; more people on buses), etc. This is underscored by the R1 zoning of the site which allows for up to three dwellings as a primary and additional use rights. In this regard the proposal is aligned with LUPA and SPLUMA with respect to “spatial sustainability and efficiency”.

As previously mentioned, the intended character has already begun to change due to the growing pressures for housing and more efficient provision of bulk services. These conditions therefore stand in direct contrast to the development guidelines envisioned in forward planning policy and the development opportunities encouraged in the DMS.

The further development of the site will create employment opportunities during the construction phase, as well as on completion (with reference to house staff that will be employed). This is considered in the interest of the social needs of the community of Cape Town.

The personal benefits that are conferred by these title deed conditions must be weighed up against the wider social benefit of removing the conditions, as well as the benefit to the applicant (land owner). It is believed that the benefits in removing these restrictive conditions outweigh any potential negative impacts as a result of the removal.

It is therefore believed that the proposal will have a material and positive social impact.

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

The application will not remove all the title deed conditions; the restrictive conditions pertaining to, for example, the “no subdivision” and the permitted “land use” of the property will remain in the title deed.

The conditions which are proposed to be removed are no longer considered relevant, and besides, the property will still be subject to the development rules as set out in the DMS.

Section 47 of SPLUMA states as follows:

47. (1) *A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended.*
- (2) *A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be 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 would deprive any person of property as contemplated in section 25 of the Constitution”.*
- (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”.*

Section 47 enables the Municipal Planning Tribunal to approve the application for removal of restrictions.

Section 25(1) of the Constitution expressly permits the deprivation of property rights provided that it is done in terms of a law of general application and is not arbitrary. Such laws have been purposefully enacted, with the removal of conditions specifically permitted and regulated by laws of general application (eg Section 47 of SPLUMA, Section 39 of LUPA and the City of Cape Town’s Municipal Planning By-law).

Given that the State will not acquire any property rights by removing the conditions, the approval will not constitute the arbitrary deprivation or expropriation of properties as contemplated and prohibited by the Constitution.

Appropriate residential densification is desirable and serves the public interest, as encouraged by all the approved City policies and development frameworks. Granting of the application to permit increased residential density on Erf 505 falls within this category and should be supported.

7. CONCLUSION

This report successfully demonstrates the *desirability* of the proposed removal of the conditions and the departures, as well as the *compliance* thereof with all the relevant adjudication criteria in SPLUMA, LUPA and Section 99 of the By-Law. The report also demonstrates consistency and compliance with all Council’s approved Frameworks, Strategies, Plans and Policies.

The proposal is considered to be entirely compatible and in character with the surrounding built environment. It is not believed that there will be any impact on existing rights, on the street scape, traffic, or on the abutting neighbours from a view, privacy or over-shadowing point of view.

Given the above, it is trusted that the Council will recognize the positive impacts and desirability of the proposal, and favourably consider and **approve** the application.

TOMMY BRUMMER TOWN PLANNERS