



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500160221

**Erf 96948, 17 Aberdeen Road,
Rondebosch**

Development Management

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Date: 8 March 2026 (as amended 19/08/2026)

Ref: 11800



PROPOSED REMOVAL OF RESTRICTIONS, DELETION OF CONDITIONS OF AN EXISTING APPROVAL, AND DEPARTURES: ERF 96948 CAPE TOWN AT 17 ABERDEEN ROAD, RONDEBOSCH

1. INTRODUCTION

This report is submitted as motivation for the proposed removal of two title deed conditions (which are also deemed to be condition of an existing approval), and departures, mainly to regularise existing alterations and additions to the dwelling house. Approval is also required to enable the proposed conversion of existing outbuildings into a second dwelling.



The property as seen from the north-west (inside the property)

The following approvals are required in terms of Section 42 of the City of Cape Town Municipal Planning Amendment By-Law, 2015, as amended ("the By-Law"):

1. Section 42(g) & (j): The **removal of restrictive title deed conditions** and to **delete the previous conditions of approvals*** from Deed of Transfer which read as follows:

Condition 1.A.(b): "That not more than one dwelling, together with the necessary outbuildings and appurtenances, be erected on this erf."

Condition 1.A.(d): "That no building shall be erected within 6,30 metres of any street line which forms a boundary of this erf. No building shall be situated within 1,57 metres of any adjoining erf, provided that this restriction shall not

apply to the common boundary of erven held as one erf under consolidated title."

*For ease of reference, this report will refer to the "removal or restrictions" which is meant to include both the removal of restrictive title deed conditions and the deletion of previous conditions of approval.

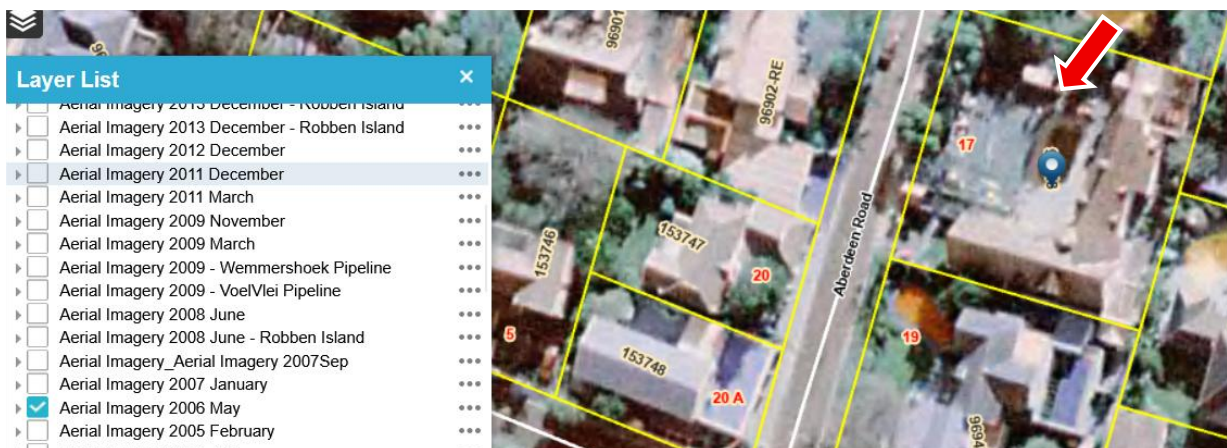
2. Section 42(b): **Permanent departures** from the Development Management Scheme (DMS) as follows:

- 2.1 From Item 22(c): To permit a portion of the existing garage and games room (2nd storey) to be 7.1m in height above the existing ground level (EGL) in lieu of 4m in height, within the 3m north common boundary building line.
- 2.2 From Item 22(d): To permit the proposed 2nd dwelling (a converted outbuilding), partially beyond 12m from the street boundary, to be 1.3m in lieu of 3m from the south common boundary (technical departure).
- 2.3 From Item 22(d): To permit the existing garage and games room (2nd storey) to be 0m in lieu of 3m from the north common boundary, and for the garage to be 1.39m in lieu of 3m from the east common boundary.

The following documents are attached to this report:

- Power of Attorney
- Certified copy of the Title Deed
- General Plan Sunnybrae Township
- Conveyancer's Certificate as prepared by **Mauritz Briers and Associates**
- Proposed plans as prepared by **Thaabiet Abrahams**
- Copies of approved building plans
- Record of pre-application consultation meeting
- (There is no bond)
- Affidavit from current registered owner
- Application form

The current owner of the property purchased it in 2025 (registration took place on 3 July 2025). The existing alterations and additions were done in approximately 2006, as can be seen on the time-lapse aerial photograph from the Council's map viewer. In terms of the Council's list of exemptions relating to administrative penalties, if the current owner was not responsible for the unauthorised building work, no admin penalty applies. The owner has provided the necessary affidavit in this regard.



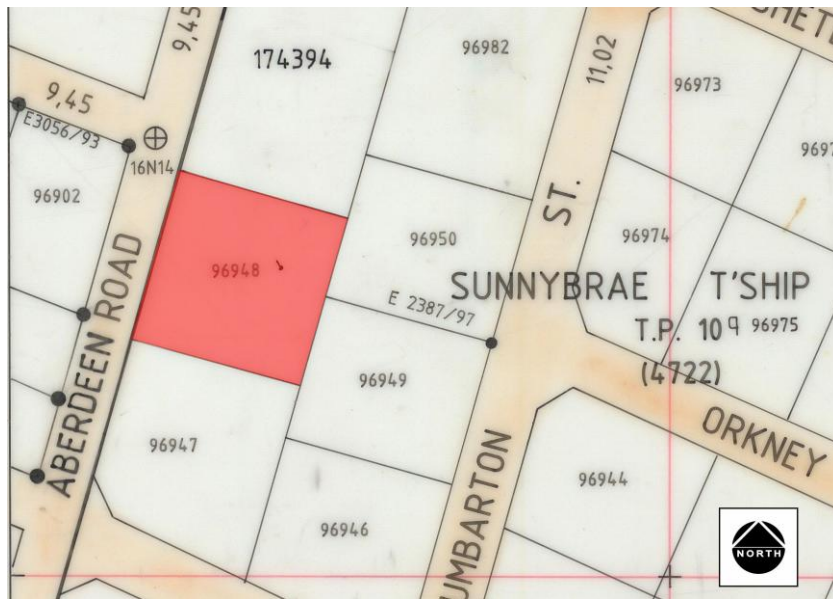
2. LOCALITY & PROPERTY PARTICULARS

The site is located on the eastern side of Aberdeen Road, in Rondebosch and forms part of the Sunnybrae Township Extension. It measures 991m² in extent, and is zoned R1. It is improved with a double storey, single dwelling house and some outbuildings, including a studio on the ground floor (all part of one building). Copies of the approved building plans are submitted with this application. The property has a Grade 3B Council grading. Although no material changes to the existing building is proposed, the necessary application in terms of Section 34 of the National Heritage Resources Act will be submitted to Heritage Western Cape (HWC), if required.

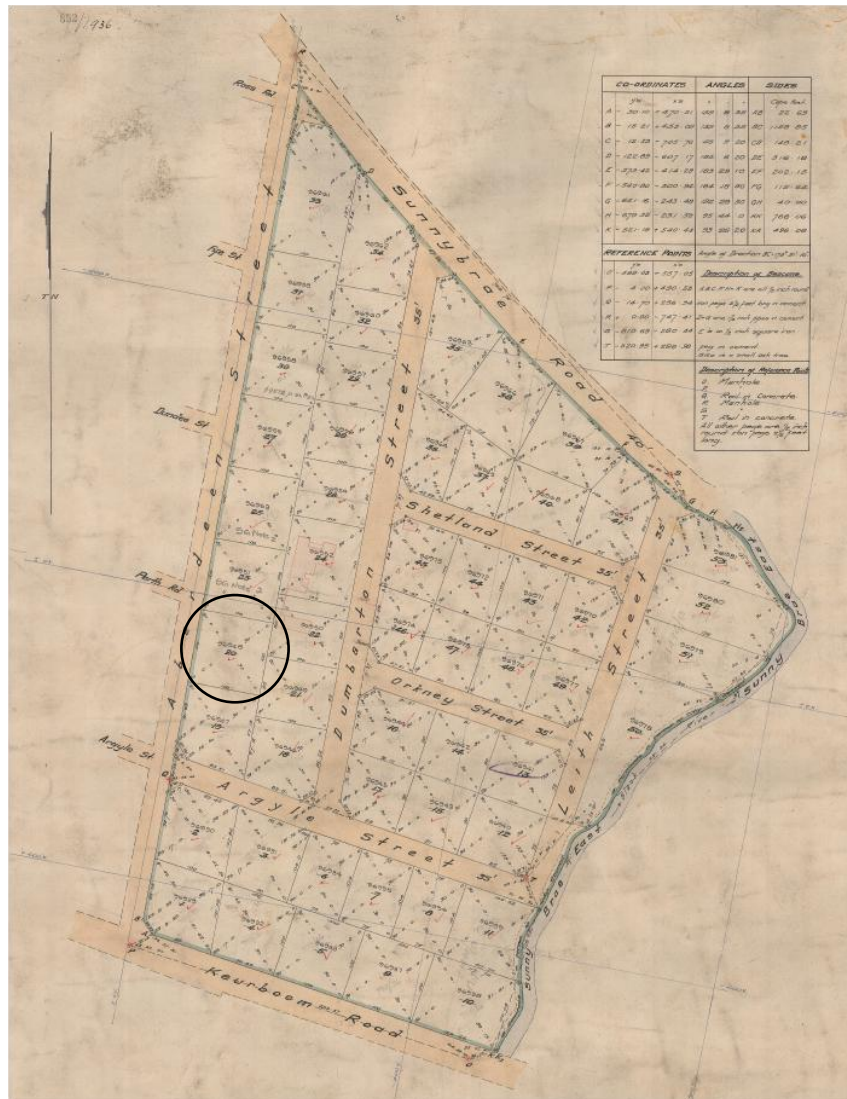
The site has two approved vehicle accesses from Aberdeen Road, which will remain.

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





The property forms part of the Sunnybrae Township which was laid out and approved in c 1936. As shown on the General Plan T.P. 10q, the Estate originally comprised 53 lots. The extract of the original Township layout is attached below, with the location of the subject erf indicated.



2.1 Title Deed and conveyancer's certificate

In terms of the conveyancer's certificate submitted, Erf 96948 is subject to the following conditions which are relevant to this application:

Condition 1.A.(b): "That not more than one dwelling, together with the necessary outbuildings and appurtenances, be erected on this erf."

Condition 1.A.(d): "That no building shall be erected within 6,30 metres of any street line which forms a boundary of this erf. No building shall be situated within 1,57 metres of any adjoining erf, provided that this restriction shall not apply to the common boundary of erven held as one erf under consolidated title."

The conditions were imposed by the Administrator in terms of Ordinance No. 33 of 1934 and are in favour of the registered owner of any erf forming part of this township. They are deemed to be restrictive title deed conditions as well as conditions of previous approval. The removal of the conditions is "mandatory" in order to enable the City to approve the application under consideration. The proposed removal and deletion are in terms of Section 42 (g) and (j) of the By-Law, and it must be advertised to every registered owner in the Sunnybrae Township extension (as per the General Plan).

3. DEVELOPMENT PROPOSAL

- The existing building will be retained in its current shape, envelope and appearance. There will thus be no visual (or external) change to the existing building.



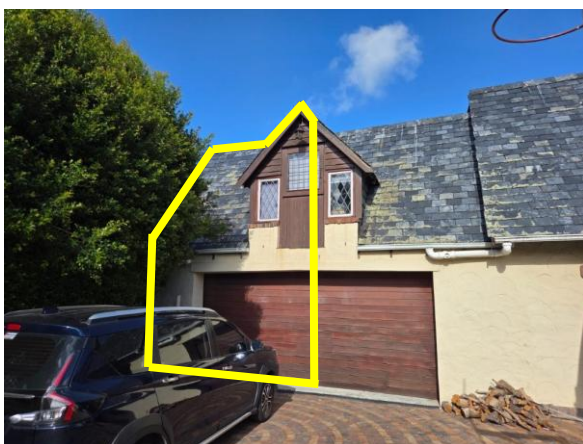
The Aberdeen Road façade of the property (which will remain unaffected)

- For ease of reference, the aerial photo below indicates the location of the various portions of the building which are to be discussion hereinafter:



- Nr. 1: Existing double garage and games room (2nd storeys)
Nr. 2: Existing store room (1st storey)
Nr. 3: Proposed 2nd dwelling (within existing building's footprint)

- The proposal is primarily to regularise the construction of the double garage with a games room directly above it (effectively the attic space), and which is within the north and east common boundary building lines (DMS and title deed). Note that only a 3m section of the garage and games room require a setback departure (not the entire structure).



The double garage and games room above*



Inside of the games room (2nd storey)

*The outline illustrates the approximate extent of the setback departure (3m from common boundary).

- In principle, the DMS permits a garage and outbuilding (i.e. the games room) to be within the common boundary building line subject to a height of 3.5m from existing ground level (EGL) to the top of the building and that it does not exceed a width of 6.5m when viewed from the street boundary. In the event:
 - The garage complies with the height but measures 7.1m wide when viewed from the street boundary, and it thus requires a setback departure.
 - The games room does not comply with the permitted 4m height or 6.5m width, and therefore requires a setback departure.
- The storeroom directly behind (east) of the garage is permitted within the common boundary building line (DMS).



Store room on ground floor, on the eastern common boundary, behind the garage

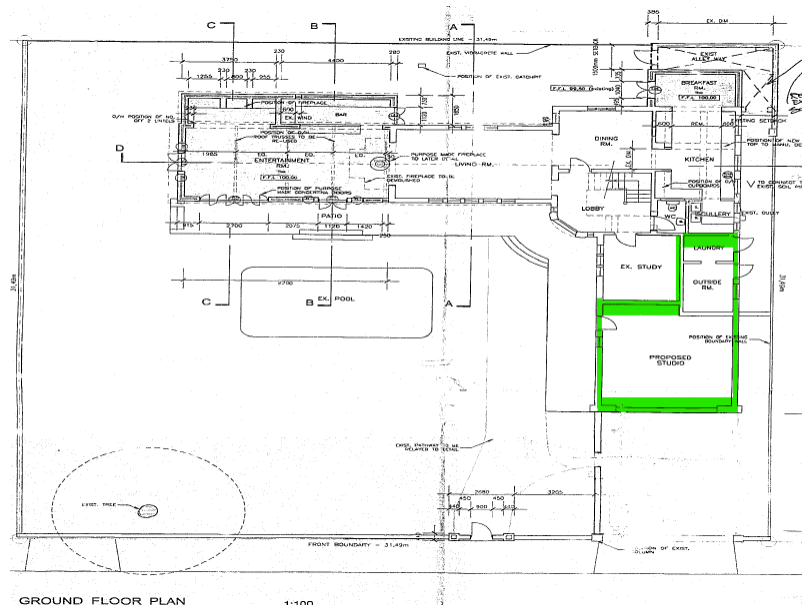
- The title deed does not permit any “building” within 1.57m of any adjoining erf, and the relevant condition is proposed to be removed/deleted.

- The existing (approved) studio and domestic staff quarters (both outbuildings) are proposed to be converted into a second dwelling (as per the extract from the approved building plan, below). The proposed conversion requires the removal/deletion of the relevant condition.

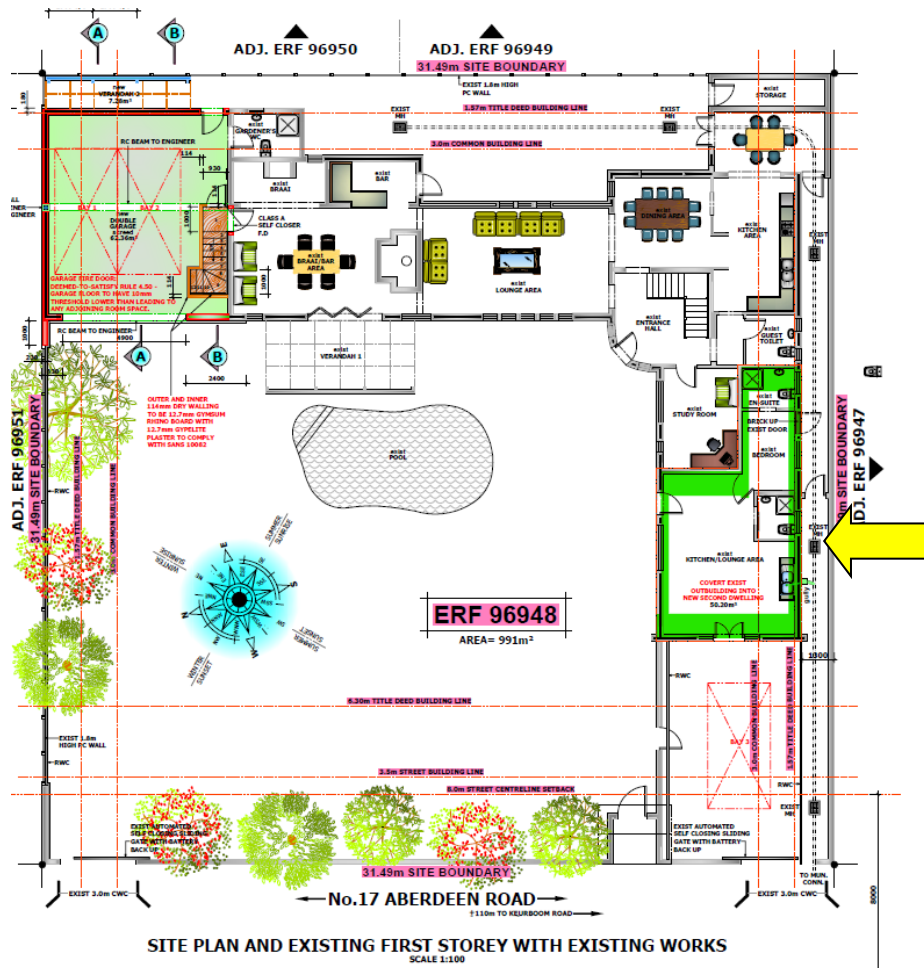


View of the dwelling from the forecourt/parking area. The existing studio on the ground floor/1st storey is proposed to be converted into the 2nd dwelling

Given that the use of the area will change from being an “outbuilding” to being a “second dwelling”, a setback departure to permit the proposed second dwelling within the 3m south common boundary building line will also be required (technical departure). The second dwelling, being on the ground floor, measures only 2.95m in height (within the common boundary building line).



Extract of the **approved** building plan with the existing outbuilding highlighted (to be converted into a 2nd dwelling)



Extract of the **proposed** plan with the proposed 2nd dwelling indicated

- The proposal complies in all other respects with the development rules of the DMS and the title deed:
 - The proposed floor space is approximately 522m² which complies with the permitted floor space of 1500m².
 - The existing buildings comply with the permitted 10m height above EGL (the games room is 7.1m in height above the EGL).
 - The DMS permits a main dwelling, plus a 2nd and 3rd dwelling, on the R1 zoned property. The proposed 2nd dwelling is therefore permitted.
 - At least 2 parking bays exist for the main dwelling, and 1 parking bay exists for the proposed second dwelling, which complies.
 - Notwithstanding the two carriageway crossings (CWC) have been approved, the street boundary measures >30m in length which permits two CWCs, and they are more than 12m apart, which is DMS compliant.
 - The existing built-upon calculation represents approximately 32% (319m²) which complies with the permitted built-upon of 50% (title deed).
 - The existing building complies with the 6.3m street boundary building line (title deed).

- For the reasons which will be motivated later in this report, it is considered desirable and necessary to **remove/delete the relevant restrictive title deed condition** as opposed to only amend them.
- The existing and approved street and common boundary walls remain unaffected.

4. DEVELOPMENT PROPOSAL

Section 48(4) of the By-Law, as amended, states that the Council must have regard to the following when considering the proposed removal of the title deed condition:

- (4) 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;*
 - (b) the decision-making criteria in section 99*; and*
 - (c) sections 42(1)(c) and 47 of SPLUMA.*

*This includes Sections 39(5) and 59 of the Western Cape Land Use Planning Act 3 of 2014 (“LUPA”) and Sections 7 and 47 of the Spatial Planning and Land Use Management Act 16 of 2013 (“SPLUMA”).

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

The proposed removal of the restrictive conditions is consistent with this criterium in the following respects:

- The DMS allows a main dwelling (primary right), a second and a third dwelling (additional use rights), and a supplementary dwelling (maximum of 50m² floor space) on R1 zoned erven.
- The proposed removal to permit a second dwelling is consistent with the DMS, as well as with approved Council policy with respect to contextually appropriate, sensitive and incremental densification.
- The DMS permits a street boundary building line of 3.5m and 3m common boundary building lines. In addition, Item 121 of the DMS permits certain structures (i.e. “buildings”) to be within the above-mentioned building lines (which is not aligned with those in the title deed).
- The result of the proposed removal will ensure a better alignment with the DMS.

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

4.2.1 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”. Densification and intensification of land uses are encouraged in this Area and should be supported.
- (b) The proposed departures do not alter the development rules relating to the permitted floor space or height with respect to the development rules of the next sub-zone (within a zone).

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

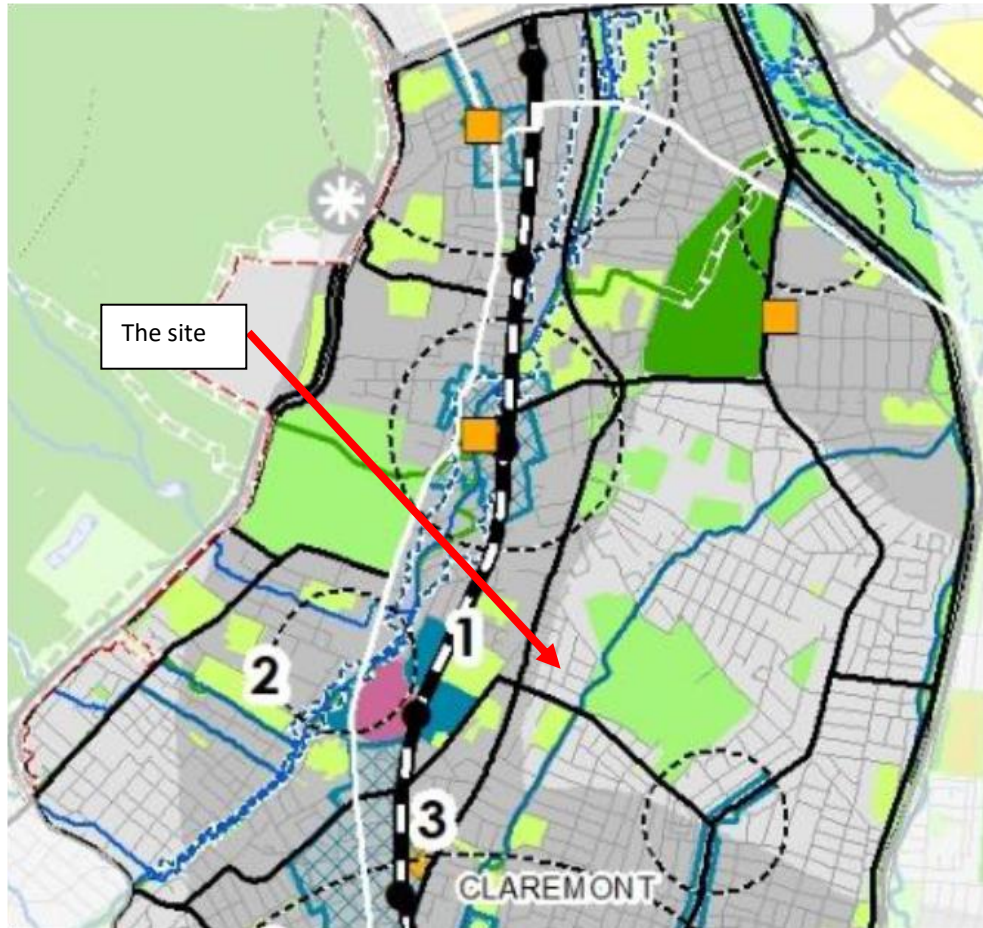
The application complies with the following relevant considerations:

(a) Applicable Spatial Development Frameworks

- The application is consistent with and supports the aims of the **Provincial Spatial Development Framework (PSDF)** as it supports higher densities, more compact settlement footprints to minimise environmental impacts (land use intensification), reduce costs and time impacts of travel and to enhance financial sustainability with regard to the provision and maintenance of infrastructure, facilities and services.
- The application is consistent with the **MSDF** and its Policies which promotes contextually appropriate densification and intensification of lands use. The erf is situated in the Urban Inner Core where “spatially targeted investment and land development to spatially transform and integrate the city form” is promoted.
- The proposal is consistent with the **Southern District Plan** which promotes contextually appropriate densification. The site is in “Sub-District 3: Mowbray to Muizenberg” and located in the area identified as “existing urban development”. It is in close proximity to Palmyra and Keurboom Roads which are both identified “connector routes”, and approximately 50m east of the identified Development Corridor.

The vision for this area is that of a highly diverse city environment that is adaptable to changing social, economic and environmental dynamics, and which offers a wide range of urban forms and opportunities to which an increasing number of people can have access. The area is encouraged to have “distinctive higher residential areas” which offer a wide range of living options, such as second dwellings; in fact, the Plan stipulates that “a significant increase in the number of dwelling units in the area is envisaged”.

The proposed second dwelling (which only measures approximately 40m² in extent), and which is contained within the existing footprint and envelope of the building, is consistent with the Plan, and a desirable form of incremental and sensitive densification and land use intensification.



- **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 second dwelling which helps to create a more compact city, is consistent with the TOD and its principles.

(b) Relevant Criteria in the DMS

The application complies with relevant criteria contemplated in the DMS, i.e. the proposal is desirable when assessed in terms of the adjudication criteria set in out Section 99, as well be dealt with further below.

(c) Applicable Policies Approved by the City

- ❖ Densification Policy: The proposed second dwelling is consistent with the aims of this Policy as it will/is:
 - facilitate a more compact city in a responsible, sensitive and incremental manner (containing urban sprawl),
 - improve the city's efficiency and sustainability,
 - increase the choice or variety of the housing stock in a popular area (close to a large number of schools), and
 - in character with the surrounding built environment with respect to land use, the urban grain, and the character of the area.

- ❖ Inclusive Economic Growth Strategy: The proposal will directly support the Strategy by having a positive impact on the overall growth of the City's GDP (critical in comparison with the population growth).
- ❖ Social Development Strategy (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 is consistent with the SDS by creating and adding another dwelling unit to the housing stock available.

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

This aspect will be discussed in more detail under Section 4.2.3 below.

(e) Impact on Existing Rights

It is not believed that the proposal will have any material impact, if any, on existing rights for the following reasons:

- The building (including the subject double garage, games room and veranda – “the outbuildings”) has been in existence since at least about 2006 when the then-owner must have constructed it. It has therefore been in existence for 20 years already, and all the neighbours are well-familiar with the existing footprint and envelope. The building is part and parcel of the immediate urban landscape and the neighbours have clearly grown accustomed and comfortable with it (as far as known no objections have ever been submitted).
- There will be no physical extension or change to the existing footprint, envelope or appearance of the existing building or the property as a whole.
- The outbuildings are situated towards the very rear of the property and has no impact on the street scape.
- The outbuildings have no impact on privacy of the two properties (Rem/Erf 174394 & Erf 96950) that it abuts.



The view from the 2nd storey games rooms window towards the east (Erf 96950)

- The above-mentioned two neighbouring properties are orientated towards the north-west and due east, respectively, and therefore face away from the subject erf.
- It is noted that outbuildings are permitted, in principle, within the common boundary building lines (in terms of the DMS). In the case of the double garage it would have been permitted on the 0m common boundary building line was it not for the fact that the façade of the garage which faces the road, is slightly wider than 6.5m. This has no impact on the neighbour (or the street).

The games room above is higher than permitted, but also has no impact (no over-looking features) and no over-shadowing.

- The proposed 2nd dwelling will be accommodated within the existing footprint and envelope of the building (the approved studio and domestic staff quarters will be converted and internally linked). The building will remain at the same distance as presently from the southern common boundary with Erf 96947. The proposal will in fact have a positive impact on this abutting neighbour given that the existing domestic entrance (which is next to the common boundary) will be blocked up (the second dwelling will take access from the west (from the street side) and from the north (from the garden side).
- The proposed 2nd dwelling will therefore have a positive impact on the abutting neighbour from a privacy point of view. It is not believed that there will be any impact from a noise perspective.
- The proposed 2nd dwelling is relatively small (only approximately 40m²) and could, at most, only accommodate a maximum of two persons (it is in fact earmarked to be used by the parents of one of the owners).
- The proposed 2nd dwelling has its own access (from Aberdeen Road) and on-site parking.
- The proposed is compliant with approved Council policy and other statutory legislation, which is considered to not have any (material) impact on existing rights.
- Most of the surrounding properties have been improved in contravention of the title deed conditions and the DMS building lines; the proposal is therefore entirely in character with the surrounding built environment.
- The property will remain to be regulated by the provisions of the DMS.

(f) Consolidation

Not applicable.

(g) Relevant National or Provincial Legislation

The applications comply with all other National and Provincial legislation.

4.2.3 Motivation in terms of Section 99(3) of the By-Law (desirability with respect to the following criteria):

(a) Socio-economic Impact

- The proposal will provide in the demand for relatively smaller and more affordable residential accommodation in a well-located area.
- The increased rates and taxes as a result of the improvement of the property (2nd dwelling) will benefit the City.
- The proposal will create a more compact city (more sustainable) and a more robust and vibrant neighbourhood, which is generally considered desirable and positive.
- The property is in close proximity to a number of schools in the immediate area which is positive from a socio-economic point of view.
- The proposal will optimise the use of the property, thereby also optimising the owner's investment and returns.

(b) Compatibility with Surrounding Uses

- The proposal is for residential purposes which is entirely compatible with the surrounding land uses (which are also for residential purposes).
- The proposal will not have any material impact on the density of the area, and is fully compatible with the character of the surrounding built environment with respect to urban grain, setbacks (most of the properties have been developed over the building lines), height and appearance.
- There is no impact on the street scape.

(c) Impact on External Engineering Services

It is not believed that there will be any impact; however, the application will be circulated by the City to the various branches for comment.

No Development Contribution is payable for the 2nd dwelling, given that it is less than 60m² in extent (as per the Development Charges Policy).

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

It is not believed that there will be any negative impact on the safety, health and wellbeing of the surrounding community. On the contrary, the proposed development will mean that more people will reside in and move around the area (albeit in a limited way – given the small size of the proposed 2nd dwelling), which generally has a positive impact on the overall safety of an area due to increased levels of surveillance which deters anti-social behaviour.

More sustainable and vibrant neighbourhoods are considered desirable and generally ensure safer and healthier communities in principle.

(e) Impact on Heritage

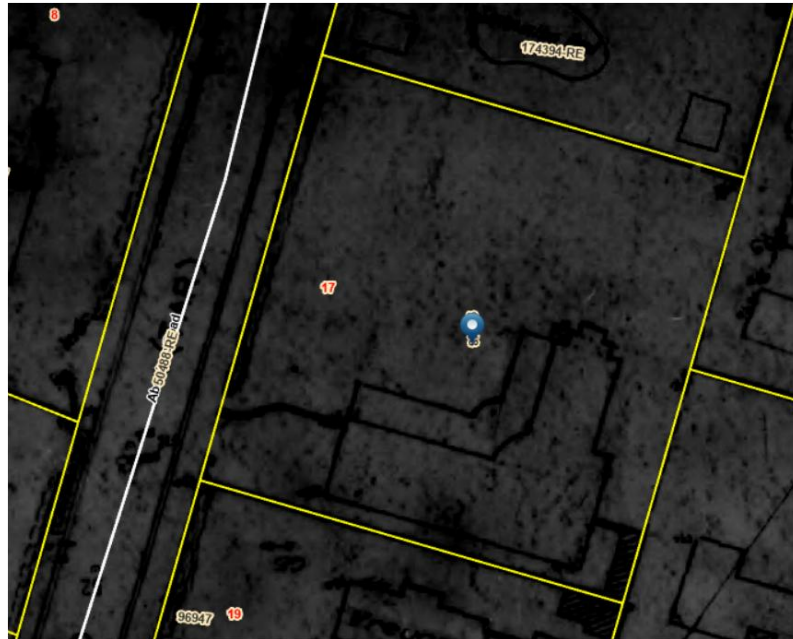
It is not believed that the proposal has any impact in this regard: although the property has a Grade 3B grading, the original dwelling (refer to its original footprint on the extract below) has been altered by substantial additions over the decades (refer to copies of approved building plans submitted). In addition, the “historic” core of the original dwelling house will and has not been affected by the building work in question (which is either internal to the building, or to the far side – at the extreme north – of the original dwelling house). In fact, with the outbuildings having been constructed by a previous owner as far away as possible from the original core of the dwelling it ensures a zero impact on the original, and main, façade of the old house, which is positive and desirable from a heritage point of view (besides making sense to take straight access from the street to the double garage).

The following photo illustrates the location of the outbuildings in relation to the older, main dwelling house:



The outbuildings which are partially the subject of this submission are entirely in character with the existing building (with respect to height, appearance, roof form, material etc.)

The property is not in a HPOZ. However, comments from a registered heritage practitioner will be obtained and if necessary, the required Section 34 application will be submitted to HWC if required.



Extract of the City Survey Map of 1944-1966 showing the original dwelling's footprint.

The proposal is considered to be **desirable** for the following reasons:

- The proposal is primarily to regularise the unauthorised building work which was done by a previous owner. It is considered desirable to obtain the necessary land use approvals (in terms of the DMS and the title deed) – even retrospectively, to regularise the existing building work.
- It also appears that the existing and approved dwelling was built slightly closer than 1.57m from the south common boundary; the proposed removal of the “building line” title deed condition will mean that the approved building no longer contravenes this condition.
- The proposed conversion of an existing outbuilding (studio and domestic staff quarters) is desirable and needed in order to allow the parents of the one owner to also reside on the same property, but in a separate and self-containing (small) unit.
- The DMS is considered to be the more desirable document to regulate the development of properties, hence the recent By-Law amendment (Section 48(4)(a)) with a new adjudication criterium as to whether the result would mean a better alignment with the DMS.
- The approval will ensure that the façade of the heritage (main) dwelling will remain unobstructed, as it would mean that the existing garage with games room, as well as the store room at the rear of the property, can remain where they are (and are therefore for all intents and purposes “out of the line of sight” (of the main dwelling)).
- The proposal is also considered desirable given that there is no material, if any, impact on any of the surrounding neighbours, on the area, or on the street with regard to views, privacy, over-shadowing, or appearance.

(f) Impact on the Biophysical Environment

There will not be any impact on the biophysical environment: since the proposal is entirely within the existing footprint and envelope, no excavation or removal of trees is required.

(g) Traffic, Parking and Access

The proposal will have a positive impact in this regard:

- Sufficient on-site parking is provided for the existing main and proposed 2nd dwelling (there is no parking departure),
- The two existing (and approved) CWCs will remain,
- There is no nett increase in the number of vehicles which currently park (or can park) on the site,
- The additional traffic generated by the proposed 2nd dwelling will have a negligible impact on the traffic, which is easily handled by the road network, and
- Excellent sight distances occur in Aberdeen Road (into both directions) – see below:



Aberdeen Road in a southern direction



Aberdeen Road in a northern direction

(h) Imposition of Conditions and Mitigation of Adverse Impacts

The Council is empowered to impose reasonable and appropriate conditions of approval.

4.3. Motivation in terms of LUPA and SPLUMA

4.3.1 Section 59 of LUPA & Section 7 of SPLUMA

(i) The proposal is consistent with Section 59 of LUPA & Section 7 of SPLUMA:

- The proposed form of densification and intensification of land use will help to limit urban sprawl and to create a more spatially compact city through incremental and contextually appropriate densification which is within fiscal, institutional and administrative means. Cumulatively, the proposal will help to lessen the pressure for development elsewhere and where the poor are almost always marginalised (on the periphery of the city). The proposal will help to protect prime and valuable agricultural land and will have a positive impact on the environment (principle of spatial justice & sustainability).
- Contextually appropriate densification, such as the proposed, will optimise the use of existing land and infrastructure, thereby curbing costs for the City and ultimately the general public (principle of efficiency).

- The proposal is considered to be a desirable form of contextually appropriate densification, and will facilitate spatial resilience by allowing better housing options to residents (spatial resilience).
- The processing of the application at the hand of the prescribed processes and in terms of applicable law, represents the principle of good administration.

4.3.2 Section 39(5) of LUPA & Section 47 of SPLUMA

The title deed conditions to be removed and deleted were imposed when the Sunnybrae Township was created in c1936. At the time zoning schemes did not exist and thus title deed restrictions were the method used to achieve a particular look and feel of an area, in order to set the development parameters and uses permitted on an erf.

Subsequent to the creation of the township, zoning schemes were established to regulate land use development and character within Cape Town. In addition, in later decades, specific development and spatial policies were created to guide spatial transformation of the city over the long-term. These included and covered aspects relating to residential densification as well as the urban character of areas. In most cases, these changes ended up promoting a different development form to those that were originally set out in the area's title deed (or envisioned by the original township developers).

These original conditions appear to have intended for the township to have a relatively low-medium density. However, many changes have occurred in the area e.g. some erven have been subdivided, and a large proportion of the erven have been developed over the permitted building lines (street and common boundaries). The character of the area is no longer the same as originally intended by the township developers.

4.3.2.1 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 unlikely that the restrictions relating to the “one dwelling only” and “building lines” currently add any **financial** value to the owners of properties within this Township. The subject erf lies on the extreme western boundary (i.e. on the periphery) of the Township, with all the other erven in the entire Township being to the north, east and south. The subject erf is therefore relatively isolated (from the rest of the Township) by reason of its location.
- A very large number of properties in the City, including in the subject Township, had (or must have had) their title deed conditions removed/amended (e.g. to permit more than one dwelling house, or to remove building line and/or built-upon restrictions). There is no evidence that the properties' values surrounding those erven have dropped as a result of such removal/amendment of conditions. On the contrary, the values of properties in the City (in general) as well as those of the erven in the sought-after southern suburbs such as Rondebosch have been consistently higher over the years.
- In the almost 100 years since these conditions were imposed in 1936, urban environments, town planning (approaches and thinking) and personal perceptions of “what represents a good and quality environment” have changed dramatically. The

financial value attached to properties and title deed conditions at the time of the Township's creation is significantly different compared to the sentiments in 2025 for a wide variety of reasons.

- The societal needs change over time and whilst some people may see improved value with these changes, others may not. Some owners may therefore choose an area with a relatively low-density character, whereas other may have the opposite view and prefer (or don't mind) higher-density living (not that the proposed 2nd dwelling represents a material increase in the density).
- There are many other factors that positively impact on the value of a property, e.g. the particular location thereof, views, proximity to social facilities and/or employment opportunities, security of the area, heritage impacts, an attractive architectural design, type of housing (e.g. "lock up and go"), etc. The fact that there is only one house per erf is thus not necessarily a prerequisite to ensure and protect the financial and other rights enjoyed by the holders of this right.
- It is our opinion that the relevant conditions currently have a negative financial value on owners of property within the Township as it restricts their ability to develop additional residential opportunities in a well-located area or to optimise the development potential of their properties. By retaining these conditions, the Council would not be able to adequately respond to the market needs of well-located housing in Cape Town.
- The proposed removal of the restrictions will also enable the owner to regularise those portions of the building which have been constructed by previous owners (e.g. the outbuilding) and even the main dwelling itself (the southern external wall of the house was approved at a distance less than 1.57m from the south common boundary).

It will also enable the existing studio and domestic staff quarters to be converted into a 2nd dwelling for the use of their parents.

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

- We are of the opinion that the title deed conditions do not hold any material **personal benefits** for the holders of the rights, which relates to the character of the area with respect to its density and built form (i.e. proximity to the street and common boundaries).
- Firstly, it is not believed that the proposal will have any meaningful or undue impact on the character of the area.
- Given that a large number of the erven in the Township have already been developed in contravention of the title deed conditions (e.g. by means of a previous land use application to remove/amend the relevant conditions) means that a large number of the "holders of these rights" themselves no longer comply with these restrictions.
- It is therefore not believed that the holders of these rights still enjoy any particular personal benefits in terms of these restrictive conditions.
- The character of the area is also protected by the development rules in the DMS and any processes contained in the By-Law. In addition, the restrictions which prohibit

subdivision, a 50% built-upon area, and a residential land use only, will remain in the deed.

(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 owner to, firstly, regularise the existing (unauthorised) building work, and second, to convert a portion of the building into a 2nd dwelling for their parents. No further building work is proposed.
- The ability to use the property more efficiently by means of the relative higher density will add considerable value to the property for the owner.

(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 restrictions remain in place. A “social benefit” implies the wider public, or society as a whole. Accordingly, there is no apparent benefit to *society* if the “one dwelling” and the 6.3m street boundary building line and 1.57m common boundary building line conditions are retained.
- *Society* will not gain anything if these conditions remain in place.
- If the conditions are not removed the site will remain as is and it will lose the opportunity of being developed with a 2nd dwelling, which is consistent with and in support of approved Council policy. It will also mean that portions of the existing structures will remain in situ without approved building plans. Given the important benefits of contextual and appropriate densification and land use intensification which is consistent with Council Policy, it is considered that there are no social benefits in retaining the restrictive conditions.

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

- The restrictive conditions were imposed approximately 100 years ago when there were fundamentally different development requirements and availability of resources. At the time, planning and development was controlled in very different ways. Cape Town was not subject to its current population and development pressures, and different concepts of what is considered to be appropriate and desirable land uses and developments 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, such as restrictive title deed conditions, so many years ago.
- The proposed removal will have a positive social benefit given that it will enable the property to be developed with one additional dwelling unit within an existing urban area, and to enable the regularisation of the other unauthorised building work. This represents efficient land use.

- The removal will add to the housing stock in a popular and well-located neighbourhood (close to many schools) and will, at the same time, provide a bigger variety of housing options (types) in the area which is easily accessible.
- The proposal will contribute towards contextually appropriate and incremental/sensitive residential densification in accordance with the recommendations of City's spatial planning policies. This, in turn, will help to curb urban sprawl and the associated negative impacts on the environment and agricultural land. And this is also considered to be in the social, or public, interest.

(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 proposal will only remove two restrictive conditions from the title deed. The other conditions will remain in place (i.e. the "no subdivision", "50% built-upon", and "residential purposes only" conditions will remain).
- The DMS will remain to be the main regulatory document to control the development of the site. The surrounding property owners' rights will therefore continue to be protected by the DMS. It is noted that the DMS carries a 3m common boundary building line restriction, which is *more onerous* than the 1.57m common boundary title deed building line (which is proposed to be removed).

4.3.2.2 Section 47 of SPLUMA

The removal of the restrictive title deed conditions will not deprive any person's rights of property as contemplated in Section 25 of the Constitution, as illustrated above, and as set out in the City's forward planning policy, including the Southern District Plan. Residential development and appropriate intensification serve the public interest and is considered desirable. The property will still be subject to development rules contained with the DMS (as well as other conditions in the title deed), which in our opinion are more relevant in today's context. The proposal is therefore considered to be compliant with Section 47 SPLUMA and can thus be assessed in terms of the desirability criteria set out in this report.

5. CONCLUSION

The desirability of the proposed removal and deletion of the relevant title deed conditions, and minor departures, have been comprehensively demonstrated and motivated above.

The proposal is considered to be a desirable form of incremental and sensitive densification and land use intensification in a well-located and contextually appropriate location.

The proposed development is considered to be wholly compatible with the character of the surrounding built environment with respect to aspects such as the land use, urban grain (density), architectural style, massing and scale. In fact, the existing footprint and envelope of the building on the property will remain unaffected as the application is primarily to regularise existing building work.

It is not believed that there will be any external impacts, or any impact on existing rights.

The proposal was shown to be compliant with various approval Council Policies, Strategies, as well as the PSDF, the MSDF and the District Plan. The proposal also satisfies the adjudication criteria as contained in SPLUMA, LUPA, as well as Sections 48 and 99 of the By-Law, and as such it should be **approved**.

TOMMY BRUMMER TOWN PLANNERS