



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500161069

**Erf 115, 9 Salisbury Avenue,
Bishopscourt**

Development Management

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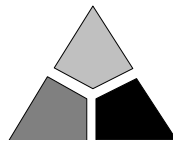
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**ERF 115, 9 SALISBURY AVENUE, BISHOPSCOURT: APPLICATION FOR
AMENDMENT OF A TITLE DEED CONDITION AND CONDITION OF EXISTING
APPROVAL AND DEPARTURE IN TERMS OF SECTIONS 42(g) 42(j) AND 42(b)
RESPECTIVELY OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING
AMENDMENT BY-LAW, 2025**

MOTIVATION REPORT

19 March 2026

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



M A Smith
Town and Regional Planner

1. INTRODUCTION AND APPLICATION DETAILS

- 1.1 The owners of Erf 115, 9 Salisbury Avenue, Bishopscourt (the subject property) want to erect a car port on their property in the position shown on the Site Development Plan below. There is a title deed condition which restricts any structures within 3,15m of the common boundaries of the property.

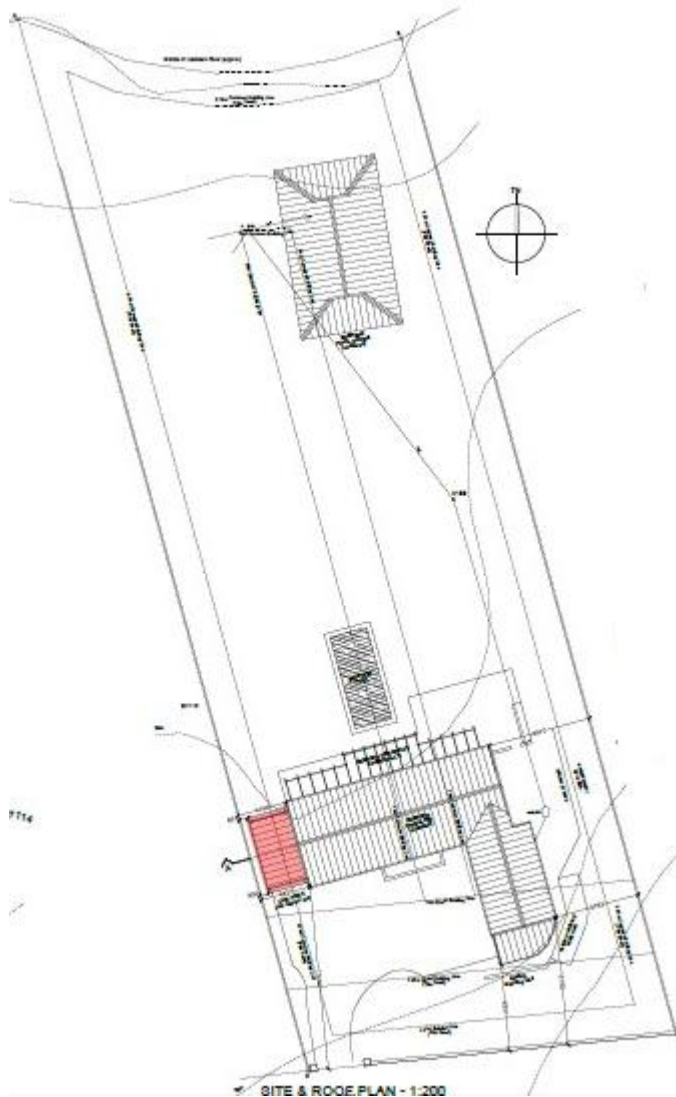


Figure 1: Proposed Car Port shaded in red

- 1.2 This application is to **amend Condition IV.4.** of the title deed (and the same condition of deemed approval) in terms of section 42(g) and 42(j) respectively of the MPBL, which states that no structures may be erected within 3,15m of any common boundary.
- 1.3 The condition to be amended will read as follows – [] denotes proposed amendment

Condition IV.4. in the Deed of Transfer

“THAT no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than Seven comma eight seven (7.87) metres to any street line which forms a boundary of this erf. No such building or structure [**except car ports and garages**] shall be situated within Three comma Fifteen (3.15) metres of any boundary common to an adjoining erf”

1.4 Application is also made for a permanent departure as follows:

Item 109(b)(i) of the DMS – to permit the proposed car port to be 0,821m in lieu of 6m from the south-western common boundary

1.5 On 29 January 2026, council approved an application submitted prior to the October 2025 MPBL amendments for the following permanent departures with respect to the property:

(i) Item 109(b) of the DMS – to permit the proposed garage extension to be 12,185m in lieu of 15m from the street boundary (Salisbury Avenue)

(ii) Item 109(b) of the DMS – to permit the proposed garage extension to be 3,15m in lieu of 15m from the north-eastern common boundary

(iii) Item 109(b) of the DMS – to permit the proposed conservatory to be 3,15m in lieu of 15m from the north-eastern common boundary

1.6 The building plan in respect of the above approval was approved on the 16th of February 2026.

1.7 The 29 January 2026 LUM approval and approved building plan are submitted with the application documents.

2. OWNERSHIP AND PROPERTY DETAILS

2.1 Title Deed Ownership and Extent

The property is owned by _____, held by Deed of Transfer No. _____. It is 3 357m² in extent.

2.2 Mandate

Michael Allan Smith is authorized to submit this application on behalf of the registered owners by virtue of the Power of Attorney submitted with this application.

2.3 Locality and Character of the Area

The property is situated at No 9 Salisbury Avenue in Bishopscourt. The subject property is in an area that can be characterized as a very high income, very low density, suburban, residential area set on undulating topography, and by the numerous trees and good views of the mountains. The surrounding properties typically contain large, detached dwelling houses with large mature trees.

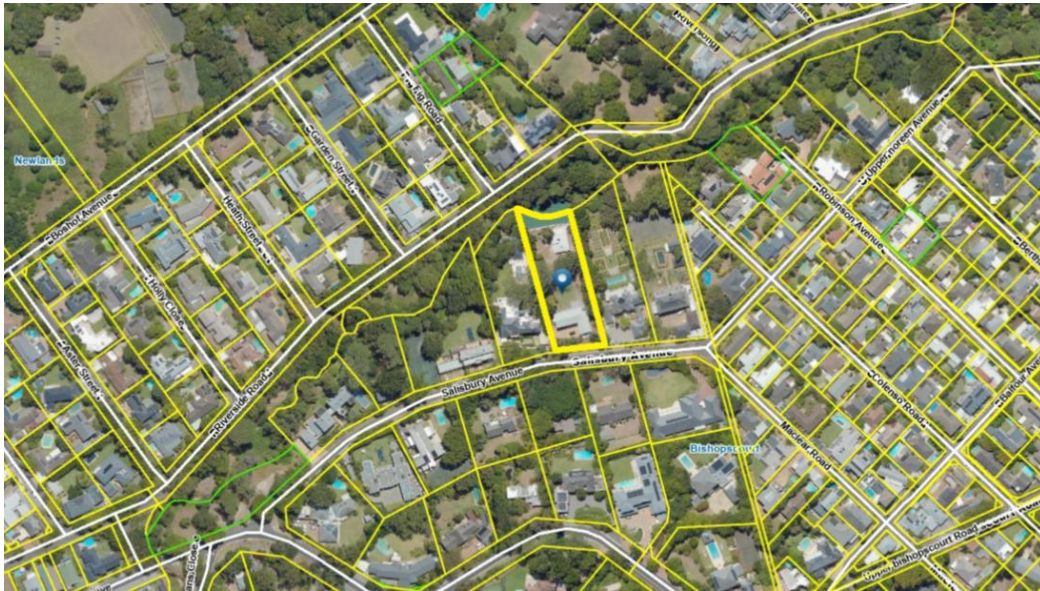


Figure 2: Locality of the site

2.4 Title Deed Conditions

Condition IV.4. in the Deed of Transfer is restrictive, and application is duly made to amend the condition and the same condition of deemed existing approval.

2.5 General Plan

The property forms part of the General Plan known as Bishopscourt Township Extension No. 1.

2.6 Zoning

The subject property and those to the east, west, and south are zoned *Agricultural (AG)* and those further north and east are *Residential 1 (R1)* in terms of the Development Management Scheme (DMS) of the City of Cape Town Municipal Planning Bylaw (MPBL). Erf 49909 to the north is zoned *Open Space 2 (OS2)*.



Figure 3: Extract from Zoning Map

2.7 DMS Development Rules

The property currently complies with all the development rules in the DMS for *Agricultural* properties, except building line setbacks, for which departures have been approved in February 2026.

3. THE PROPOSAL (SEE SDP / BUILDING PLAN)

- 3.1. The purpose of this application is to permit the erection of a car port on the property as shown in **Figures 1, 4, 5 & 6**.

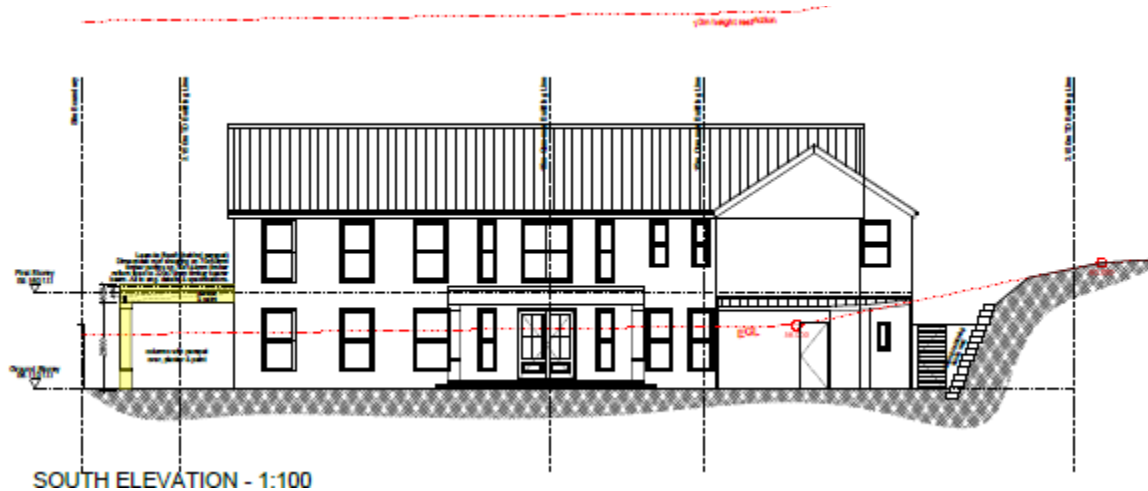


Figure 4: South Elevation Showing the Proposed Car Port



Figure 5: North Elevation Showing the Proposed Car Port



Figure 6: West Elevation Showing the Proposed Car Port

4. ALIGNMENT OF THE PROPOSAL WITH PLANNING POLICIES

4.1 Provincial Spatial Development Framework

Since the Provincial SDF demarcates the site as being suitable for Urban Development purposes, the proposed additions & alterations are consequently in line with the policies of the Provincial Spatial Development Framework.

4.2 Municipal Spatial Development Framework

The Municipal SDF calls for the creation of an efficient urban structure, through encouraging high density, mixed uses and development in appropriate areas.

The subject property is situated in a transformation area defined as an “*incremental growth and consolidation area*”, as identified in the MSDF, 2023.

The proposal is simply for the addition of a car port on the property. It is therefore considered that the proposals of this application are in alignment with the MSDF, 2023.

4.3 Inclusive Economic Growth Strategy (IEGS)

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

4.4 The District SDF: Southern District Plan - Sub-District 2: Bishopscourt /Constantia Tokai

The subject property is situated in an area identified as “Urban Development”. One of the primary spatial development objectives is “*to maintain and enhance the unique sense of place and character of these valleys.*”

Since the proposals of this application are simply to permit the addition of a car port on the property, it is seen to be generally in line with the District Plan.

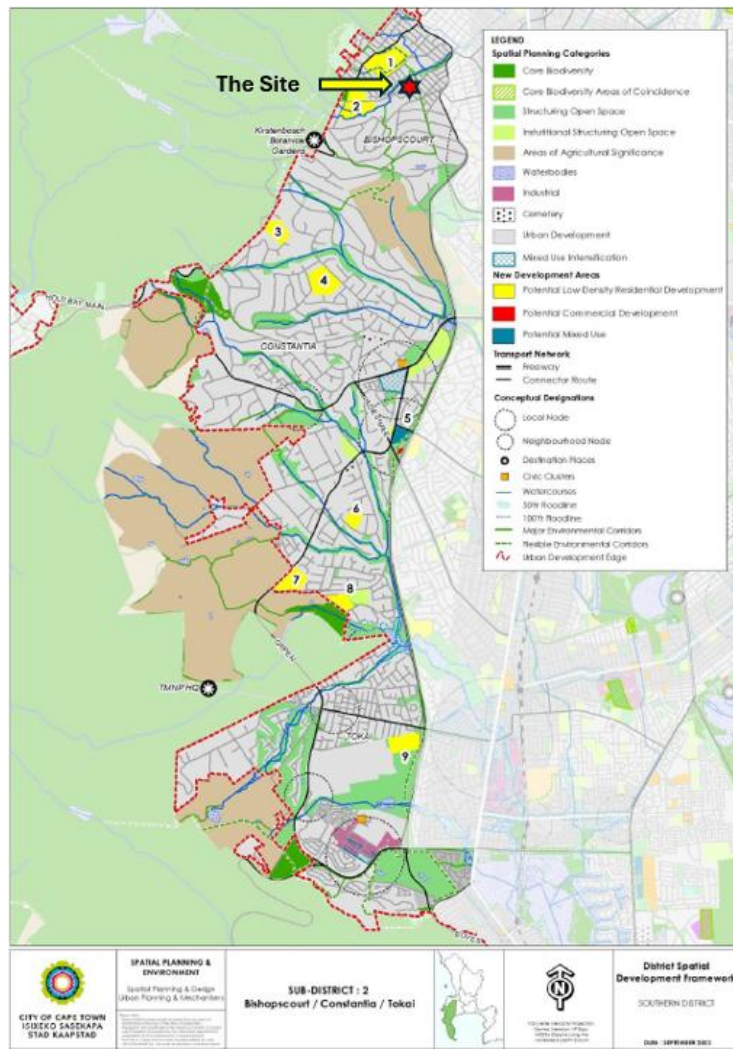


Figure 7: The site is in an area identified for “urban development”.

5 SECTION 99 OF THE BY-LAW

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

- (i) *“The proposed use or development of land must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible.”*

This application is consistent with the MSDF, as discussed in section 4.1 of this report.

- (ii) *“In the case of an application for a departure to alter the development rules relating to permitted floor space or height, approval of the application will not have the effect of granting the property the development rules of the next subzone within a zone and the approval of an application for a departure to alter the development rules relating to permitted floor space or height that does not exceed 10% of the maximum height or floor space of the existing subzone does not trigger the minimum threshold requirement.”*

This is not applicable.

- 5.2 Section 99 (2) of the By-law states that *“If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision-maker must consider all relevant considerations including, where relevant, the following:”*

(a) *Any applicable Spatial Development Framework*

This has been discussed in section 4 of this report.

(b) *Relevant criteria contemplated in the development management scheme*

The relevant criteria in the DMS have been discussed in section 2.7 of this report. The property complies with all the development rules for AG properties in the DMS.

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

The proposal is generally compliant with all relevant policies and strategies approved by the City to guide decision making, as discussed in section 4 of this report.

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

See section 5.3 below:

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

The impact on existing rights will be limited. The development rules will not change. The proposed new car port is low-key and will not impinge on any neighbour's rights. There will be no impact on existing views and no impact on the street (Salisbury Avenue). Furthermore, the well-established trees and vegetation along the south-west common boundary will effectively screen the proposed car port from the view of the neighbouring property, so there will be no visual impact.



Figure 8: The trees & vegetation on the SW common boundary of the property screen the car port from view of the neighbours – there will be no visual impact.

- (f) *In an application for the consolidation of land unit –*
 - (i) *the scale and design of the development*
 - (ii) *the impact of the building massing*
 - (iii) *the impact on surrounding properties; and*

This is not applicable.

- (g) *Other considerations prescribed in relevant national or provincial legislation, which includes the development principles as contained in section 47 of the Spatial Planning and Land Use Management Act, 2013 (Act no. 16 of 2013).*

This is discussed in section 8 of this report.

(h) *Whether the application complies with the requirements of this By-law*

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

5.3 *The following considerations are relevant to the assessment of the desirability of the proposed use or development of land:*

(i) *socio- economic impact*

The socio-economic impact will be positive, providing enhanced residential accommodation in a well-established sought-after area.

(ii) *compatibility with surrounding uses*

The proposal is compatible with the surrounding uses. It is entirely residential. The proposed addition of a car port is low-key and will tie in with the existing architectural style of the property.

(iii) *impact on the external engineering services*

There will be no impact on external engineering services. The proposed car port will not add any load to existing services.

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

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

(v) *impact on heritage*

There will be no impact on heritage. The subject property is not situated in a HPOZ.

(vi) *impact on the biophysical environment*

There will be no adverse impact on the bio-physical environment. The area within which the property is located is not sensitive in terms of the bio-physical environment. No existing trees will be affected.

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

There will be no impact on traffic, parking or any other transport-related considerations.

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

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

6. AMENDMENT OF TITLE DEED CONDITION

- 6.1 It is considered that the title deed condition that this application seeks to amend is outdated and redundant having been notarized in the title deeds of the properties forming Bishopscourt Township Extension No. 1 eighty-three years ago (in 1943).

Through the modernization of this era, the reduction of family sizes, the changing land use system and the development of various spatial and built form policies by the City of Cape Town, the built form has changed in Bishopscourt.

Clearly, there is a move away, albeit marginally, from the character envisaged by the township developer as contained in the now outdated title deed conditions. Furthermore, it is considered that the MPBL and DMS are sufficient to protect the built form and character of the area.

The beneficiaries to the title deed condition are all the registered owners of properties forming part of Bishopscourt Township Extension No. 1 – See Conveyancer's Certificate

- 6.2 The city must consider the following when deciding an application for removal, suspension or amendment of a restrictive condition:

Whether the result would better align with the DMS

It is considered that the result of the amendment of the condition would better align with the DMS since the setbacks with respect to properties zoned Agricultural which are smaller than 2 hectares are now commensurate with the setback rules for R1 zoned properties of similar size.

Title deed conditions are also considered redundant and were typically included in title deeds before zoning schemes. The Development Management Scheme now controls development rules in Cape Town.

The decision-making criteria in section 99 of the MPBL

These have been discussed in sections 5.1 – 5.3 of this report

Sections 42(1)(c) and 47 of SPLUMA

The following factors must be considered in terms of section 42(1)(c) of SPLUMA

- *the public interest* – there is very little public interest in a private car port
- *the constitutional transformation imperatives & related duties of the state* - this has no relevance
- *the facts & circumstances relevant to the application* – these have been set out in this report
- *the respective rights & obligations of all those affected* – the result of the amendment of the condition which will permit the erection of a car port on the subject property will have little effect on anyone.
- *the state & impact of engineering services, social infrastructure & open space requirements* – this has no relevance
- *any factor that may be prescribed, including timeframes for making decision* – the city has an obligation to consider the application and decide on it timeously.
-

The following must be considered by the decision-maker in terms of section 47 of SPLUMA

Section 47 of SPLUMA sets out the duties and obligations of the Municipal Tribunal in accordance with the Act and the Constitution of South Africa.

7. SECTION 39(5) OF THE LAND USE PLANNING ACT (LUPA)

The following should be considered – (points of motivation will be listed under each of these headings)

“The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.”

Restrictive conditions provide property owners with an understanding of the type of development that may occur in the township, at the time of their creation and can provide a financial or other value (whether positive or negative) to a person as they create the look and feel of the township, which can determine the utility and desirability of the township to a person. This may determine purchasing considerations.

Given the changing character of the area over time, the value of the condition to be amended has changed in line with the changing built character. The city has recognized this and has amended the setbacks applicable to properties zoned Agricultural which are less than 2 hectares in size in the Amendment Planning Bylaw 2025, such that they (most of Bishopscourt) are now commensurate with those applicable to properties larger than 2 000m² in the R1 zone.

Aerial photography makes it clear that numerous properties in the area have car ports or garages closer than 3,15m to their common boundaries.

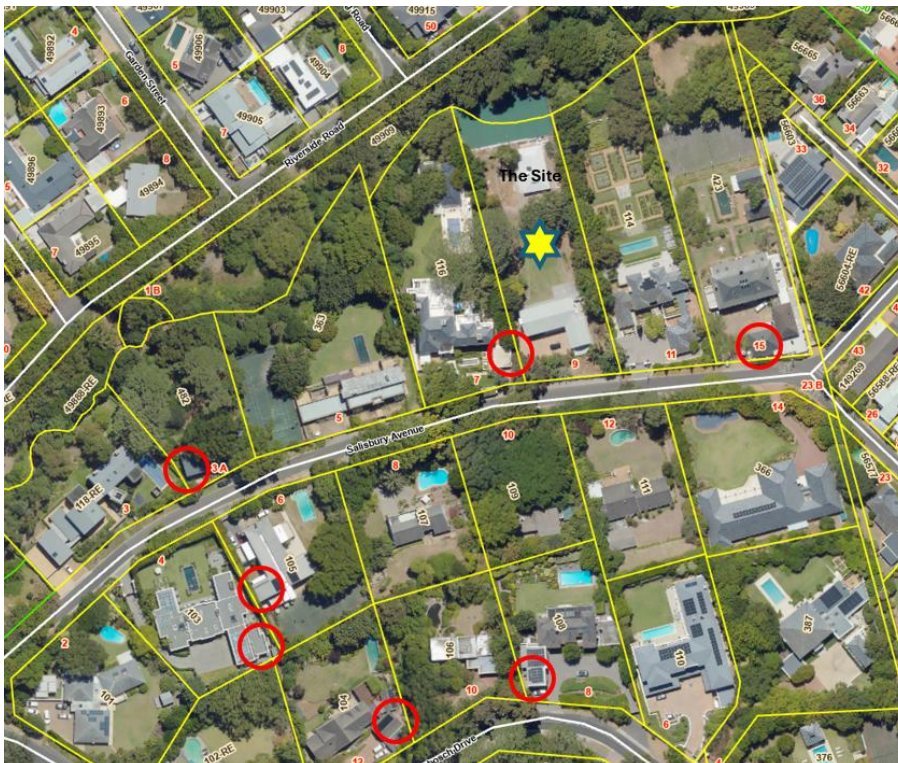


Figure 8: Garages or car ports closer than the title deed permits (3,15m) are shown by red ellipses.

Given the above, it is fair to say that the amendment of the restrictive condition will not result in a loss of financial or other value. The amendment of the restrictive conditions will facilitate appropriate home improvement and functionality, which will increase the municipal valuation of the property, which will add to the City's rates base.

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

The personal benefits to the holder of rights relate indirectly to the character of the area. Since the character of the area has changed over time since the imposition of title deed conditions, it can be argued that the personal benefits accruing to the holder of the rights in the township are negligible in relation to the conditions to be removed.

The value of the rights must be assessed in relation to the reality of a changing pattern of development in the area which is becoming more compact and denser over time and where the quality of the built environment is maintained through quality urban design, landscaping, etc instead of the preservation of a low density suburban built pattern.

Considering new city policies and legislation it can be argued that there may be negative impacts on the holders of the rights if the condition remains unaltered, given that development of the area may stagnate, possibly impacting negatively on property values in the area and the attractiveness of the area in terms of a desirable place to live.

"The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended."

The personal benefits to the applicant are substantial since the proposal will permit the owner to build a new car port on the property.

The MPBL enables restrictive conditions to be amended, where it is reasonably required to accommodate the changing built form of the city and the changing needs of property owners, which is the case with this application.

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

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

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

There are substantial social benefits in amending the condition as it will enable the better utilisation of the property in terms of modern city development. The proposed car port will add better functionality without detracting from the residential appeal of the area, which is in the public interest and a social benefit.

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

8 DEVELOPMENT PRINCIPLES CONTEMPLATED IN SECTION 39(5) OF LUPA

8.1 These are discussed below:

- (i) *Principle of Spatial Justice* – The approval of this application will permit contextually appropriate home improvements and will cumulatively contribute to spatial justice in terms of relieving pressure for development elsewhere which drives the poor to the periphery of the city. Low densities close to areas with good opportunities displace other people to worse located land.
- (ii) *Principle of Spatial Sustainability* – Contextually appropriate home improvements such as this proposal will contribute to environmental sustainability by reducing pressure on valuable agricultural and natural land. Applications such as this effectively act to reduce urban sprawl in the long run and result in better use of developed land and existing municipal services.
- (iii) *Principle of Efficiency* – Contextually appropriate home improvements, as is the case with this proposal, results in the more efficient use of land and municipal services and infrastructure.
- (iv) *Principle of Spatial Resilience* – Contextually appropriate home improvements, as is the case with this proposal, facilitate spatial resilience in that it allows better residential options to citizens.
- (v) *Principle of Good Administration* – *The application will be assessed and processed in accordance with the relevant laws and legislation.*

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