



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Case ID 1500164700

**Remainder Erf 3304, 1 Bridle Road,
Oranjezicht**

Development Management

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Date: May 2026

Ref: 7653 (Arina de Villiers)

Your ref:



PROPOSED SECOND DWELLING REMAINDER ERF 3304 ORANJEZICHT, AT 1 BRIDLE ROAD

1 THIS APPLICATION

Remainder Erf 3304 is developed with a dwelling house. The owners intend constructing a second dwelling and the southern portion of the site and an outbuilding (carport and storeroom) along the eastern boundary currently used for open parking.

The following land use approvals are required in terms of Section 42 of the City of Cape Town Municipal Planning By-law, 2015 (MPBL):

- i. Section 42(g), for the removal of conditions and servitudes from the title deed related to not more than one dwelling, 3,15m setbacks from the erf boundaries and the centreline of a water main, and the cancellation of a water main servitude and a pipeline servitude (no longer in use since at least the 1960s).
- ii. Section 42(j), for the deletion of the above conditions which are deemed conditions of approval imposed in terms of the By-law.
- iii. Section 42(b), for departures from the provisions of the Development Management Scheme (DMS).

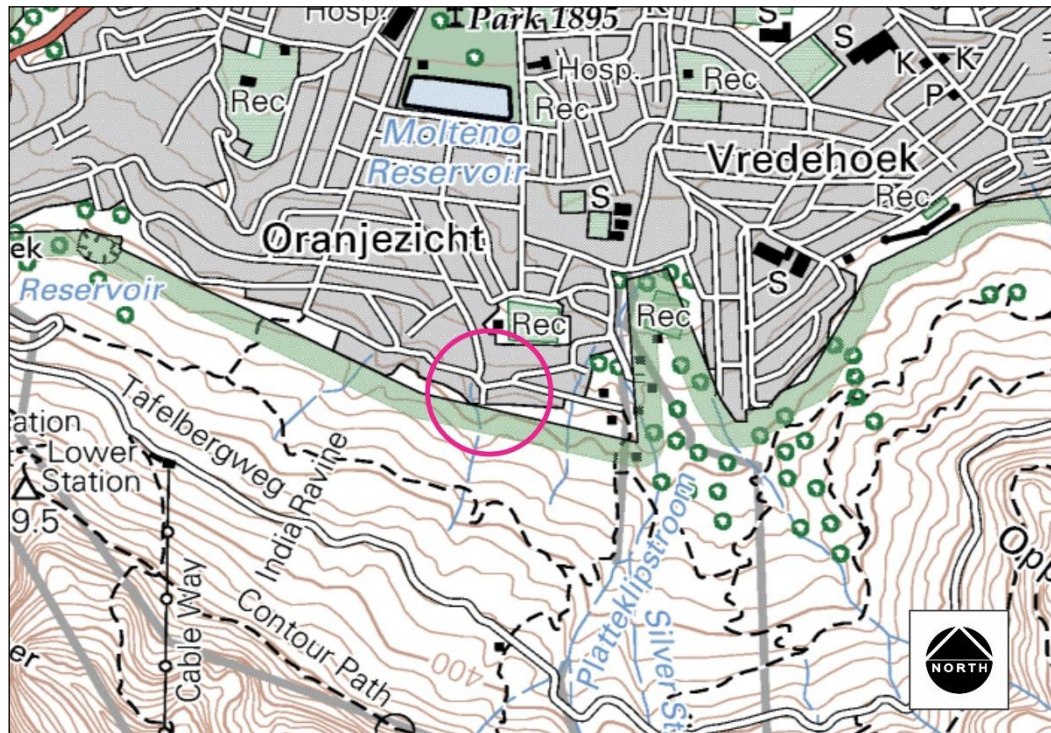


Figure 1: Locality Map

2 DOCUMENTS SUBMITTED HEREWITH

The following documents are submitted with this application:

- Application form
- Record of pre-application consultation
- Power of attorney
- Certified copy of the title deed
- Conveyancer's certificate
- General Plan & diagrams
- 1957 & 1968 Government Gazette Proclamations (Table Mountain)
- 1993 Approval to purchase road portions
- 1993 Approval to subdivide road portions
- Approved building plan
- Site Development Plan

3 THE PROPERTY

Description: Remainder Erf 3304 Oranjezicht
Erf size: 1152m²
Zoning: Residential Zoning 1: R1
Accessed from: Bridle Road with driveway (reciprocal right of way servitudes) over the abutting Erven 3572 and Re-2255.
Developed with: Dwelling house and swimming pool



Figure 2: Aerial Photograph

4 TITLE DEED: CONDITIONS & SERVITUDES

The original "Oranje Zicht Estate" (Erf 658) was held by freehold title made in favour of in 1901. Deductions from the Estate over the years resulted in the establishment of various townships and the following is relevant:

- The Oranjezicht "A" Township (Extension No. 1) was established in 1929.
- The township boundaries were extended in 1950 by the addition of Erf 2255.
- Portion 2 (Erf 2746) was deducted from Erf 2255 in 1963.
- In 1993, Erf 2746 was consolidated with two portions of the abutting road reserves (a portion of Marmion Road and a portion of Bridle Road) to form Erf 3304.
- That portion of the site originally part of Bridle Road (Erf 3572) was subdivided in 2004 with the property concerned since registered as "Remainder Erf 3304".

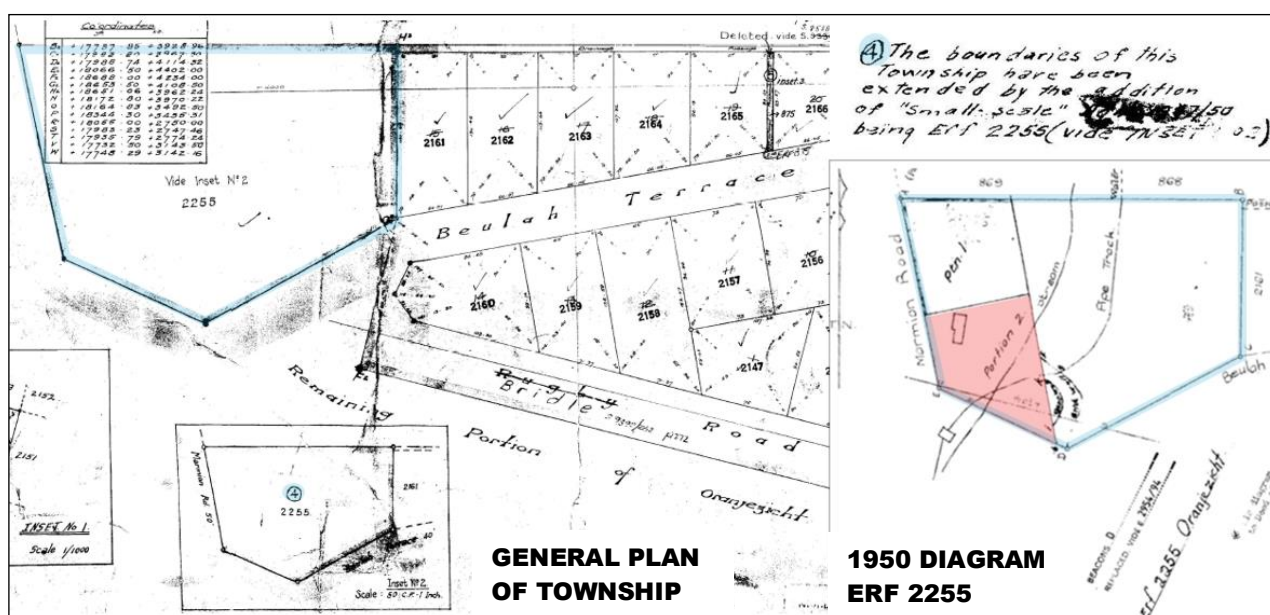
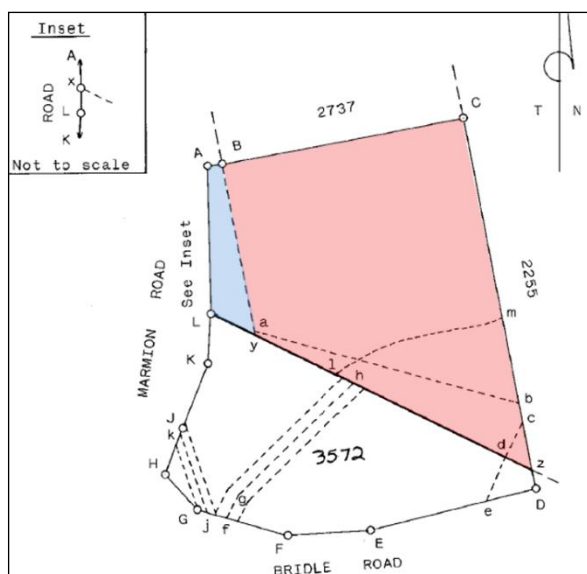


Figure 3: Extracts of the 1929 General Plan & 1950 SG Diagram for Erf 2255



Re-Erf 3304 comprises the following two components, as referred to in the title deed:

- **Figure A B y x** (originally part of Marmion Road, indicated in blue)
- **Figure B C z y** (Erf 2746, a portion of Erf 2255, indicated in red)

Note: Erf 3572 (originally part of Bridle Road) was deducted from Erf 3304 in 2004.

Figure 4: Extract of the 1993 diagram for Erf 3304

I. Insofar as Figure A B y x (in blue) is concerned:

Paragraph I of the title deed refers to the western portion of the property which was originally part of Marmion Road and previously held by Deed of Transfer No. 10782/1961 as part of the “remaining extent of Erf 658 Oranjezicht”. This component is subject to a water rights servitude, entitled to the township conditions imposed by the Administrator in 1929, and subject to the endorsement on the 1961 title deed in terms of which the remaining extent of Erf 658 was proclaimed to be part of the Table Mountain Monument (refer 1957 and 1968 Government Gazette Proclamations).

No building work is proposed within this portion of the site with none of the conditions or servitudes required to be removed or cancelled.

II. Insofar as Figure B C z y (in red) is concerned:

Paragraph II of the deed refers to the original “township erf” (Portion 2 of Erf 2255), which is subject and entitled to various conditions and servitudes, as set out below.

The conditions and servitudes In Paragraph II.D.(a) were imposed on Erf 2255 in 1953 (when it was first sold), by the Administrator.

Township conditions:

Conditions 1 to 5 were imposed by the Administrator when approving the Oranjezicht “A” Township (Extension No. 1) in 1929. These conditions were imposed on Erf 2255 when it was first sold in 1953 (Conditions 3 and 5 are to be removed from the title deed):

- II.D.(a)1.: This erf shall not be subdivided except with the consent of the Administrator.*
- II.D.(a)2.: This erf shall be used for residential purposes only.*
- II.D.(a)3.: Not more than one dwelling shall be erected on this erf.*
- II.D.(a)4.: Not more than one third the area of this erf shall be built upon.*
- II.D.(a)5.: No building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 3,15 metres of any boundary of this erf.*

Services, material & excavation:

Conditions 6 and 7 refer to services that must be allowed over the erf from other erven and the receiving of material and excavation to ensure safe use of and proper slopes to the streets. These conditions will remain in the title deed.

Water main & pipeline servitudes:

Conditions 8 and 9, also imposed by the Administrator in 1953 when Erf 2255 was sold refer to water main and pipeline servitudes reading as follows:

- II.D.(a)8.: This erf shall be subject to a pipeline servitude and a water mains servitude each 3,05 metres wide in favour of the Cape Town City Council as shown on the diagram thereof, and the owner shall be obliged without compensation to allow access to the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any works pertaining thereto annexed to*

II.D.(a)9. *No building shall be erected on this erf unless its drainage is so located as to permit of flow by gravitation into the Foul Sewer in Sidmouth Road, or the owner of the land has to obtain, at his own cost, the necessary right to construct his private drainage over the property of the Western Province Rugby Union so as to be able to drain by gravity into the Council sewer in Montreal Avenue.*

(the water main servitude and the pipeline servitude being represented on Diagram No. 9366/1993 by the line a b and l m respectively)

The water main and stormwater pipeline no longer exist, and these servitudes should be cancelled, for reasons set out below in Paragraph 5.

Conditions in favour of the City:

The conditions in Paragraph II.D.(b) were imposed in 1953 when Erf 2255 was subdivided and sold. These conditions are in favour of the original Transferor, Ronald Cohen and his successors in title to the “remaining extent of “Oranjezicht”, which was transferred to the City of Cape Town in 1961. These conditions are complied with and need not be removed.

Reciprocal driveway & height servitudes:

The property is further:

- Subject to a driveway servitude in favour of Re-Erf 2255 (figure cdz).
- Entitled to a driveway servitude over Re-Erf 2255 (refer noting sheet)
- Entitled to a driveway servitude over Erf 3572 (figure dzDe).
- Entitled to a servitude over Erf 2737 which prevents the construction of any structure or grow of any hedge, tree or shrub of a height of more than 0,91m anywhere within the servitude area; a swimming pool may be built in this area (refer noting sheet).

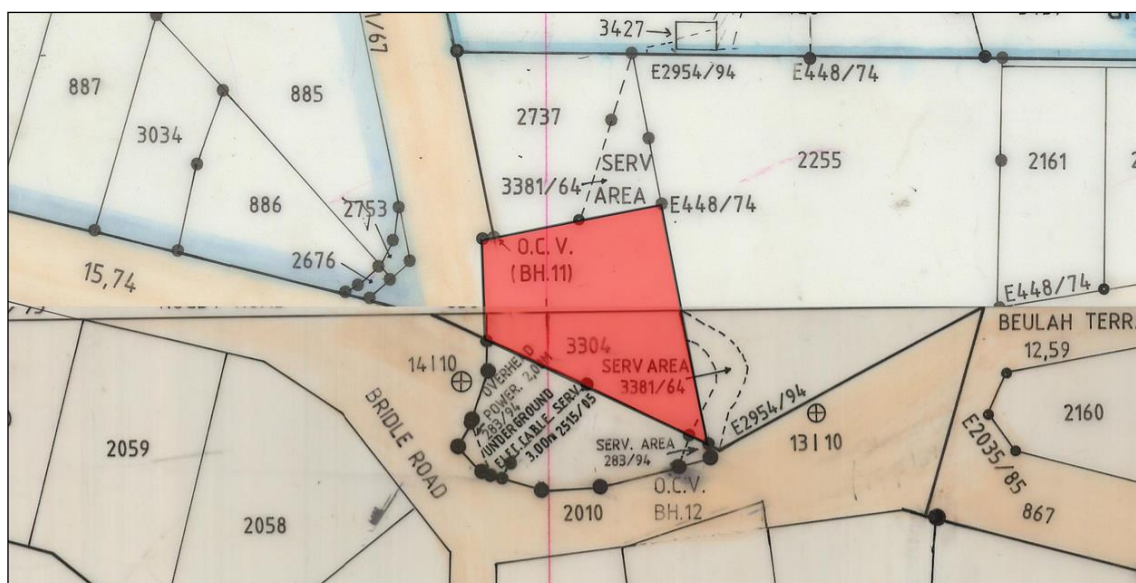


Figure 5: Noting Sheet

5 SERVITUDES TO BE CANCELLED

The water and stormwater pipe servitudes have not been in use since at least 1964, and these servitudes should be cancelled.

Erf 2746 (Portion 2) was subdivided from Erf 2255 in 1960, first registered in 1963.

In the 1990s, the owner of Erf 2746 applied to purchase portions of the abutting road reserves as he wanted to fence the land due to problems experienced with vagrants.

In a memo dated 1992-08-21, the City Planner (Surveys and Land Information branch) confirmed that the servitudes were not required by either the Waterworks or Drainage and Sewerage branches. According to the memo:

- The servitude “ef” on the 1960 diagram (“ab” on the 1993 diagram) covered a water main and was relaid clear of the erf in 1964.
- The servitude “gh” (“lm” on the 1993 diagram) covered a stormwater pipeline which had become redundant.

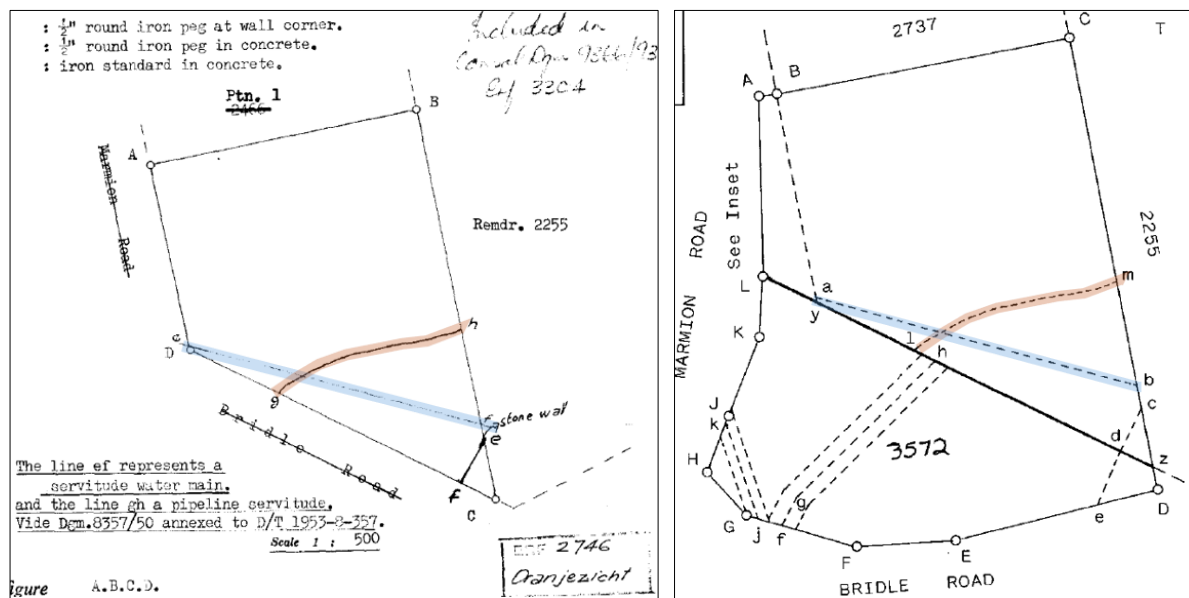


Figure 6: The 1960 diagram for Erf 2746 (left) and the 1993 diagram for Re-Erf 3304 (right)

6 ZONING AND LAND USE

Erf Re-3304 is zoned Residential Zoning 1 (R1) and is developed with a dwelling house and swimming pool. A building plan for alterations and extensions was approved on 27 May 2025, plan approval number 1700564970).



Figure 7: Zoning Map

7 THE PROPOSAL

The site development plan (SDP) for the proposed second dwelling and outbuilding was prepared by *Ulrich Bruwer Architecture* and was assessed in terms of the title deed conditions and the DMS provisions.

7.1 Land use (removal of title deed condition)

A second dwelling is an additional use right in R1 which means that it must also comply with the conditions in Item 25A of the DMS; in essence, the floor space of the second dwelling may not exceed that of the main house with construction thereof subject to clearance by the relevant municipal service departments that a development charge has been paid.

The “not more than one dwelling” condition must be removed from the title deed to permit two dwellings on the property.

7.2 Floor space (complies)

The proposed floor space is 769,1m², almost half of what is permitted (1500m²). The proposed floor space of the second dwelling (226,9m²) does not exceed the approved floor space of the main house (542,2m²).

7.3 Height (complies)

Dwellings must be 10m high, measured from the existing ground level (EGL) to top of the building. As shown on the sections and elevations, the 2-storey second dwelling complies comfortably with the prescribed height. The one-storey outbuilding is 2,675m high.

7.4 Building lines (removal of restrictions & departures)

The DMS building lines are 4,5m from the street and 3m from the common boundaries. Certain structures are permitted within the building lines, with a garage, carport or outbuilding permitted at 0m from a common boundary if not higher than 3,5m or wider than 6,5m.

The title deed prescribes that no building or structure, except boundary walls and fences, may be built within 3,15m from (i) any of the erf boundaries or (ii) the centre line of the water mains.

- The proposal complies with the street boundary building lines, given that no new building work is proposed within 3,15m or 4,5m from Marmion Road.
- The outbuilding is not higher than 3,5m and not wider than 6,5m and as such permitted on the east common boundary.
- The second dwelling is proposed up to 0,747m from the east common boundary with the roof eave closer than 3m from the south common boundary; DMS departures and the removal of the 3,15m title deed setback condition are required.
- The second dwelling is proposed over the water mains servitude ("ab") and within the 3,15m setback on either side of the water mains. As confirmed by the Surveys and Land Information branch in 1992, the water main was re-laid clear of the property in 1964. The servitude and 3,15m setbacks on either side of it can therefore be cancelled and removed from the title deed.

7.5 Item 22(c)(ii) height (departure)

Where a building is permitted within 3m of a common boundary, the height of such portion is limited to 4m, measured from EGL to top of building.

Departures are required for that portion of the building within 3m of the east boundary (up to 7,853m above the EGL) and the portion (roof eave) within 3m from the south boundary (up to 6,361m above the EGL).

7.6 Coverage / built upon (complies)

The DMS does not restrict the coverage of buildings on this erf.

The title deed prescribes a built upon area of not more than one third the area of the site, e.g., 33,3% (384m²). The proposed built upon area is 31,3% (360,7m²).

7.7 Parking & access (complies)

The existing access from Bridle Road and reciprocal driveway servitude over the Erf Re-3304 and the two abutting Erven RE-2255 and 3572, will be retained as is.

Oranjezicht is part of a PT1 parking area where dwellings must be provided with 1 bay each. Each of the two dwellings on Erf Re-3304 will be provided with 3 on-site parking bays, e.g., the existing triple garage in the main house with a double garage plus carport proposed for the second dwelling.

7.8 Boundary walls (complies)

No changes are proposed to the existing boundary walls.

8 MPBL APPLICATIONS

8.1 Removal of restrictions

In terms of Section 42(g) of the MPBL, application is made for the removal / cancellation of the following conditions / servitudes from Deed of Transfer No. _____ for Remainder Erf 3304, e.g.:

II.D.(a)3. Not more than one dwelling shall be erected on this erf.

II.D.(a)5. No building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 3,15 metres of any boundary of this erf.

II.D.(a)8. This erf shall be subject to a pipeline servitude and a water mains servitude each 3.05 metres wide in favour of the Cape Town City Council as shown on the diagram thereof, and the owner shall be obliged without compensation to allow access to the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any works pertaining thereto annexed to

II.D.(a)9. No building shall be erected on this erf unless its drainage is so located as to permit of flow by gravitation into the Foul Sewer in Sidmouth Road, or the owner of the land has to obtain at his own cost, the necessary right to construct his private drainage over the property of the Western Province Rugby Union so as to be able to drain by gravity into the Council sewer in Montreal Avenue.

(the water main servitude and the pipeline servitude being represented on Diagram No 9366/1993 by the line a b and l m respectively.)

II.G. No building or structures shall be erected within 3,15 metres of the centre line of the 0,2583 metre water main which traverses the property hereby transferred.

8.2 Deletion of deemed conditions of approval

In terms of Section 42(j) of the MPBL, application is made for the deletion of the above title deed conditions numbered II.D.(a)3, II.D.(a)5, II.D.(a)8, II.D.(a)9 and II.G., which are deemed to have been imposed as conditions of approval in terms of the By-law.

8.3 Permanent departures

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

- a) Item 22(c)(ii): To permit portions of the building within 3m from the east and south common boundaries to be 7,853m and 6,361m respectively in lieu of 4m above existing ground level.
- b) Item 22(d): To permit the second dwelling at:
 - 0,780m in lieu of 3m from the east common boundary (basement)
 - 0,747m in lieu of 3m from the east common boundary (ground floor)
 - 1,779m in lieu of 3m from the east common boundary (first floor)

9 ADJUDICATION CRITERIA

Section 99 of the By-law sets out the criteria for deciding an application.

Section 48 of the By-law deals with the removal, suspension or amendment of restrictive conditions, with sub-section (4) specifying that the City must consider the following when deciding on the application to remove the title deed conditions:

- (a) Whether the result would better align with the DMS;
- (b) The decision-making criteria in Section 99; and
- (c) Sections 42(1)(c) and 47 of SPLUMA.

10 ALIGNMENT WITH THE DMS

Removal of the title deed conditions will align the development potential with the DMS.

The *not more than one dwelling restriction* does not align with the current R1 zoning which permits 3 dwellings (a main house, second dwelling and third dwelling) on the property. Once removed, the proposed second dwelling will be permitted.

The *3,15m title deed setback* does not align with the DMS which permits the structures listed in Item 121(1) to be built within the building lines.

The *servitudes* for the water main (re-laid clear from the erf in 1964) and stormwater pipe (redundant) are no longer in existence or required by the City. The *3,15m title deed setback* from the water main serves no purpose and does not align with the DMS.

11 SECTION 99 OF THE MPBL

11.1 Section 99(1)

The application complies with the minimum threshold requirements, e.g.:

- (a) The proposed land use is consistent with the MSDF.
- (b) Height and floor space departures are not required; the zoning will remain R1.

11.2 Section 99(2)

The application should be approved for reasons set out below.

- (a) Spatial development frameworks

Municipal Spatial Development Framework (MSDF) (2023)

The MSDF sets out the City's spatial vision and development priorities to achieve a reconfigured, inclusive spatial form for Cape Town. Oranjezicht forms part of the "Urban Inner Core" (UIC), an area identified by the City where investment must be prioritised and where private sector development must be "incentivised." Residential densification and land use intensification as proposed align with all the spatial strategies of the MSDF.

Table Bay District Plan (2023)

The MSDF guides the proposals in the more detailed District Plans. The property is in an area designated for urban development where a range of land uses and densities must be encouraged by way of subdivisions, rezonings and second and third dwellings. Oranjezicht is within the existing urban footprint where residential densification and land use intensification must be encouraged, guided by available infrastructure capacity, neighbourhood density and character, proximity to job opportunities and social facilities, and access to public transport.

The proposal aligns with the District Plan as it represents sensitive densification in a residential area characterised by large dwellings and second dwellings and close to all the amenities the City has to offer.

The property forms part of Sub-District 2: City Bowl, Port and Surrounds (more specifically the residential suburbs of Tamboerskloof, Oranjezicht, Gardens and Vredehoek). The proposal will assist in achieving the spatial development objective for the area which is to ensure appropriate built form and land use to achieve a quality environment.

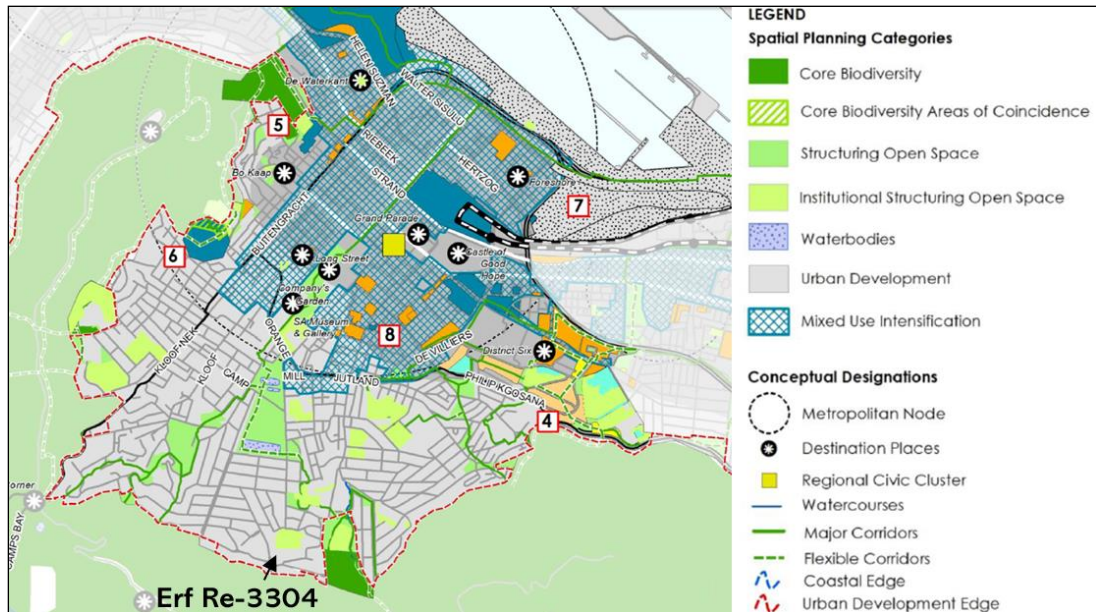


Figure 8: Extract of the Sub-District 2 SDF

(b) DMS criteria

The application complies with relevant criteria contemplated in the DMS. All documents and information required to enable a proper assessment in terms of the adjudication criteria, are submitted with the application.

(c) Applicable strategies and policies

The proposal complies with the City's approved strategies and policies.

The principal objection of the *Inclusive Economic Growth Strategy (2021)* is to grow and create jobs. Employment will be created during the construction phase and post construction given increased employment opportunities at the second dwelling.

The proposal is consistent with the *Social Development Strategy (2013)* as it will help to create a safer area by increasing the number of people/families residing in the area and allowing more people to live near the economic, institutional and recreational facilities the City has to offer.

Residential densification and land use intensification within the urban edge contribute to the containment of urban sprawl and comply with the vision of the *Environmental Strategy (2017)* 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 increased densities across the City by way of permitting subdivisions, additional dwellings and/or flats.

Residential densification within urban areas is desirable for various reasons, e.g.:

- More efficient use is made of land which is a scarce resource.
- The site is in the City Bowl, near the vast 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 to 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 public and the development of townships throughout the City.

The proposal represents a sensitive increase in density. The proposal has been informed by the character and built environment established in the township over the years as well as all the approved planning policies and documents for the area.

(d) Desirability

The application is desirable, as contemplated in subsection (3).

(e) Granting of the application will not impact negatively on existing rights:

Removal of restrictions:

The township developer conditions were imposed in 1929, before the first section of the Cape Town Town Planning Scheme were promulgated in the 1940s. The zoning scheme regulations were amended numerous times over the years, with the latest amendments in operation since October 2025. Removal of the title deed conditions will result in a building supported by all approved City policies and strategies and will ensure the development potential of the property is better aligned with the DMS.

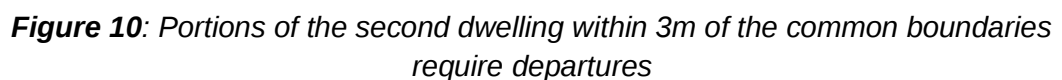
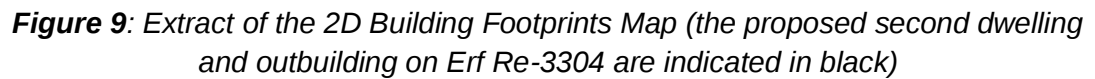
Removal (cancellation) of the servitudes:

In 1992, the City's Surveys and Land Information branch commented on the then proposal to consolidate Erf 2746 (Portion 2 of Erf 2255) with portions of the abutting road reserves.

It was confirmed that the water mains and stormwater pipeline servitudes were not required by the City's Waterworks or Drainage and Sewerage branches, given that the water main was re-laid clear of the property concerned in 1964 (following the subdivision of Erf 2746 from Erf 2255) and the fact that the stormwater pipeline had also become redundant.

Cancellation of the servitudes will have no impact whatsoever on any existing rights given that these services no longer exist.

The departures are desirable and will not impact on existing rights or the character of the area. As shown on the City's 2D building footprint map, several buildings in the area (refer pink outlines) were built closer to the erf boundaries than what is permitted in terms of the title deed and zoning provisions. The proposed second dwelling and outbuilding along the east common boundary of the property is indicated in black outline with the red outlines indicating servitudes.



The second dwelling is setback 3m from the south boundary common to Erf 3572 with only a very small portion of the roof eave proposed within the 3m building line. Whereas this is permitted in terms of Item 121(1) of the DMS (with a setback departure not required from this boundary) a departure is required in terms of Item 22(c)(ii) to permit the small portion of the roof eave within the 3m building line, to be higher than 4m above EGL. This is considered highly technical in that it will have no impact whatsoever on any views or privacy enjoyed by the property to the south.

The terrace height of the dwelling on Erf 3572, according to Google Earth, is at 180m amsl, which is more than a metre higher than the roof ridge of the second dwelling, at 178,799m amsl. In addition, the second dwelling will be screened by existing vegetation.

The second dwelling is setback 1,779m from the east common boundary, with stairs and a ground floor deck proposed up to 0,747 from the east boundary. The setback and 4m height departures required for this portion of the building will similarly not impact on views or privacy of the neighbouring erven, given that it will be screened by existing vegetation and the fact that it will always be sufficiently separated from properties to the east by the reciprocal driveway servitude.



Figure 11: The second dwelling will be nestled among existing vegetation and will not impact on the privacy or views enjoyed by neighbouring properties

- (f) Other considerations prescribed in relevant national and provincial legislation

The proposal is consistent with the development principles contained in Section 7 of the Spatial Planning and Land Use Management Act, No 16 of 2013 (SPLUMA) and Section 59 of the Land Use Planning Act, No 3 of 2014 (LUPA), e.g.:

- The proposal is *spatially just* as it will provide accommodation for an additional family within an area where residential densification must be promoted.
- The proposal is *spatially sustainable* as it is within an existing urban area and will contribute to the containment of urban sprawl.
- The proposal is *efficient* as it will optimise the viability of bulk infrastructure and will make better use of land which is a scarce resource.

11.3 Section 99(3)

This sub-section sets out the considerations which are relevant to the assessment under subsection (2)(d) of desirability. The proposal is desirable for the following reasons:

- (a) The proposed second dwelling will have a positive socio-economic impact for the property owner and surrounding neighbourhood. The proposal is for sensitive residential densification in line with all approved planning policies. The development will add significant value to the property which will in turn have a positive impact on the values of surrounding properties.
- (b) The property is in residential neighbourhood characterised by large dwellings and second dwellings and flats within the La Montagne development just to north of the property. The zoning of the property will remain R1 with the proposed second dwelling being compatible with surrounding land uses.
- (c) There should be no negative impact on external engineering services. The proposal will be circulated internally for branch comments. A development contribution will be determined given the increased land use rights and any services which need to be upgraded, will be at the cost of the developer.
- (d) There will be no negative impact on the safety, health or wellbeing of the surrounding community. The proposal is for sensitive residential densification to provide accommodation for an additional family, thus improving the safety of the neighbourhood by having more people residing in the area.
- (e) The property is not in a Heritage Protection Area. The original dwelling is older than 60 years, with confirmation required whether the proposal requires approval from Heritage Western Cape.
- (f) There will be no impact on the biophysical environment with no activities proposed which trigger an application in terms of the National Environment Management Act.
- (g) There will be no traffic, parking, access or other transport related impact. Adequate on-site parking will be provided; whereas only 1 bay per dwelling is required, each dwelling will be provided with 3 parking bays.

12 SECTION 39(5) OF LUPA

The LUPA assessment of the removal of restrictions application is required in terms of Section 99(2)(g) of the MPBL, referred to above.

(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;

The conditions limiting the property to only one house which must be setback 3,15m from the erf boundaries and a redundant water main, as well as the now redundant water main and stormwater pipeline servitudes, do not add any financial or other value to the holders of the rights.

Since the conditions were imposed in 1929 when the township was established, the perception of what represents a residential neighbourhood has changed noticeably. Financial values of properties nowadays are more related to modern and attractive homes, smaller properties and gardens which are easier to maintain, safety, privacy, proximity to infrastructure and facilities, etcetera.

Removal of the conditions and cancellation of the servitudes will permit a land use, building form and scale which respect both the natural and developed surrounding environments and character of the area, in line with all approved planning policies.

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

The conditions do not accrue any personal benefits to any holders of rights. None of the owners in the township will gain anything personally by preventing more than one dwelling on the site and to permit the second dwelling and outbuilding within 3,15m from the common boundaries. Granting of the application will not result in the deprivation of any personal property rights as contemplated in Section 25 of the Constitution.

(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 of the application will benefit the owner of Erf Re-3304 personally as it will enable the construction of a second dwelling on the property. The owner will be entitled to sell or lease the unit. The use will optimise the investment made by the owner.

(d) 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” and the question is therefore what the benefit of the rights are as it relates to society. “Society” comprises the neighbours, residents and the broader society which includes future generations.

The question is therefore whether a decision to prevent the redevelopment of the property with a second dwelling, closer than 3,15m from the common boundaries, comprises a social benefit to anyone. The answer would be no, given that this would go against all the approved policies of the City of Cape Town. Council's purpose in adopting the MSDF is to introduce densification and diversification and to improve the prospects of the City thriving socially and economically as a town planning organism. Oranjezicht is an integral suburb of the City and a component of its objectives. Removing the conditions will assist in achieving the adopted objectives of the MSDF.

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

The question is whether the redevelopment of the property with a second dwelling comprises a social benefit to anyone. The answer would be yes, given that the removal of the conditions will enable a land use supported by all approved City policies and frameworks, which have various social and other benefits.

(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.

All conditions will not be removed from the title deed. The "no subdivision", "residential purposes only" and one-third "built upon" restrictions will remain in the title deed. In addition, the conditions referring to services that must be allowed over the site where required by the City, will also remain in the title deed. Removal of the conditions referring to only one dwelling, 3,15m setbacks and redundant servitudes, will better align the development rights of the property with the DMS. Owners in the township will still benefit from the rights conferred on them by the DMS and remaining conditions and the City may impose further conditions when granting the application to mitigate any impact.

13 ASSESSMENT IN TERMS OF SPLUMA

13.1 Sections 42(1)(c) of SPLUMA

The proposal is desirable in terms of this subsection.

- *Public interest:* Appropriate land use intensification and densification in urban areas serves the public interest. Benefits are sustainable development (increasing efficient use of land, reducing urban sprawl and preserving green spaces), economic growth (strengthening the local economy and tourism industry) and improved public services (given that higher density areas justify investments in public transportation, healthcare and other essential services).
- *Constitutional transformation imperatives and related duties of the State:* The State must realise the constitutional imperatives of Sections 24 and 25 of the Constitution, which are to protect the environment through legislation which include a land use planning system (densification and land use intensification contribute to environmentally sustainable and economically viable cities) and to protect property rights (granting of the application will not impact any existing rights).

- *The facts and circumstances relevant to the application:* The property is part of the *Urban Inner Core* in terms of the MSDP and earmarked for urban development in terms of the *Table Bay District Plan*. It is located within an existing urban area where residential densification and land use intensification are encouraged to support the City's public transport system.
- *The respective rights and obligations of all those affected:* The conditions were imposed in 1929 when the township was established. The rights and obligations of property owners in the township will not be affected, given that the second dwelling was designed to respect the surrounding character.
- *The state and impact of engineering services, social infrastructure and open space requirements:* The application will be circulated to all relevant branches to confirm whether there are sufficient services infrastructure to permit the second dwelling. The relevant branches will also comment on the cancellation of the water main and stormwater pipeline servitudes, which are to be cancelled.
- *Any factors that may be prescribed including timeframes for making decisions:* The City must decide on the application within the prescribed timeframes.

13.2 Section 47 of SPLUMA

This section enables the MPT to amend, remove or suspend title deed conditions.

Section 25(1) of the Constitution expressly permits the deprivation of property rights provided 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 (e.g., SPLUMA, LUPA and the MPBL).

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 land use intensification serves the public interest, as encouraged by all the approved City policies and development frameworks. Granting of the application for Erf Re-3304 falls within this category and should be supported.

14 CONCLUSION

The proposal to construct a second dwelling on Erf Re-3304 is desirable and in line with the City's approved densification policies, is compatible with surrounding land uses and the built environment and will not impact on any existing rights.