



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

Case ID 1500166127

**Erf 2106, 9 Invermark Crescent,
Gardens**

Development Management

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Date: 12 August 2026

Ref: 11862 (Rowan Rademeyer)



**APPLICATION FOR PERMANENT DEPARTURES AND REMOVAL OF A RESTRICTIVE TITLE DEED
CONDITION: ERF 2106 ORANJEZICHT, 9 INVERMARK CRESCENT**

1. INTRODUCTION AND APPLICATIONS

The intention of the application is to permit alterations and additions on the property. Departures are required in terms of the Development Management Scheme (DMS) to permit: 1) external timber steps linking the subject property to the adjoining Erf 2108, and 2) a rooftop timber deck (balcony) on the existing outbuilding along the southern common boundary.

It should further be noted that the owner of the subject property is a trustee of the trust that owns the adjoining Erf 2108 Oranjezicht; therefore, the proposed pedestrian access gate and timber steps will serve to link these properties along the southern common boundary. Furthermore, the proposed rooftop timber deck (balcony) on the existing outbuilding will be utilised by and accessed from the adjoining Erf 2108.

Certain portions of the proposed building work are situated within the 1.57m common boundary building line stipulated in the title deed. It is thus proposed to remove the relevant title deed condition to permit the proposed alterations and additions. The proposed alterations and additions within the title deed building line relate to a timber deck, entrance steps and landings, alterations to the existing outbuilding, external steps, and a garden/architectural wall (with ponds on either side of it). The alterations/additions to the existing outbuilding include the reconfiguration (and lowering) of its roof as well as a rooftop deck.

It should be noted that the title deed condition which is proposed to be removed was imposed prior to the promulgation of the Townships Ordinance (33 of 1934), the removal thereof is therefore "voluntary" and the Council is not required to enforce compliance with it.

The relevant title deed condition (relating to building lines) which is proposed to be removed allows for structures to be 1.57m and 3.15m from the common and street boundaries, respectively. This is less onerous when compared to the applicable building lines in terms the DMS which require structures to be setback 3m and 3.5m from the common and street

The following documents are attached to this report:

- Application form
- Power of Attorney
- Conveyancer certificate
- Deed of Transfer
- General Plan Nos. T.P.9p (3766/1933) & A5263/1930
- Conveyancer certificate as prepared by **Debra Gouws Attorney**
- Record of pre-application consultation
- Proposed plans, prepared by **Timothy Penfold Studio (Pty) Ltd. Architects**
- Copy of approved building plans

2. THE PROPERTY

2.1 Ownership

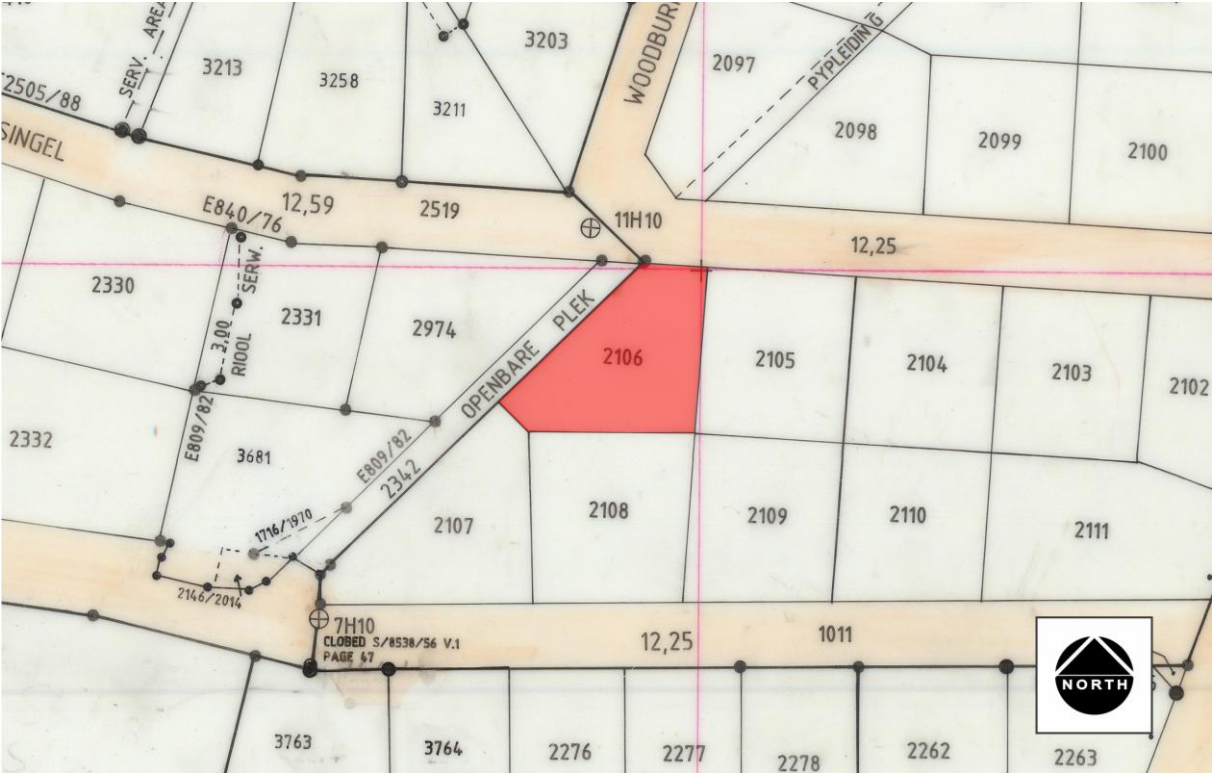
The property is registered in the name of _____ Power of Attorney has been provided to appoint **Thomas Brian Brummer** to submit the application.

2.2 Locality, site particulars and context

The property measures 822m² in extent and is situated in Invermark Crescent, which is the second last street in Oranjezicht below the Table Mountain National Park. The property is improved with a single dwelling house.

The **Locality Map** of the property in the inner-City context is indicated below.

The **Noting Sheet** as obtained from the Surveyor-General's office, below, indicates the context of the property in relation to the surrounding erven and street network.

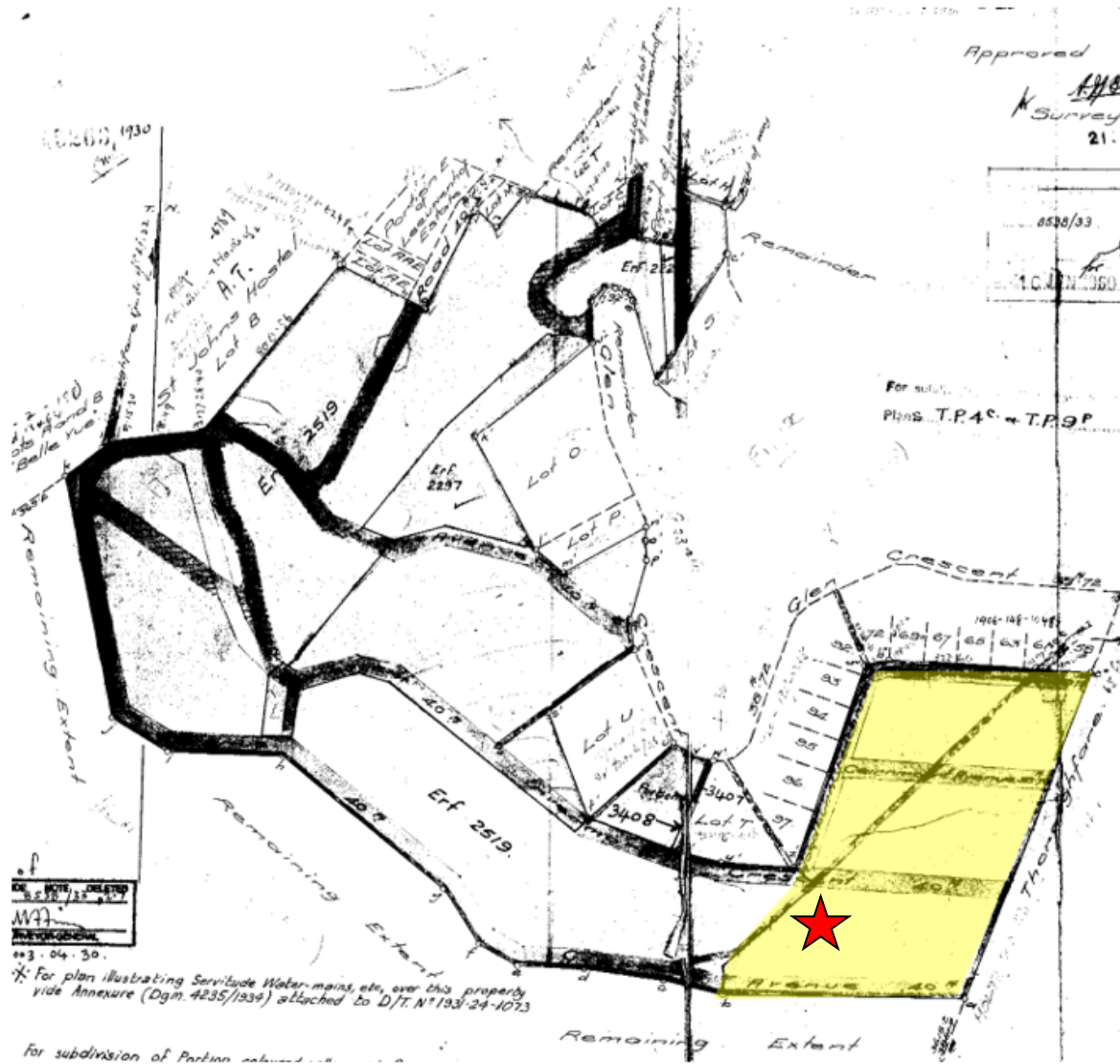


The Council's **Zoning Map**, below, indicates that the property is zoned Residential Zoning: R1. All the surrounding properties are also zoned R1, and, since all of them are larger than 650m² in extent, they all have the same existing rights (with regard to the DMS).



2.3 Title Deed and conveyancer certificate

Erf 2106 is situated in the original (bigger) "Gardens Township", which is indicated on A5263/1930 (see extract below). The location of Erf 2106 is indicated by the red star.



Extract: The Gardens Township (A/5263/1930).

This original Township was subdivided over the years, with various title deed conditions imposed, as further explained below.

Condition B:

Erf 2106 used to be "Lot 132", with Lots 112 – 138 of the Gardens Township depicted on General Plan T.P.9p (3766/1933) – see extract below (a full copy is attached). The location of the Erf 2106 is indicated by the red star. The area demarcated in "yellow" below, is also shown on the original Township map – above.



Extract of General Plan T.P.9p: Advertising must be to the erven as highlighted above

According to the conveyancer's certificate, the conditions under Condition B in Deed of Transfer were imposed by the Administrator of the Cape of Good Hope under the provisions of Ordinance No. 13 of 1927, and are applicable on the erven in this Township. For the purposes of this application, it relates to Condition B.(d).

A title deed search was conducted by *Nicolette Joubert* from **Debra Gouws Attorneys** who certified that the conditions to be removed are restrictive conditions (imposed at the time of township establishment) were imposed "prior to 33/34" (Condition B). The beneficiaries are those property owners within the areas as per General Plan T.P.9p.

The restrictive condition has been identified as category 1.2 conditions as referred to in the City's Standard Operating Procedures (SOP), which means that it does not involve a condition or approval granted or deemed to have been granted in terms of the By-Law. The proposed removal is therefore "voluntary" and the Council is not required to enforce compliance with it.

The application is made in terms of Section 42(g) of the By-Law.

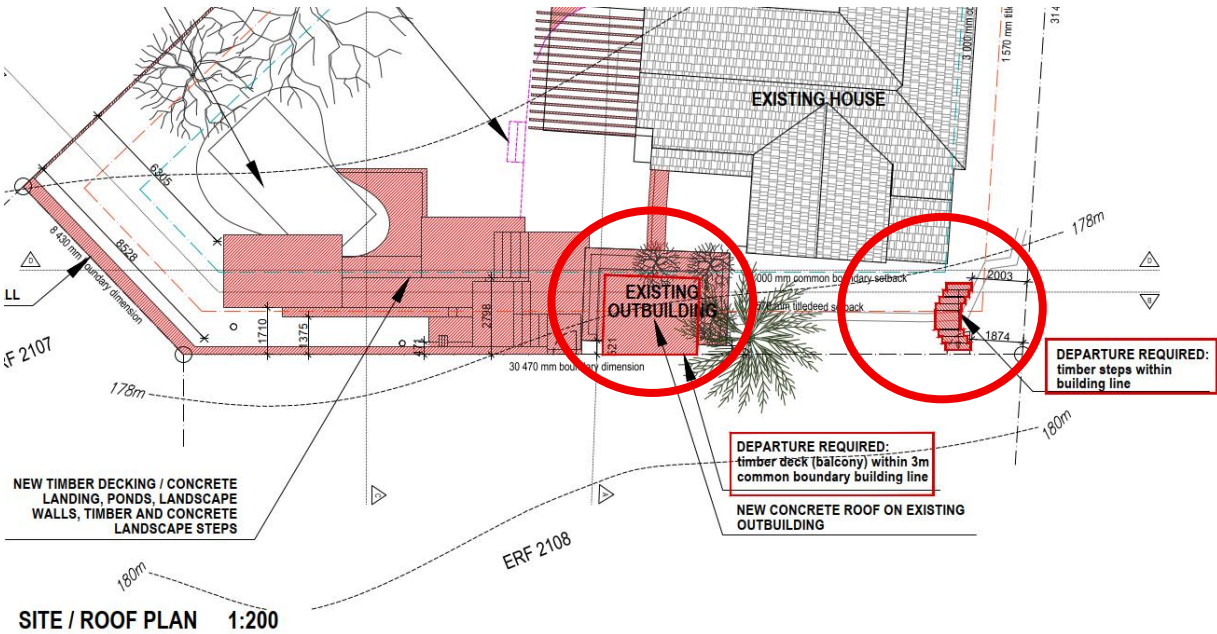
3. DEVELOPMENT PROPOSAL

Alterations and additions are proposed on the property, these include:

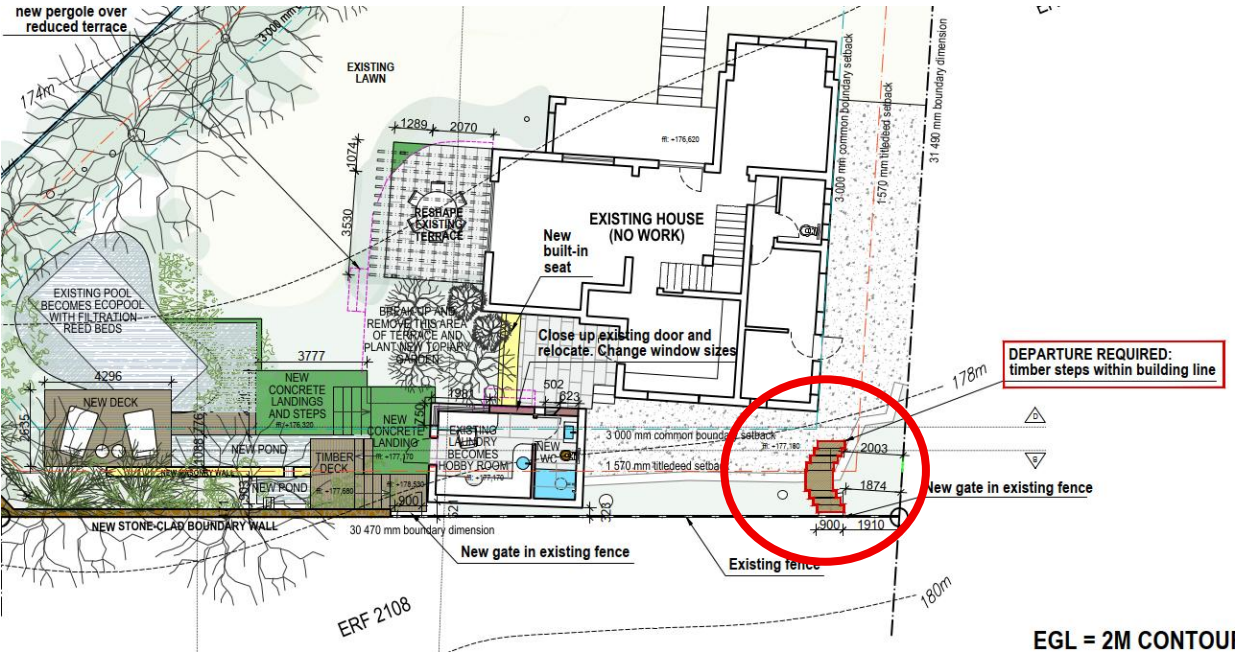
- a) New timber deck areas, concrete landings, and entrance steps immediately adjoining the existing outbuilding (hobby room).
- b) Internal alterations to the existing outbuilding together with the reconfiguration (and lowering) of its roof.
- c) A rooftop timber deck (balcony) on the existing outbuilding.
- d) 2.3m high common (southern) boundary wall.
- e) Staircase and landing linking the existing garage.
- f) Timber pergola over the existing terrace.
- g) A garden/architectural wall with ponds on either side of it.
- h) The owner of the subject property is a trustee of the trust that owns the adjoining Erf 2108 Oranjezicht; therefore, a pedestrian access gate and steps are proposed, linking the properties along the southern common boundary.

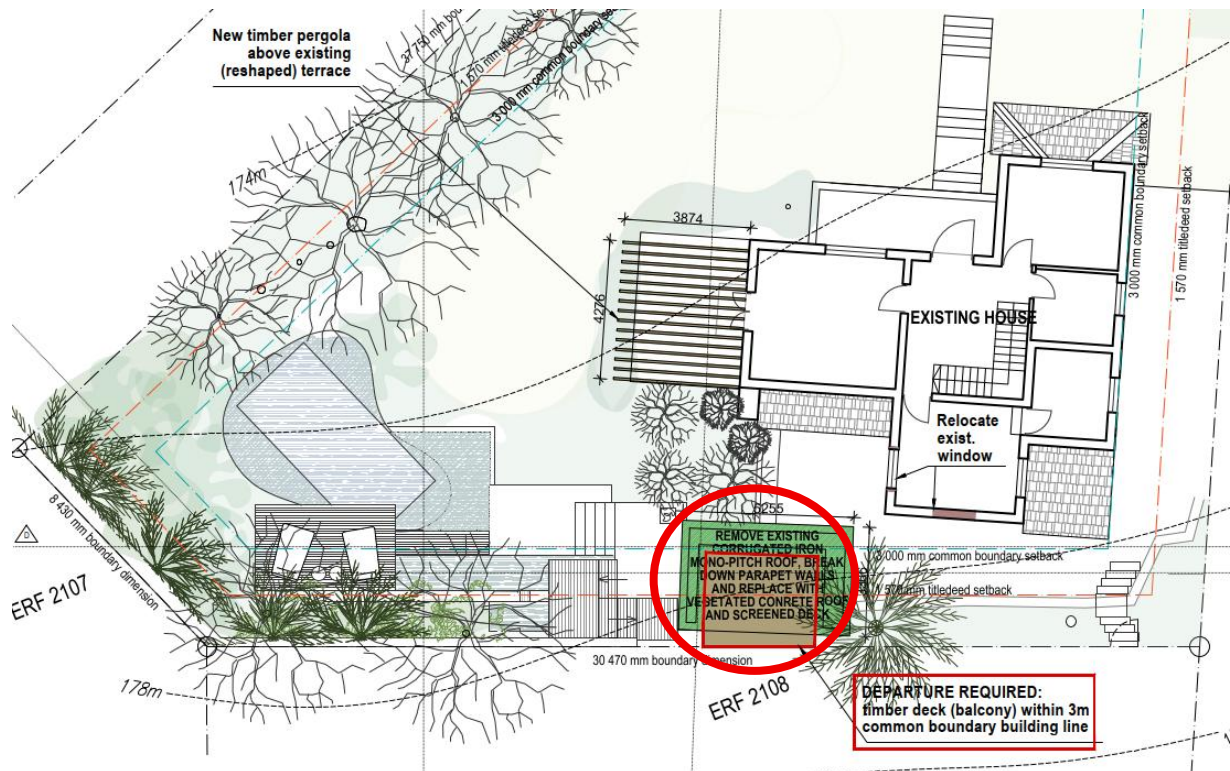
All the aforementioned building work complies with the Development Management Scheme (DMS), apart from (c) & (h) above.

Portions of the proposed development which are situated within the title deed building line relate to a timber deck, an architectural/ garden wall (with ponds on either side it), entrance steps, and alterations to the existing outbuilding. The portions requiring a departure are illustrated with a red circle, below.

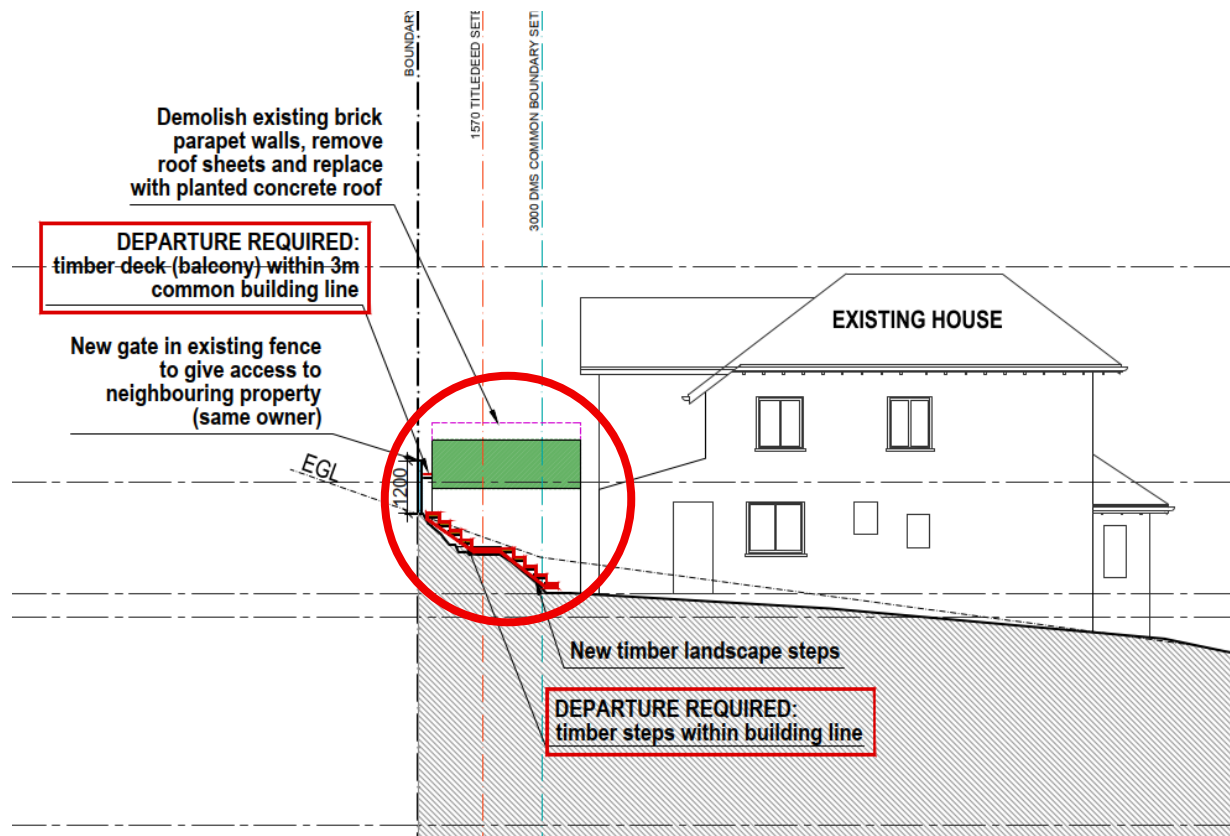


Site Plan





Second storey



Proposed steps leading to the adjoining Erf 2108, primarily below EGL

- The proposed additions within the southern common boundary building line (in terms of the DMS) are situated approximately 25m from Invermark Crescent and located primarily behind the existing dwelling, thus they will not be visible from the street. In addition, due to their location and height, they are also not considered to be visible from the surrounding properties and will not have any impact on the existing height of the building (as the roof of the outbuilding will in fact be lowered).
- The proposed alterations and additions only require the removal of one title deed restriction, Condition B(d), requiring a 1.57m common boundary setback.
- The proposed deck areas, steps, ponds, and garden walls are primarily located below the EGL and thus will not create any overshadowing or privacy issues and will not have any material impact on the surrounding property owners.
- The approved structures on the site constitute an existing built-upon of only 164m² (approximately 20%) whereas the proposed additions result in a built-upon area of 191m² (23%). Given that Condition B.(c) of the title deed restricts "built-upon" to one-third of the site (i.e. approximately 273m²), the proposal is considered desirable and 10% less than that which is presently permitted.

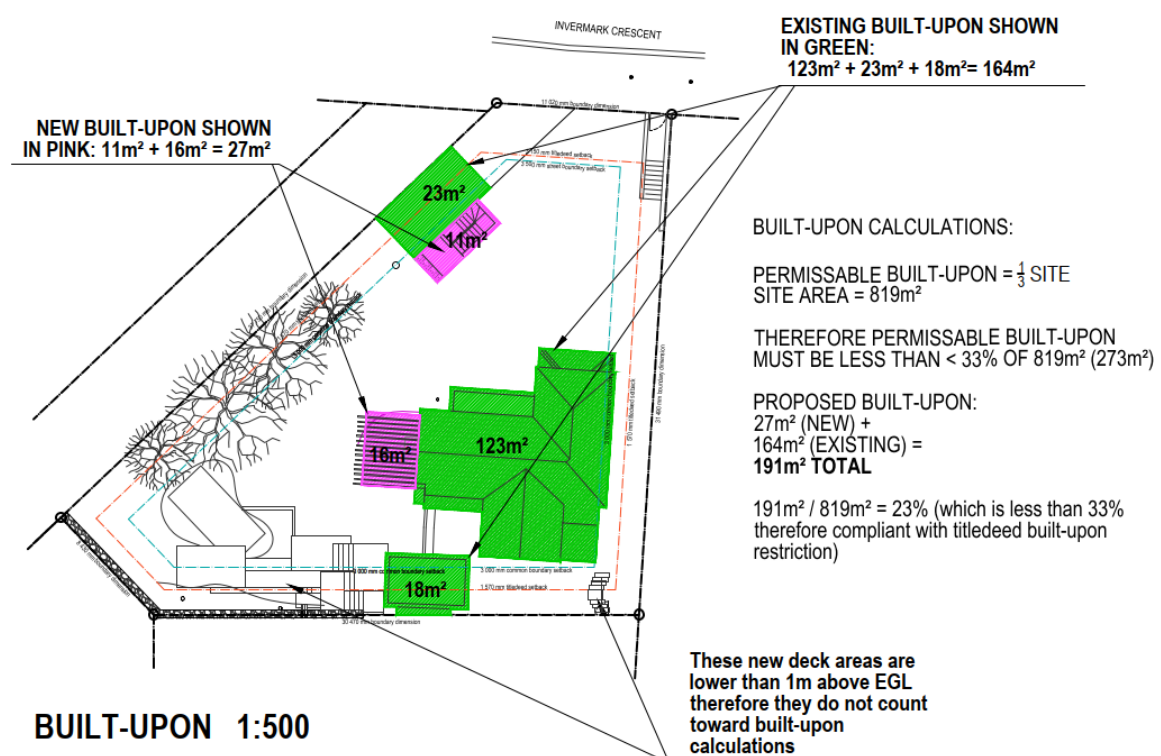


Illustration of built-upon area

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4. ADJUDICATION AND MOTIVATION

4.1 Applicable Legislation: Adjudication Criteria

Section 48(4) of the By-Law states that the Council must have regard to Section 99 of the By-Law, as well as Sections 39(5) and 59 of the Western Cape Land Use Planning Act 3 of 2014 ("LUPA") and Sections 42(1)(c) and 47 of the Spatial Planning and Land Use Management Act 16 of 2013 ("SPLUMA") when considering the proposal.

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. Oranjezicht falls in the "Urban Inner Core" where land use densification and intensification are encouraged and should be supported.
- (b) The principle of "granting the property the development rules of the next subzone within a zone" is not applicable.

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

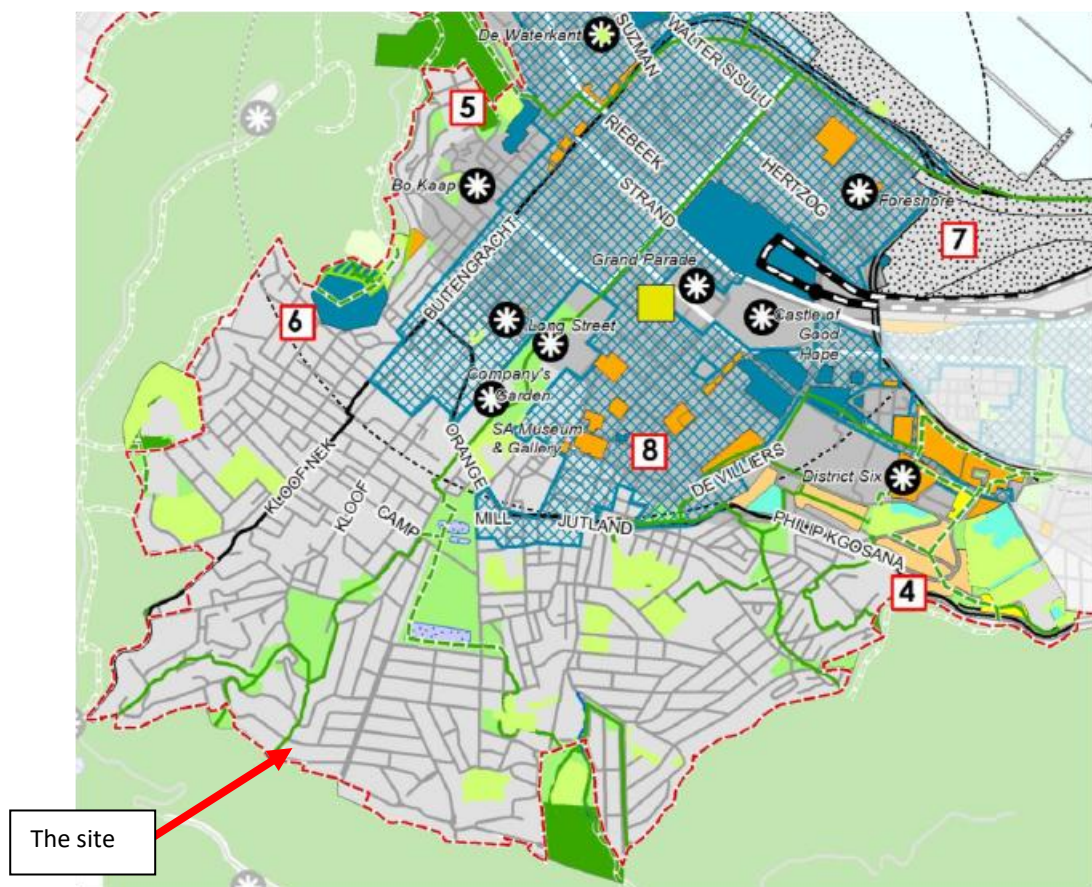
The application complies with the following relevant considerations:

- (a) Applicable Spatial Development Frameworks
 - The application is consistent with the **MSDF** which sets out the City's spatial vision and development priorities to achieve a reconfigured, inclusive spatial form for Cape Town. The subject property forms part of the "**Urban Inner Core**" (**UIC**), which is identified by the City as a priority area, highlighting the importance of private sector investment through land-use intensification, densification, and incentivisation.

As mentioned, the erf is in the Inner Urban Core which has as its principle the following: *"The City, public, and private sectors are committed to coordinated, spatially targeted investment and land development to spatially transform and integrate the city form".*

The main desired spatial outcome and land use guideline is to promote and support diverse and dense land uses in association with public transport infrastructure provision – essentially intensification and densification in the City Bowl. The property is approximately 170m walking distance from a MyCiTi (Invermark) bus stop. The proposal is consistent with the intentions of the MSDF, and accounts for private sector investment into the area. Furthermore, the proposal supports the management of urban growth through appropriate built-form within the inner city (and in relative close proximity to a large number of employment opportunities, hospitals, schools, etc.) and is thus consistent with the MSDF.

- The **Table Bay District Plan** illustrates that the site is situated in “Sub-District 2: Cape Town CBD/Paarden Eiland Area” and earmarked for “Urban Development”. It is inside the Urban Development Edge, and does not abut any watercourses, corridors or other open spaces. Considering the nature and location of the proposed alterations (e.g. primarily to the rear/south of the existing dwelling and 25m from the street), the proposal is deemed consistent with the District Plan in so far that it promotes a more compact built form as well as the management of urban growth through appropriate built-form within an urban residential environment.



The proposal is consistent with the following spatial development objectives of the Plan:

- ❖ *Ensure an appropriate built form and land use to achieve a quality environment.* Given the nature and location of the proposed alterations and additions, the proposal is considered an appropriate built form within an urban residential area.
 - ❖ *Encourage residential densification where possible and appropriate:* Although the proposal does not result in an increase in the level of densification, the proposed additions contribute to a denser built environment.
 - ❖ *Encourage land use intensification along public transport routes:* The site is approximately 170m walking distance from a MyCiTi bus stop.
 - ❖ *Manage parking to lessen its impact on the environment...reduce car trip demand and encourage public transport ridership:* Sufficient on-site parking exists.
 - ❖ *Provide sensitive gateways to Table Mountain & protect green links and open space system:* Given the location of the additions (to the rear of the existing dwelling), nature (small-scale & low impact), and height (primarily below the EGL), the proposal will protect the "visual linkages to the sea and mountain", and will ensure a sensitively scaled development.
- **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 proposal is consistent with the TOD as it represents a denser built form in close proximity to the City Bowl itself but also within walking distance of the MyCiTi bus route.

(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 will be seen in more detail below.

(c) Applicable Policies Approved by the City

The proposal complies with the following approved Council Policies:

- **Densification Policy:**

Although the subject application does not involve an increase in the number of dwelling-units, the application is considered consistent with the Policy as it helps to establish a denser and more compact city in a responsible and incremental manner.

Furthermore, the application is consistent with the Policy for the following reasons:

- ❖ protects the surrounding built and natural environment by being highly sensitive to its form and character with the surrounding built environment.
- ❖ supports the development of a viable public transport system and improve levels of access to the city's resources and amenities.
- ❖ improves the city's efficiency and sustainability – thereby containing urban sprawl

- **Inclusive Economic Growth Strategy:** The Inclusive Economic Growth Strategy (IEGS) is a short, medium and long-term plan for addressing the economic crisis facing Cape Town within the greater South African context, and for identifying comparative advantages that can be leveraged.

The proposal is consistent with the Strategy by having a positive impact on the overall growth of the City's GDP through the additional investment made by the owner in his property, which will also increase the property's value. The employment that will be provided during the construction phase is desirable and positive and will have a positive impact on the lives of those workers.

- **Urban Design Policy:** The proposal is considered to be consistent with some of the objectives of this Policy by "*promoting development intensity, diversity and adaptability*" (making efficient use of the site; optimising the development potential of the erf through the intensification of built form; and primarily complying with the development rules), and since it [the development] "*protects, value and enhances the natural environment through sustainable design*" (by curbing urban sprawl).

- **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 considered to ensure that growth is environmentally sustainable given that the proposed development is situated within a designated urban area.

The proposal is consistent with this Strategy.

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

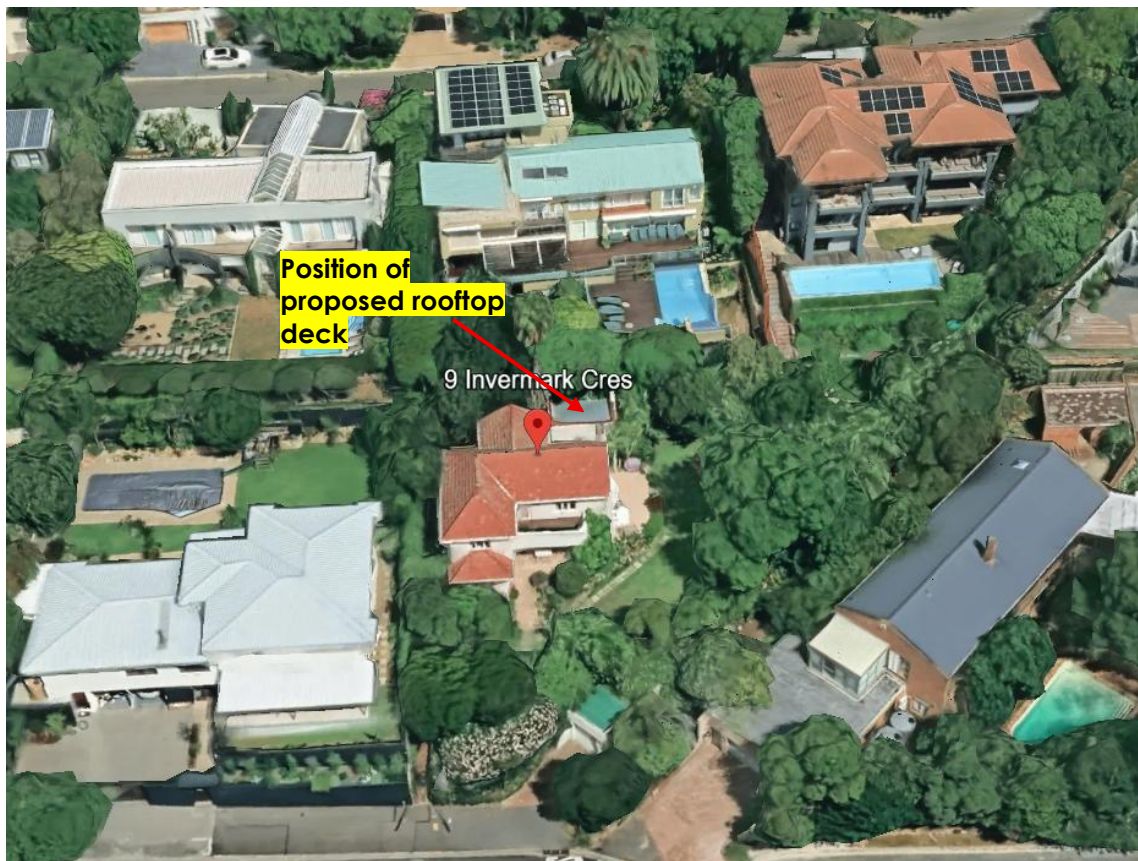
- The proposal is an appropriate and sensitive form of residential development within an existing urban area.
- The proposed departures relate to relatively minor building work; these alterations/additions are primarily located along the shared common boundary of Erven 2106 and 2108 (owned by the same family) and therefore these departures do not have any material impact on the surrounding properties.
- The proposal is consistent with the approved Council Policies and Strategies, as well as statutory legislation (e.g. Frameworks and District Plan).
- The proposed development is compatible with the residential character of the area and thus will not have an undue or material impact on the surrounding built environment.
- The proposed additions are located approximately 25m from the street and therefore will not be noticeable or result in an impact on the streetscape.
- The proposal is not believed to have any significant impact on existing rights, which is considered desirable.
- The relevant title deed conditions were imposed in terms of legislation which applied almost 100 years ago when the Oranjezicht township – and indeed the entire city, was vastly different with regard to aspects such as property development, property values, demand for housing, etc. It can confidently be said that hardly (if indeed any) development of the townships in the entire Cape Town (where applicable) have materialised as envisioned by the original township developers, with respect to aspects such as the number of dwellings, the extent of space around buildings (i.e. built-upon), building lines, etc. Times – including town planning, the property market, and township development - have changed dramatically since then.
- It is pointed out that, in terms of the proposed amendments to the Planning By-Law (and specifically Section 48 which deals with the “Removal, suspension or amendment of restrictive conditions”), the following new wording is *inter alia* proposed:

(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; (underlining our emphasis).

Clearly the emphasis is to better align with the DMS to allow low-impact structures such as uncovered decks, steps, ponds, and an architectural wall within the common boundary building line.

- The proposal will bring the proposed development in line with the DMS and with “modern” town planning.
- The proposed rooftop timber deck (balcony) on the existing outbuilding will be accessed from the adjoining Erf 2108. The height of this building will not be increased, in fact it will be lowered (due to the roof reconfiguration), and therefore it will not create any additional impact on the views of the surrounding properties. Furthermore, considering that 1) this structure is significantly setback from the other surrounding common boundaries, 2) the height is less than 3.5m, and 3) it is sufficiently screened by existing vegetation, it is not considered to impact on the privacy of the surrounding properties. Please refer to the photograph below.



(e) Impact on Existing Rights

It is not believed that there is any impact on existing rights for the following reasons:

- The proposal is generally consistent with the DMS; only two building line departures are required which are considered minor and non-impactful.
- The proposal is compatible with the residential character of the area, which is considered to respect existing rights.
- The proposal will not be visible from the street, thereby not having any impact on the streetscape; the street façade will remain as is.
- The proposal is compliant with the permitted floor space (and overall permitted height); in fact, the development of the site is considerably less, than that which is permitted in terms of existing rights.
- The existing floor space is 198m², an additional 21m² of floor space is proposed, therefore, the proposed total floor space is 219 m². In terms of the DMS, the permissible floor space is 1500m², and thus the proposed total floor space is substantially below the existing right.
- The approved structures on the site constitute an existing built-upon of only 164m² (approximately 20%) whereas the proposed additions result in a built-upon area of 191m² (23%). Given that Condition B.(c) of the title deed restricts "built-upon" to one-third of the site (i.e. approximately 273m²), the proposal is considered desirable and 10% less than that which is presently permitted.
- The relevant title deed condition (relating to building lines) which is proposed to be removed allows for structures to be 1.57m and 3.15m from the common and street boundaries, respectively. This is less onerous when compared to the applicable building lines in terms the DMS which require structures to be setback 3m and 3.5m from the common and street boundaries, respectively; with the exception of certain low impact structures; such as outbuildings, garden/architectural walls, entrance steps & landings (leading to the ground floor), open & uncovered stoeps (on ground floor), storage sheds etc. as per Item 121 of the DMS.
- Importantly, there is no impact on the existing height of the building, so that no views will be affected.
- The departure relating to Item 121A of the DMS in respect of the proposed "unscreened" rooftop deck does not negatively impact on the surrounding properties given that this departure relates to the common boundary between Erven 2106 & 2108 (owned within the same family). As can be seen on the SDP, the balcony will contain some screening and vegetation.
- The proposal relates to structures which will not have a material impact on traffic flow, parking or noise, and which will not have any impact on over-shadowing or privacy.
- No coverage regulation applies on this property.
- The proposal does not trigger any additional parking requirements.

- Very few, if any of the properties in the township and in the immediate vicinity, comply with their title deeds and the DMS (with regard to building lines, for example). The proposal is therefore not an attempt to acquire any more, or additional, rights, that what are already enjoyed by the other properties. As a result, it is not believed that the proposal will have any impact on existing rights.

(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

The application complies with the following relevant considerations:

(a) Socio-economic Impact

The proposal will create employment opportunities during and after construction which will have a positive economic impact on those parties involved. The more efficient utilisation of the property will ensure a better return on the investment made by the owner of the land which is positive from their perspective. The development will result in increased investment in the property which will have a positive impact on the municipal valuation of the property concerned and which will lead to increased rates and taxes for the Council.

Since the proposal is considered desirable and without any material impact on the existing rights of the surrounding property owners, plus the minor nature of the proposed departures, it is also considered to have a positive socio-economic impact on the neighbouring properties.

(b) Compatibility with Surrounding Uses

The subject property is zoned Residential (R1) and used for residential purposes (the same as all the other properties in the area). The proposal will be entirely consistent and compatible with the surrounding land uses and built form.

(c) Impact on External Engineering Services

The proposal will not have a material impact on the external engineering services given that it is not accompanied by an increase in density, but rather a sensitive form of residential development.

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

It is not believed that the proposal will have any undue impact on the surrounding community in this regard. On the contrary, additional development is considered to have a positive impact on the overall safety and wellbeing of the neighbours and the area as a result of the increased levels of direct and indirect surveillance.

(e) Impact on Heritage

The property is not situated in a Heritage Protection Overlay Zone (HPOZ), and the existing buildings do not presently contain a heritage grading. A heritage consultant has been appointed to engage with the City's **Environmental and Heritage Department** in order to grade the buildings.

The existing buildings are older than 60 years, and therefore the proposed alterations trigger the need for a permit from Heritage Western Cape (HWC) in terms of Section 34(1) of the National Heritage Resources Act (25 of 1999). This process will run in parallel with the subject application.

No new building work is proposed within the existing dwelling. Although alterations are proposed to the existing outbuilding (pool room), these are not considered to negatively impact on heritage, particularly considering their location (to the rear of the existing dwelling and approximately 25m from the street).

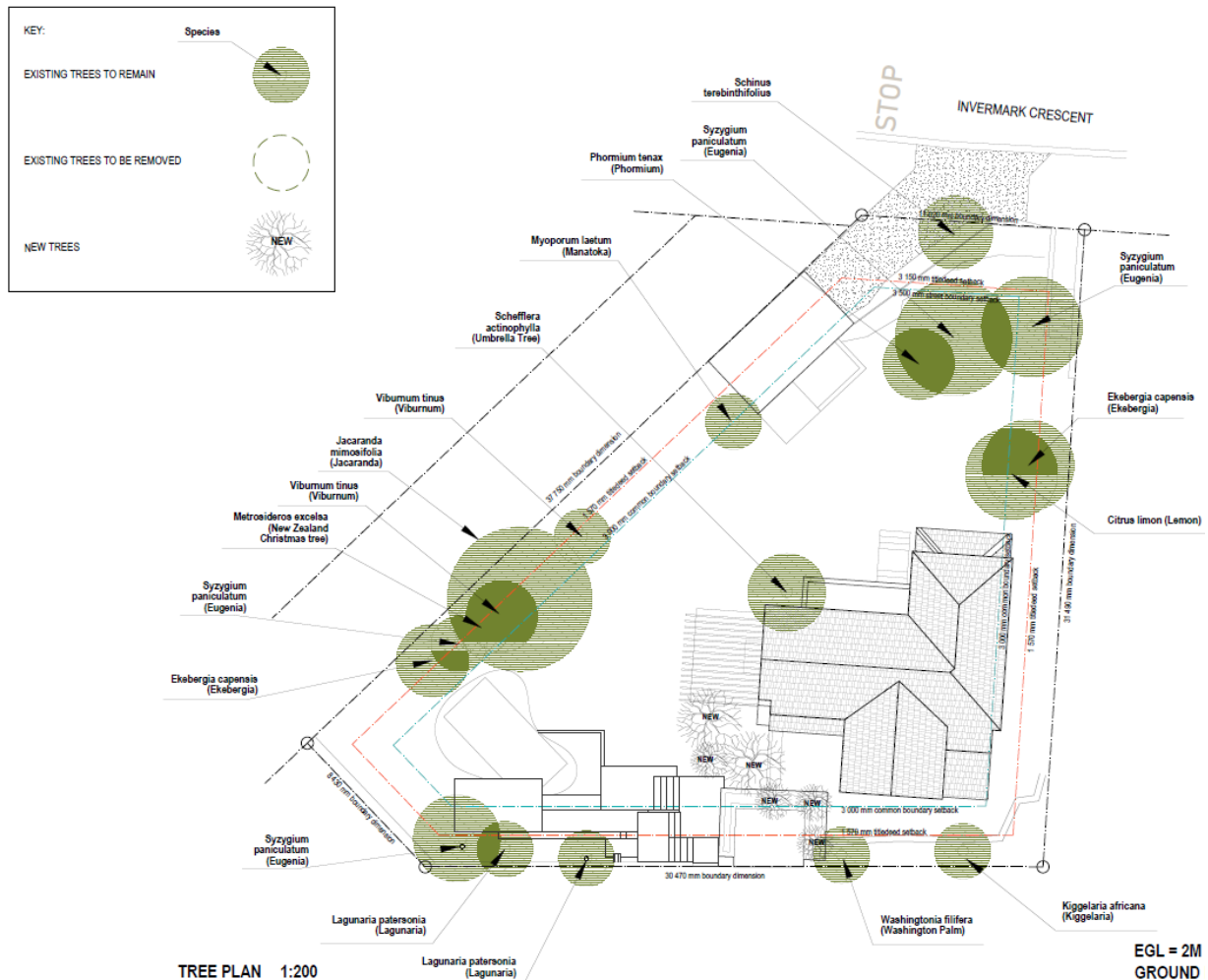
Therefore, we do not anticipate any negative impact on heritage resources.



1944- 1966 City Survey

(f) Impact on the Biophysical Environment

The existing trees are illustrated on the SDP. These do not require removal; rather, they will be retained to form part of the property's aesthetic appeal, which is also considered desirable from an environmental perspective. Furthermore, six new trees are proposed to be planted; these will further complement the existing greenery as well as serve to screen the proposed development.



(g) Traffic, Transport, Parking and Access

The property is situated within a PT1 zone. The proposal complies with the relevant requirements (in terms of the DMS) in this regard. It is not believed that there will be any impact on traffic, parking, and access given that the existing status quo in respect of parking and access remains unchanged, furthermore, the proposal does not include an increase in the number of dwelling-units and thus traffic movement will not be impacted.

(h) Imposition of Conditions and Mitigation of Adverse Impacts

There are no adverse impacts predicted. If the City finds it necessary, conditions of approval can be imposed to mitigate any potential adverse impacts.

4.2.4 Motivation in terms of LUPA and SPLUMA

- (i) The proposal complies with the above in the following ways (Section 59 of LUPA & Section 7 of SPLUMA):

4.2.4.1 Spatial sustainability, efficiency, resilience, and justice:

- The proposal will help to limit urban sprawl and to create a more spatially compact city which is within fiscal, institutional and administrative means. This is consistent with the principle of spatial sustainability.
- This will help to protect prime agricultural land on the outskirts of the city, and will have a positive impact on the environment. This is consistent with the principle of environmental sustainability.
- The proposal makes use of existing infrastructure, thereby curbing costs for the Council, developers and ultimately the general public. This is consistent with the principle of efficiency.
- Contextually speaking, appropriate urban development, such as that proposed, will cumulatively help by taking pressure off from development elsewhere which normally drives the poor to the edges of the city. This is consistent with the principles of spatial justice.
- The property is under-developed with regard to its existing rights, especially with regard to its permitted floor space and even height. The proposal is not an attempt to acquire additional floor space over and above what is permitted on the site; in fact, the proposal is considered to be modest in scale and immaterial in impact. The application is merely to make more efficient use of the land primarily within existing rights. This is the principle of spatial resilience.

4.2.4.2 Section 39(5) of LUPA

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 should be noted that the subject condition (relating to building lines) which is proposed to be removed, was imposed prior to the promulgation of the Townships Ordinance (33 of 1934), and therefore the City cannot enforce this condition, and it does not require a mandatory removal. The removal is a “voluntary” application, and the owner has willingly made application in this regard to align the property with the current building lines in terms of the DMS.

The relevant condition stems from nearly 100 years ago, at a time when the township was created, and when it (and the city as a whole) looked vastly different than currently. At the time, the township developers intended the suburb to have a very particular “look and feel”, and deemed it “desirable” to impose these restrictions to control aspects such as the built form (of buildings), land uses (i.e. one dwelling only), building lines, etc. This was particularly done because no zoning schemes existed at that time (like they do now) to execute such “controls”. With the coming of zoning schemes (which are far more in touch with modern planning principles and property developments) they have largely taken over the “role” of controlling property development from title deeds.

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

Fast forward almost 100 years and the Oranjezicht township now “looks and feels” entirely different from the original township developers’ vision: as mentioned, few properties comply with the one-third built-upon, most properties have been improved with structures (building) over the building line(s), and many properties have been developed with more than one dwelling house.

The changed nature of the suburb is a fact that cannot be ignored, and it needs to be accepted that a city is not static but a dynamic "organism": its character changes over time as society and the realities of the modern world also change. With this change, different values are often attributed to what makes a suburb desirable, and what represents "financial or other" values. For example, over time, society has come to accept (and even desire) more compact urban environments due to increased levels of security, relative lower economies of scale (with respect to the "shared cost" of infrastructure by more properties), shorter traveling times (to work, school, recreation, etc.), smaller properties and gardens which are easier to secure, maintain and afford, a gradual need for smaller dwellings due to smaller families, etc. These are all examples of (contemporary) aspects which currently holds financial and other values to the holders of the rights (as opposed to the ones from a century ago). Indeed, a large number of erven in this township have had their title deed conditions removed or amended over many years, and without any apparent and negative impact on property values. On the contrary, the property values in Oranjezicht have never been higher than presently.

The fact that the proposal is considered to be desirable, modest, with immaterial impact on the area, and entirely in character with the surrounding built environment, will further mean that it is not believed that it will have any undue impact on the financial or other values.

With regard to actual figures, the following table provides these for some of the properties which already underwent a removal/amendment of title deed conditions (either the same or similar to that of the current proposal), as well as the values for the surrounding properties. It is clear that, almost without fail, all the properties increased in value.

Application property (with either the same or similar conditions removed/amended)	Neighbouring properties	2022 Municipal valuation	2025 Municipal valuation
Erf 2326 @ 21 Invermark Crescent 2022: R29,15 million 2025: R33,55 million	Erf 2327	R15,7 million	R20,05 million
	Erf 3755	R20 million	R25,8 million
	Erf 3129	R30 million	R46,8 million
Erf 2108 @ 34 Glencoe Avenue, Oranjezicht 2022: R16,95 million 2025: R20.1 million	Erf 2107	R17,55 million	R27,25 million
	Erf 2109	R15,5 million	R18,1 million

Accordingly, it is not believed that there is any material and negative impact on the financial or other values.

The removal of the relevant Condition will enable the further development of the property, an increase in its municipal valuation, and hence higher rates income for the Council.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition;

It is reiterated that the relevant title deed condition (relating to building lines) which is proposed to be removed allows for structures to be 1.57m and 3.15m from the common and street boundaries, respectively. This is less onerous when compared to the applicable building lines in terms the DMS which require structures to be setback 3m and 3.5m from the common and street boundaries, respectively; with the exception of certain low impact structures; such as outbuildings, garden/architectural walls, entrance steps & landings (leading to the ground floor), open & uncovered stoeps (on ground floor), storage sheds etc. as per Item 121 of the DMS.

We are of the opinion that the relevant condition does not hold any material **personal** benefits for the holders of the rights. "Personal benefits" could be local in nature (i.e. for properties next to/close to the subject erf) or more general in nature (i.e. for the township extension). These benefits could be in the form of ambient noise levels, privacy, impact on views etc. The proposal must however also be seen in light of the following statements (and keeping in mind the reality of a changing urban milieu of the City – including Oranjezicht, over many years – and which is still ongoing).

The proposal is consistent with approved Council Policies and other legislation which encourage and support a denser urban form through incremental and reasonable residential development in contextually appropriate locations, such as the subject erf which is in close proximity to the City Bowl as within walking distance of a MyCiTi bus route. The Oranjezicht township has changed considerably over the years with many properties having been developed in the same manner as proposed now. The proposal is therefore not a foreign concept, or out of character with the built environment of this suburb. On the contrary, it is a perfect urban fit. The proposed alterations and extensions have been carefully designed to be largely compliant with the DMS and indeed there are only a few minor setback departures which are considered negligible, and with no material external impact.

The original intention of the relevant conditions for the area has been significantly diluted over time due to the changed character of the township. This is a critical aspect to keep in mind when considering if the “personal benefits” of the holders of the right really still apply, or have any merit.

It is not believed that there are any material personal benefits to the holders of this right, if the relevant “building line” restrictive condition is retained, particularly considering the context of the area, and the immaterial impact of the proposal. In fact, for reasons mentioned earlier in this report, we are of the opinion that the proposal will have a positive impact on the personal benefits of the holders of this “right”, or, put differently, retaining the condition would accrue minimal personal benefit to the holders of the rights.

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

Granting the application will enable the property to be developed in alignment with the existing rights with regard to building lines in terms of the DMS (i.e. to be developed more efficiently). The approval of the application will also optimise the investment made in the property by the owner. The property is currently considered to be under-developed with regard to existing rights, particularly in respect of the permissible floor space (less than 15% of the permissible right of 1500m²). Approval of the proposal will therefore have a significant personal benefit for the owner of the premises by unlocking additional development potential in the form of low impact alterations and additions.

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

It is our opinion that there will be no social benefits should the restriction remain in place. A “social benefit” implies the wider public, or society as a whole. Since the relevant condition aims to restrict the building lines, there is no apparent benefit to society if the condition is retained, especially considering the nature, appearance and character of the existing surrounding built environment (where many, if not most, of the properties have been relieved of the same/similar title deed conditions, and have been improved over the building lines, etc). It is not believed that society will gain anything if this condition is retained. It stands to reason that there is likewise no undue impact on society if the condition is removed.

The social benefit of the removal, suspension or amendment of the restrictive condition:

The removal of the relevant condition will have a positive social benefit given that it will enable desirable and sensitive residential development within the City Bowl - a highly contextually appropriate area, being in close proximity to a multitude of commercial and social facilities and opportunities.

The proposal supports the management of urban growth through appropriate built-form within the inner city, which has positive social impacts e.g. it limits urban sprawl, protects and optimises resources and infrastructure, creates safer and more sustainable/viable communities, benefits the environment etc.

The further development of the property will create employment opportunities during the construction phase; this is considered in the interest of the social needs of the community of Cape Town.

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

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;

No, the application will not remove all the title deed conditions; in fact all of the remaining conditions will remain. The restrictive conditions pertaining to, for example, the "no subdivision", "one-third built upon", "one-dwelling" and "land-use" restrictions will remain in place.

The condition which is proposed to be deleted is no longer considered relevant, and the property will still be subject to the development rules as set out in the DMS.

4.2.4.3 Section 47 of SPLUMA

The condition that is to be removed does not constitute servitudes or contractual rights. It is a limitation on the use of land imposed in the public interest. Neighbouring owners have an interest in the restrictions, but the restrictions do not vest in them with any private rights to property within the meaning of Section 25 of the Constitution.

In addition, Section 25(1) of the Constitution permits the deprivation of property rights provided that it is done in terms of a law of general application and is not arbitrary. The proposed removal is specifically permitted and regulated by laws of general application being Section

47 of SPLUMA, Section 39 of LUPA, and Section 42 of the By-Law. It follows that the proposed removal is constitutional as long as it complies with applicable legislation.

The removal of the restrictions further does not entitle neighbouring owners to compensation under Section 25, due to the fact that Section 47(3) of the SPLUMA specifically precludes any award of compensation as follows: *"A Municipal Planning Tribunal considering an application to remove, amend or suspend a restrictive condition is not liable to compensate any person for any loss arising from or related to a decision made in good faith and in terms of this Act to remove, amend or suspend a restrictive condition."*

4.2.4.4 Section 42(1)(c) of SPLUMA

In considering and deciding an application the Municipal Planning Tribunal (MPT) must take into account:

- the public interest
- the constitutional transformation imperatives and the related duties of the State
- the facts and circumstances relevant to the application
- the respective rights and obligations of all those affected
- the state and impact of engineering services, social infrastructure and open space requirements; and
- any factors that may be prescribed, including timeframes for making decisions.

In consideration of the above, the application has been demonstrated to be desirable and consistent with the relevant criteria.

4.2.4.5 Section 48(4)(a) of the MPBL

Section 48(4)(a) of the MPBL:-

"whether the result would better align with the development management scheme"

In respect of the above, it is considered that the removal of the restrictive title deed condition will result in better alignment with the DMS; the intention of this component of the application is to enable this alignment, albeit a few immaterial building line departures are required. The application has been demonstrated to be largely compliant with the requirements of the DMS and thus is considered desirable.

5 CONCLUSION

This report successfully demonstrates the *desirability* of the proposed removal of a title deed condition and the departures, as well as the *compliance* thereof with all the relevant adjudication criteria in SPLUMA, LUPA and Section 99 of the By-Law.

The report also demonstrates consistency and compliance with all Council's approved Frameworks, Strategies, Plans and Policies.

The proposal is considered to be entirely compatible and in character with the surrounding built environment. It is not believed to have any material external impacts, and no impact on existing rights. The proposed departures are considered minor and will not have any material impact.

Given the above, it is trusted that the Municipal Planning Tribunal will favourably consider and **approve** the application.

TOMMY BRUMMER TOWN PLANNERS