

**REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS
AND
TECHNICAL APPROVAL
ERF 875 STELLENBOSCH
AT 11 PIET RETIEF STREET**



SUBMITTED TO:

Land Use Management
Stellenbosch Municipality

ON:

23 September 2021

BY:

PIETERHUIZEN
PLANNING

OUR REFERENCE: J020
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DATE: 11 November 2021

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1. INTRODUCTION AND APPLICATIONS

1.1 Introduction

The purpose of this report is to motivate the applications required to allow for the addition of a second dwelling to the existing dwelling house on Erf 875 Stellenbosch (hereafter referred to as “the property”). Further applications will also allow the future development of the property in accordance with the applicable zoning scheme regulations.

The following documents are attached to this report:

Annexure A:	Application Form
Annexure B:	Copy of Deed of Transfer No. T.23999/2001
Annexure C:	Power of Attorney
Annexure D:	Conveyancer Certificate
Annexure E:	General Plan No. 870/1947
Annexure F:	Site Development Plan
Annexure G:	Pre-Application Scrutiny Feedback

1.2 Applications

In terms of Section 15 of the Stellenbosch Municipality Land Use Planning By-Law, 2015 (hereafter referred to as “the By-Law”), *Pieterhuizen Planning (Pty) Ltd* hereby officially apply for the following:

In terms of Section 15(2)(f): For the **removal of restrictive title deed conditions B.I.(a), B.I.(b), B.I.(c), B.I.(d) and B.II.(i)** from Deed of Transfer No. [REDACTED].

In terms of Section 15(2)(g): For a **technical approval** in accordance with Section 13 of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow for a second dwelling on the property.

See **Annexure A**, attached to this motivation report, for the signed application form.

2. THE PROPERTY

2.1 Ownership and Title Deed

Erf 875 Stellenbosch is registered in the name of [REDACTED] (hereafter referred to as "the owner"), measures 1 094m² in extent, and is held by Deed of Transfer No. [REDACTED] – see **Annexure B**, attached, for a copy of the title deed.

The owner of the property has duly authorised *Wilhelm Esterhuizen of Pieterhuizen Planning (Pty) Ltd* to submit the required land use applications to the Stellenbosch Municipality. The power of attorney is attached to this report as **Annexure C**.

2.2 Conveyancer Certificate

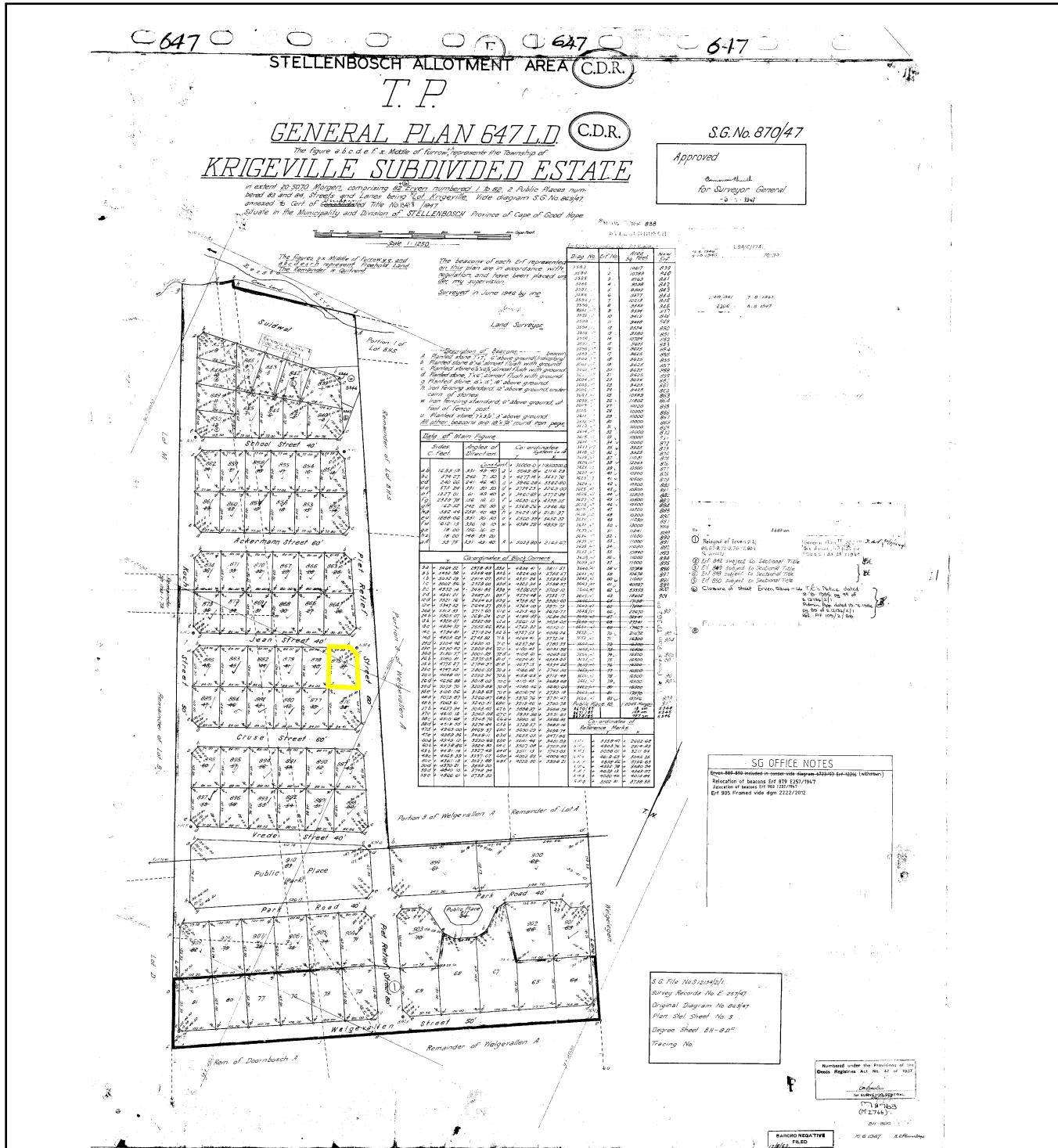
As mentioned, the property is held by Deed of Transfer No. [REDACTED]. *Conveyancer Grant Alastair Gregory Hill* from *Miller Bosman Le Roux Attorneys* has certified that the following conditions in the said deed, restricts the development of the property:

- B.I.(a): This erf shall be used for residential purposes only.*
- B.I.(b): Only one dwelling, together with such outbuildings as are ordinarily required to be used therewith shall be erected on this erf.*
- B.I.(c): Not more than one third of the area of this erf shall be built upon.*
- B.I.(d): No building or structure or any portion thereof except boundary walls and fences (sig.), shall be erected nearer than 6.30 metres to the street line which forms a boundary of this erf, nor within 3.15 metres of the lateral or rear boundary common to any adjoining erf, no building, however, to exceed two storeys in height.*
- B.II.(1): The roofs of all buildings on this erf must be uniform in regard to material and style. Flat roofs for outbuildings, garages, etc. will only be permitted if the main building also has a flat roof.*

The conveyancer certificate is attached to this report as **Annexure D**.

2.3 Surveyor General Documents and Background

The **General Plan**, below and attached as **Annexure E**, (S.G No. 870/1947) illustrates the cadastral identity of the property within the context of the Krigeville Subdivided Estate. The restrictive title deed conditions, as identified by the conveyancer certificate and mentioned under Section 2.2 of this report, was imposed by the Administrator of the Cape of Good Hope when the subdivision of Krigeville was approved. It is therefore argued that all properties illustrated in Figure 1, below, are (or were at some point) subject to the listed restrictive title deed conditions.



2.4 Locality and Context

With reference to the **Locality Map**, Figure 2 below, the property is situated in southern residential suburb of Stellenbosch, known as Krigeville. The property is situated within close proximity of various educational institutes such as Paul Roos Gimnasium, Rhenish Primary, Rhenish Girls High School, Bloemhof Girls High and Eikestad Primary. It is also noticeable that the Stellenbosch Central Business District is favourably accessible from the property.

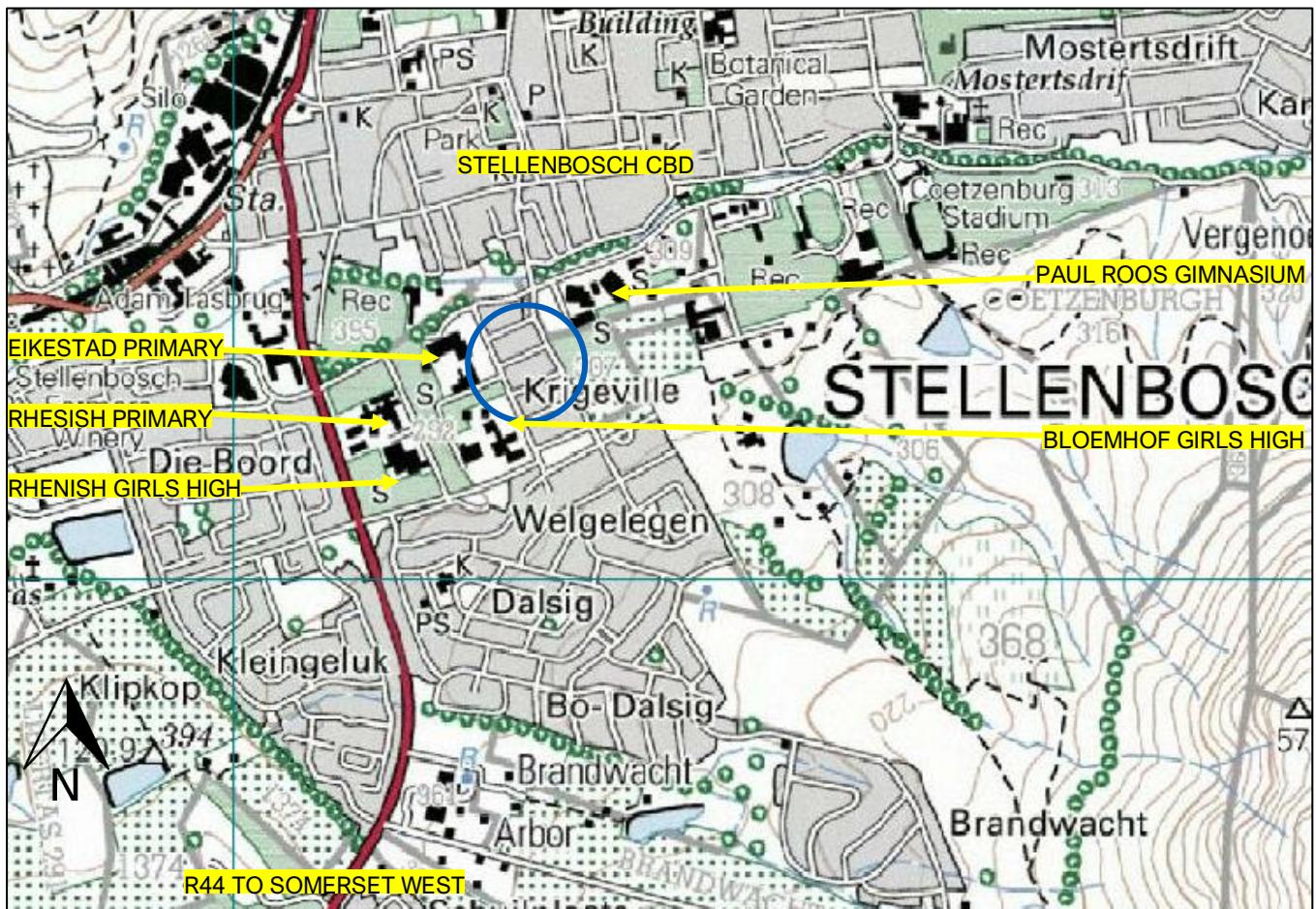


Figure 2 Locality Map of the Property

The **Aerial Photographs**, Figures 3 and 4 below, illustrates that the property is located on the corner of Piet Retief Street and Jean Road. The property is further bounded by Erf 876 (southeast) and Erf 878 (west). Across Piet Retief Street, from the property, is the sports fields of Paul Roos Gimnasium as well as agricultural land.

Access to the property is from Piet Retief Street. The property is currently developed with a double storey dwelling house comprising five bedrooms as well as a single-storey double-garage.

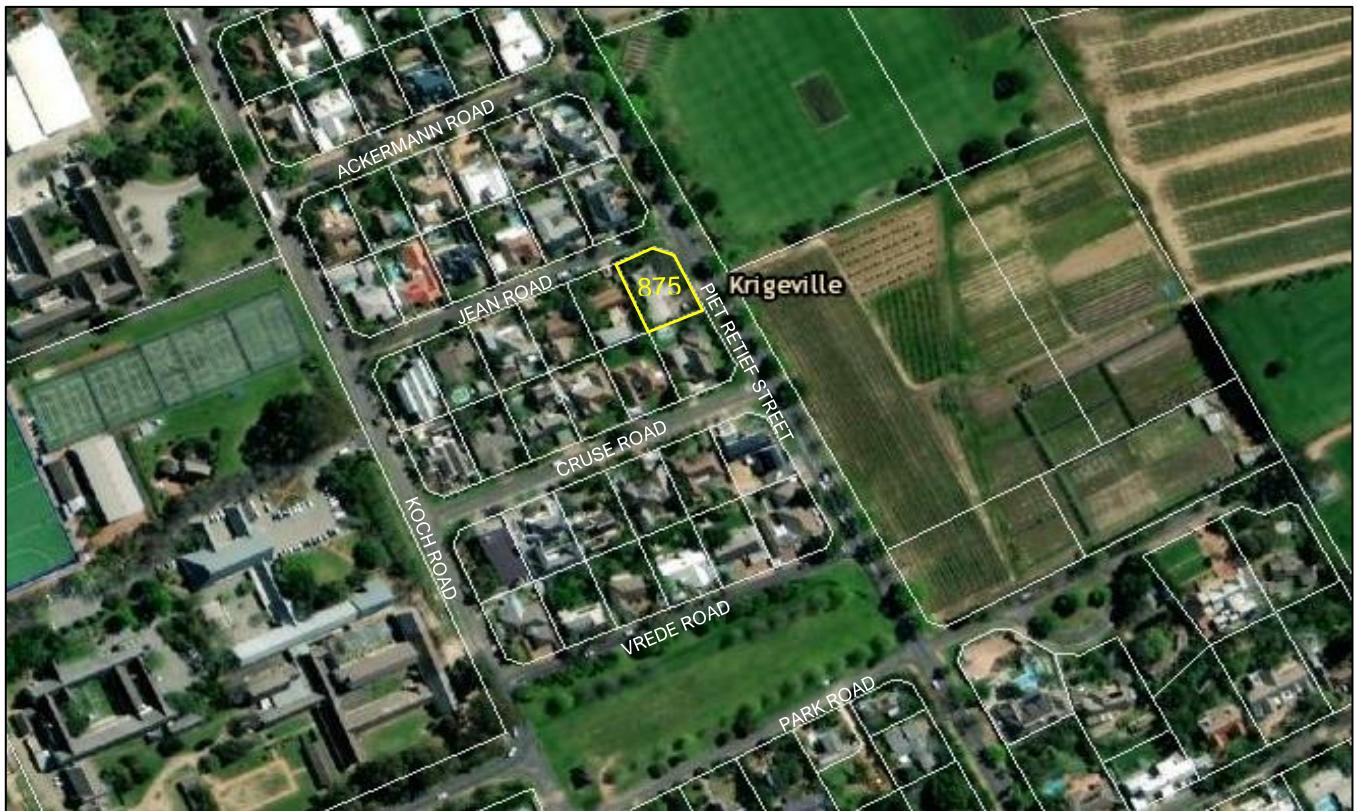


Figure 3 Aerial Photograph of the Property within the Surrounding Area



Figure 4 Aerial Photograph of the Property

Various properties that form part of the original Krigeville Subdivision, have since been developed in accordance with the provisions of the applicable zoning scheme, rather than the conditions as contained in the Pivot Deed of Transfer of the said properties (Deed of Transfer No. T.18689/1947).

Examples of this includes the following:

a) Erf 871 Stellenbosch at 3 Ackerman Road:

Not used for residential purposes only. Business use prevalent on the property (Green Tree Systems).

b) Erf 887 Stellenbosch at 7 Piet Retief Street:

Not used for residential purposes only. Home occupation practice prevalent on the property (Pierre Kruger Physiotherapist).

Second dwelling currently being developed.

c) Erf 888 Stellenbosch at 5 Piet Retief Street:

Not used for residential purposes only. Business use prevalent on the property (Protekma Insurance Brokers).

d) Erf 889 Stellenbosch at 10 Vrede Road.

Not used for residential purposes only. Home occupation practice prevalent on the property (Dr Dewald Cloete - Dentist)

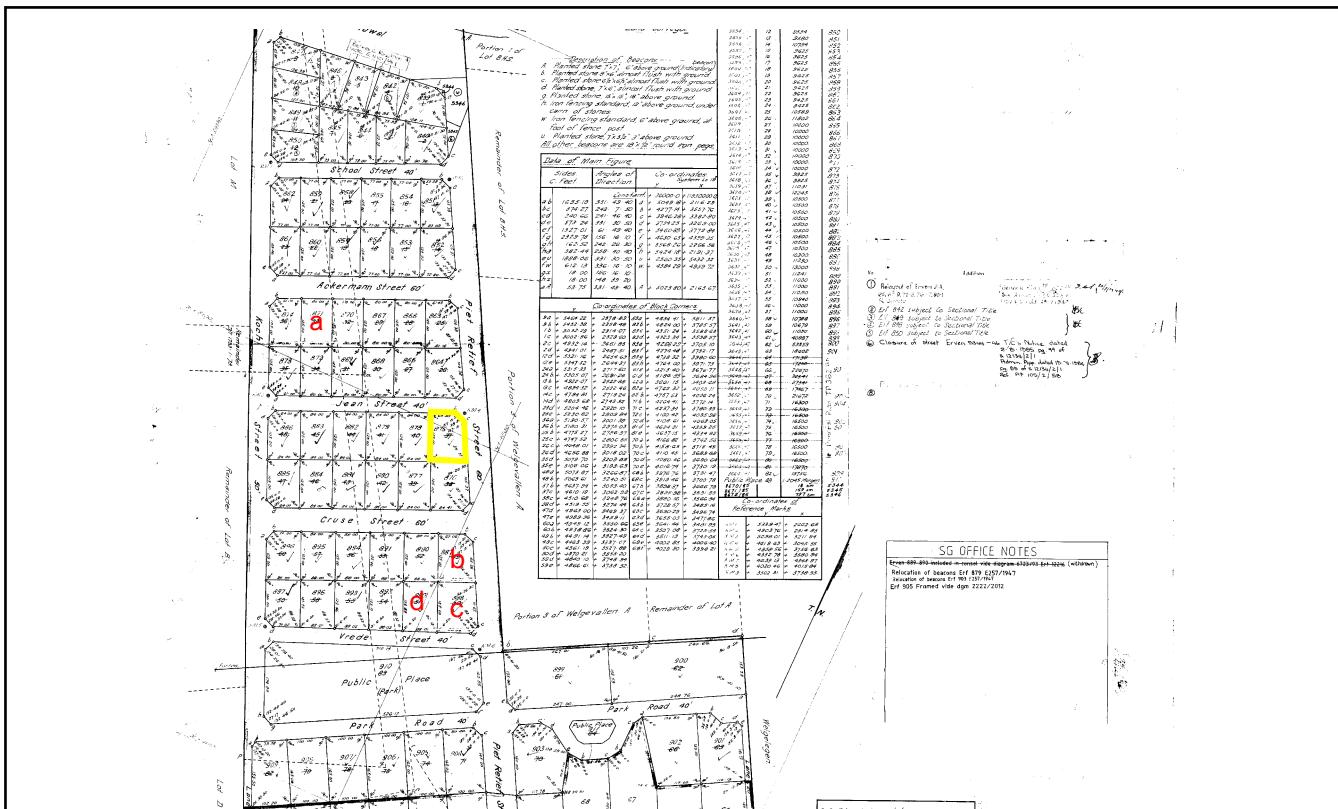


Figure 5 Locality of Properties Developed further than per the Title Deed Conditions

2.5 Heritage Considerations

The existing dwelling house on the property is older than 60 years. Aerial photographs from both 1955 and 1966 have been obtained and illustrates that the dwelling house was developed between these two dates – see Figures 6 and 7 below. A formal application to Heritage Western Cape will be made for the proposed additions and development will only commence once approval has been granted by Heritage Western Cape.



Figure 6 Aerial Photograph of the Property (1955)



Figure 7 Aerial Photograph of the Property (1966)

2.6 Zoning

The zoning of properties situated in the Stellenbosch Municipality is regulated in terms of the Stellenbosch Zoning Scheme By-Law, 2019 (hereafter referred to as “the Zoning Scheme”). Below is an extract of the Stellenbosch Municipality’s **Zoning Map**, indicating the property zoned Conventional Residential. According to the Zoning Scheme, the purpose of this zone is to, *inter alia*, make provision for moderate densification through additional dwellings with similar character and built form.

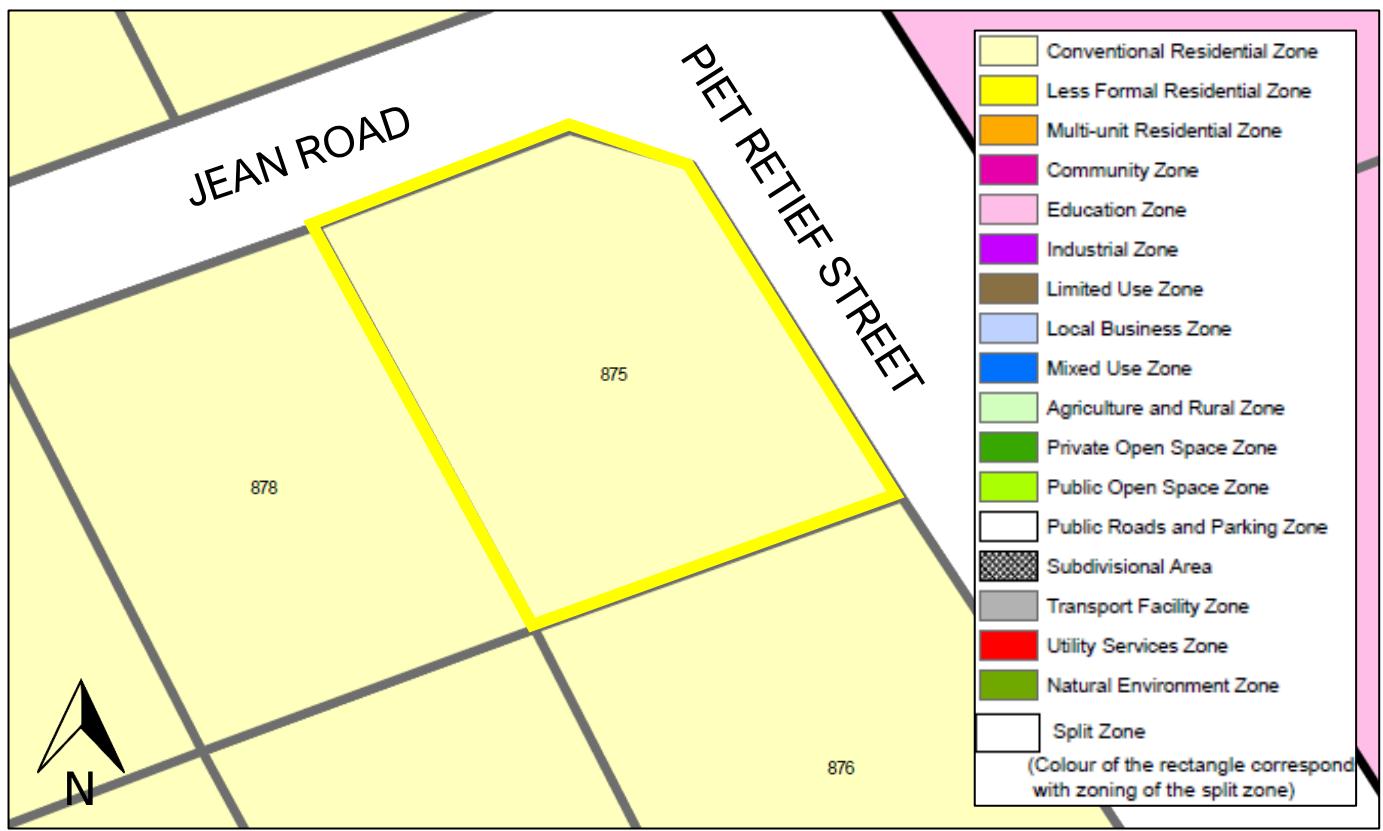


Figure 8 Extract of the Zoning Map

The following land uses and development parameters, in terms of the Zoning Scheme, are applicable to the property:

ERF 451 STELLENBOSCH CONVENTIONAL RESIDENTIAL ZONE 1 337M ²	
Land Uses / Development Parameters	Zoning Scheme Permissions
Primary Uses	Dwelling House
Additional Uses (Technical Approval Required)	Bed and breakfast establishment; Home day care centre; Home occupation practice; Home lodging; Second dwelling ; Occasional use (one event/year); Private road.
Consent Uses (Consent Use Application Required)	Commune; Extramural facility; Group housing; Guest house; House shop; Occasional use (>one event/year); Tourist dwelling unit; Additional uses exceeding parameters in this chapter.
Street Boundary Building Lines	4m
Common Boundary Building Lines	2.5m (0m for garages and carports not higher than one storey)

Coverage	50% (547m ²)
Height	2 Storeys
Parking:	
- Dwelling House	2 Bays
- Second Dwelling	1 Bay

Table 1 Zoning Scheme Land Uses and Development Parameters

3. PROPOSED DEVELOPMENT

3.1 Summary of Proposal

As mentioned, the property is currently developed with a double-storey dwelling house comprising of five bedrooms. With reference to the site development plan (drawing number 2021/14 – 001-007), drawn by *Andre Franszen and Associates* and attached to this motivation report as **Annexure F**, the proposed development of the property will include the addition of a second dwelling on top of the existing garage of the building. Vehicular access to the second dwelling will be from Piet Retief Street, via the existing carriageway crossing. Three parking bays, in addition to the existing double garage, are provided for on the property. Pedestrian access to the second dwelling will be via an external staircase situated on the south-eastern portion of the building – see Figures 9 and 10 for the proposed additions to the existing building.

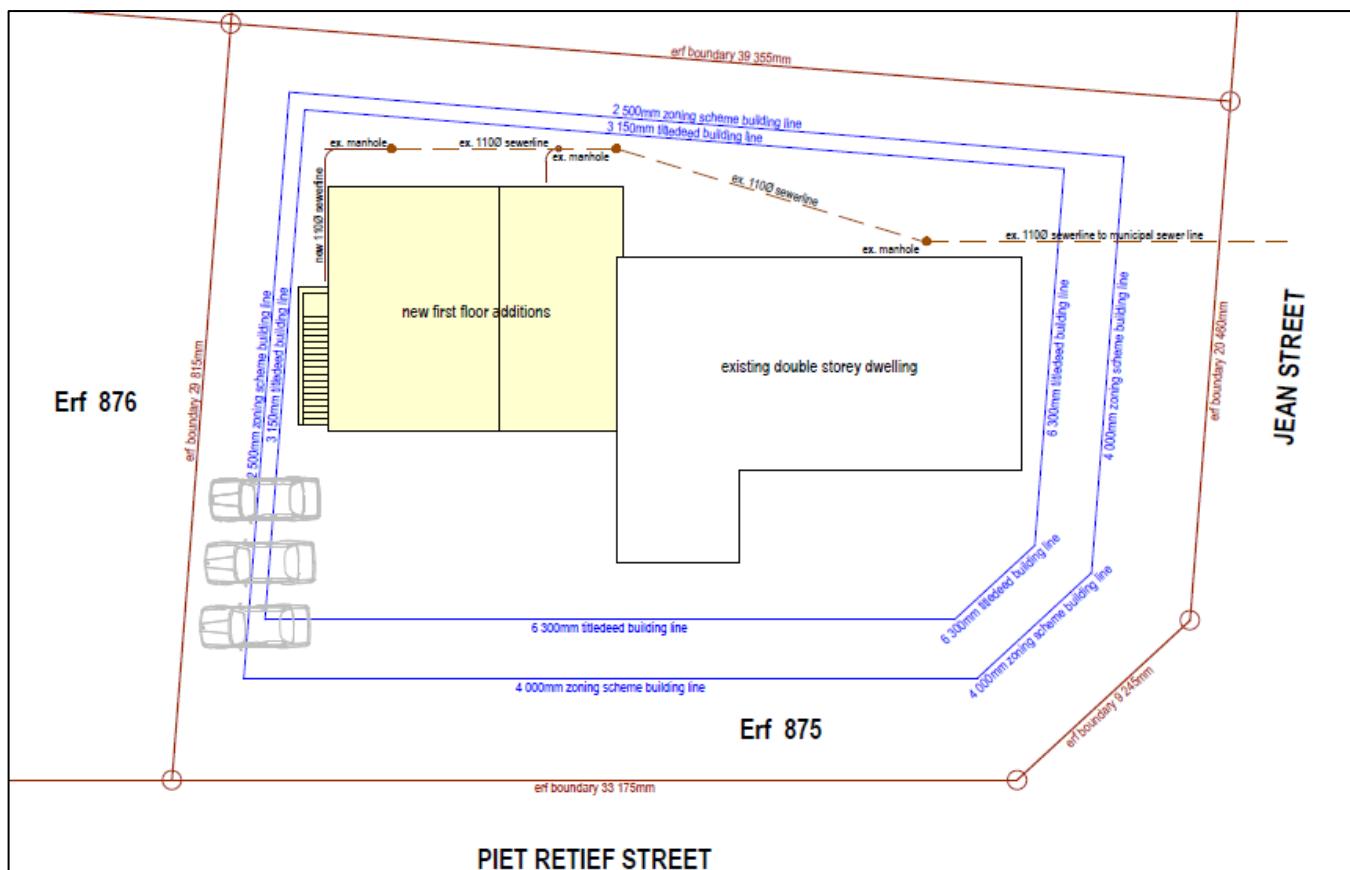


Figure 9 Extract the Site Development Plan (Site Plan)

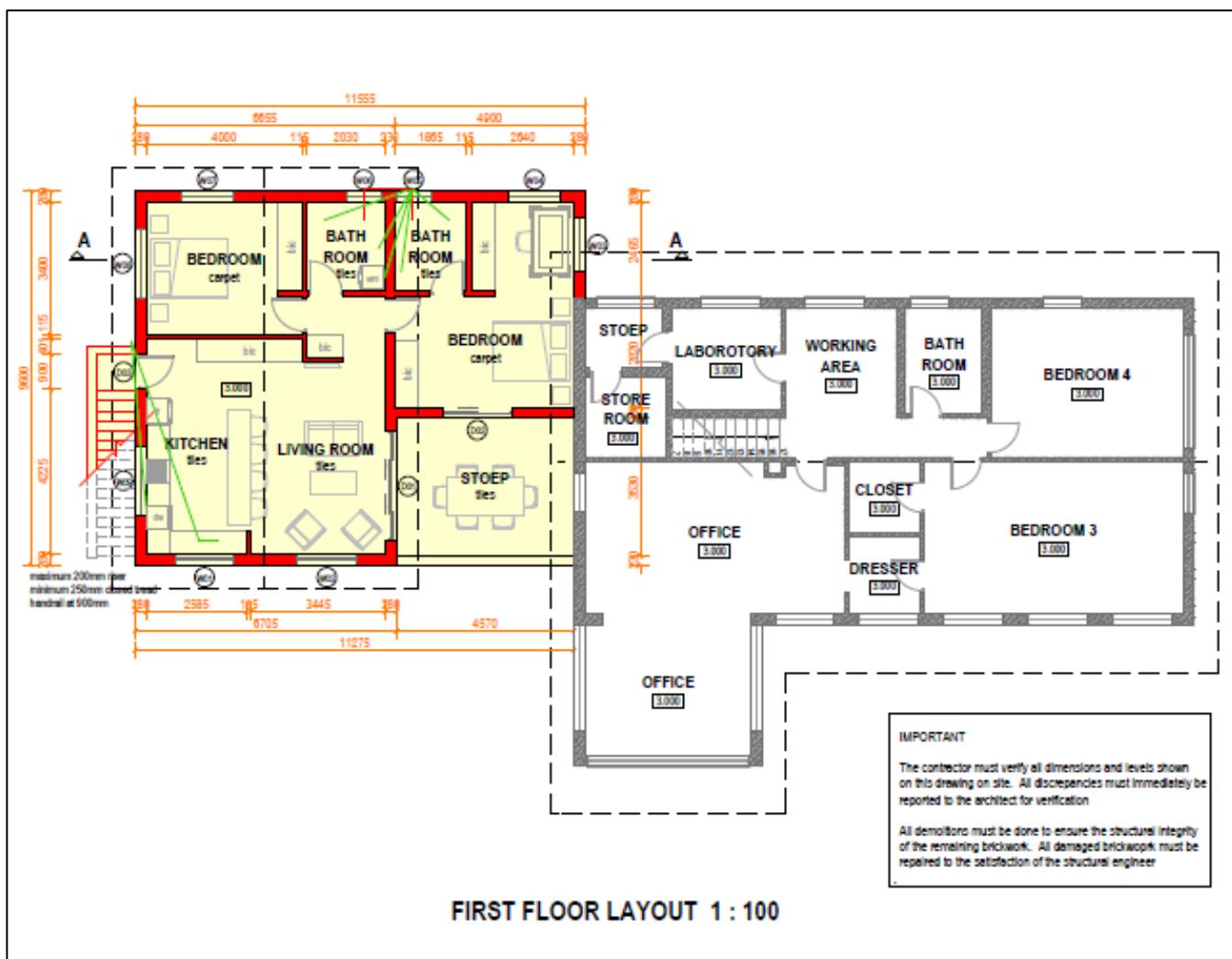


Figure 10 Extract the Site Development Plan (First Floor Plan)

3.2 Assessment of Proposed Development

In order to assess the proposed development, cognisance should be taken of the identified restrictive title deed conditions as well as the land uses and development parameters pertaining to properties zoned Conventional Residential as per the Zoning Scheme.

Accordingly, the proposed additions and alterations is assessed in Table 2 below:

ERF 451 STELLENBOSCH CONVENTIONAL RESIDENTIAL ZONE 1 337M ²			
Land Uses / Development Parameters	Zoning Scheme Permissions	Restrictive Title Deed Conditions	Proposal
Primary Uses	Dwelling House	B.I.(b): One Dwelling Only	Dwelling House
Additional Uses	Second dwelling		Second Dwelling

Street Boundary Building Lines	4m	B.I.(d): 6.3m	>6.3m
Common Boundary Building Lines	2.5m (0m for garages and carports not higher than one storey)	B.I.(d): 3.15m	>3.15m
Coverage	50% (547m ²)	B.I.(c): One Third Built Upon (364.67m ²)	23.75% (259.83m²)
Height	2 Storeys	N/A	2 Storeys
Parking: - Dwelling House - Second Dwelling	2 Bays 1 Bay	N/A	5 Parking Bays

Table 2 Assessment of Proposal

4. APPLICATIONS

Although the proposal conforms with the restrictive title deed conditions in terms of the residential use, built upon and building lines, it is proposed to remove these conditions. This will make provision for the future development of the property in accordance with the provisions of the Zoning Scheme.

Therefore, formal applications are hereby made for the following:

i. In terms of Section 15(2)(f) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for the **removal of the following restrictive title deed conditions**:

B.I.(a): *This erf shall be used for residential purposes only.*

B.I.(b): *Only one dwelling, together with such outbuildings as are ordinarily required to be used therewith shall be erected on this erf.*

B.I.(c): *Not more than one third of the area of this erf shall be built upon.*

B.I.(d): *No building or structure or any portion thereof except boundary walls and feces (sig.), shall be erected nearer than 6.30 metres to the street line which forms a boundary of this erf, nor within 3.15 metres of the lateral or rear boundary common to any adjoining erf, no building, however, to exceed two storeys in height.*

B.II.(l): *The roofs of all buildings on this erf must be uniform in regard to material and style. Flat roofs for outbuildings, garages, etc. will only be permitted if the main building also has a flat roof.*

ii. In terms of Section 15(2)(g) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for a **technical approval** to allow for a second dwelling on the property.

5. ADJUDICATION AND MOTIVATION

5.1 Motivation in Terms of Section 39.(5) of the Western Cape Land Use Planning Act, 2014

Section 33.(5) of the By-Law states that the Municipality must have regard to certain considerations which is derived from Section 35.(5) of the Western Cape Land Use Planning Act, 2014 (hereafter referred to as “LUPA”). The motivation, in terms of the said consideration, follows:

Section 33.(5)(a): the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;

It is unlikely that the restrictions currently add any financial value to the owners of properties within the Krigeville Subdivision. The deletion of the restrictive conditions will allow for the development of the property largely in line with the provisions of the Zoning Scheme. The proposed dwelling house and second dwelling is designed to respect the surrounding built environment of the area. The proposal will be in character with and be compatible with the surrounding, existing urban single residential landscape. It is not believed that the proposed deletion of the conditions will have any undesirable impact on the character or property values of the erven in this sought-after and popular area.

The proposed investment through the construction of the proposal is considered desirable, and it can be expected that it will have a positive impact on the surrounding property values.

Section 33.(5)(b): the personal benefits which accrue to the holder of rights in terms of the restrictive condition;

It is not believed that the “holders” of these rights currently enjoy any personal benefits. As mentioned above, the proposal will be in character with the surrounding natural and built environment, while a number of the property owners in the area already went through the same process to allow those erven to be developed with a dwelling house and second dwelling.

Section 33.(5)(c): the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;

The proposal will enable the owner of the property to develop it in response to the market demand for additional housing options in Stellenbosch Town. This is due to the property being well located from educational institutes and the town centre.

The property will be developed in line with the Stellenbosch Municipality's approved policies. Furthermore, the deletion of the title deed conditions will allow for the owner to develop the property in accordance with the primary and additional use rights (subject to a technical approval).

The optimising of the use of the erven will also assist with the maintenance costs of the properties and the building, which is considered desirable from an aesthetic, practical and financial point of view.

Section 33.(5)(d): the social benefit of the restrictive condition remaining in place in its existing form;

It is not believed that there is any social benefit (including to the broader society) in the restrictive conditions being retained in their existing form, e.g. it does not concern a public open space or community facility used or accessible to the general public. On the contrary, there is sufficient reason to motivate that the proposed deletion of the restrictive conditions is indeed considered to have a social benefit, as explained in the paragraphs below.

If the conditions are not deleted, the erf will lose the opportunity of being developed to its full potential and within the envisaged provisions of the current zoning scheme.

Section 33.(5)(e): the social benefit of the removal, suspension or amendment of the restrictive condition; and

The deletion of the restrictions will have a positive social benefit given that it will enable a development that is desirable within an existing residential urban area.

The removal of the restrictive title deed conditions will also allow for an additional housing option within close proximity of the Stellenbosch Central business District and various educational institutes. This will result in the residents of the dwelling house and second dwelling to be closer to economic, social, and educational opportunities.

Furthermore, and given the character of the area, it is believed that the proposed deletion of the conditions will have a positive social impact (benefit).

The deletion of the restrictive conditions will ensure that valuable and extra housing stock will be added to an existing urban area where there is a relatively high demand for residential properties.

The proposal is considered desirable as it constitutes a sensitive and incremental form of densification which will ensure more compact and sustainable cities, curb urban sprawl and reduce the impact on agricultural land and the costs pertaining to the provision of new services. This clearly has social benefits for the broader public.

Lastly, the removal of the restrictive title deed conditions will not result in the overdevelopment of the property which might result in a negative social impact. In fact, any further development will be regulated by the applicable Zoning Scheme.

Section 33.(5)(f): whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

The proposal will not remove the beneficiaries' right completely as applicable Zoning Scheme, with its development rules, will remain in place to regulate the further development of the property.

The proposed deletion is seen as a reasonable and acceptable way to allow for the development of the property.

5.2 Motivation in Terms of Section 65 of the By-Law

Section 65 of the By-Law relates to the adjudication of applications submitted in terms of the By-Law. The applications required, as set out in Section 4 of this report, are assessed in Table 3 below, against the general criteria for the consideration of applications as set out in Section 65(1) of the MPBL:

Assessment of Applications in terms of Section 65(1) of the By-Law	
Section 65(1) Criteria	Assessment of Proposal
a. Application submitted in terms of the By-law.	The application is submitted in terms of Sections 15(2)(f) and 15(2)(g) of the By-law.
b. Procedure followed in processing the application.	To be decided. The proposed development was tested with the Municipality by means of pre-application consultation. See Annexure G for feedback received during the pre-application scrutiny process. All relevant and required documentation are attached to this application and motivation.
c. Desirability of land use	The applications for the removal of restrictive title deed conditions and technical approval to allow for a dwelling house and second dwelling on the property, are considered desirable. The reasons for the desirability of the applications may be summarised as follows: <ul style="list-style-type: none">- The approval of the applications will not have a negative impact on the surrounding properties. This is due to the land use (residential) being in character with the immediate surrounding area.

	<ul style="list-style-type: none"> - The approval of the removal of restrictive title deed conditions will not result in an unusual advantage for the owners of the property. Any future development will have to comply with the provisions of the applicable Zoning Scheme. - The proposed land use, resulting in a marginal increase in density, is appropriate in the context of the area and will contribute to a more compact urban environment. - The existing rights of the surrounding neighbours will not be significantly impacted in a negative way. - The proposed land use will not negatively impact the existing infrastructure in the area.
d. Comment in response to public participation.	The application to be advertised in accordance with the Stellenbosch Municipality's requirements.
e. Applicants response to comments received.	To be submitted as part of the Portfolio of Evidence upon conclusion of the Public Participation Process.
f. Investigations in terms of other laws.	Not Applicable.
g. Written assessment by planner.	To be done by the Stellenbosch Municipality.
h. Impact on municipal engineering services.	The proposed dwelling house and second dwelling will not have a negative impact on the Stellenbosch municipal engineering services. This is due to the development being a form of sensitive densification within the existing character of the surrounding area. It should also be noted that the Development Contributions for the development will be paid by the owners of the property.
i. The IDP and SDF	<p>The Stellenbosch Municipality's Spatial Development Framework guides land use decisions in both the short and long term. This document conceptualizes seven core principles. While not all these principles are of pertinence to this application, the relevant principles are indicated below.</p> <p><i>Maintain and grow the assets of Stellenbosch Municipality's natural environment and farming areas:</i> This application will not have any impact on the Municipality's natural environment and farming areas as the proposed development is located well within the urban edge.</p> <p><i>Respect and grow cultural heritage:</i> In line with the Stellenbosch Municipality's SDF, the proposed development will contribute to sensitive densification of an established conventional residential area.</p> <p><i>Direct growth to area of lesser natural and cultural significance as well as movement opportunity:</i> The proposed development is regarded as a brown field development, making more efficient use of existing municipal infrastructure. The sensitive densification of the property will allow for an extra family to live within</p>

close proximity to the Stellenbosch Central Business District, educational institutes such as schools, as well as natural recreation areas.

Clarify and respect the different roles and potentials of existing settlements: As identified throughout this report, the property is located within an area earmarked for conventional residential development. The proposed development contributes to this since the approval thereof will contribute to realising the potential of conventional residential properties to be sensitively densified.

Address human needs for housing, infrastructure, and facilities: As mentioned, the proposed development will enable an additional family to utilise the existing municipal infrastructure of the area, whilst providing them with a residence close to various amenities and facilities.

Ensure balanced, sustainable communities: It is required that future development within Stellenbosch take cognisance of the fact that the municipality is experiencing increased congestion. Development and densification must be prioritised within a radius of 1km of residential areas. It is essential to position work opportunities as well as services, within proximity from where people live. Settlement densities need to be encouraged in order to make public transport viable. Considering the location of the property together with the possible land uses, this application is contributing to a less congested municipality.

Optimal Land Use: The Stellenbosch Municipality SDF states that the municipal area faces a shortage of around 20 000 housing units. In order to respect the character of the municipality, it is required to promote and support infill development.

The removal of the restrictive title deed conditions will enable the development of a second dwelling unit and as a result will assist in addressing the need for housing opportunities within the municipality without causing any harm to agricultural land or the character of the municipal area. The removal of the restrictive title deed conditions will also enable the current (and future) owners to develop the property generally in accordance with the development rules and parameters as set out in the applicable zoning scheme.

Furthermore, the main principles of the SDF include the following:

	<ul style="list-style-type: none"> - The principles of walking distance, functional integration, socio-economic integration, appropriate densification, and the urban edge should inform settlement design. - The usage of land should be based on its highest and best long-term sustainable use as opposed to its long-term financial return. - A balanced supply of low, middle- and high-income housing should be ensured in each settlement node to promote integration and minimize the need for travel. - Development approvals should be guided by the need to achieve the settlement densities needed to make the public transport system financially and operationally viable. - Subdivisions, second dwellings, sectional title, re-development of existing low-density areas, infill and brownfield land opportunities should be prioritized over greenfield sites, as guided by the SDF. <p>The application promotes all the above highlighted principles of the SDF.</p>
j. IDP and SDF of district Municipality.	In line with this applicable plan and framework.
k. IDP and SDF of local Municipality	Discussed and addressed under i and j, above.
l. Applicable structure plans	N/A
m. Applicable policies for decision making	Aligned.
n. Provincial spatial development framework	The application is in line with the Municipal and District SDF and IDP, which is informed by the provincial IDP and SDF which all promotes densification. Thus, the application is in line with the provincial SDF.
o. Regional spatial development framework.	N/A
p. National policies, norms, and criteria.	N/A
q. Section 42 of the Spatial Planning and Land Use Management Act.	The application is considerate towards the requirement and provisions of Section 42 of the Spatial Planning and Land Use Management Act.
r. Chapter VI of the Land Use Planning Act	Spatial Justice: Aligned. The proposal includes an opportunity of a second dwelling within proximity of various schools and other points of interest.

	<p>Considering the location of the property, it may be justified that the property owner deserves the opportunity of developing the property to its maximum potential, whilst being sensitive towards the character of the area.</p> <p>Spatial Sustainability: Aligned. The proposal complies with this principle by ensuring that the development of the property will create a more compact Stellenbosch. It will also contribute to the promotion of land development in a location that will limit urban sprawl.</p> <p>Efficiency: Aligned. This application entails the utilisation of existing infrastructure on an optimal level. A dwelling house, on its own, is argued to be an in-efficient use of land, and infrastructure resources. The proposal will allow for the efficient utilisation of the resources on the property.</p> <p>Good Administration: The approval of this application will be in the best interest of the Stellenbosch Municipality.</p> <p>Spatial Resilience: Through the approval of this application, there will be no negative impact on the surrounding area; nor would there be any additional risk to the resilience of human residents in the area.</p>
s. Applicable provisions of the zoning scheme	As discussed, the proposed development is in line with the provisions of the Zoning Scheme. The scheme makes provision for a second dwelling on Conventional Residential zoned properties, subject to the Technical Approval from the Stellenbosch Municipality.

Table 3 Motivation of the Applications

6. CONCLUSION

The applications have been made in terms of Section 15(2) of the By-Law for the removal of restrictive title deed conditions and for a technical approval to allow for a second dwelling to be developed on the property. This report has demonstrated that the proposed applications will not have a material impact on the surrounding property owners and that the proposal is considerate towards the existing built environment. It is therefore recommended that these applications should be approved.

PIETERHUIZEN PLANNING (PTY) LTD

23 September 2021