

**REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS
AND
DEPARTURE
(Summary Motivation Report)
ERF 4769 STELLENBOSCH
AT 8 UITSIG ROAD**



SUBMITTED TO:

Interested and Affected Parties

ON:

2 June 2022

BY:

PIETERHUIZEN
PLANNING

OUR REFERENCE: J028
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DATE: 2 June 2022

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Table of Contents

1. INTRODUCTION AND APPLICATIONS REQUIRED	3
2. THE PROPERTY.....	3
2.1 Ownership and Title Deed	3
2.2 Conveyancer Certificate	3
2.3 Surveyor General Documents and Background.....	4
2.4 Locality and Context.....	5
2.5 Zoning.....	6
3. PROPOSED DEVELOPMENT	7
3.1 Summary of Proposal.....	7
3.2 Assessment of Proposed Development.....	8
4. APPLICATIONS	8
5. ADJUDICATION AND MOTIVATION	9
5.1 Motivation in Terms of Section 39.(5) of the Western Cape Land Use Planning Act, 2014	9
5.2 Motivation for the Departure from Section 55.(2)(a) of the By-Law.....	11
5.3 Motivation in Terms of Section 65 of the By-Law.....	12
6. CONCLUSION.....	16

1. INTRODUCTION AND APPLICATIONS REQUIRED

The purpose of this report is to motivate the applications required to regularise the existing development of a braai room and double façade garage on Erf 4769 Stellenbosch (hereafter referred to as “the property”). Further applications will also allow the future development of the property with a second dwelling, subject to a future application for a technical approval.

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.6.(a) and B.6.(b)** from Deed of Transfer No. T.41202/2017.

In terms of Section 15(2)(b): For a **departure** from Section 55.(2)(b) of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow the existing garage to be 0m in lieu of 1m from the street boundary with Uitsig Street.

2. THE PROPERTY

2.1 Ownership and Title Deed

Erf 4769 Stellenbosch is registered in the names of [REDACTED] (hereafter referred to as “the owner”), measures 954m² in extent, and is held by Deed of Transfer No. T. [REDACTED] – see

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.

2.2 Conveyancer Certificate

As mentioned, the property is held by Deed of Transfer No. T. [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.6.(a): *Hierdie erf mag alleenlik gebruik word vir die oprigting daarop van een woning of ander geboue vir die doeleindes wat die Dorpkommissie en die plaaslike owerheid goedkeur, met dien verstande dat indien die erf in die gebied van 'n dorpsaanlegskema ingesluit is, die plaaslike owerheid enige ander*

geboue wat deur die skema toegelaat word, kan toelaat, onderworpe aan die voorwaardes en beperkings wat in the skema bepaal word.

B.6.(b): Geen gebou of struktuur of enige gedeelte daarvan, behalwe grensmure en heinings, mag behalwe die toestemming van die Administrateur nader as 6,30 meter van die straatlyn wat 'n grens van hierdie erf uitmaak, asook nie binne 3,15 meter van enige ander grens opgerig word nie.

2.3 Surveyor General Documents and Background

The **General Plan**, below, (S.G No. 10625/1969) illustrates the cadastral identity of the property within the context of the Stellenbosch Extension No. 16 Subdivision. 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 this extension 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.

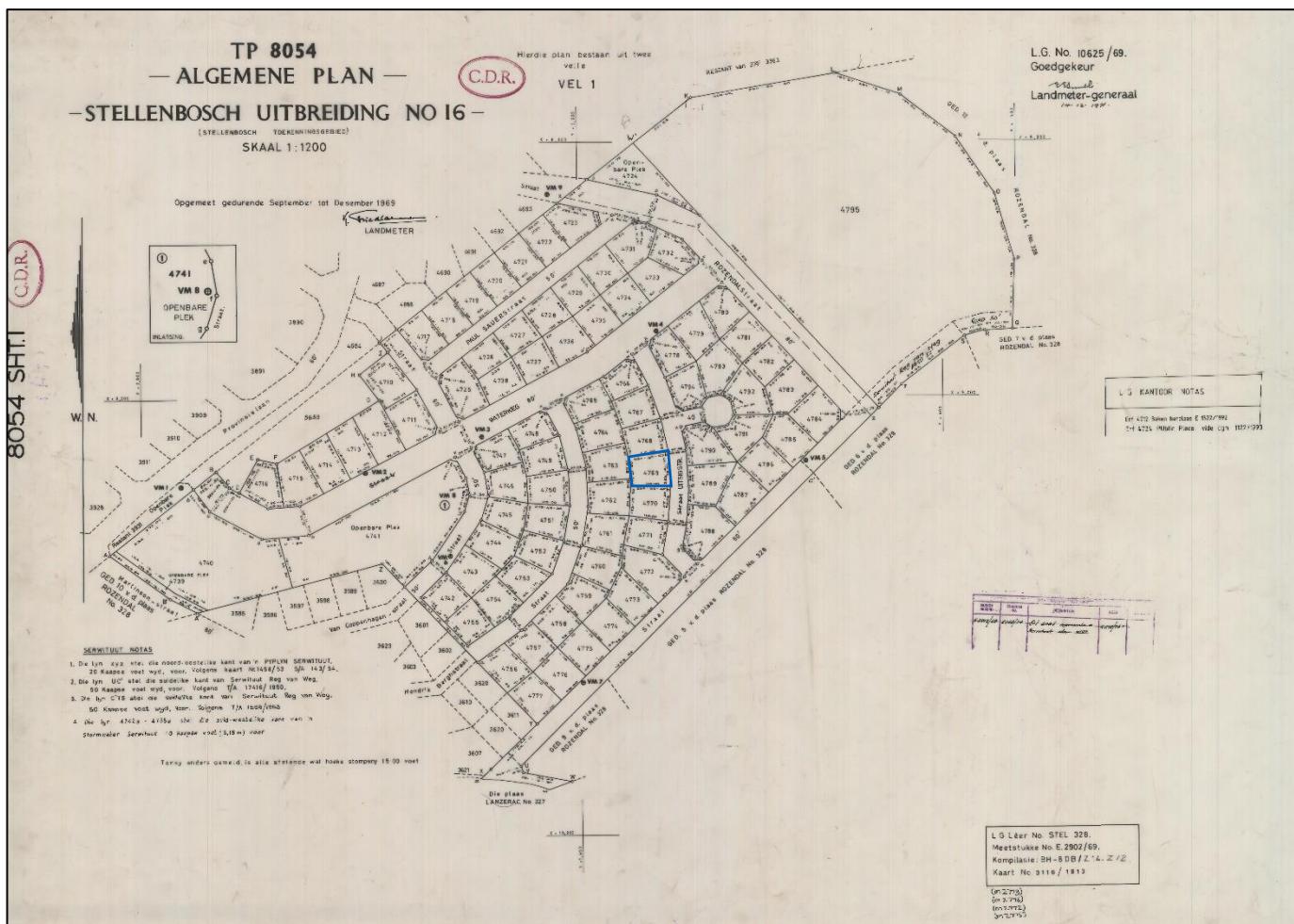


Figure 1 *General Plan*

2.4 Locality and Context

With reference to the **Locality Map**, Figure 2 below, the property is situated in eastern residential suburb of Stellenbosch, known as Uniepark/Rozendaal.

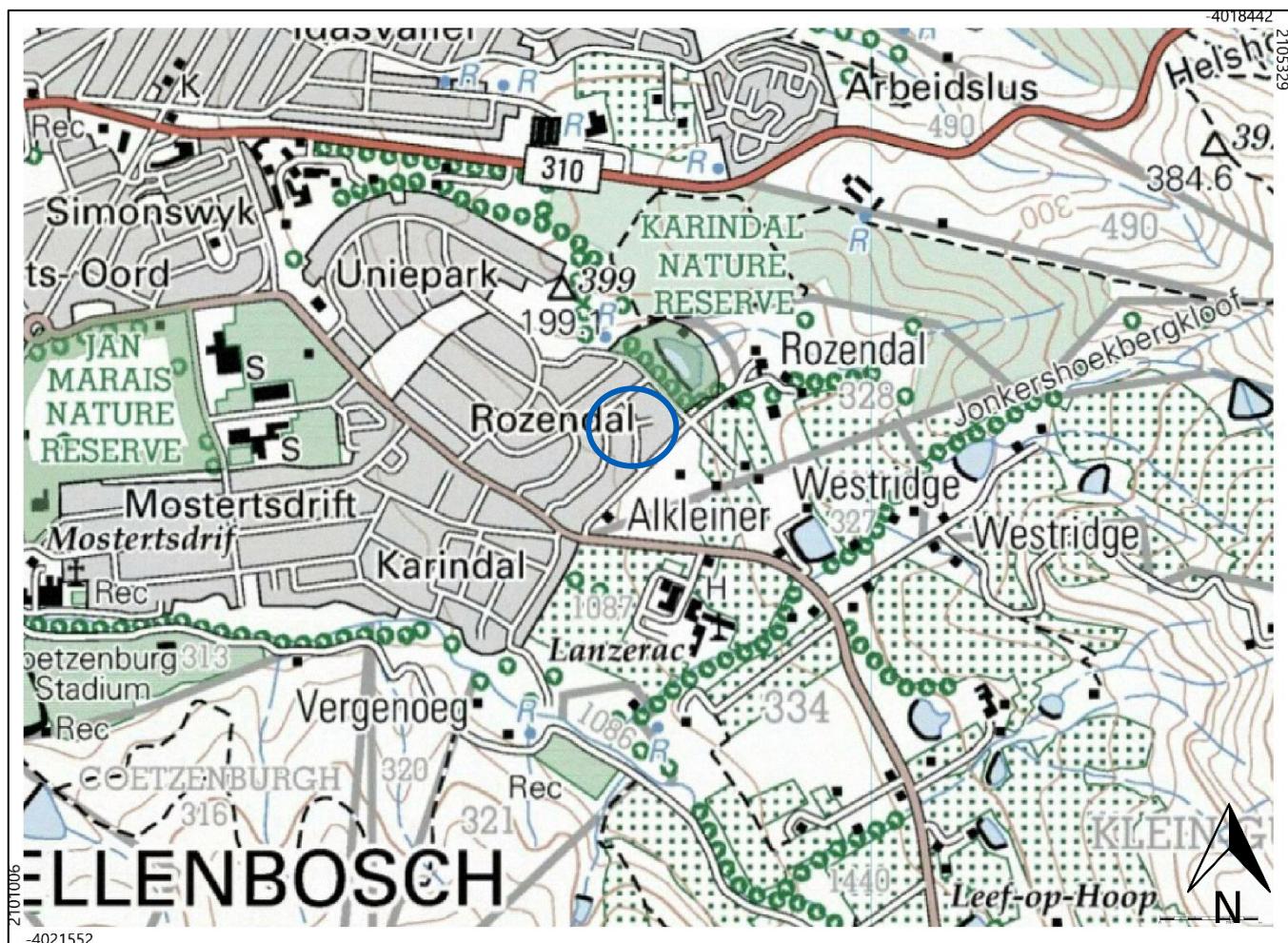


Figure 2 Locality Map of the Property

The **Aerial Photographs**, Figures 4 below, illustrates that the property is located at 8 Uitsig Street and is further bounded by Erf 4768 (north), Erf 4770 (south) and Erven 4762 and 4763 (west). Access to the property is from Uitsig Street, abutting the property to the east.

Uitsig Street is a relatively short street servicing 13 single residential homes in terms of access. It is argued that this street will not experience a large volume of vehicular traffic at any time during the day.

The property is currently improved with a single storey dwelling house, braai room and double façade garage. It should be noted that the braai room and double façade garage was added to the existing dwelling house prior to land use management or building plan approval.



Figure 4 Aerial Photograph of the Property

2.5 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.

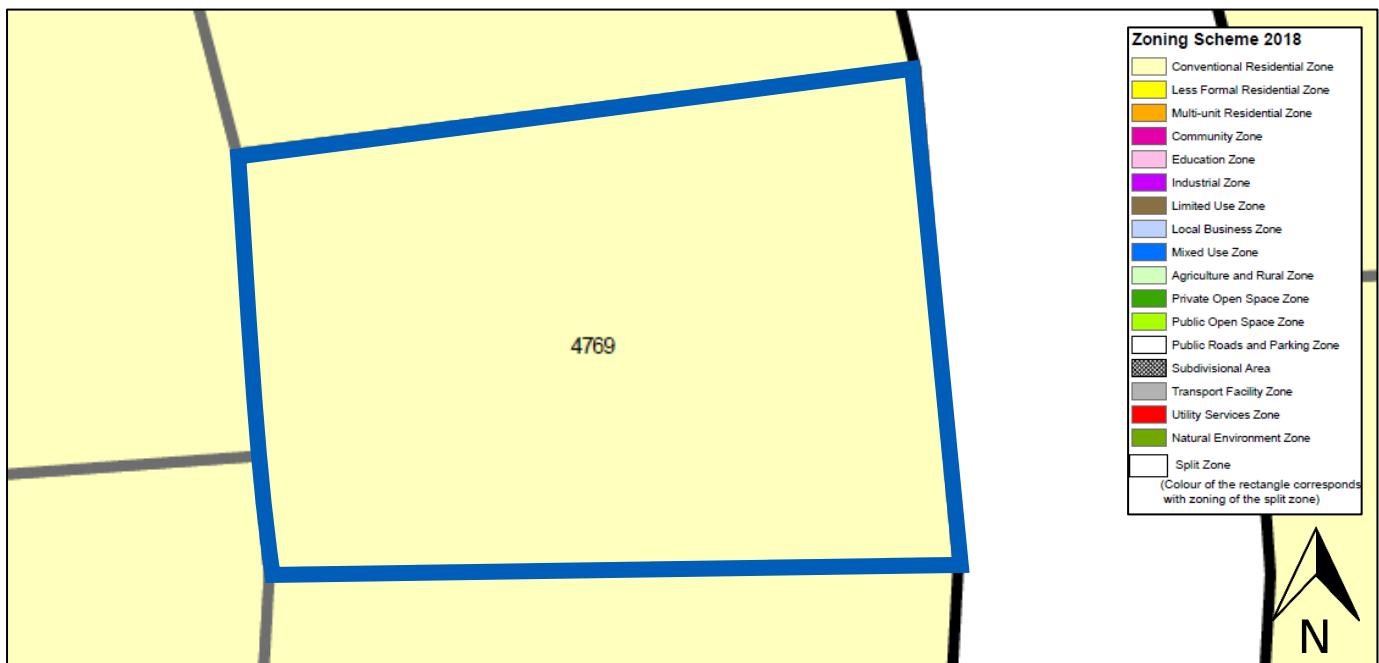


Figure 5 Extract of the Zoning Map

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

ERF 4769 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 single storey dwelling house, a braai room and a double façade garage. With reference to the site development plan (drawing number 01 dated 25/08/2021), drawn by *Tim Ziehl Architects* and attached to this motivation report as **Annexure F**, this application involves the regularisation of the existing braai room and double façade garage that was developed prior to land use management and building plan approval – see Figure 6 below for an overlay of the plan with the aerial photograph.



Figure 6 Extract the Site Development Plan (Site 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.6.(a): One Dwelling Only	Dwelling House
Additional Uses	Second dwelling		
Street Boundary Building Lines	4m 1m for garages	B.6.(b): 6.3m	0m (garage)
Common Boundary Building Lines	2.5m (0m for garages and carports not higher than one storey)	B.6.(b): 3.15m	1m (garage)
Coverage	50% (547m ²)	B.I.(c): One Third Built Upon (364.67m ²)	37.47% (358.22m²)
Height	2 Storeys	N/A	1 Storeys
Parking: - Dwelling House	2 Bays	N/A	2 Parking (garage)

Table 2 *Assessment of Proposal*

4. APPLICATIONS

From Table 2, above, it should be noted that it is not the intention of the owner to develop a second dwelling on the property in this instance. They do, however, want to remove the restrictive title deed condition pertaining to the number of dwellings permitted on the property (restrictive title deed condition B.6.(a) – this will allow them (or future owners) to develop a second dwelling on the property on the condition that an application for a technical approval be approved by the Stellenbosch Municipality. The existing garage contravenes restrictive title deed condition B.6.(b) as well as Section 55.(2)(a) of the Zoning Scheme.

Therefore, formal applications are hereby made for the following:

In terms of Section 15(2)(f): For the **removal of restrictive title deed conditions B.6.(a) and B.6.(b)** from Deed of Transfer No. T. [REDACTED], which read as follows:

B.6.(a): *Hierdie erf mag alleenlik gebruik word vir die oprigting daarop van een woning of ander geboue vir die doeleindes wat die Dorpkommissie en die plaaslike owerheid goedkeur, met dien verstande dat indien die erf in die gebied van 'n dorpsaanlegskema ingesluit is, die plaaslike owerheid enige ander geboue wat deur die skema toegelaat word, kan toelaat, onderworpe aan die voorwaardes en beperkings wat in the skema bepaal word.*

B.6.(b): *Geen gebou of struktuur of enige gedeelte daarvan, behalwe grensmure en heinings, mag behalwe die toestemming van die Administrateur nader as 6,30 meter van die straatlyn wat 'n grens van hierdie erf uitmaak, asook nie binne 3,15 meter van enige ander grens opgerig word nie.*

In terms of Section 15(2)(b): For a **departure** from Section 55.(2)(b) of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow the existing garage to be 0m in lieu of 1m from the street boundary with Uitsig Street.

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 Stellenbosch Extension No. 16 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 existing building on the property 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.

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 existing building on the property is in character with the surrounding natural and built environment.

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 removal of the restrictive title deed conditions will allow for the regularisation of the existing buildings on the property. It will also allow for the future development of the property in accordance with the permissions of the Zoning Scheme.

By removing the restrictive title deed condition pertaining to the amount of dwellings permitted on the property, the owner of the property will be able to develop a second dwelling in the nearby future in response to a possible 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).

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.

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 the possibility of developing 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 may be added to an existing urban area where there is a relatively high demand for residential properties.

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 for the Departure from Section 55.(2)(a) of the By-Law

Section 55.(2)(a) of the By-Law states that *carports are permitted up to 0 meters from the street boundary and garages are permitted up to 1 meter from the street boundary*. After various correspondence with different department within the Stellenbosch Municipality, it is noted that the practical reasoning behind this 1m setback for a garage is to allow for sufficient sightlines when a vehicle exists the said garage.

In this instance, it should be noted that the street boundary of the property is set back approximately 4.5m from the “black top” of Uitsig Street. With no significant road bend prevalent in Uitsig Street, it is argued that this 4.5m setback will be sufficient to ensure the safe exit of vehicles from the garage to the road.

5.3 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)(a) 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 email correspondence with the Stellenbosch Municipality Infrastructure Services Department regarding the departure from Section 55.(2)(a) of the By-law.
c. Desirability of land use	<p>The land use will remain that of residential and is in line with the current zoning of the property. The application for the removal of restrictive title deed conditions to allow for the future development of a second dwelling on the property, is considered desirable. The reasons for the desirability of the applications may be summarised as follows:</p> <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. - 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 possible development of a second dwelling on the property, 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.	No impact.
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, any future development of a second dwelling 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 possible future densification of the property will allow for an extra family to live within close proximity to the Stellenbosch Central Business District, educational institutes such as schools, as well as natural recreation areas.</p> <p><i>Clarify and respect the different roles and potentials of existing settlements:</i> 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.</p> <p><i>Address human needs for housing, infrastructure, and facilities:</i> As mentioned, the proposed development will enable an additional family to utilise the existing municipal infrastructure of the area (if a second dwelling were to be developed in the future), whilst providing them with a residence close to various amenities and facilities.</p>

	<p><i>Ensure balanced, sustainable communities:</i> 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 needs 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.</p> <p>The removal of the restrictive title deed conditions will enable the future development of a second dwelling unit on the property 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.</p> <p>Furthermore, the main principles of the SDF include the following:</p> <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	<p><u>Spatial Justice:</u> Aligned. The proposal includes an opportunity of a second dwelling within proximity of various schools and other points of interest.</p> <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><u>Spatial Sustainability:</u> Aligned. The proposal complies with this principle by ensuring that the future 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><u>Efficiency:</u> Aligned. This application entails the utilisation of existing infrastructure on an optimal level. The proposal will allow for the efficient utilisation of the resources on the property.</p> <p><u>Good Administration:</u> The approval of this application will be in the best interest of the Stellenbosch Municipality.</p> <p><u>Spatial Resilience:</u> 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.
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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 departure to allow for the regularisation of the existing garage 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

2 June 2022