



**ANDREW PRATT** TOWN PLANNING

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**MY REF:** 287 G - Erf 168212 Bo Kaap  
**DATE:** 11 April 2016

The Director: Building Development Management  
City of Cape Town  
Table Bay District (A) Administration

**Attention: Mr Paul Heydenrych**

Dear Sir

**APPLICATION FOR REZONING, DEPARTURES & COUNCIL'S APPROVAL IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW OF 2015: ERF 168212 CAPE TOWN, 37 LION STREET – REVISED SCHEME**

**1. INTRODUCTION**

**1.1. Planning application and proposal**

Application is made for various Departures as per Section 1.3 below, in order to permit the erection of a new small block of flats on the subject property.

The subject property is currently vacant and will be improved with block of flats, four storeys high and containing 4 dwelling units. It is important to note that the design of the block of flats mimics the historic built form in the area, albeit in a modern way. In terms of the details of the proposal, the following should be noted:

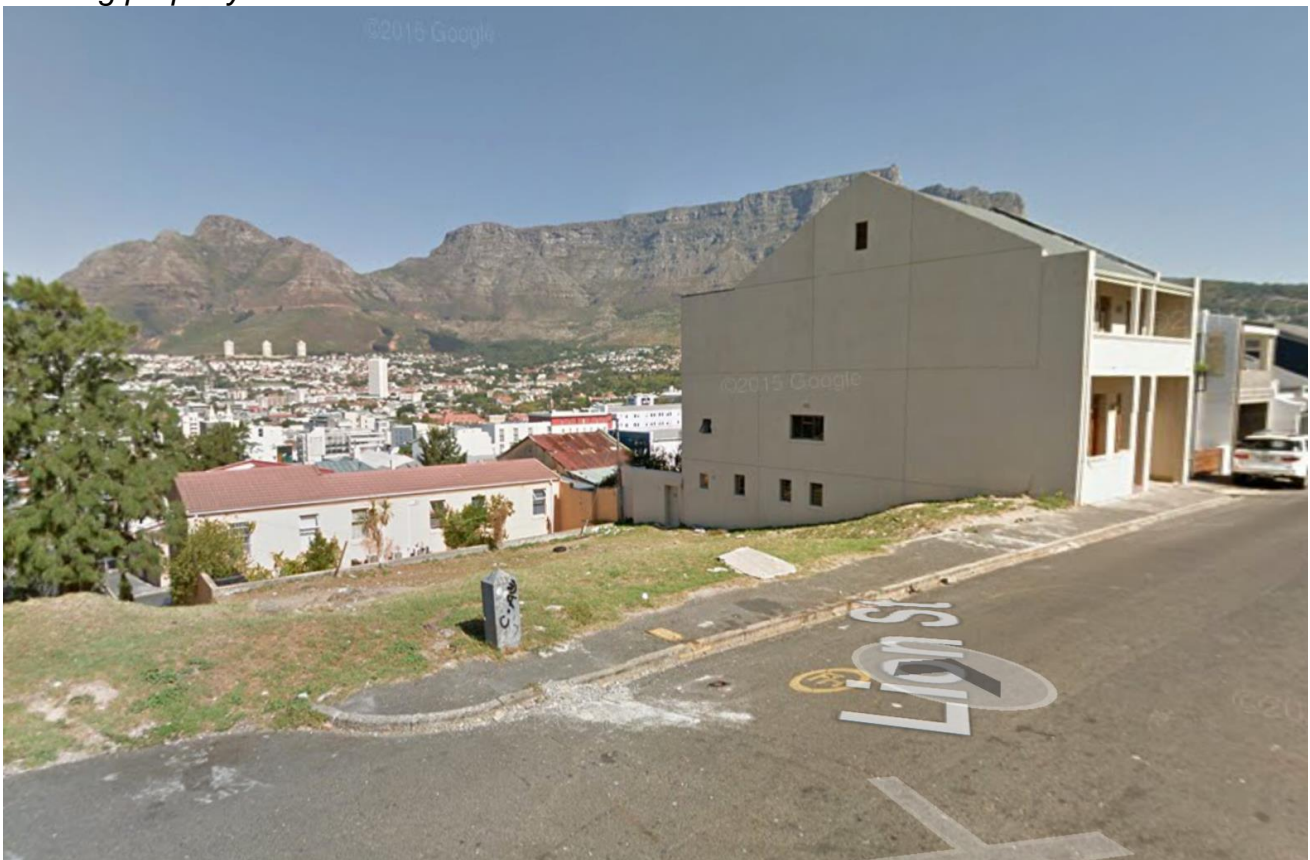
- The ground storey parking area will be accessed off the unmade road reserve of Orphan Street, with the pedestrian steps still remaining. Two parking bays per dwelling unit are provided, which complies with the DMS.
- At 1<sup>st</sup> storey a “studio” space is provided for ancillary residential amenity purposes such as a kids play area, home art studio, home office, entertainment area, home study / library, etc.
- At 2<sup>nd</sup> storey level a bedroom is provided, as well as a patio area.
- The living areas are provided at 3<sup>rd</sup> storey level, including a small patio facing south-east.
- The roof of the proposed block of flats will also be accessible (i.e. roof decks provided), with privacy screens between the various dwelling units.

## 1.2. Subject property / property description

The subject property is currently vacant and has an approximately 5m fall in the land from its south-west to north-east property boundaries. Due to the “unmade” nature of Orphan Street between Lion and Bryant Streets, the only vehicular access is currently off Lion Street adjacent to the north-west of the subject property. However, negotiation with Council’s Roads and Stormwater Department has resulted in the current proposal, where vehicular access to the property is provided via a portion of the unmade Orphan Street as shown on the plans.

The subject property is zoned General Residential R4 (GR4) and is not subject to any overlay provisions within the Cape Town Zoning Scheme Regulations.

*Existing property viewed from Lion Street*



## 1.3. Applications required in terms of planning law

Application is made for rezoning, permanent departures and Council’s approval in terms of Section 42 of the Municipal Planning By-law (MPBL), in order to permit the erection of a new block of flats on the subject property as per the submitted plan.

The following planning application is required in terms of the provisions of the MPBL:

**1.3.1 Section 42 of the MPBL:** To permit the rezoning of the subject property from General Residential 4 (GR4) to General Residential 5 (GR5).

The following planning applications are required from the provisions of the Development Management Scheme (DMS), which is contained as Schedule 3 of the Municipal Planning By-law:

- 1.3.2 Section 41(a):** To permit coverage of 76.1% in lieu of 60%.
- 1.3.3 Section 41(e):** Departure to permit the building being 0m in lieu of 4.5m from Lion Street (street boundary).
- 1.3.4 Section 41(e):** To permit the ground and 1<sup>st</sup> storey to be setback 2.61m in lieu of 4.5m from the south-east common boundary.
- 1.3.5 Section 41(e):** To permit the 2<sup>nd</sup> storey terrace to be setback 4.265m in lieu of 4.5m from the south-east common boundary.
- 1.3.6 Section 41(e):** To permit the 3<sup>rd</sup> storey to be setback 5.82m in lieu of 6.77m from the south-east common boundary.
- 1.3.7 Section 41(e):** To permit the roof terrace (balustrade) to be setback 7.2m in lieu of 7.37m from the south-east common boundary.
- 1.3.8 Section 41(e):** To permit the roof terrace (screen walls) to be setback 6.8m in lieu of 8.085m from the south-east common boundary.
- 1.3.9 Section 89:** Council's approval to permit the construction of retaining and other walls, steps, sliding gate and covered entrance over a public street.

## **2. BASIC INFORMATION**

### **2.1 Applicant / mandate**

The registered owners of the subject property RA Perfect & AN Broome has authorised Andrew Pratt Town Planning to make application to the City of Cape Town for the applications referred to in Paragraph 1.3 above, and to act as the Applicant in this and related matters.

### **2.2 Ownership details**

The subject property is owned by RA Perfect & AN Broome who is desirous to improve the subject property as per the submitted SDP.

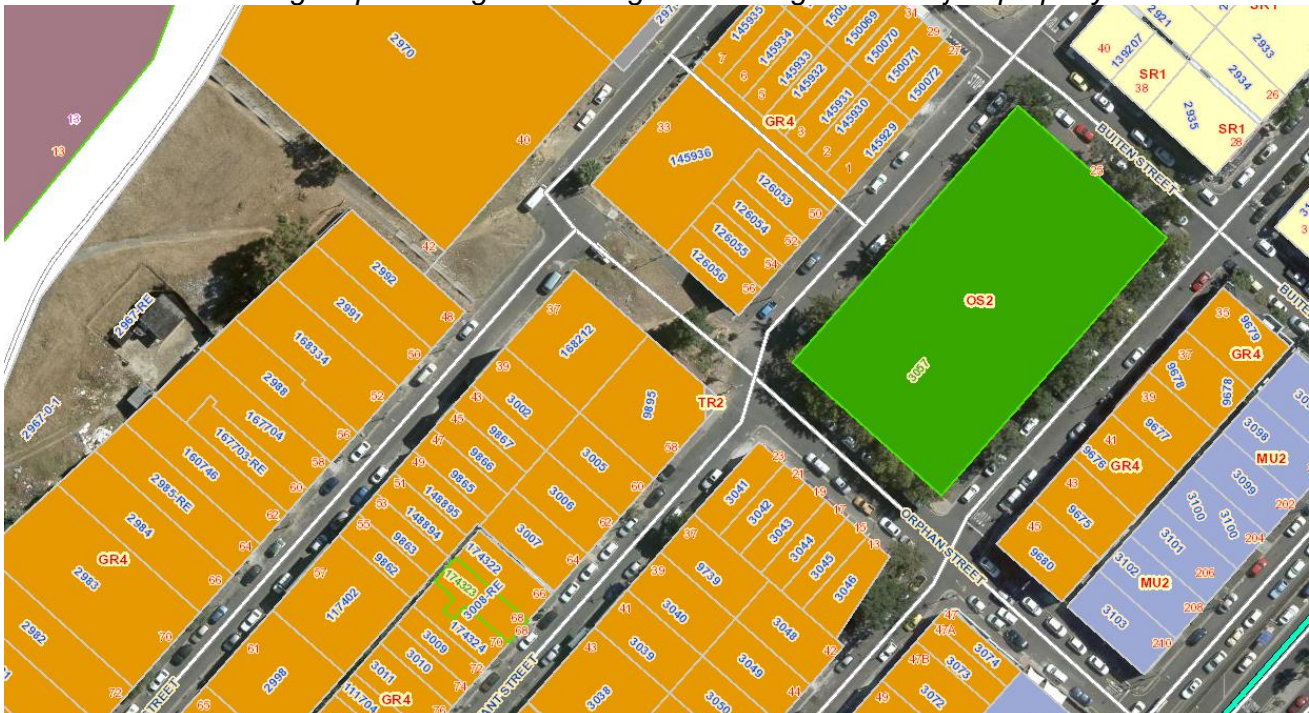
### **2.3 Applicable Zoning Scheme Regulations and zoning**

The Cape Town Development Management Scheme (DMS) is applicable to the subject property. As indicated earlier in this report, the subject property has a General Residential R4 (GR4) zoning. However, it is applied for to rezone the subject property to General Residential 5 (GR5) and therefore the applicable parameters will be:

## Cape Town Zoning Scheme Regulations extract

GENERAL RESIDENTIAL ZONES	SUBZONE	DENSITY	COVERAGE	MAXIMUM HEIGHT ABOVE BASE LEVEL		BUILDING LINES		STREET CENTRELINE SETBACK	OTHER PROVISIONS
				To wallplate	To top of roof	Street boundary	Common boundaries		
<b>GENERAL RESIDENTIAL SUBZONE 1: GROUP HOUSING (GR1)</b>  <b>PRIMARY USES</b> Dwelling house, group housing, private road, open space and additional use rights  <b>ADDITIONAL USE RIGHTS</b> Flats and home occupation, subject to restriction  <b>CONSENT USES</b> Utility services, home child care and rooftop base telecommunication station	GR1	35 du/ha	N/a	8,0 m	10,0 m	5,0 m external public street 0,0 m internal road Garages 5,0 m from kerb	3,0 m external boundaries 0,0 m internal boundaries	N/a	Design principles Open space Parking and access Site development plan Flats and home occupation as additional use right Dwelling house outside group scheme
<b>GENERAL RESIDENTIAL SUBZONES (GR2-GR6)</b>  <b>PRIMARY USES</b> Dwelling house, second dwelling, group housing, boarding house, flats, private road and open space  <b>CONSENT USES</b> Utility service, place of instruction, place of worship, institution, hospital, place of assembly, home occupation, shop, hotel, conference facility, guest house and rooftop base telecommunication station	GR2	<b>FLOOR FACTOR</b> 1,0	60%	To top of roof 15,0 m		4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)	8,0 m	Parking and access Screening Wind mitigation Dwelling house and second dwelling Group housing Institution, place of instruction and place of assembly Shop
	GR3	1,0	60%	20,0 m		4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)	8,0 m	
	GR4	1,5	60%	24,0 m		4,5 m	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street)	8,0 m	
	GR5	2,5	60%	35,0 m		4,5 m; 9 m above 25 m height	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street); 15,0 m above 25,0 m height	8,0 m	
	GR6	3,0	60%	40,0 m		4,5 m; 9 m above 25 m height	4,5 m or 0,6 H (0,0 m up to 15,0 m height for 18,0 m from street); 15,0 m above 25,0 m height	8,0 m	

Extract from the zoning map showing the existing GR4 zoning of the subject property



### **3. PLANNING MOTIVATION**

#### **3.1 Location, surrounding land uses and character of the area**

The subject property is located within the historic Bo-Kaap area, which has a distinct “urban village” character consisting of a mix of mainly single and double storied historic cottages and some more modern buildings. The character of this unique inner city residential enclave, located in close proximity to the Cape Town Central Business District, is also influenced by its relationship with the business activities along Buitengracht Streets. This area is also characterised by varying erf sizes and a fine urban grain, with the majority of the buildings being either single or multiple storeyed, with limited garden space and are constructed in close proximity to the common and street boundaries. The unique urban form of the buildings in this area forms an integral part of the character of this area. All of the immediate surrounding properties appear to be used for residential purposes.

Given the character of the area as described above, it is clear that the development of the subject property with a new multi-storied small block of flats will not have a negative impact on the character of the area from a built form perspective. It is important that the proposal be considered in context of the existing rights of the subject property, including considering the architectural detailing / merits of the proposal.

#### **3.2 Relevant planning policy**

The following planning policies and legislation are applicable to this application:

##### **3.2.1 Provincial Spatial Development Framework (PSDF)**

The PGWC’s strategy of densification is embodied within the Provincial Spatial Development Framework (PSDF), which strongly focuses on urban restructuring, and identifies various objectives and associated linked strategies to address spatial discrimination and inefficiencies. The identified strategies are specifically geared towards curtailing urban sprawl through the appropriate densification of urban settlements and minimising the consumption of scarce resources (i.e. land). Residential densification within urban corridors is identified as a key planning element.

The proposal is considered to comply with the overarching objectives and strategies specified within the PSDF.

##### **3.2.2 The Cape Town Spatial Development Framework (CTSDF)**

The following policy statements contained within the CTSDf are applicable to this proposal (albeit considering the higher-level positioning of this Framework):

- Promote land use policies and mechanisms that support the development of small business.
- Promote appropriate land use intensification across the City to ensure incremental densification
- Allow for a greater mix of land uses and higher-density residential development in appropriate locations.
- Plan for employment and improve access to economic opportunities; and
- Build and inclusive, integrated and vibrant city.

This proposal is considered to be in line with these policy statements within the CTSDf.

### 3.2.3 The Table Bay District Plan (TBDP)

The Table Bay District Plan indicates that the subject property is located within the Metropolitan Road, with nodes being characterised by the: “intensity, mix and clustering of activities or land uses (including commercial/ business development and associated employment opportunities, higher-order services and higher residential densities) at points of maximum accessibility, exposure, convenience and urban opportunity”.

In terms of the Cape Town Metropolitan Node and as per the TBDP, the following important policy guidelines should be considered:

- This area remains the **most significant urban node** and should be supported as an area for inclusive and sustainable economic growth that positions Cape Town as a globally competitive city.
- A range of **land use guidelines have been developed to address built form issues and to ensure appropriate bulk, density and heights** within the node.
- In general, **support high intensity mixed-use development** (e.g. office, retail, residential), the extent of which should be guided by relevant city/district and local area policy guidelines.
- In general, **support residential densification in line with the provision of the City’s Densification Policy** (2012) and sub-district/ relevant local area development guidelines.
- **Support a more flexible position to parking provision and related departures in these nodes**, where well served by public transport.

Further to the above, the following policy statements contained within the TBDP, relating to this specific area, are applicable to this proposal:

- Allow increased residential densities along existing and proposed public transport routes to support the viability of the routes.
- Encourage residential densification where possible and appropriate
- Protect the fine-grained character of the central city Urban Conservation Area and provide suitable interfaces with the historical built fabric.
- Encourage intensification of land uses aligned with current and proposed public transport services.

It is believed that the approval of this proposal will be in line with these policy statements within the TBDP.

The recently approved above-mentioned plans echo the principles mentioned in the PSDF and also advocate efficient and integrated urban structures, in which urban sprawl is contained and appropriate densification is encouraged.

### 3.2.4 Council’s Cape Town Densification Policy

The Densification Policy recognises the need for appropriate densification across the City to promote longer-term sustainability of Cape Town’s natural, urban and rural environments. The Densification Policy was approved in Feb 2012 to specifically, amongst others, guide decision-making with regards to density related applications. The Densification Policy identifies various Density Priority Zones, with the subject property being located within such a zone

Although measured at a micro scale, the proposed development (given its location) is in line with the Densification Policy statement of achieving increased densities in close proximity to Activity Routes and within nodes. It has been shown in this report that the proposal will not have a negative impact on the character of the area or surrounding property owners' rights, thereby complying with the Densification Policy requirement for appropriate densification.

Some of the relevant objectives specified within the Densification Policy include:

- Ensure that the building form, scale, bulk and architectural appearance are appropriate and integrate into the existing built context and character of the area;
- To ensure the optimal use of scarce resources and infrastructure such as engineering services, facilities, public amenity and land;
- Protect, manage and enhance the natural and built environment; and
- Support the utilisation and development of a viable public transport system through facilitating economies of scale.

### **3.3 Urban form / built fabric**

Notwithstanding the fact that it is proposed to rezone the subject property, of importance in this area is not the zoning of the subject property, but rather the built-form and the character of the area. As indicated above, the area is characterised by a variety of erf sizes and Dwelling Houses, with a finer grained urban development. An active and articulated interaction with the street is essential in this area. Part of the character and charm of this area is the close relationship of the buildings to the street and common boundaries, where space is at a premium, resulting in a certain degree of privacy and space being compromised. Given the articulated façade of the proposed development facing Lion Street and the pedestrian focussed Orphan Street, the building being situated closer to the Lion Street boundary, the articulated balcony, fenestration and stoep features, the broken-up roof-scape to address the perceived size of the building and the excavated ground and 1<sup>st</sup> floor areas, it is clear that the proposal contributes positively to and integrated well with the historic and existing built form in the area.

It is worth noting that both Council's Heritage Resources Section (HRS) and Urban Design Branch have been involved through the development of the proposal and is in support of the proposal.

### **3.4 Rezoning**

The subject property is proposed to be rezoned from General Residential 4 (GR4) residential to General Residential 5 (GR5). Due to the character of the area and as indicated earlier in this report, of importance in the area (more than the zoning of the subject property) is the built-form and architectural integration of any development into the historic and desirable built fabric of the area. It has already been shown earlier in this report that the proposal will not have a negative impact on the character of the area or the built-form. It should also be noted that although the rezoning of the subject property is merely technical in nature, since it is only required due to the proposed increased floor space. The additional height afforded the rezoned GR5 zoned property will not be required and the applicant will agree to and have no objection to the height being limited as per the GR4 zoning (existing zoning rights). The increased floor space can be seen as an outcome / factor of an appropriate built form for the area, which is of greater importance than a "theoretical" floor space number.

Of utmost importance is to ensure that the proposed built-form is the most appropriate for the area, notwithstanding any departure applications required as a result thereof. The proposed General Residential 5 (GR5) zone is seen as the most appropriate zone, given the nature of the use proposed, the built form of the proposed building and the limited bulk allowed for when compared with some other General Residential subzones.

### **3.5 Coverage departure**

A coverage departure 80.2% in lieu of 60% is applicable relating to this proposal. In terms of this departure required the following should be noted:

- It has already been shown that the proposal will not have a negative impact on the character of the areas and that the built form is compatible with and appropriate for the area.
- Of utmost importance in this area is the building form and character, which relates to buildings being constructed in closer proximity to the various street and common boundaries and positively interacting with the street and surrounding properties. In order to conform to the built form in the area, a consequence will always be an increase in coverage. However, as previously indicated, this is entirely appropriate for the area.
- When compared to the footprints of existing buildings in the area, which also covers a significant portion of the properties, the proposal will not have an additional impact with regards to the perceived coverage / built bulk.
- The coverage departure is exacerbated through the provision of various balconies and terraces, which features have a positive impact on the area in terms of interaction with the area, visual surveillance, etc. Balconies and terraces also appear lightweight in nature and do not “read” as significant built bulk.
- A wide unmade road (Orphan Road), which will provide access and allow for significant landscaping / terracing, is located along the north-east property boundary, which should limit the perceived coverage / built bulk of the proposal by providing visual relief, etc.

It is clear when considering the above that the coverage departure will have a limited impact on the area, surrounding property owners and streetscape.

### **3.6 Setback departures**

In terms of the various setback departures applied for as per Section 1.3 above to permit the new block of flats on the subject property, the following should be noted:

#### ***Street setback departures***

- The proposed building facing Lion Street is typical of the entrance / small stoep architecture of the area and can therefore be considered appropriate.
- Only two floors of the building is visible from the street, which is in accordance with the built form of the area.
- It is clear that an appropriate streetscape is being proposed, which will contribute positively to the streetscape rhythm of the area and integrate will into the area.
- Most, if not all of the existing buildings in the area are already constructed hard-up / close to the street boundary.
- The street façade is interactive (i.e. fenestration, etc proposed), which improves surveillance over the street.



- The visible portions of the building (i.e. two top storeys) are setback from Lion Street, which can be seen as appropriate for the area.

It is clear from the above that the required street departures will have a limited impact on the area or surrounding property owners, specifically given the existing built form and character of the area.

### ***Common boundary departures***

- Given that Orphan Street is an un-made road and acts as a pedestrian way, this boundary is also considered in terms of the DMS as a common boundary. Given the allowable 0m setbacks to a height of 15m for a distance of 18m from the street, no setback departures are applicable for the north-east and south-west common boundaries.
- When considering the various departures required from the south-east common boundaries, it is clear that these departures (in terms of actual setbacks) are minor in nature and should not impact negatively on the area or surrounding property owners.
- The proposed building appropriately steps-back at the various storeys, which further limits the possible impact on the area and adjacent property owners.
- Views of the city are towards the south-east, with most of the properties in the area facing this direction. Given the slope of the subject property and the rights afforded the subject property, any compliant building will have similar impacts on surrounding properties than the proposal.
- The proposed building will basically overlook the rear / back facades of properties located to the south-east and therefore should have a limited impact on residential amenity.
- The proposed building should improve visual surveillance / security to various surrounding properties.

It is my opinion that the required setback departures required will have a limited impact on the area or surrounding property owners and should be supported by Council.

### **3.7 Council approval required for building within the TR2 (road reserve) area**

In terms of the proposed minor works within the road reserve area, the following should be noted:

- Discussions have taken place with Council's Roads and Stormwater Department regarding the vehicular entrance and minor building work within the road reserve area.
- The proposed retaining walls, steps, sliding gate and covered entrance are minor in nature and should not negatively impact on the area.
- Pedestrian access via the unmade Orphan Street will still be maintained and will not be compromised as a result of this proposal.
- Council should have less of a maintenance burden, since the owners of the subject property should maintain the area.
- The proposal does not prohibit the future extension of Orphan Street and will not have a negative impact on the access arrangement.
- The building work within the road reserve area can easily be removed and is not permanent.

### **3.8 Traffic and transport issues**

As is clearly shown on the plans, the proposal complies with the number of required parking bays for the proposed 4 dwelling units. Seven parking bays are provided for the owners of the dwelling unit, while one of the parking bays will be designated as a visitor bay.

It should be noted that most of the dwelling houses in the area do not have access to on-site parking bays and it is therefore rare that this is accommodated on-site, as is the case with the subject property.

### **3.10 Compliance with the decision-making criteria as per Section 99 of the Municipal Planning By-law (MPBL)**

3.10.1 In terms of Section 99(1) of the MPBL an application must be refused if the application does not satisfy the minimum requirements as listed in this section. In this regard, the following should be noted:

- Given the application made and legislation specified as per Section 1.3 of this report, it is clear that this application comply with the requirements of the MPBL.
- Given the new block of flats planned within an urban area, it is also clear that the proposal complies with the provisions of the Cape Town Municipal Spatial Development Framework.
- Given the assessment above and for the reasons as listed in Section 4 of this report below, it has been shown that the proposal is desirable as per the relevant consideration criteria as stated in Section 99(3) of the MPBL.
- The proposal includes a rezoning from GR4 to GR5, hence complying with the requirement of the DMS and MPBL relating to the effective granting of the floor space rights of the next subzone as is the case with the subject property.

Given the above, the application does not fail to comply with the minimum requirements as stated in Section 99(1) of the MPBL and should therefore not be refused but supported by the decision-maker.

3.10.2 In terms of Section 99(2) of the MPBL, if the application is not refused in terms of Section 99(1), when deciding whether or not to approve the application, the decision-maker must consider all relevant considerations as listed in this section. In this regard, the following should be noted:

- In terms of the applicable Table Bay District Plan (relevant spatial development framework), the area and subject property is designated for urban development. Given that that the block of flats is planned for an existing erf within an urban area and the district plan assessment provided earlier in this report, it is clear that the proposal complies with the provisions of the Table Bay District Plan.
- It has been shown in the report that the proposal complies with any relevant criteria contemplated in the DMS.
- Given the nature of the application, the proposal does not trigger and is not in conflict with any relevant Council policy.
- Given the assessment above and for the reasons as listed in Section 4 of this report below, it has been shown that the proposal is desirable as per the relevant consideration criteria as stated in Section 99(3) of the MPBL.
- It has been shown and argued in this report that the proposal will not have a negative impact on the existing rights of relevant surrounding property owners.

- With regards to this proposal, there are no other relevant considerations as prescribed in national or provincial legislation.

Given the above and considering the desirability assessment in Section 4 below, the decision maker should approve the application in terms of Section 98 of the MPBL.

#### **4. DESIRABILITY ASSESSMENT**

The desirability assessment in terms of the relevant issues listed as part of Section 99(3) of the MPBL can be summarized below:

- The proposal should have a positive economic and social impact, given the additional investment into the area and employment opportunities being created.
- The scale of capital investment with regards to the current proposal appears minor, but when considering the possible future knock-on effect on property values, etc the proposal will have a positive impact on the area and surrounding properties.
- The proposed built form is seen as appropriate for the area and in line with the character of the area.
- No impact on the character of the area is anticipated.
- The proposal will integrate well with the existing and surrounding buildings and consider the rights of surrounding property owners.
- The existing rights of surrounding property owners will not be negatively impacted on as a result of the proposal, especially when considering the rights afforded the subject property in terms of the DMS.
- Given the appropriate built form proposed and the interactions, as part of the design, with specifically Council's Heritage Resources Section; the proposal will not have a negative impact on the heritage nature of the area.
- The proposal provided sufficient on site parking bays (rare in this area) and will therefore have a limited impact on the traffic and parking in the area.

Andrew Pratt