

MOTIVATIONAL MEMORANDUM:

REMOVAL OF TITLE RESTRICTIONS

ERF 76 RISIDALE



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MOTIVATIONAL MEMORANDUM: REMOVAL OF TITLE RESTRICTIONS

ERF 76 RISIDALE

On behalf of

MRS HANNAH-MARIE BARTLETT

KiPD

Compiled by:

Title	Position	Date
SASKIA COLE	PROFESSIONAL TOWN PLANNER	25 February 2019

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1 INTRODUCTION

The purpose of this memorandum is to support the application for the removal of title conditions 1.(a) to 1.(g) and 1.(i) to 1.(n) from Title Deed T31922/1991 and conditions (a) to (l) from Title Deed T47314/2018.

All pertinent information is included in this memorandum.

2 SITE CONTEXT

2.1 OWNERSHIP PARTICULARS

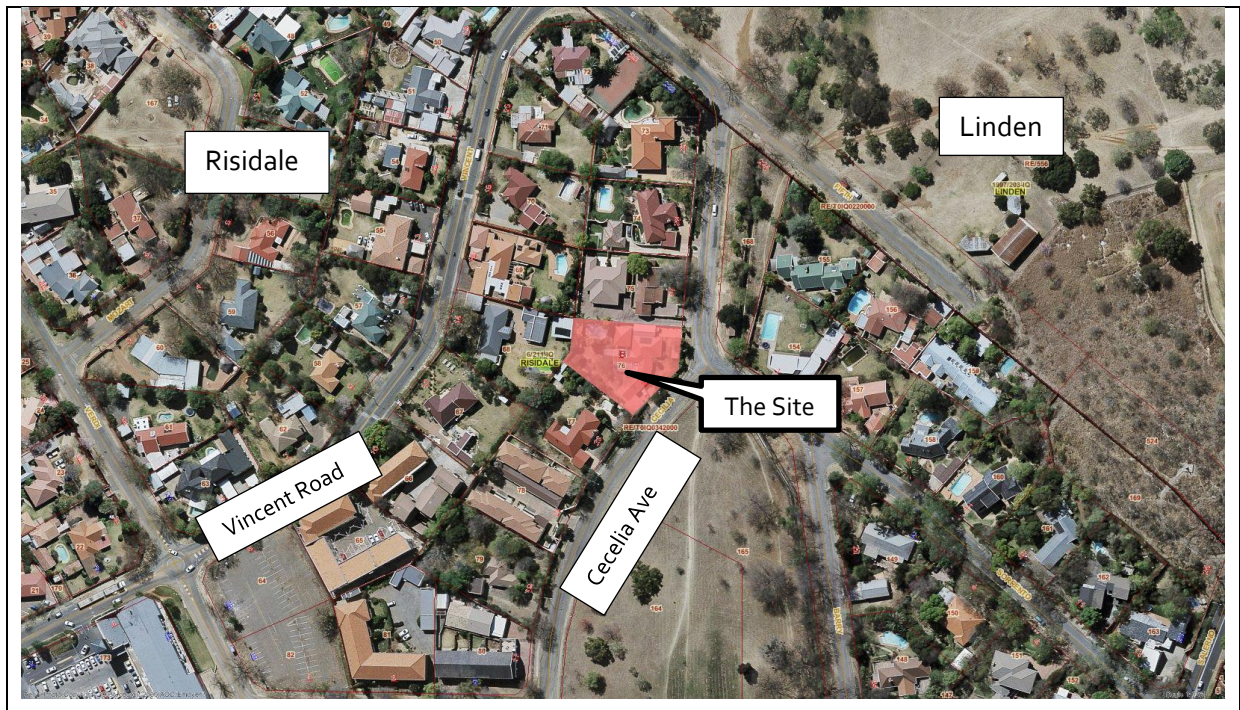
The property is registered at the Deeds office as follows :

Property details	Registered owner	Title deed no	Extent (m ²)
Erf 76 Risidale	Hannah-Marie Bartlett	T31922/1991 and T 47314/2018	1513 m ²

In terms of title deed T31922/1991 the property was registered to Mr Trevor Hornsby Bartlett and Mrs Hannah Marie Bartlett, a half share each. Unfortunately Mr Bartlett passed away and his half of the property was transferred to Mrs Bartlett in terms of Title Deed T47314/2018, thus making Mrs Bartlett the sole owner of the property.

2.1 LOCALITY

The site is located on at no 25 Cecelia Avenue, Risidale, as indicated below :

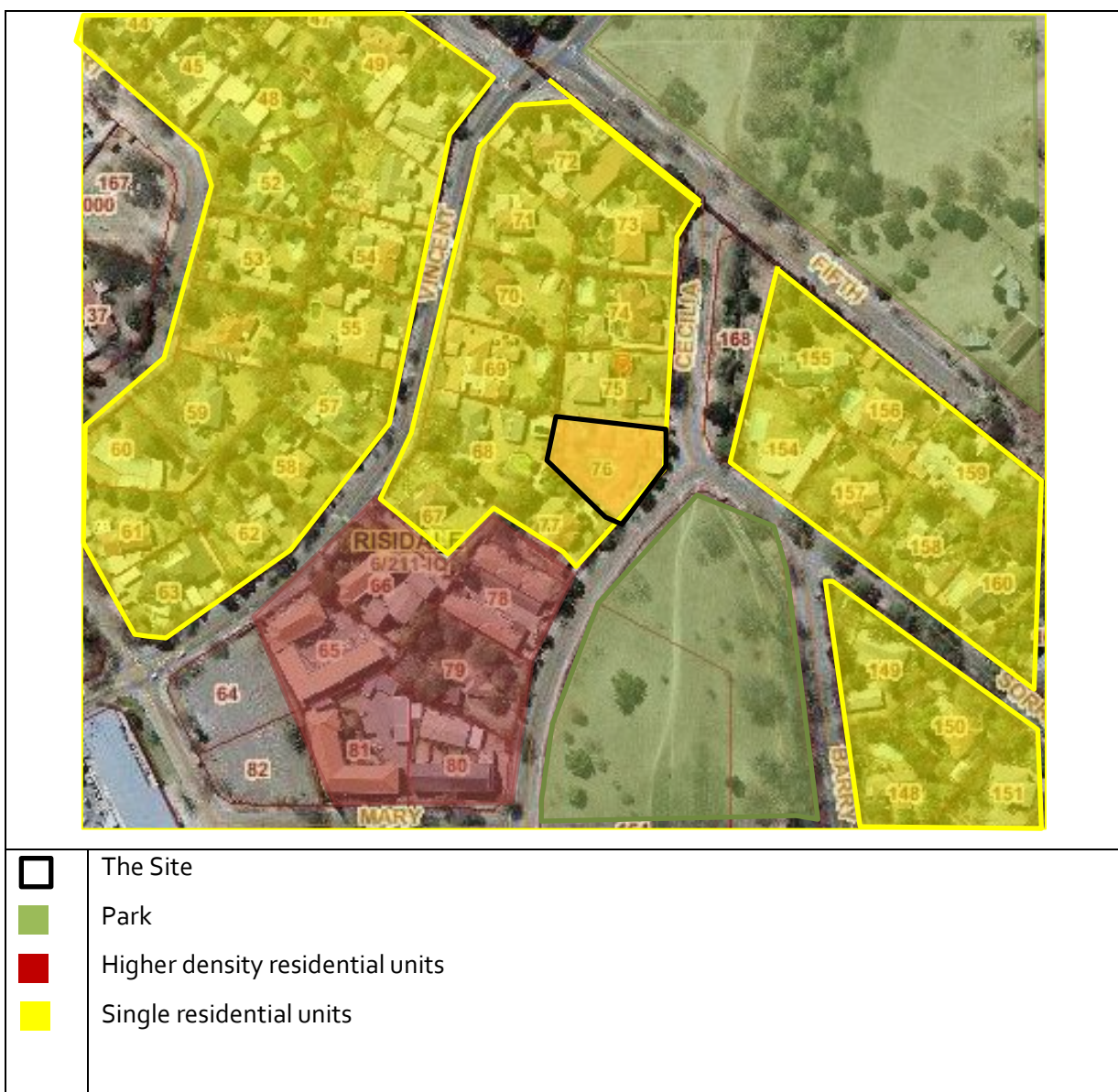


2.1 MORTGAGE BOND

There is no mortgage bond registered against this property

2.1 EXISTING AND SURROUNDING LAND USE

There is currently a single residential dwelling house on the property. The site is surrounded by predominantly single residential dwelling units, as well as some flats to the south west and public open space across the road and to the north. The plan below indicates the land uses of the surrounding properties:



3 EXISTING ZONING AND DEVELOPMENT CONTROLS

In terms of the City of Johannesburg Land Use Scheme, 2018, the property is zoned as follows:

Zoning	Residential 1
Height	3 storeys
Coverage	50% (1-2 storeys) 40% (3 storeys)
Floor Area Ratio	1.2
Building Lines	3m from the street boundary

4 DEVELOPMENT INTENT

The land owner has constructed a car port on the street boundary of the property. Although the City of Johannesburg Land Use Scheme, 2018 allows for carports to be constructed over the street building line, with approval of building plans, the title deed contains a title restriction which prohibits construction within 6.1m from the street boundary.

It is thus necessary to remove particularly this title restriction from the title deeds to allow for approval of the building plans for the car port.

Application is however being made to remove all title restrictions from the title deeds which deal with matters already being enforced by the Land Use Scheme. Having these conditions in the title deed as well the Scheme is found to be superfluous.

5 REMOVAL OF TITLE RESTRICTION

Application is hereby made to remove title conditions 1.(a) to 1.(g) and 1.(i) to 1.(n) from Title Deed T31922/1991 and conditions (a) to (l) from Title Deed T47314/2018.

Condition 1.(h) has already been removed from Title Deed T31922/1991, see endorsement on page 8 of the title deed.

The conditions are mostly outdated and newer legislation is in place to control the various components, thus nullifying the necessity of mentioning them in the title deed. The conditions and reasons for their requested removal are detailed below:

Title Deed T31922/1991

Conditions to be removed		Comment	Legislation
No.	Content		
1. (a)	All rights to minerals and precious stones, including all rights which may be or become vested in the freehold owner to share in any proceeds which may accrue to the State from the disposal of the undermining rights of the township, and also the share of claim licence moneys and any share of rentals or profit which may accrue to any owner under any mining lease granted in respect of the land covered by the township, and the like are reserved by RISIDALE TOWNSHIP COMPANY LIMITED and its successors in the title of such rights, in respect of which rights Certificate of Mineral Rights Number 152/1948 R.M. dated 15 th March , 1948, has been issued.		As the custodian of mineral rights, only the state can authorise exploitation of mineral resources and grant these rights through the minister.
1.(b)	The applicant and any other person or body of persons so authorised, in writing, by the administrator shall for the purpose of securing the enforcement of these conditions and any other conditions referred to in Section 56 bis of Ordinance Number 11 of 1931 or any amendment thereof have the right and power at all reasonable time to enter into and upon the erf for the purpose of such	The City of Johannesburg has taken over the role of Administrator and access to property for inspection is enforced by the Municipal Planning By-Law, 2016.	Municipal Planning By-Law 2016, section 63.

	inspection or inquiry as may be necessary to be made for the abovementioned purpose.		
1.(c)	The erf shall not be subdivided except in special circumstances and then only with the consent, in writing, of the Administrator (or any body or person designated by him for the purpose) who may prescribe such further conditions as he may deem necessary.	The City of Johannesburg has taken over the role of Administrator and has processes in place for the approval of subdivision applications.	Municipal Planning By-Law 2016, section 33
1.(d)	The elevational treatment of all building shall conform to good architecture so as not to interfere with the amenities of the neighbourhood.		City of Johannesburg Land Use Scheme, 2018, Clause 51(2)
1.(e)	Neither the owner nor any other person shall have the right save and except to prepare the erf for building purpose to excavate therefrom any material without the written consent of the local authority.	The excavation of material from an erf is prohibited in terms of the Land Use Scheme, except to prepare the erf for building.	City of Johannesburg Land Use Scheme, 2018, Clause 14(1)(a)
1.(f)	No animal as defined in the Local Authority Pounds Regulation framed under the Local Government Ordinance Number 17 of 1939, shall be kept or stabled on the erf.	The municipal public health by-laws prohibit the keeping of animals, besides approved pets, in a proclaimed township.	City of Johannesburg Public Health By-Laws, Section 118(3)
1.(g)	No wood and/or iron buildings or buildings of unburnt clay- brick shall be erected on the erf.	Modern architecture may allow for the use of these materials as long as the building is structurally sound and conforms to building standards.	National Building Regulations and Building Standards, 1977

1.(i)	Except with the special permission in writing of the applicant the roofs of all buildings erected on the erf shall be of tile, shingles, slated, thatch or concrete.	Modern architecture may allow for the use of these materials as long as the building is structurally sound and conforms to building standards.	National Building Regulations and Building Standards, 1977
1.(j)	The erf shall be used for the erection of a dwelling house only provided that with the consent of the Administrator, after reference to the Board and the local authority, a place of public worship or a place of instruction, social hall, institution or special buildings appertaining to a residential area, may be erected on the erf provided further that where the township is included within the area of an approved town planning scheme, the local authority may permit such other buildings as provided for in the scheme, subject to the conditions of the scheme under which the consent of the local authority is required.	The use of land is governed by the town planning scheme in place by the municipality and changes to the use must be made in terms of the municipal planning by-laws.	City of Johannesburg Land Use Scheme, 2018, Clause 14(10)
1.(k)	Neither the owner nor any other person shall have the right to make or permit to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of a like nature.		City of Johannesburg Land Use Scheme, 2018, Clause 14(1)(c)
1.(l)	Not more than one dwelling house, together with such outbuildings as are ordinarily required to be used in		City of Johannesburg Land Use Scheme, 2018, Clause 21 & 27

	<p>connection therewith shall be erected on the erf, except in special circumstances and the only with the consent, in writing, of the Administrator (or body or person designated by him for the purpose) who may prescribe such further conditions as he may deem necessary</p>		
	<p>I. The dwelling house exclusive of outbuilding to be erected on the erf, shall be of the value of not less than R5000,00.</p>	<p>The amount of R5000 is superfluous at this point in time due to inflation over many years.</p>	
	<p>II. The main building, which shall be a completed building and not one partly erected and intended for completion at a later date, shall be erected simultaneously with or before the erection of the outbuildings,</p>		<p>City of Johannesburg Land Use Scheme, 2018, Clause 14(10)</p>
1.(m)	<p>Building including outbuildings erected on erven Number 12 to 21 and 83 to 96 shall be located not less than 15,24 metres from their boundaries abutting on Muldersdriff Road and buildings including outbuildings erected on any other erf shall be located not less than 6,10 metres from its boundary abutting on a street and in such manner as shall be agreed upon by the local authority.</p>		<p>City of Johannesburg Land Use Scheme, 2018, Clause 34.</p>

1.(n)	If the erf is fenced or otherwise enclosed the fencing or other enclosing device shall be erected and maintained to the satisfaction of the local authority.		City of Johannesburg Land Use Scheme, 2018, Clause 14(6)
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Title Deed T47314/2018

Conditions to be removed		Comment	Legislation
No.	Content		
(a)	The applicant and any other person or body of persons so authorised, in writing, by the administrator shall for the purpose of securing the enforcement of these conditions and any other conditions referred to in Section 56 bis of Ordinance Number 11 of 1931 or any amendment thereof have the right and power at all reasonable time to enter into and upon the erf for the purpose of such inspection or inquiry as may be necessary to be made for the abovementioned purpose.	The City of Johannesburg has taken over the role of Administrator and access to property for inspection is enforced by the Municipal Planning By-Law, 2016.	Municipal Planning By-Law 2016, section 63.
(b)	The erf shall not be subdivided except in special circumstances and then only with the consent, in writing, of the Administrator (or any body or person designated by him for the purpose) who may prescribe such further conditions as he may deem necessary.	The City of Johannesburg has taken over the role of Administrator and has processes in place for the approval of subdivision applications.	Municipal Planning By-Law 2016, section 33

(c)	The elevational treatment of all building shall conform to good architecture so as not to interfere with the amenities of the neighbourhood.		City of Johannesburg Land Use Scheme, 2018, Clause xx
(d)	Neither the owner nor any other person shall have the right save and except to prepare the erf for building purpose to excavate therefrom any material without the written consent of the local authority.	The excavation of material from an erf is prohibited in terms of the Land Use Scheme, except to prepare the erf for building.	City of Johannesburg Land Use Scheme, 2018, Clause 14(1)(a)
(e)	No animal as defined in the Local Authority Pounds Regulation framed under the Local Government Ordinance Number 17 of 1939, shall be kept or stabled on the erf.	The municipal public health by-laws prohibit the keeping of animals, besides approved pets, in a proclaimed township.	City of Johannesburg Public Health By-Laws, Section 118(3)
(f)	No wood and/or iron buildings or buildings of unburnt clay- brick shall be erected on the erf.	Modern architecture may allow for the use of these materials as long as the building is structurally sound and conforms to building standards.	National Building Regulations and Building Standards, 1977
(g)	Except with the special permission in writing of the applicant the roofs of all buildings erected on the erf shall be of tile, shingles, slated, thatch or concrete.	Modern architecture may allow for the use of these materials as long as the building is structurally sound and conforms to building standards.	National Building Regulations and Building Standards, 1977

(h)	<p>The erf shall be used for the erection of a dwelling house only provided that with the consent of the Administrator, after reference to the Board and the local authority, a place of public worship or a place of instruction, social hall, institution or special buildings appertaining to a residential area, may be erected on the erf provided further that where the township is included within the area of an approved town planning scheme, the local authority may permit such other buildings as provided for in the scheme, subject to the conditions of the scheme under which the consent of the local authority is required.</p>	<p>The use of land is governed by the town planning scheme in place by the municipality and changes to the use must be made in terms of the municipal planning by-laws.</p>	<p>City of Johannesburg Land Use Scheme, 2018, Clause 14(10)</p>
(i)	<p>Neither the owner nor any other person shall have the right to make or permit to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of a like nature.</p>		<p>City of Johannesburg Land Use Scheme, 2018, Clause 14(1)(c)</p>
(j)	<p>Not more than one dwelling house, together with such outbuildings as are ordinarily required to be used in connection therewith shall be erected on the erf, except in special circumstances and the only with the consent, in writing, of the Administrator (or body or person designated by him for the purpose) who may prescribe such further</p>		<p>City of Johannesburg Land Use Scheme, 2018, Clause 21 & 27</p>

	conditions as he may deem necessary		
	I. The dwelling house exclusive of outbuilding to be erected on the erf, shall be of the value of not less than R5000,00.	The amount of R5000 is superfluous at this point in time due to inflation over many years.	
	II. The main building, which shall be a completed building and not one partly erected and intended for completion at a later date, shall be erected simultaneously with or before the erection of the outbuildings,		City of Johannesburg Land Use Scheme, 2018, Clause 14(10)
(k)	Building including outbuildings erected on erven Number 12 to 21 and 83 to 96 shall be located not less than 15,24 metres from their boundaries abutting on Muldersdriff Road and buildings including outbuildings erected on any other erf shall be located not less than 6,10 metres from its boundary abutting on a street and in such manner as shall be agreed upon by the local authority.		City of Johannesburg Land Use Scheme, 2018, Clause 34.
(l)	If the erf is fenced or otherwise enclosed the fencing or other enclosing device shall be erected and maintained to the satisfaction of the local authority.		City of Johannesburg Land Use Scheme, 2018, Clause 14(6)

6 MOTIVATION

Before town planning schemes were introduced in South Africa it was necessary to have certain conditions stipulated in law in order for municipalities to be able to enforce them. Conditions that referred to land use and building restrictions were inserted into the title deeds of erven through the conditions of establishment in the township establishment processes.

With the introduction of town planning schemes into municipalities, many conditions that had in the past been administrated by title deeds, were inserted into, and thereafter governed and enforced by the town planning scheme, or land use scheme, being a more modern term.

Over time, municipalities have also brought out municipal by-laws to deal with some of the other conditions which were previously placed in title deeds, for example the keeping of animals.

It is not necessary to have two legislative tools dealing with exactly the same development restrictions and law. As the new 2018 land use scheme as approved by the City of Johannesburg allows for flexibility in land use rights, with the consent of the municipality, it is in the land owners interest to remove restrictive conditions from their title deed which does not allow for such flexibility

The main aim of this application is to remove the title restriction which refers to a 6.1m building line along boundaries abutting onto streets in Risidale. .Clause 34(3) of the City of Johannesburg Land Use Management Scheme, 2018 allows for the development of garages and carports related to single dwelling units within the stipulated building line for that erf, with the approval of building plans. No relaxation of the building line is required. The title condition is thus in contradiction to the land use scheme and as thus application is made to remove this, and other conditions from the title deed to allow for flexibility in development of the erf.

7 REGIONAL SPATIAL DEVELOPMENT FRAMEWORK

The subject site is located within Region B, Sub Area 14 of the City of Johannesburg regional Spatial Development Framework, 2010/2011. Development objective 1 for this sub-area is to protect and enhance the neighbourhood character and amenities of this sub area. As the intension is to retain the single dwelling unit, and not amend the landuse, the residential character of the neighbourhood will be retained and protected. We are of the opinion that the application is not in contravention to the RSDF.

8 RECOMMENDATION

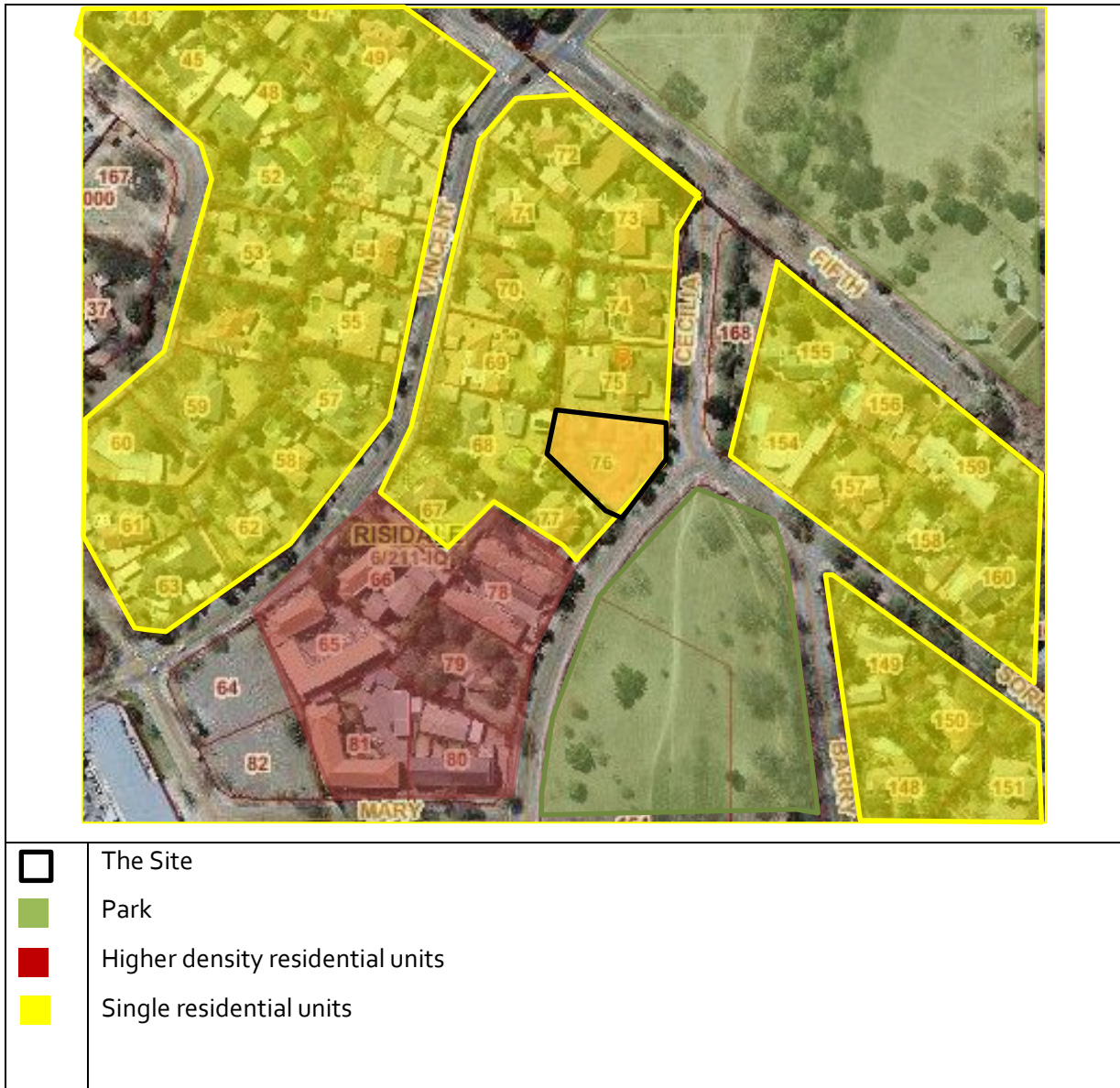
The approval of the application would allow the land owner flexibility in the development of the site and allow for adherence to the new land use scheme as approved by the City of Johannesburg.

We therefore recommend that the application be approved.

ANNEXURE 1: LOCALITY PLAN



ANNEXURE 2: LAND USE PLAN



ANNEXURE 3: ZONING MAP

