

**MOTIVATIONAL MEMORANDUM:
Removal of Restrictions Application
for
Erf 284 Ontdekkerspark**

**on behalf of
O.S. Hutton**

Date	23 February 2023
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INTRODUCTION

The purpose of this memorandum is to introduce, elaborate upon and motivate the application for the removal of restrictions from Title Deed 17535/2017 in respect of Erf 284 Ontdekkerspark.

The full extent of the application is set out in this memorandum, which comprises of the following:

- ❖ Chapter 1: General Information
- ❖ Chapter 2: The Application
- ❖ Chapter 3: Policy Environment
- ❖ Chapter 4: Motivation
- ❖ Chapter 5: Conclusion

1. GENERAL INFORMATION

KiPD (Pty) Ltd, the authorised agent, has been appointed by Olivia Samantha Hutton, the registered owner of the property, to lodge an application for the removal of restrictive title conditions for Erf 284 Ontdekkerspark. The property will be referred to as “the site”, “the subject properties” and/or “the proposed development” in this memorandum.

1.1. THE APPLICATION

Application is hereby made in terms of Section 41 of the City of Johannesburg (CoJ) Municipal Planning By-Law, 2016, hereinafter referred to as the “By-Law”, read together with the provisions of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA), for removal of restrictions 1.(a) to 1.(l) of Title Deed T17535/2017.

1.2. AGENT AND CLIENT

1.2.1. Agent

The authorised town planning agent acting on behalf of the client is:

Name	KiPD (Pty) Ltd
Responsible Persons	Saskia Cole
Postal Address	47 Third Street, Linden, 2195
Contact Number	011 888 8685 / 082 574 9318
Email	saskia@kipd.co.za

1.2.2. Client

The client's details are as follows:

Name	Olivia Hutton
Contact Number	076 622 7218
Address	391 Ontdekkers Road, Florida Park X3, 1709
Email	finance@geohutt.co.za

1.3. LAND DEVELOPMENT AREA

1.3.1. Site Locality

(Annexure A: Plan 1 and 2)

Ontdekkerspark is located in the western region of Johannesburg, east Horison, north of Discovery, west of Florida and south of Kloofendal. The property is located at no 70 Frere Avenue, Ontdekkerspark.

1.4. LEGAL ASPECTS

1.4.1. Ownership

In terms of Deed of Transfer T17535/2017, the property is registered in the name of Olivia Samantha Hutton and measures 1 042 m².

1.4.2. Power of Attorney

The owner of the property has provided a signed power of attorneys to enable KiPD to submit a formal application as per the requirements of the CoJ Municipal Planning By-Law, 2016.

1.4.3. Registered Mortgage Bonds

There is a mortgage bond registered against the property with ABSA Bank. The bondholders consent letter is attached to this application.

1.5. EXISTING LAND USE

The property is currently being used as a single dwelling house.

1.6. SURROUNDING LAND USE

(Annexure C: Land use plan)

Ontdekkerspark is predominantly a residential suburb, with a businesses concentrated along Ontdekkers Road.

1.7. EXISTING ZONING AND DEVELOPMENT CONTROLS

(Annexure D: Zoning Certificate)

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

Zoning	Residential 1
Primary rights	Dwelling units
Secondary rights	Residential buildings, religious purposes, places of instruction, child care centre, social halls, institutions, special buildings, sport and recreation clubs, public or private parking areas, medical consulting rooms, guest house, tavern / shebeen.
Floor Area	1.2
Density	1 dwelling per erf
Coverage	50%- 1 storey 40% 2 and 3 storeys
Height zone	3 storeys
Building Lines	As per scheme: 3m street boundary

1.8. SURROUNDING ZONING

(Annexure E : Surrounding zoning plan)

In terms of the City of Johannesburg Land Use Scheme, 2018, most of the erven surrounding the property are zoned "Residential 1", north west of the property is an educational site and further north are business properties.

2. THE APPLICATION

2.1. PROPOSED REMOVAL OF TITLE RESTRICTIONS

Application is hereby made to remove title conditions 1.(a) to 1.(l) of Deeds of Transfer T17535/2017.

Condition	Motivation for removal
1.(a) The applicants 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 fifty-six bis of Ordinance No.11 of 1931, have the right and power to enter into and upon the erf at all reasonable times for the purpose of such inspection or enquiry as may be necessary to be made for the abovementioned purpose.	The "Applicant" is now the City of Johannesburg and they are now the enforcer all title conditions and other laws.

1.(b)	The elevational treatment of all buildings shall conform to good architecture so as not to interfere with the amenities of the neighbourhood.	Regulated by the National Building Regulations
1.(c)	Neither the owner nor any other person shall have the right, save and except to prepare the erf for building purposes, to excavate therefrom any material without the written consent of the local authority.	The land use is governed in terms of Sections 14(a) and (c) of the City of Johannesburg Land Use Scheme, 2018.
1.(d)	Except with the consent of the local authority no animal defined in the Local Authorities' Pounds Regulations shall be kept or stabled on the erf	This condition is superfluous as the City of Johannesburg By Laws regulate the ownership of domestic animals in residential areas.
1.(e)	No wood and/or iron buildings or buildings of unburnt clay-brick shall be erected on the erf.	Regulated by the National Building Regulations
1.(f)	Except with the special permission in writing of the local authority, the roofs of all buildings erected on the erf shall be of slate, thatch, tiles, shingles or concrete.	The local authority employs suitably qualified personnel to assess, critique and approve all building plans and building materials whilst ensuring that the proposed building abides by the requirements as set out by the National Building Regulations and the Building Standards Act, 1977 (Act 3 of 1977) as well as the City of Johannesburg Land Use Scheme, 2018.
1.(g)	Where, in the opinion of the local authority, it is impracticable for stormwater to be drained from higher lying erven direct to a public street the owner of the erf shall be obliged to accept and/or permit the passage over the erf of such stormwater: Provided that the owners of any higher lying erven, the stormwater from which is discharged over any lower-lying erf, shall be liable to pay a proportionate share of the cost of any pipeline or drain which the owner of such lower lying erf may find necessary to lay or construct for the purpose of conducting the water so discharged over the erf.	The land use is governed in terms of Sections 14(2)) of the City of Johannesburg Land Use Scheme, 2018.
1.(h)	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 Townships Board and the local authority, a place of public worship or a place of instruction, social hall, institution or other buildings	The use of land is regulated by the City of Johannesburg Land Use Scheme, 2018

	<p>appertaining to a residential area may be erected on the erf: Provided further that the local authority may permit such other buildings as may be provided for in an approved Town-planning Scheme, subject to the conditions of the scheme under which the consent of the local authority is required.</p>	
1.(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 earthen-ware pipes or other articles of a like nature.</p>	<p>The land use is governed in terms of Sections 14(a) and (c) of the City of Johannesburg Land Use Scheme, 2018.</p>
1.(j)	<p>Except with the consent of the Administrator who may prescribe such conditions as he may deem necessary, not more than one dwelling-house together with such outbuildings as are ordinarily required to be used on connection therewith shall be erected on the erf: Provided that if the erf is subdivided or if such erf or any portion thereof is consolidated with any other erf or portion of an erf this condition may with the consent of the Administrator be applied to each resulting portion or consolidated area.</p> <p>(i) The dwelling-house, exclusive of outbuildings, to be erected on the erf shall be of the value of not less than R5 000,00;</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 outbuilding.</p>	<p>The density of the property as well the use of it is regulated by the City of Johannesburg Land Use Scheme, 2018.</p>
1.(k)	<p>Buildings, including outbuildings hereafter erected on the erf shall be located not less than 4,57 metres from the boundary thereof abutting on a street.</p>	<p>Condition is contradictory to Part V (sections 34 and 35) of the City of Johannesburg Land Use Scheme, 2018 where building lines are regulated.</p>
1.(l)	<p>If the erf is fenced, or otherwise enclosed, the fencing or other enclosing devise, shall be erected and maintained to the satisfaction of the local authority.</p>	<p>Regulated by the National Building Regulations and the City of Johannesburg Land Use Scheme, 2018 (section 14(6)).</p>

These title conditions were imposed prior to any town planning scheme coming into operation for the Municipality. Since then all of these conditions are included and/or administrated in terms of a town planning or land use scheme, currently the City of Johannesburg Land Use Scheme, 2018 or the National Building Regulations, or other by-laws.

There is therefore no longer a need to have these conditions included in the title deeds of the properties.

3. SPATIAL PLANNING ENVIRONMENT

In terms of Section 5(2) of the City of Johannesburg Municipal Planning By-Law, 2016 – “any land development application in terms of said By-Law shall be guided and informed by the City’s Integrated Development Plan and Municipal Spatial Development Framework as adopted and approved in terms of Section 20 of SPLUMA and Section 10 of said By-Law.”

This section therefore reviews all relevant spatial planning documents and plans, to determine the suitability and compliance to the spatial plans of the City.

The following spatial planning documents have been reviewed :

- City of Johannesburg Spatial Development Plan, 2040 (2016);
- Nodal Review Policy 2019/2020.

The Spatial Development Framework 2040 (SDF) is a city wide spatial policy document that identifies the main challenges and opportunities for the City, sets a spatial vision for the future city and outlines a set of strategies to achieve that vision.

Along with providing a spatial vision, the SDF defines the strategic spatial areas to be used in the City’s capital investment prioritisation model. This will ensure that infrastructure investment is directed to areas with the highest potential to positively impact on the development trajectory of the City as defined in the SDF.

In terms of the SDF, the subject property falls within the “Consolidation Zone”, this area (neither within the Transformation Zone, nor outside the urban development boundary) is viewed as a focus of urban consolidation, infrastructure maintenance, controlled growth, urban management, addressing backlogs (in social and hard infrastructure) and structural positioning for medium to longer term growth.

The focus of the strategy is to create liveable lower to medium density suburban areas that are well-connected to areas of higher intensity through transit infrastructure, without the need for additional investment in service infrastructure.

In terms of the Nodal Review Policy, 2019/2020, the subject property falls partly within the “General Urban Zone” and earmarked for minimum 60 units per hectare.

In the “General Urban Zone”, a medium intensity of uses is desired with a scattering of land use mixed though out the area but concentrated along high streets.

The application is to remove restrictive conditions only, with specific focus on the building line restriction contained in the title deed which is contrary to the CoJ LUS, 2018. The use of the property will remain "Residential 1" with a single main dwelling unit developed. Therefore the proposal supports the SDF and Nodal Review.

4. MOTIVATION

4.1. NEED, DESIRABILITY AND PUBLIC INTEREST

The proposal to remove the title restrictions from Title Deed T17535/2017 is to first and foremost remove conditions which are contrary to the CoJ LUS, 2018, specifically regarding building lines.

All additional restrictions removed are done so because they are regulated in terms of the scheme, or other legislation and need not be included in the Title Deed.

The rights of the public, the City and the property owner are still protected due to the existence of additional legislation and specifically the CoJ LUS, 2018.

5. SPLUMA DEVELOPMENT PRINCIPLES

In terms of the Spatial Planning and Land Use Management Act (Act 16 of 2013) (SPLUMA), the following principles apply to spatial planning, land development and land use management and are hereby applied to this application:

SPLUMA Referral		Proposed Development Compliance
7 (a)	Spatial Justice	The development addresses the principle of spatial justice as it answers to the rectification of previous injustices by improving the ability for the owner to more optimally use her property.
7 (b)	Spatial Sustainability	The principle of spatial sustainability is addressed in the fact that the development is being implemented in an area that is considered viable for the development to occur within and addresses the immediate need to the amenity.
7 (c)	Efficiency	The land development optimises the use of existing engineering infrastructure. No additional infrastructure is required.
7 (d)	Spatial Resilience	The principle of spatial resilience applies in that the Spatial Development framework supports the type of development that's been instituted in the area, therefore adhering to the vision of the City.
7 (e)	Good Administration	The development answers to the broader scope and the microscope of all spheres of government, in that it allows for the owner of the property to use her property in the most optimal manner.

6. RECOMMENDATION

The application to remove the restrictive conditions from the title deed is supportive of the CoJ Land Use Scheme as well as the City's by laws and other legislation such as the National Building Regulations.

We therefore recommend that the application be approved.