

## EXECUTIVE SUMMARY

### PROTEA VILLAGE ENVIRONMENTAL & TECHNICAL FEASIBILITY STUDY

#### Introduction

The Restitution of Land Rights Act (Act 22 of 1994) was enacted to restore or compensate people for their land rights lost as a result of racially discriminatory laws or practices, after 19 June 1913.

It was not until 1966 when the Provincial Authorities instituted expropriation proceedings to take over a large portion of the properties concerned for educational purposes, a portion of land for road purposes and a portion of land for public open space, that the Protea Village community were finally removed to areas as far a field as Mitchells Plain and Lotus River.

The claimants estimate that there were approximately 110 families in the village at the time of dispossession, occupying mostly what are referred to as the Stegmann Cottages. The Protea Village Action Committee (PROVAC) lodged a claim in 2001 with the Land Claims Commission on behalf of 86 former tenants against Erven 212 and 242 in terms of the Restitution of Land Rights Act.

Erf 212, the Boshenheuveld Arboretum is presently used for recreational purposes and belongs to the City of Cape Town (CoCT). Erf 212 was originally home to only two of the claimant community. The village school and cricket field and the spring which were critical components of the village were also sited on Erf 212. Erf 242, which is in the ownership of the Department of Public Works and leased by the National Botanical Institute has remained undeveloped since the 1960's. The NBI have agreed to waive their 99 year lease to make the property available for resettlement. The community has also been granted the use of the Stone Cottages.

The CoCT is in the process of considering releasing portions of Erf 212 for the restitution of rights related to the legitimate Protea Village Land Claimants who were dispossessed of their right to remain in the two cottages; and as alternative land for those other legitimate Protea Village Land Claimants whose land has, since the removals, been developed.

The CoCT has therefore commissioned this report to assess:

- i. the availability of Erf 212 in terms of the land rights lost;
- ii. the significance of the present usage and amenity value of the land; and
- iii. the technical and environmental feasibility of resettlement in the area.

The CoCT have also commissioned a set of design guidelines and parameters through which they can administer and control future development on the site.

**Chapter 2: Planning Policy Review** summarises the implications of planning policy relevant to the site. Even though the City of Cape Town or any other authority involved in planning / development control may not refuse the application for rezoning to permit resettlement in terms of restitution, it is important that the applicable planning policies and controls are identified, as these are important informants to understanding the role of the site and the implications of resettlement for the broader Metropolitan community.

The following planning policies were reviewed:

- The Cape Metropolitan Guide Plan (Urban Structure Plan, 1988)
- The Draft Metropolitan Spatial Development Framework (1996)
- Metropolitan Open Space System (MOSS, 1996) and Cape Metropolitan Open Space System (CMOSS, incomplete)
- Municipal Spatial Development Framework (Muni-SDF, 1999)
- Peninsula Urban Edge Study (2001)
- Greening the City: Open Space and Recreation Plan for Cape Town, 1982
- Scenic Drive Network Management Plan (2002)

The Guide Plan for the Cape Peninsula defines most of the Protea Village site as suitable for Urban Development purposes; the only exception being the area on both sides of the Liesbeek River which is described as Open Space. It requires river banks, streams, expanses of water and other sensitive nature areas to be protected.

The site is located within  $\pm 3$ km of the mature Claremont/Wynberg node related to the Southern Suburbs corridor and is thus very well located in terms of the access it can offer to a full range of facilities and amenities and transport needs. While the MSDF promotes higher densities throughout the metropole, high densities would be inappropriate on the sites in question.

Although the site is not identified exactly as part of the mountain area in MOSS, it should not be excluded from being regarded as a key component of the larger connected green web that is the basis of MOSS. Erf 212 will almost certainly form part of a CMOSS study due to its location, nature and rural zoning. This site as a green open space provides 'variety, character and a sense of visual relief', in addition to having a recreational, storm water and ecological role.

The green link shown in the Muni-SDF Management Zone 3 responds directly to the Liesbeek River corridor that runs through the site. This link needs to be maintained and reinforced through the proposed development due to its ability to contribute to the ecological functioning of the greater green system, its potential to be part of a greater recreational web of pedestrian trails and its potential as a mechanism to convey and filter storm water.

Both Erven 212 and 242 presently lie outside the urban edge. Amendments to the urban edge would be required as a result of proposed redevelopment of these sites.

A large part of Erf 212 is part of the "landscape framework", i.e. is important at a metropolitan scale. It forms a critical part of the Liesbeek River System, and connects the mountain with the metropolitan green network. Erf 212 as a confluence of two mountain streams and the source of the Liesbeek River is seen as a protection worthy environment and as a key pedestrian link between the mountain and the Black River Park area.

The site does not lie within the 'scenic envelope' as set out by this plan and therefore does not need to fulfil scenic conditions for Rhodes Drive. The Management Plan does however make reference to the need to address the undesirable residential fences that surround Erf 212 and Erf 242 and the need to address the shortage of parking required for events held on the stone cottages site and at Kirstenbosch. Development should also endeavour to preserve tree canopies as far as possible.

**Chapter 3 outlines** the contextual analysis of the sites at the Metropolitan and Sub-metropolitan scales, examining the natural and urban systems that impact on the sites. This chapter confirms the key ecological function of the sites, in particular Erf 212. It also highlights the accessibility of the site to major urban centres including Claremont / Wynberg and the Cape Town CBD. The analysis indicates that while the site is well located in terms of higher order institutions and the metropolitan freeway system it remains fairly isolated from the main commercial activity associated with the Southern Suburbs Main Road corridor for those without access to private means of transport.

Analysis of the existing planning policy frameworks in Chapter 2 and the site within its broader context discussed in Chapter 3 revealed that the site has a number of significant roles (**Chapter 4**). The **site plays a key water infiltration and catchment role**. The site plays an important role in its present **green-belt parkland** as a key recreational area, offering visual relief and interest to those passing the site. The site is **part of the sub-metropolitan and metropolitan scale open space web**. It therefore has the potential to contribute to the making of continuous green recreational and ecological systems. This is important in terms of the City of Cape Town's policies which support the notion of a more socially and ecologically sustainable City.

The site also has a role in the reading of the larger landscape by those who use it on a daily basis and those who pass by it. Given that the site is surrounded by residential development it would be appropriate to consider that a portion of it could take on a residential role.

**Chapter 5** constitutes the main body of the report. It summarises the environmental, landscape, heritage and engineering services reports prepared by specialists and CoCT officials. It also includes a land-use analysis, an investigation into the planning and procedural aspects which have relevance to this process and the findings of a socio-economic survey that was conducted with the help of PROVAC.

Two aspects of the environmental analysis were carried out by consultants who specialise in freshwater ecosystems and indigenous vegetation respectively. Their assessment of the natural systems operating on site presently was based on the 100 year flood line. Their analysis included an assessment of the legal

constraints including provisions in terms of The Water Act (Act 36 of 1998); The National Environmental Management Act (Act 7 of 1998) and Development Control Guidelines in flood prone Areas (2000).

This analysis together with a set of recommendations with respect to ecosystems and indigenous vegetation protection formed the main informant to defining a developable envelope.

(Figure i) identifies which portions of the site are developable from an environmental perspective. The developable portions highlighted in this figure measure approximately 5.8 hectares in extent. There is an additional 0.8 hectares that could be considered for development if certain conditions are fulfilled. These would involve the cleaning out of the land fill site of which the extent still remains unclear. Further tests are to be conducted to assess the severity of the pollution levels and their possible impact on the river system.

While the developable portion is fixed it is important to remember that there are further constraints on the proposed development of the site. These include: servicing and infrastructural requirements; heritage, landscape and spatial informants that inform the next level of design in which the preferred form and location of the proposed development within these defined portions are fixed. These informants are summarised in the report in Section 5.2.

The socio-economic and planning and procedural considerations do not directly inform the design or layout of the proposed development but are intended to give guidance with respect to the land use on the site. From a planning and procedural point of view, it is important to point out the key legal and procedural considerations that may impact on the proposed development of the sites under consideration.

Section 5.3 examines the City wide Land Restitution Policy (City of Cape Town: October, 2001), the zoning applicable to Erven 242 and 212, Bishopscourt and the conditions of title that may affect the proposed development of the properties concerned.

The City of Cape Town adopted a City-wide policy on Land Restitution dated October 2001 to pledge its support for land restitution and to guide its responsibilities in terms of the Restitution of Land Rights Act (Act 22 of 1994). This policy outlines the implications of planning, development control and servicing for the City in cases where land falling within its jurisdiction is subject to restitution. Where land subject to restitution is municipal owned, the City's full involvement is required. In the case of the claim in question, Erf 212 is municipal owned. The City therefore has an obligation to consider this land from a planning policy, development control and servicing perspective.

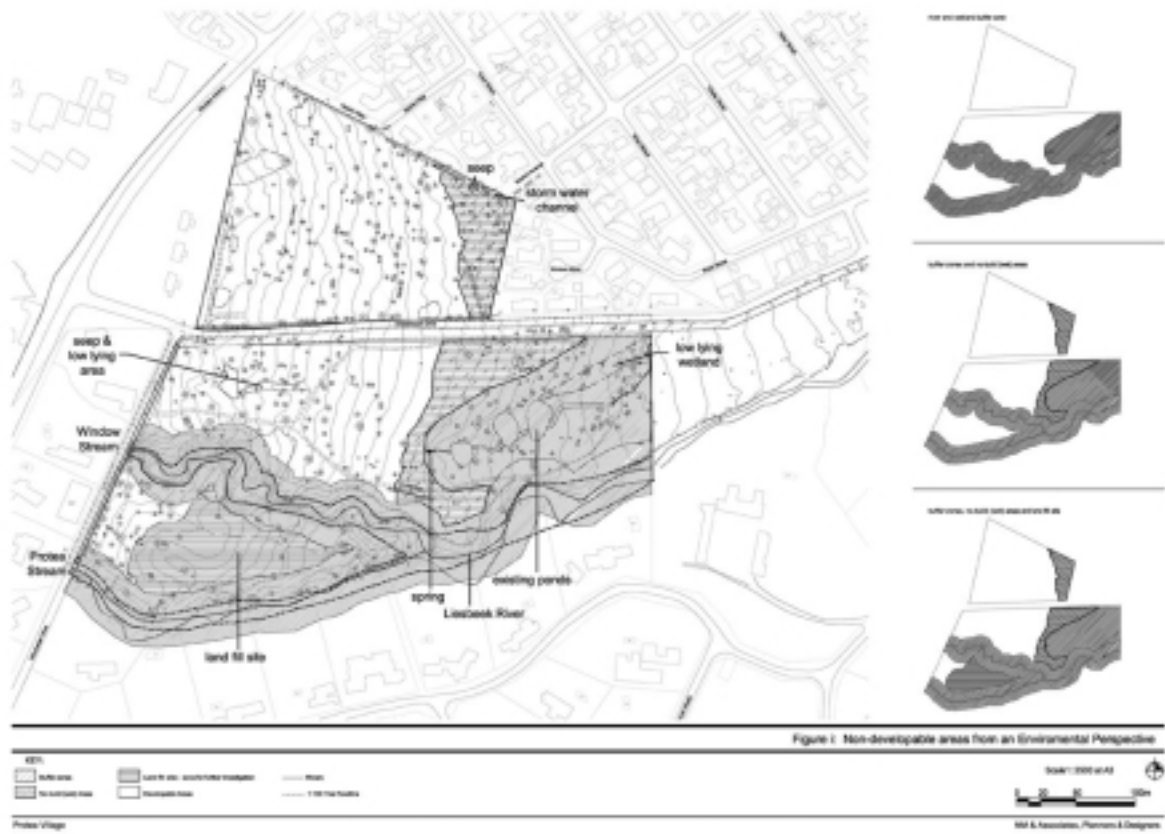
In June 2001, the City obtained a legal opinion on the applicability of the Land Use Planning Ordinance (LUPO, Ordinance 15 of 1985) to land restored or awarded to claimants. This opinion concluded that: *"Compliance with normal legal requirements as stipulated in the LUPO is a prerequisite to the development of land awarded or restored to claimants. However, the relevant official or delegated authority (City or Provincial Administration of the Western Cape: PAWC) cannot refuse to permit the claimants to live on restored land and thus would have little, or no discretion, in respect of a planning application which seeks to rezone the property for residential use and to subdivide it to permit the claimant families to have their own homes (i.e. restoration of rights lost). However, the City may exercise its discretion in respect of permitting other business and/or commercial uses."* (October, 2001)

Erf 242 is predominantly zoned 'Grouped Dwelling Residential Use Zone' in terms of the Cape Town Zoning Scheme, a minor portion in the south western corner is zoned 'Rural'. Having done extensive research and taken advice from the Land Use Management Branch of the City of Cape Town, how Erf 242 achieved a 'Grouped Dwelling Residential Use Zone' status, is questionable. The site has a history of uncertainty and complexity with respect to its zoning and therefore the development rights applicable to it.

In a report dated 21 May 1982 compiled by the City Engineers' Department, it is recorded that Erf 242 was the subject of a land swap arrangement with Erf 104323 located in Fernwood and was rezoned from 'Educational Purposes' to 'Group Housing Purposes' in terms of the Townships Ordinance 33 of 1934. In terms of this rezoning Schedule 8 conditions were imposed by the Administrator. These conditions are listed in Section 5.3 of the report.

To clarify the status of Erf 242, it is recommended that the site be rezoned to Single Dwelling Residential through the LUPO process. At the same time, it would be necessary to amend the Cape Town Zoning Scheme boundary in terms of Section 9 of the Land Use Planning Ordinance (Ordinance 15 of 1985) since it is not clear when the Administrator rezoned Erf 242 in 1982 in terms of the Cape Town Zoning Scheme, whether the area was incorporated into the Cape Town Municipal boundary.

Insert figure i



The Schedule 8 conditions applicable to Erf 242 require deletion by the PA: WC so as to make way for more appropriate design, development and procedural guidelines and controls.

Erf 212 is zoned 'Rural Zone' in terms of the Divisional Council Zoning Scheme and Designated Public Place. The City of Cape Town formulated a policy in 1982, which states that no further subdivisions would be permitted in the Township of Bishopscourt. The area includes Erf 212.

It is important to note that a large proportion of land in Bishopscourt is zoned Rural and developed for residential use. However, the requirements of a Rural Zoning cannot guide land use and permissible buildings on the site given the special circumstances surrounding the proposed resettlement.

Any proposed land uses on Erf 212 should therefore be considered through the LUPO procedural process. Also, in terms of the legal opinion obtained by the CoCT, it can be assumed that the City would consider, residential and recreation uses of a limited nature more favourably since these could be motivated on the basis of 'the restoration of land rights lost'.

A socio-economic survey was conducted to determine the profile of the claimant community. There are 86 claimants of whom 55 (64%) provided a response to the survey questionnaire. A summary of the report containing the findings of the survey and their implications for resettlement is provided in Section 5.4.

**Chapter 6** describes the development vision for the site and the proposals as discussed through the participation process with the Protea Village community. One of the aims of the present process was to work towards a proposal in which all 86 claimants' preferences could be addressed. A visioning exercise was done with the claimant community to establish what the preferred option for resettlement on the site would be.

Options at this early stage included an old age facility that could house some of the elderly and could become an income generating facility in the long term, a guest house as an income generating facility, housing and additional facilities and amenities such as a sports facility / community centre, a school and clinic. The museum was also mentioned although it was accepted that this would most probably be located within the stone cottages. Workshops with a focus group representing the various interest groups within PROVAC were set up to allow the claimants to develop a shared vision for the future.

In the absence of a business plan which acknowledged the different levels of affordability within the group, the claimant community dismissed the option of institutional development and expressed their desire for all claimants to be resettled on site on an equitable basis, on erf sizes of 500m<sup>2</sup> each. The claimant community expressed their desire to include the land fill site and the wet areas on the bottom portions of each of Erf 212 and 242 which have been classified as no build zones. The consultant team have expressed reservation around the release of land beyond what is required for the development of 86, 500m<sup>2</sup> erven because it would compromise the ecological integrity and public amenity value of the remaining portions of the site.

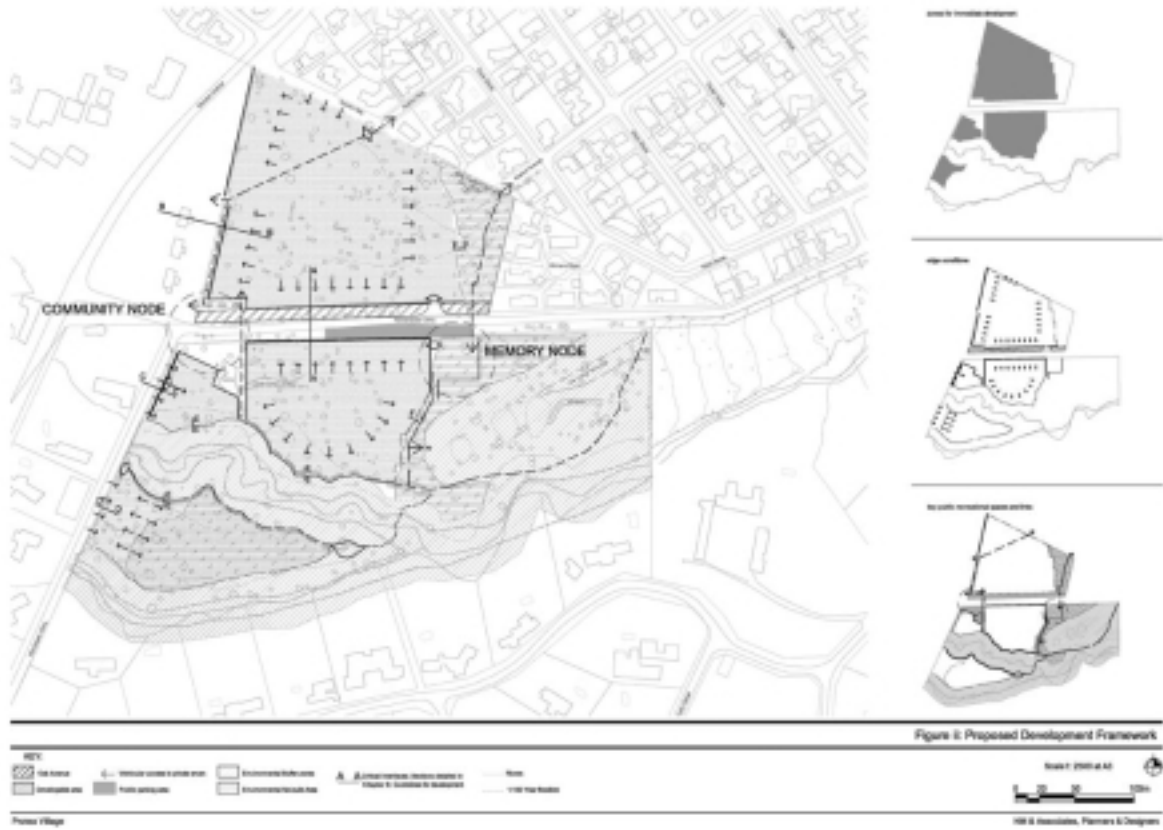
While the analysis favours development of Erf 242 it supports development on Erf 212 in a limited way and only for reasons of achieving social justice in terms of restitution.

The analysis suggests that development on Erf 212 should be limited to small pockets and that these should relate to the Kirstenbosch Drive and Winchester Drive edges. This would allow Erf 212 to maintain its role as a public recreational area and allow the spatial integrity of the riverine corridor to remain intact. It is important to recognise that while the developable footprint has been fixed at 5.8 hectares, the optimal footprint would therefore be one which allowed for smaller pockets of development and a smaller developable footprint on Erf 212.

**Chapter 7** outlines the development framework which is a response to the various scales of analysis and the needs expressed through the process. Figure ii depicts the proposed Development Framework for the sites concerned. The Framework has the following key principles and elements. The proposed Development Framework must be read in conjunction with the guidelines provided in Chapter 8.

***The proposed Development Framework attempts to protect the sites' broader role and at the same time direct development of the site as a residential environment.***

Insert figure ii



The proposed Framework provides measures which protect the site's role as

- a key water infiltration and catchment zone within a larger system related to the Liesbeek River;
- green-belt parkland with amenity value for the broader community;
- green space offering visual relief and scenic qualities; and
- a symbolic memorial to the acts of displacement and now reconciliation and healing.

The roles above are a reminder of the important public role the site holds. The site needs to continue to serve not only the local residents but the broader Cape Town community. The framework also addresses the potential of the site to become a destination for tourists a large number of whom pass the site on a daily basis.

#### ***Key public spaces and links across the site***

The framework indicates a sequence of public spaces to allow for visitors to move across the site and along the river corridor between the stone cottages and the spring.

The following provides a more detailed explanation of each of the nodes and the other key public components of the framework.

#### ***The Community node***

Gateway space:

It is recommended that this portion of the site is landscaped using a language of low wurf walls and laterite to reinforce the area as a pedestrian gateway into the residential area on Erf 242 and a link between the Church and the stone cottages and Erf 242 and Erf 212.

'Arum' Link

It is recommended that a laterite path and / or a boardwalk offering the public opportunities to access the river corridor from this Node, be constructed.

#### ***The Memory Node***

This area is located within a no-build zone. It is recommended that this space be the venue for the implementation of a public space project that attempts to deal with the issue of memorialisation. Landscaping including low wurf walls with gravel, laterite parking on Kirstenbosch Drive and information boards and timber bollards to define the space and lead people towards the spring would be necessary for the node to function as an interpretative facility.

#### ***The public walkway related to the Kirstenbosch Drive Oak Avenue***

It is recommended that a public pathway under the Oak trees be constructed using a similar language of laterite and low wurf walls where possible. This would allow pedestrians coming from Boschoff Avenue to access the Community Node and those using public transport and the local shop to walk safely along the length of the site and wait for transport in a positive environment.

#### ***Network of pedestrian paths across Erf 212***

The Framework reflects a network of public paths which is part existing and part proposed. A number of new paths would need to be constructed to enable them to work as a single continuous system. Materials would need to be limited to those in the design guidelines. The path crossing the river should be eliminated or replaced with a light weight bridge which limits the impact that pedestrian traffic has on the river bed and banks.

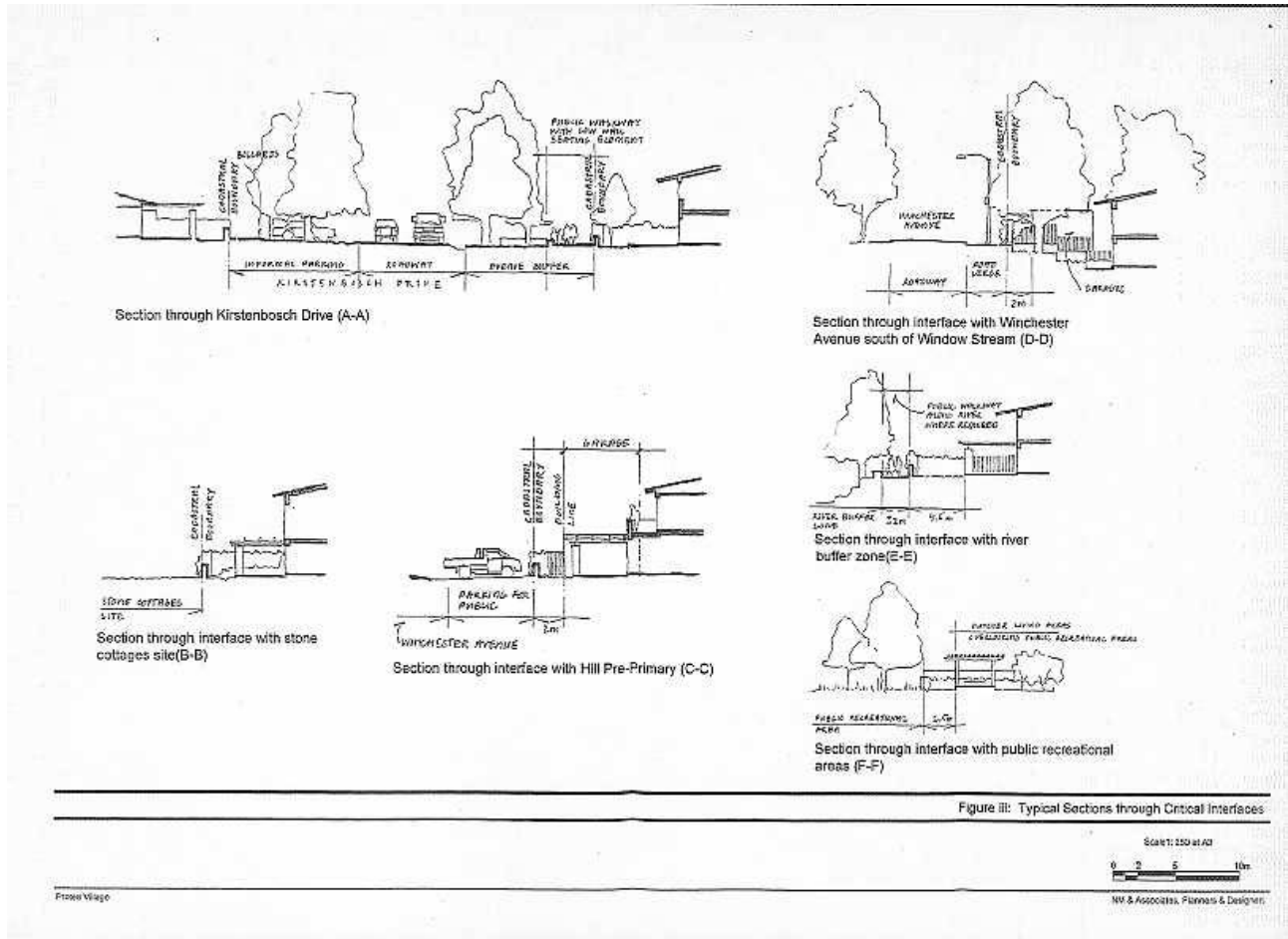
#### ***Key public / private interfaces***

The framework indicates which interfaces are the most critical in terms of the public structure for the local area. The most critical public / private interfaces include the following:

- Winchester Avenue edge – facing the existing school and the existing residences
- Kirstenbosch Drive edges of both Erven 212 and 242;
- the boundary facing onto the stone cottages site;
- the green recreational edge; and
- the river buffer edge.

Each of these interfaces is required to fulfil a number of conditions related to the intended function of the spaces onto which the intended houses face. The typical sections related to Figure iii and listed below explain the design approach required for each edge condition.

Insert figure iii





- The edges facing onto Kirstenbosch Drive and the stone cottages site (see section AA and BB)
- Winchester Avenue facing the school (see Section CC)
- Winchester Avenue between Protea and Window Streams (see Section DD)
- Erven abutting the river buffer zone (see section EE)
- The edges facing onto the green recreational areas (see section FF)

**Chapter 8** contains the design guidelines that would enable the CoCT to direct and control future development on the site.

Guidelines are critical on environmentally sensitive sites such as Erf 242 and Erf 212, especially when clustered development is being proposed. The Guidelines in Chapter 8 are therefore intended to direct the planners and designers through the detailed design stages in the following phase of the development process in a manner which results in a development that contributes to the:

- Enhancement and protection of the inherent character of the two sites;
- Protection of the existing pattern of use of the sites as a passive recreational destination for the general public; and
- Protection of the key natural systems on site.

The City of Cape Town are mandated to review the manner and form of all new development in their jurisdiction to protect the broader public interests in terms of the Land Use Planning Ordinance (Ordinance 15 of 1985), the Municipal By-laws and the National Building Regulations and all the other relevant Legislation pertaining to planning, design and development of the properties concerned.

The development control conditions set out in this chapter will be enforced by the CoCT. It is recommended that the remaining guidelines be implemented by a body especially formed for the purpose of reviewing design options through the following phase. It is proposed that this body be established by the Claimant Community in the form of a Home Owners Association (HOA). The CoCT: Urban Design, Land Use Management, Land Restitution and Special Projects, Environmental Management and Parks and Bathing Branches; as well as a representative from the Fernwood and Bishopscourt Ratepayers' Associations would be co-opted onto this HOA to jointly oversee the initial development of the site and should disband after construction is completed.

The guidelines were mainly informed by the specialist studies discussed in Chapter 5 and discussions with the claimant community and are divided into two main sections. The first section has two components. The first component is comprised of controls at the level of principle. The second component is comprised of those controls which can be legislated through their incorporation into the existing zoning scheme. The second section focuses on the construction process and the controls necessary to prevent damage to the natural and historic aspects of the site.

**Chapter 9** investigates the costs associated with resettlement on the site related to the rates, rates exclusions and land cost based on figures provided by the CoCT's Property Valuations Branch. From the figures provided it can be assumed that each household would be paying at least R10 000.00 per annum towards rates in today's terms for a 500m<sup>2</sup> Erf in the Bishopscourt area. It is understood that a rates holiday is applicable to returning claimants for the first ten years of resettlement subject to the property not changing hands during this period.

Returning claimants would need to be able to afford to pay at least R800.00 per month in today's terms (excluding increases) to cover the rates once the rates holiday period is over. It is therefore critically important for a business plan which engages the claimant community in an exercise to determine how each individual will be able to afford to return to the site, to be drawn up.

**Chapter 10** concludes that:

- With the exception of the eastern edge of Erf 242, the majority of the site is developable; and limited portions of Erf 212 are developable as indicated on Figure i.
- It is feasible to develop on the portions of Erf 212 and Erf 242 indicated on Figure i from an environmental and technical perspective.
- The ecological and amenity value and present public usage of the sites are highly significant and for this reason they need to be protected and balanced with resettlement requirements especially in the case of Erf 212.

- The design guidelines and parameters are sufficiently broad to allow flexibility in managing and facilitating the nature and form of development on the sites, while achieving consistency in the built landscape and adding value to the natural landscapes.

The report recommends that:

- The recommendations contained in the Contextual Analysis be adopted.
- A business plan be completed as a matter of priority to determine the financial feasibility of developing 86 residential units within the developable portions indicated on Figure ii.
- The developable envelopes on Erf 212 only be released on condition that resettlement in terms of restitution of land rights lost occurs on the site.
- The correspondence dated 8 October 2003, addressed to the City of Cape Town from the Department of Environmental Affairs and Development Planning (DEADP) be reviewed in terms of the requirements of Section 24(1) of the National Environmental Management Act, (Act No. 7 of 1998) with a view to proceeding with an Environmental Impact Assessment given the ecological and historical sensitivities associated with the properties concerned.
- Prior to the proposed development on Erf 212, procedures be followed to:
  - Apply for the rezoning of certain developable portions from Rural to Single Dwelling Residential Zone in terms of the LUPO process;
  - Ensure the closure of Public Place of the portions to be used for resettlement purposes; and
  - Apply for the simultaneous deviation from the policy on subdivision pertaining to the site.
- Prior to the proposed development on Erf 242, procedures be followed to:
  - Amend the Cape Town Zoning Scheme boundary in terms of Section 9 of the Land Use Planning Ordinance (Ordinance 15 of 1985);
  - At the same time, rezone the developable portion of the property from 'Grouped Dwelling Residential' to Single Dwelling Residential through the LUPO process;
  - Apply to the PA: WC for the deletion of the Schedule 8 conditions applicable to Erf 242 so as to make way for more appropriate design, development and procedural guidelines and controls outlined in Chapter 8 of this report; and
  - Apply for the closure of the south western portion of Erf 242 zoned 'Street Purposes' (indicated 'Rural').
- Subject to confirmation by a Conveyancer that the existing conditions require to be upheld, an application for the removal of inappropriate conditions on Erf 212 should be submitted;
- Subject to confirmation from a Conveyancer that the existing servitude is no longer applicable, apply for the removal of this condition on Erf 242 as discussed in Chapter 5 (Section 5.3).
- The land fill area be tested and rehabilitated irrespective of whether resettlement occurs.
- That a site visit with representatives of the Claimant Community, the surrounding community, the CoCT, and other key stakeholders such as the NBI be set up to confirm the findings of the tree audit before the detail design phase is initiated.
- CoCT requests to be co-opted onto the Protea Village legal entity in the process of being established by the claimant community.
- The Design Guidelines be adopted, revised and enforced in terms of the CoCT's requirements and mandate to manage and control the nature and form of development on the sites concerned. In this regard Council may want to support the establishment by the Claimant Community of a Home Owners Association who would also serve as a Design Review Panel on which relevant stakeholders would be co-opted to ensure that the concerns associated with design and affordability are balanced with appropriate development on Erven 242 and 212.
- The CoCT take ownership of all the public areas outside of the proposed development pockets. This report also recommends that the relevant departments including Parks and Bathing and Design Services use this report to motivate for implementation funds for the next financial year. It is further recommended

that bodies with an interest in the heritage and ecological aspects of the broader landscape, be approached for financial support and assistance.

The detailed planning and design process be initiated as a matter of priority to enable resettlement in the near future.