

PROTEA VILLAGE BISHOPSCOURT

**COMPOSITE APPLICATION FOR DELETION OF A RESTRICTIVE TITLE CONDITION,
REZONING, SUBDIVISION, CONSENT & DEPARTURE FOR ERVEN 503, 511, REM ERF
212 & ERF 242 BISHOPSCOURT**



Prepared for:
Protea Village Communal Property Association

By:



Planning Partners (Pty) Ltd

**November 2021
Ref: 4398**

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1. INTRODUCTION

This application is submitted on behalf of the Protea Village Communal Property Association (CPA) for the rezoning, subdivision and related statutory procedures in respect of Erven 503, 511 and 242 Bishopscourt for residential development purposes. Also included is an application on behalf of the City of Cape Town to rezone Remainder ("Rem") Erf 212 to Open Space Zone 2 (Public Open Space). The application relates to the development of land that was awarded to CPA members in terms of the Restitution of Land Rights Act, 22 of 1994. The developable land units, namely Erven 242, 503 and 511 are owned by the Protea Village Communal Property Association (PVCPA), while the City of Cape Town owns Rem Erf 212 which is intended to remain for open space purposes. Note that the City of Cape Town has granted Power of Attorney to the Chairman of the PVCPA to act on its behalf regarding Rem Erf 212 Bishopscourt.

Since the development components of the land parcels are intended to be developed in an integrated manner for the benefit of the CPA members, one composite application is submitted. Erven 503 and 511 will incorporate upmarket residential units and a mews development on Erf 514 to be sold on the open market. Remainder Erf 212 will be retained by the City of Cape Town as public open space. Erf 242 will be developed as a conventional residential development with 86 single residential units for the CPA members who will own these units by freehold title. **Figure 1** shows the location of the properties and **Figure 2** illustrates the overall development and landscape concept.

The development plan has been informed by a comprehensive environmental impact assessment undertaken in terms of the National Environmental Management Act (NEMA).

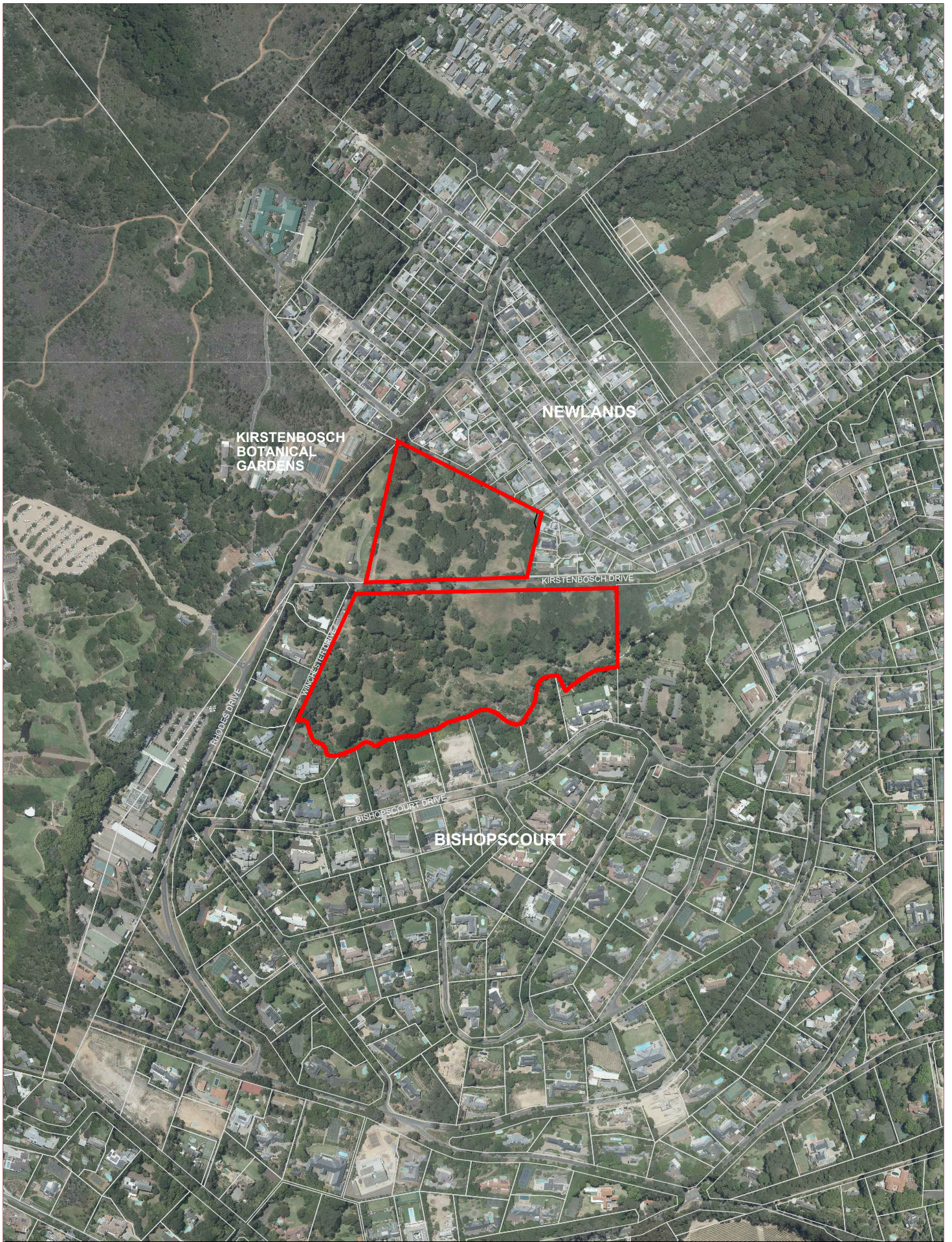
It is relevant to note that approval to subdivide Erf 212 Bishopscourt was granted by the City of Cape Town on 18 September 2019 in order to separate the open space component which will be retained by the Municipality, and the development component. Two portions and a remainder were created. The SG Diagrams for the two newly created portions have been approved and the properties have been registered. Portion 1 of Erf 212 has been approved with Erf 511 assigned as the number of this land unit. Portion 2 of Erf 212 has been approved with Erf 503 assigned as the number of this land unit.

Attached to this report are **Annexures** containing prescribed information such as application form, power of attorney, conveyancer certificate, title deeds and erf diagrams. Other **Annexures** contain specialist reports such as engineering services report, transport impact assessment, architectural principles, and environmental studies.

1.1 Background

The Restitution of Land Rights Act (Act 22 of 1994) was enacted to restore or compensate people for land rights lost as a result of racially discriminatory laws and practices. Under the former Group Areas Act the authorities forcibly removed people of colour from specified areas. In 1966 the Protea Village community, which had been occupying and using the subject properties and abutting properties for generations, was removed to areas as far afield as Mitchells Plain, Lotus River and other areas on the Cape Flats.

The CPA, previously known as the Protea Village Action Committee, lodged a claim with the Land Claims Commission on the 4th of February 1995, in terms of the Restitution of Land Rights Act. The claim lodged on behalf of Protea Village Community related to approximately 28.4 hectares of land that the community previously occupied. Of the CPA members, 46 opted for monetary compensation and the current beneficiaries, amounting to 86 families, were awarded land in the form of Erf 212 and Erf 242 Bishopscourt. The award also included rights relating to access and use of adjacent land containing the stone cottages.



KIRSTENBOSCH
BOTANICAL
GARDENS

NEWLANDS

KIRSTENBOSCH DRIVE

RIDGWAY DRIVE

WORCESTER DRIVE

BISHOPSCOURT DRIVE

BISHOPSCOURT



THE SITE

**ERVEN 212 & 242
BISHOPSCOURT**

LOCALITY



SCALE 1:7500

PLANNING
PARTNERS



SEPTEMBER 2020

Figure 1

KIRSTENBOSCH
NATIONAL BOTANICAL GARDENS



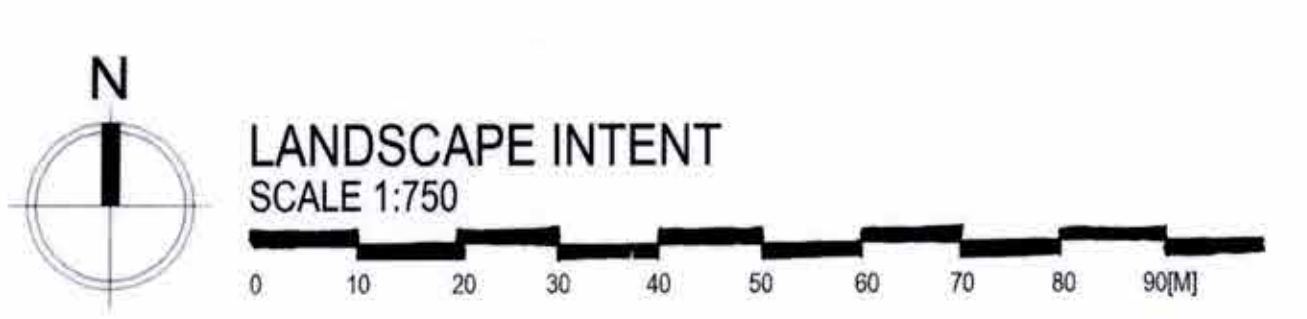
NO	DATE	BY	DESCRIPTION

- HARD LANDSCAPE LEGEND:**
- EXISTING AND PROPOSED GRAVEL SINGLE TRACK PATHWAYS MEANDERING THROUGH PUBLIC OPEN SPACE.
 - 3m WIDE MEANDERING LATERITE WALKWAY ALONG KIRSTENBOSCH DRIVE
 - TIMBER BOARDWALKS OVER WETLANDS AND OVERLAND STORMWATER OVERFLOWS.
 - CHILDREN'S PLAY STRUCTURES IN POCKET PARKS.
 - EXISTING 3No PONDS, SPRING AND INTERCONNECTING WETLAND STREAMS TO REMAIN AND TO BE ENHANCED.
 - 10m WIDE PROPOSED WETLAND.
 - 2No PROPOSED LANDSCAPED DETENTION PONDS ALONG EASTERN EDGE.
 - EXISTING RIVERINE BANKS AND STREAM.

- SOFT LANDSCAPE LEGEND:**
- EXISTING SURVEYED TREES TO REMAIN.
 - PROPOSED INTERNAL STREET TREES, TO FUTURE SPECIE AND SIZE DETAIL (APPROXIMATE POSITIONS AS DRIVEWAY POSITIONS MAY IMPACT ON THIS PROPOSAL).
 - PROPOSED INDIGENOUS PARK TREES.
 - PROPOSED ADDITIONAL INFILL TREES ALONG KIRSTENBOSCH DRIVE, SPECIES AND SIZE TO FUTURE DETAIL.
 - PROPOSED INTERNAL PARKS SET UNDER CLUSTERS OF EXISTING TREES WHERE POSSIBLE.
 - EXISTING 'VELD-LANDSCAPE' IN PUBLIC OPEN SPACE TO REMAIN.
 - INTERNAL ROAD VERGES IN SOUTHERN DEVELOPMENT TO BE DONE BY INDIVIDUAL HOME OWNERS.
 - INTERNAL ROAD VERGES IN NORTHERN DEVELOPMENT TO BE LAWNED.
 - KIRSTENBOSCH DRIVE ROAD RESERVES TO BE PLANTED WITH LOCALLY INDIGENOUS WATERWISE PLANTING.

NOTES:
PLEASE REFER TO TREE SURVEY (DRAWING NR. 77218A.TS.001 / AUGUST 2018) FOR MORE DETAIL ON TREES TO BE RETAINED AND REMOVED.

PROJ	NO	DATE	DESCRIPTION
PROTEA VILLAGE			
LANDSCAPE INTENT			
77218A	77218A.LI.001	C	
DATE	AUGUST 2019		
SCALE	1:750 @ A0		
DRAWN BY	JJ		
CHECKED BY	JJ		
APPROVED BY	JJ		
CLIENT			
PROJECT			
PROTEA VILLAGE COMMUNAL PROPERTY ASSOCIATION			



Rem Erf 212 is presently used as passive open space and is registered in the name of the City of Cape Town. Erven 503 and 511 are recent subdivisions of Erf 212 and are also presently used as passive open space. The transfer of Erven 503 and 511 from the City of Cape Town to the National Government of the Republic of South Africa was registered on 5th October 2020, and have been in turn transferred to the PVCPA on 15th June 2021 simultaneously with Erf 242, thus all developable land units are formally owned by the PVCPA and the process of restitution has taken one step further.

Erf 212 is recorded on the General Plan in the Surveyor General's Office as Public Place, but it is not zoned as public open space in the Municipality's Development Management Scheme. Erf 242 has remained undeveloped since the community was forcibly removed. Application was made under separate cover to close erven 503 and 511 as Public Place and this application has been approved as explained in more detail in Section 3.4.

1.2 Components of the application

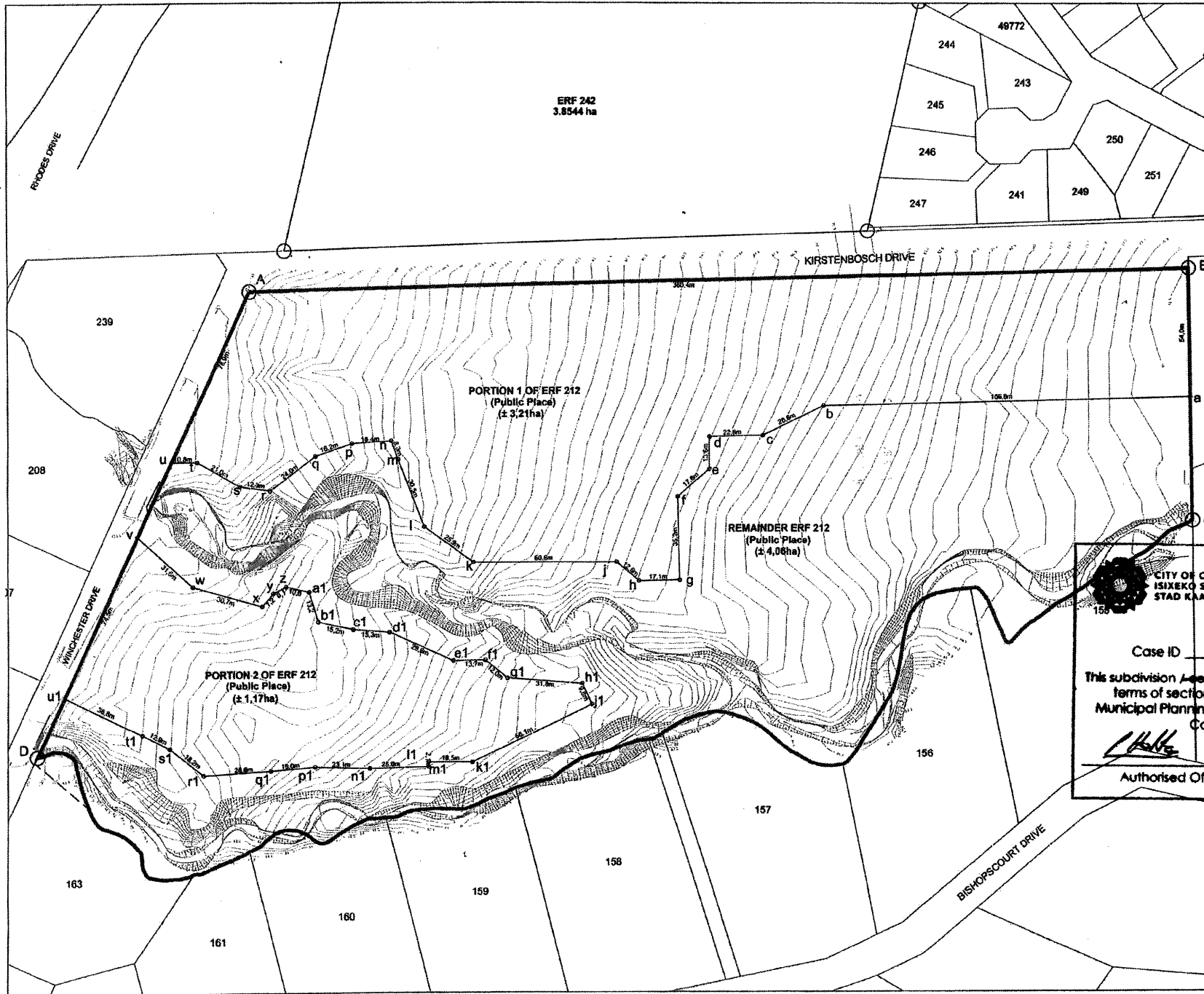
There are a number of land use planning applications required to facilitate development on the subject properties, including removal of a restrictive condition, rezoning, subdivision and consent, all to be processed in terms of the Municipal Planning By-Law (MPBL).

The subdivision of Erf 212 into two portions and a Remainder has been approved in order to separate the public open space component from the development component (see **Annexure 6** for a copy of the approval). This subdivision was processed under exemptions granted in terms of the MPBL. The reason for this preliminary subdivision was to demonstrate a commitment on the part of the authorities towards land restitution and to facilitate the process. The approved subdivision in relation to existing cadastral boundaries is shown in **Figure 3**.

The following statutory applications are submitted as part of this composite application:

- Deletion of restrictions relating to Erven 503 and 511 Bishopscourt in respect of a restrictive condition of title pertaining to the size of new erven to be created, in terms of Section 42 (g) of the MPBL.
- Rezoning of Erven 503 and 511 Bishopscourt from Agricultural Zone to Subdivisional Area, in terms of Section 42(a) of the Municipal Planning By-Law (MPBL), for residential development and associated uses;
- Rezoning of Remainder Erf 212 from Agricultural Zone to Open Space Zone 2 in terms of Section 42(a) of the MPBL for the purpose of Public Open Space;
- Rezoning of Erf 242 Bishopscourt to Subdivisional Area in terms of Section 42(a) of the MPBL for residential development and associated uses;
- Permanent departure from the provisions of the Schedule 8 conditions 2 through to 6 applicable to Erf 242 Bishopscourt, incorporated as development rules in the MPBL, in terms of Section 42(b) of the MPBL so that these rules no longer need to be complied with.
- Subdivision of Erf 511 Bishopscourt into 28 medium sized residential erven, an erf which will in the future accommodate 22 townhouse erven and private roads within a gated village, and 5 large residential erven and private road in terms of Section 42(d) of the MPBL;
- Subdivision of Erf 242 into 86 residential erven, 4 public open space erven and 2 public street erven, in terms of Section 42(d) of the MPBL;
- Consent in terms of Section 42(i) of the MPBL for an utility service comprising a sewer pump station.
- Implementation of the subdivision approval in phases, in terms of Section 42(e) of the MPBL.

**SUBDIVISION OF
ERF 212
BISHOPSCOURT**



- NOTES:**
1. The Figure ABC middle of river D represent Erf 212 Bishopscourt which measures ± 8,44ha in extent vide Dgm 1581 / 1965 annexed to D / T 1974 -33794
 2. The middle of the river has been drawn from General Plan 1013LD vide Dgm 11863 / 1962 and not surveyed.
 3. ABAbcdefghijkmmopqrstu represents Portion 1 of Erf 212 Bishopscourt which measures ± 3,21ha in extent.
 4. vwxyzab1cd1ef1g1h1i1j1k1l1m1n1o1p1q1r1s1t1u1 represents Portion 2 of Erf 212 Bishopscourt measuring ± 1,17ha in extent.
 5. All areas and dimensions are approximate.

**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

Case ID 7472602

This subdivision / subdivision has been exempted in terms of section 57 of the City of Cape Town Municipal Planning By-law, 2015 from the need for Council's approval.

[Signature] 22/09/18
 Authorised Official Date

SOURCE:
 Contours Erf 212 : WP GEOMATICS Nov 2017
 Contours Erf 242 : Joubert & Brink 02/08/2018
 Cadastral Erf 212 & 242 : dh&a L1184 Oct 2018

PROPOSED SUBDIVISION

 SCALE 1:1500	 PLANNING PARTNERS
AUGUST 2019	4398 - 02

2. CONTEXT

2.1 Locality

The subject properties are located close to Kirstenbosch Gardens in Bishopscourt. Erven 503, 511 and Rem Erf 212 are situated south of Kirstenbosch Drive on the corner of Winchester Avenue. Erf 242 is situated north of Kirstenbosch Drive and adjacent to the Kirstenbosch stone cottages. The properties are surrounded by existing upmarket residential development in Fernwood and Bishopscourt. The Good Shepherd Church and the Hill Pre-primary School are situated opposite the site along Winchester Avenue. **Figure 1** shows the site in its local context and **Figure 4** depicts the site in more detail with an overlay of existing contours.

2.2 Zoning

Erven 503, 511 and Rem Erf 212 are zoned Agricultural, whilst Erf 242 is shown to have a split zoning of General Residential 1: Group Housing and Agricultural, in terms of the City of Cape Town Development Management Scheme. An extract of the City's zoning map is shown in **Figure 5**. It is necessary to first rezone the development components of the properties to Subdivisional Area, and then to subdivide the properties, with the plan of subdivision designating a deemed zoning for the individual erven. The deemed zoning is explained more fully in Section 9 of this report.

Schedule 8 conditions, incorporated as development rules in the MPBL apply to Erf 242. Six conditions contained in Schedule S8/214 were imposed to regulate development on Erf 242, in terms of the then Townships Ordinance 33 of 1934. Historically these conditions were included in the then City of Cape Town Zoning Scheme. Under the new planning dispensation these Schedule 8 conditions are now incorporated into the City of Cape Town Municipal Planning Bylaw: Development Management Scheme (DMS), as development rules in terms of Item 19 Special Provisions.

The applicable conditions are listed in Section 9.3, one of which limits the number of dwellings permitted on Erf 242 to 60 dwelling units. The other five conditions are historic and are considered inappropriate with respect their wording. Application for a permanent departure from these conditions will need to be made, and new conditions of approval imposed by the City under current planning law, contingent on the approval of this application.

2.3 Restrictive Conditions of Title

Rem Erf 212 and erven 242, 503 and 511 are all subject to numerous conditions of title as evident from the reading of the various Deeds contained in **Annexure 4**. While the conveyancer has identified three restrictive conditions in the certificate relating to erven 503 and 511 and Rem Erf 212 (refer to **Annexure 3**), only Condition D contained in the title deeds for erven 503 and 511 needs to be removed. Condition 3 applicable to Rem Erf 212 does not need to be removed as, in the conveyancer's opinion, this condition does not prevent the proposal.

Erven 503 and 511 Bishopscourt are held under a single title deed, namely T29844/2020. This deed contains two conditions that impact on the further subdivision and use of these properties. The title deed refers to certain waggon roads (originally referred to in amended Deed of Grant dated 15th June 1901) and the subdivision of "Bishops Court" or Lot C.S., held by Certificate of Registered Title dated the 26th July 1938. It has been established that Lot C.S. is now Erf 239 Bishopscourt and is shown in **Figure 4**. The diagram for Erf 239 Bishopscourt and the General Plan TP 1013 as well as an extract of the Surveyor General noting sheet, M1660, are included in **Annexure 5**. Erf 239 contains the Good Shepherd



— BOUNDARY OF ERF 212 & 242

**ERVEN 212 & 242
BISHOPSCOURT**

CONTEXT

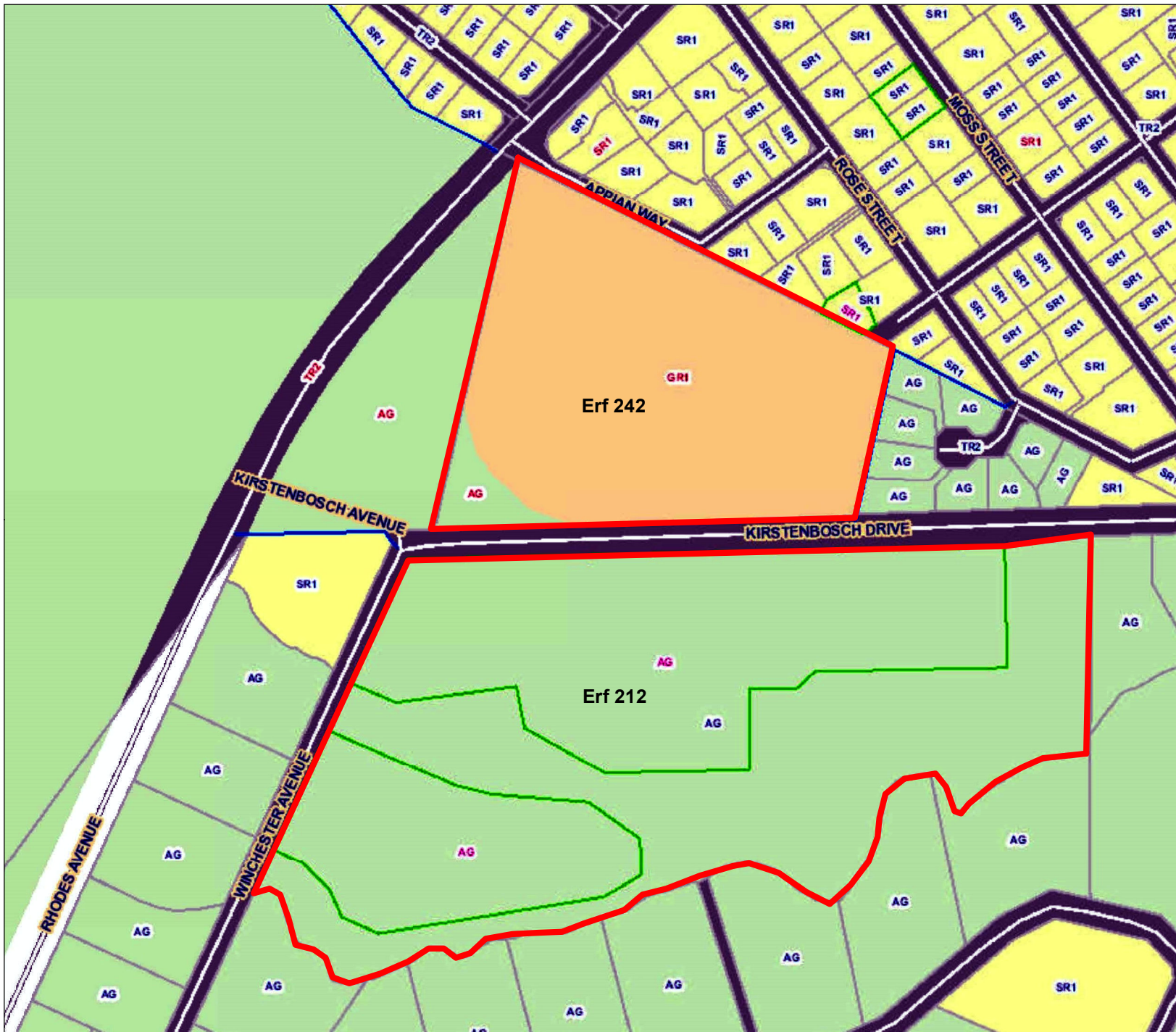
SCALE 1:3000



SEPTEMBER 2020

Figure 4

ERVEN 212 & 242 BISHOPSCOURT



Cape Town Zoning Scheme

- Agricultural
- Community 1 : Local
- Community 2 : Regional
- Council To Deem
- General Business 1
- General Business 2
- General Business 3
- General Business 4
- General Business 5
- General Business 6
- General Business 7
- General Industrial 1
- General Industrial 2
- General Residential 1 : Group Housing
- General Residential 2
- General Residential 3
- General Residential 4
- General Residential 5
- General Residential 6
- Limited Use Zone
- Local Business 1 : Business Interface
- Local Business 2 : Local Business
- Mixed Use 1
- Mixed Use 2
- Mixed Use 3
- Open Space 1 : Env. Conservation
- Open Space 2 : Public Open Space
- Open Space 3 : Special Open Space
- Risk Industry
- Rural
- Single Residential 1 : Conventional Housing
- Single Residential 2 : Incremental Housing
- Transport 1 : Transport Use
- Transport 2 : Public Road and Parking
- Utility

Planning & Building Development Management

Legend

- 23 Street Number
- Roads
- Major Roads
- Scenic Drives
- Wards
- Subcouncils
- SG Approved Properties
- Registered Properties
- Cape Town CBD
- Roggeveld Sub-area
- St George's Street Sub-area
- FA#5.6
- FA#6.8
- FA#7.9
- FA#9.0
- FA#10.1
- Subdivisional Areas
- V&A Waterfront Development Area
- Koeberg Restriction Area
- Heritage Protection Areas
- Local Areas
- PT1 Zones
- PT2 Zones

Scale - 1:0000
Spheriod: WGS 1984
Projection: Transverse Mercator
Linear Unit: Meter (1.000000)

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PLEASE NOTE:
Zoning is to be verified by means of an official zoning certificate requested from the relevant office. All applications to be verified at the Office of the Surveyor General.

CITY OF CAPE TOWN
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Making progress possible. Together.

Church and the Hill Pre-primary School and is located on the corner of Winchester and Kirstenbosch Drive, which is in the north-west corner of subdivided Erf 212.

Erven 503 and 511 are held under the same deed, being T29844/2020. Conditions 1.B and 1.D are applicable to Erf 511, while Conditions 2.B and 2.D are applicable to Erf 503. The wording of B and D is exactly the same for both erven. As such it is not necessary to duplicate the conditions, which read as follows:

Conditions B and D state:

B. Subject to the following conditions contained in Amended Deed of Grant dated 15th June 1901 (Cape Quitrents Volume 40 No 20), namely:-

(b) That the waggon roads running over the land shall remain free and undisturbed.

D. Subject to and with the benefit of the following conditions contained in Deed of Transfer No 7596 dated 26th July 1938 as having been then imposed in favour of Bishops Court Estate Cape (Proprietary) Limited and its successors as owners of the land held under Deed of Transfer No. 7596 dated 26th July 1938, namely: -

That in any subdivision of "Bishops Court" or Lot C.S. held by Certificate of Registered Title dated the 26th July 1938, No 7595 in favour of the Council of the Colonial Bishopricks Fund, the lots bordering on each boundary thereof shall be similar in extent to the lots of the land hereby conveyed on opposite side of such boundary lines.

Condition D limits the size of the erven to be created from the subdivision. Consequently it is necessary to delete the condition as it affects the further internal subdivision of both erven.

It has been established that the "waggon roads" are public streets, and by situation, they fall outside the perimeter of the application properties. Furthermore, it has been confirmed that this condition should not have been retained in the portions transferred to the CPA due to location.

Condition B will need to be removed by way of a Conveyancer's 4(1)(b) application in terms of Section 4(1)(b) of the Deeds Registries Act which provides for the rectification of errors in title deeds.

The Conveyancer's Certificate contained in Annexure 3 confirms the aforementioned. Once this application is registered in the Deeds Registry, Condition B can be removed from the Conveyancer's Certificate.

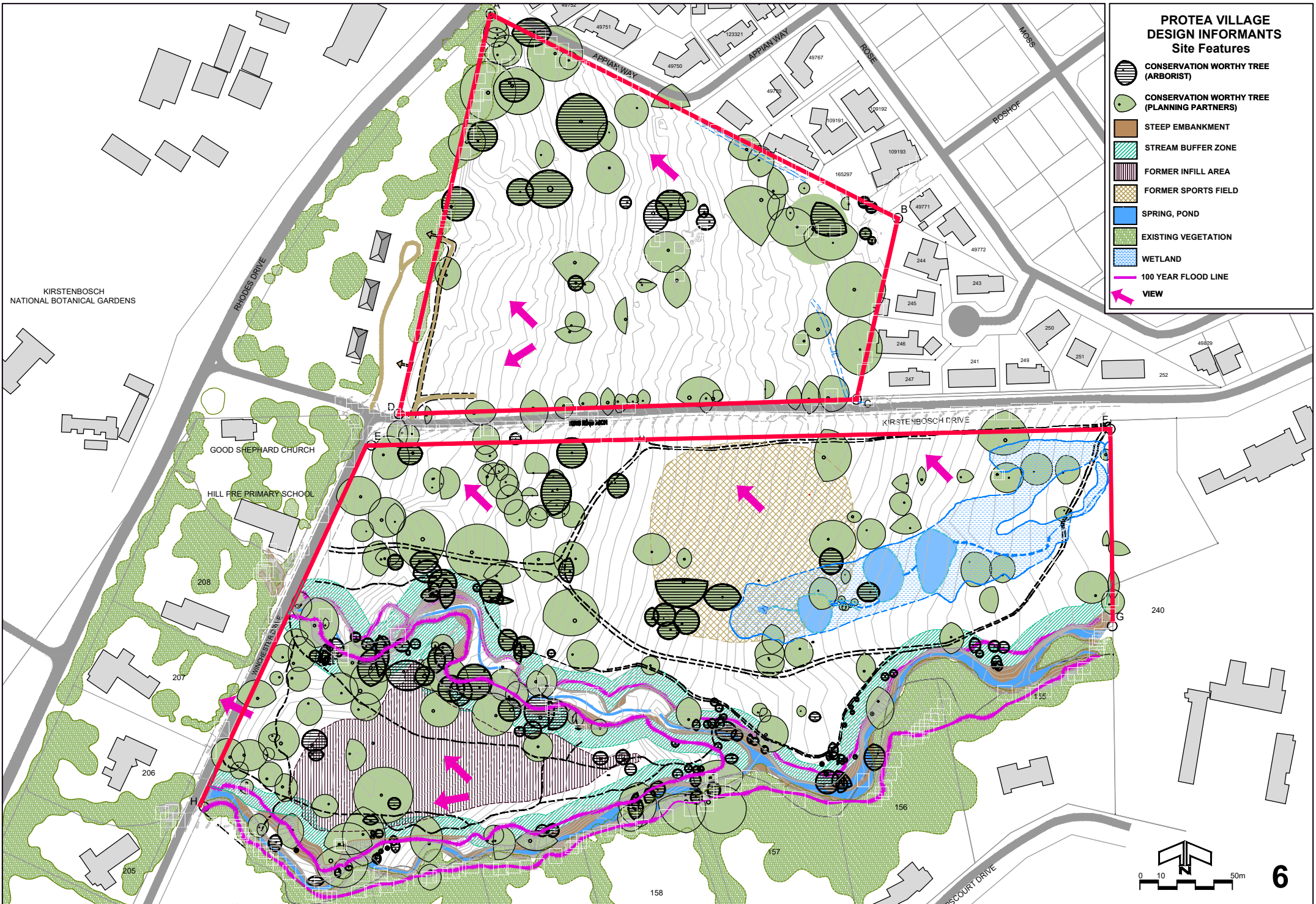
2.4 Site features

A Basic Assessment in terms of NEMA has been undertaken, and the specialist studies of that environmental process have informed the development proposal. **Figure 6** is a composite plan showing the existing site features that have informed the design of the proposed development. A series of plans have been prepared that show different environmental layers and development responses to site features and this is available in the Basic Assessment Report.

The subject properties are currently unoccupied and are covered in grasses and trees. They have been described as an arboretum in the past, but this is a misnomer because the

**PROTEA VILLAGE
DESIGN INFORMANTS
Site Features**

-  CONSERVATION WORTHY TREE (ARBORIST)
-  CONSERVATION WORTHY TREE (PLANNING PARTNERS)
-  STEEP EMBANKMENT
-  STREAM BUFFER ZONE
-  FORMER INFILL AREA
-  FORMER SPORTS FIELD
-  SPRING, POND
-  EXISTING VEGETATION
-  WETLAND
-  100 YEAR FLOOD LINE
-  VIEW



cultivation of trees is not based on a scientific or research programme. In the following sections, when Erf 212 is referred to, it is taken to include Erven 503 and 511, because these are recent subdivisions of Erf 212, and because Erf 212 is the description used in the NEMA process.

A stream runs west to east through Erf 212 and comprises two tributaries of the Liesbeek River that converge on the site, before then flowing along the southern boundary of Erf 212. The topography is relatively gentle except for the stream banks on parts of the site which are relatively steep. The stream widens and narrows along its course. The ecological and recreational importance of the stream is recognised and buffer areas have been determined by a freshwater specialist. In addition to ecological considerations, it is necessary to recognise floodlines that have implications for potential development. The 1:100 year floodline has been determined and is shown on **Figure 7**, which is also a plan showing the current approved subdivision boundaries.

The aquatic component of Erf 212 includes a natural spring and associated wetland. The main wetland occurs towards the eastern part of the site and three man-made ponds are situated within the wetland. The spring discharges into a small furrow that connects the ponds. It is intended to rehabilitate the wetland and divert the furrow so that water does not discharge into the roadway as is the current situation. A small part of the wetland close to Kirstenbosch Drive will be infilled and stormwater ponds with aquatic features will be constructed on a portion of the site to be designated as public open space. The wetland system will then discharge into the main stream near the south eastern corner of Erf 212.

Figure 8 shows the wetlands and the photographs below illustrate the existing ponds and spring on Erf 212.



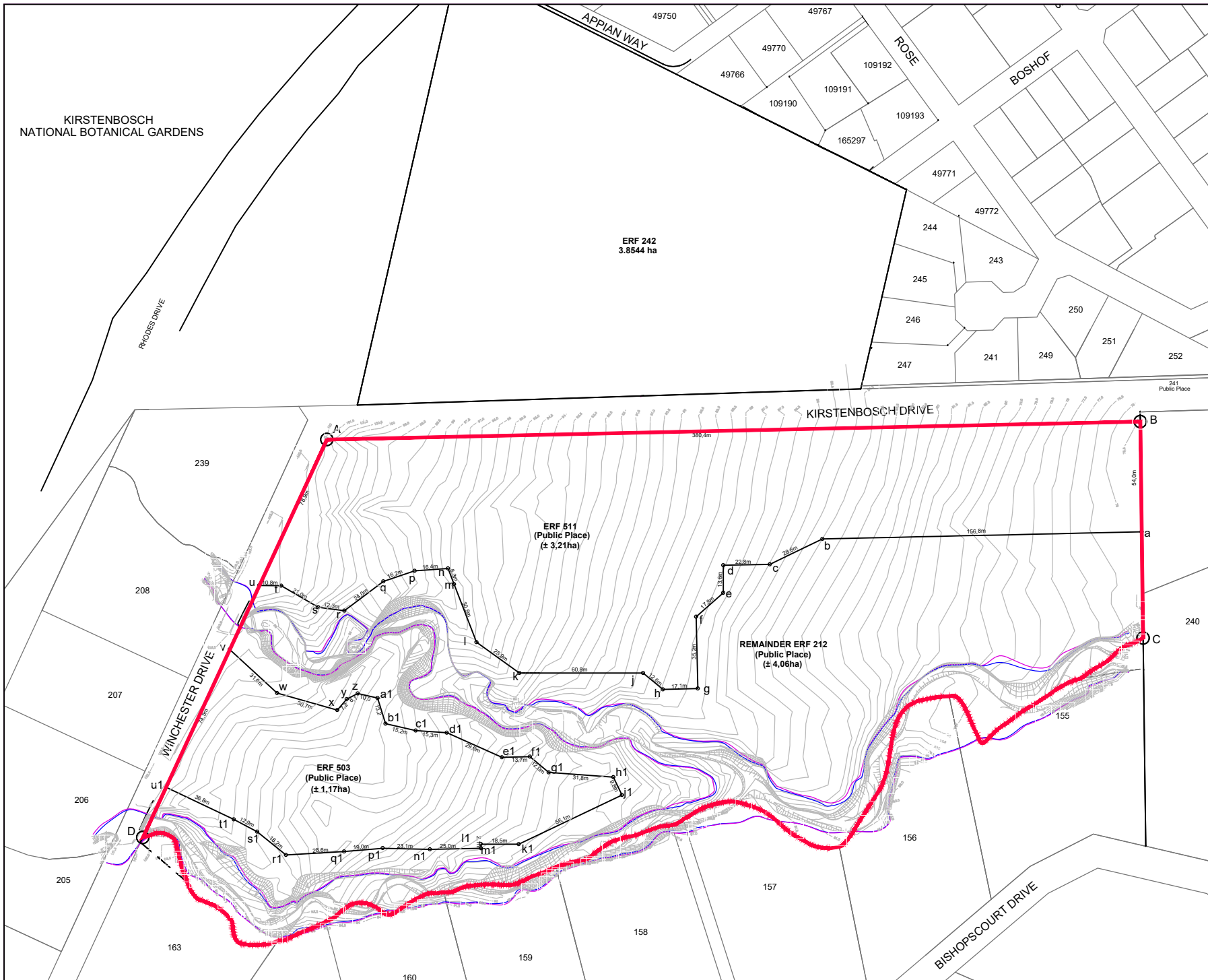
One of the 3 ponds on Erf 212



Natural Spring on Erf 212

Two tree studies were conducted, one by a landscape architect to identify species and landscape character, and another by an arborist to identify the health of trees. It is evident that some trees have limited remaining life, with branches and tree trunks having fallen over and presenting a danger to the public. Nevertheless, a significant number of trees have been identified as worthy of being retained, where possible, in the layout. The photographs below show some of the mature trees and a common situation of fallen branches.

**SUBDIVISION OF
ERF 212
BISHOPSCOURT**



NOTES:

1. The Figure ABC middle of river D represent Erf 212 Bishopscourt which measures ± 8,44ha in extent vide Dgm 1581 / 1965 annexed to D / T 1974 --33794
2. The middle of the river has been drawn from General Plan 1013LD vide Dgm 11863 / 1952 and not surveyed.
3. The Figure ABabcdefghijklmnpqrstu represents Erf 511 Bishopscourt which measures ± 3,21ha in extent.
4. The Figure vwxyza1b1c1d1e1f1g1h1j1k1l1m1n1p1q1r1s1t1u represents Erf 503 Bishopscourt measuring ± 1,17ha in extent.
5. All areas and dimensions are approximate.

- BOUNDARY OF ERF 212
- 100 YEAR FLOOD LINE
- 50 YEAR FLOOD LINE

SOURCE:
Contours Erf 212 : WP GEOMATICS Nov 2017
Contours Erf 242 : Joubert & Brink 02/08/2018
Cadastral Erf 212 & 242 : dh&a L1184 Oct 2018

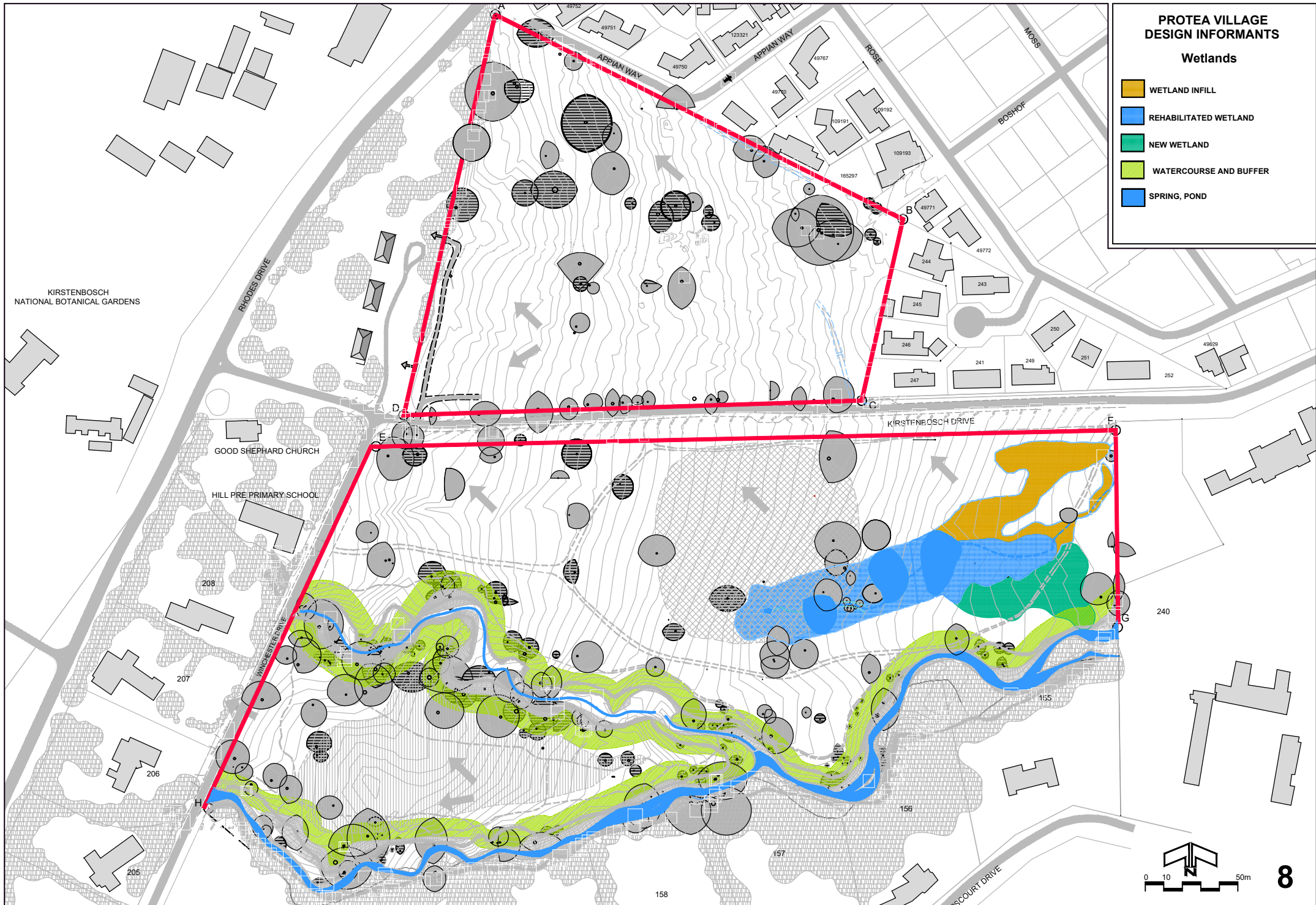
APPROVED SUBDIVISION


SCALE 1:2500

PLANNING PARTNERS 

SEPTEMBER 2020

Figure 7





Mature trees with fallen branches and logs in various places

Adjacent to the southern perimeter of the site are large Bishopscourt residential properties, most of which have dense vegetation alongside the stream. This existing vegetation provides a visual and functional buffer between these residential properties and the site.

An area of infill is located on Erf 212 in the south western corner between the two stream tributaries. In the 1960's and possibly even earlier, the Municipality used this area as an infill site for the disposal of, mostly rubble. However, the geotechnical survey revealed that the fill includes domestic waste mixed with variable quantities of sandy soils which locally, alternate with more clayey micaceous silt.

The fill is all inert waste, such as bits of glass bottles, plastic bags and rusted steel objects. The depth of the fill ranges from 0m to 1.7m, which is not only the waste, but also includes sand and boulders. Indications are that the infill area is stable and does not pose a health risk, but foundations for dwelling houses will need to cater for potential geotechnical issues. This area will form part of the proposed upmarket residential plots, and additional costs for foundations are affordable with such units.

The original inhabitants used a portion of Erf 212 as a sports field and this area remains as a relatively flat, open space. The location is depicted in **Figure 6**. There are fine views from this and other open areas on the site towards the Table Mountain range. However, not all areas on the site have good views and there are many introverted spaces behind tree clusters. Examples of mountain views as seen through the trees are depicted in the following photographs.



External mountain views and internal introverted spaces

Kirstenbosch Drive, which separates Erven 212 and 242, is partly lined with oak trees and has a rustic feel. Every effort will be made to retain the oak trees and the proposed landscaping along the road verges will be designed to complement the existing character, without compromising on safe traffic movement. Several footpaths cross the site and are evidence of its use by the public as an open space for exercise and dog walking.

Adjacent to Erf 242 are 3 Stone Cottages that are currently used by the South African National Botanical Institute. Two pedestrian gates provide a link between Erf 242 and the cottages, and the future development of erf 242 will retain a pedestrian link to the stone cottages.



Kirstenbosch Drive with existing oaks



Stone cottage as viewed from Erf 212

3. LEGAL FRAMEWORK

3.1 Municipal Planning By-Law

The City of Cape Town Municipal Planning By-Law (MPBL) makes provision for different types of land use applications. This submission includes application for removal of restrictive conditions, rezoning, subdivision and consent. Principles in the By-Law need to be considered when evaluating such applications. These are dealt with in a later section of this report and it is demonstrated that the proposal complies with the principles of the By-law.

3.2 City of Cape Town Development Management Scheme

The Development Management Scheme (DMS) is a component of the MPBL and regulates land uses and development parameters. It also facilitates the implementation of principles set out in relevant spatial development frameworks and policy documents adopted by the Municipal Council. The General Residential 1, Single Residential 1 and Open Space 2 and 3 zones are selected from the DMS as the most suitable zones for the proposal because the permitted development parameters of these zones are mostly consistent with the proposal. The DMS further makes provision for a Consent Use, required for the electrical sub-station and sewerage pump station to service the site, as well as the removal of a restrictive condition of title.

Deemed development rules recorded in Schedule 8: Special provisions applicable to certain properties apply, and application to depart from them is required.

3.3 City of Cape Town Immovable Property By-Law (2014)

Erven 503, 511 and Rem Erf 212 are designated as public place. Section 4(2) of the City of Cape Town Immovable Property By-law sets out a process for the closure of public place.

Application to close erven 503 and 511 as Public Place was submitted in terms of this By-Law under separate cover at the end of December 2020 and the application has since been approved. Note that Remainder Erf 212 will remain public place and remain in the ownership of the City of Cape Town to be used by the general public for recreational purposes. **Figure 9** shows the portion of Public Place to be closed. The process that was followed is explained in Section 3.4.

3.4 Section 37 of the Land Use Planning Act (Act 3 of 2014)

This section of LUPA deals with the closure of public place. Included is a provision that the Municipality must close a public place permanently if the land is required to be utilised permanently for a purpose that is different from the public place purpose. There are also requirements for interaction with the Surveyor General.

Originally it was intended that the closure of public place would have formed part of this composite application, and that transfer of land to the CPA would occur after approval of the composite application. However the City was keen to facilitate the land restitution process and so a process to register transfer of erven 503 and 511 was initiated. This involved a first step of transferring the properties to National Government, and ultimately these erven will be transferred to the Communal Property Association.

Based on the September 2019 approval, the project conveyancer attempted to register the properties according to the description contained in the approved subdivision diagram. The Office of the State Attorney responded in stating that *“although it was correct conveyancing practice to do so, the effect is that erven 503 and 511 Bishopscourt are now public places and therefore cannot be transferred to private individuals because public places, through the operation of law, vest in the local authority in whose jurisdiction the property is situated.”* Consequently a separate application was submitted in December 2020 to close the public places to enable registration of transfer of these land units. During the processing of this application it was recognised by the City that all legalities in respect of the restitution claim have been approved and consented to by all the relevant Authorities, including the City. Effectively the decision had already been taken to transfer land to the CPA, which would permanently change the use of the land, and the closure was simply an administrative process.

A status report and certificate relating to the closure of public place was obtained from the Surveyor General. In February 2021 the City’s Property Management Holding Branch confirmed that:

- It had received the final closure certificate from the Surveyor General,
- The Council resolutions to make the land available for restitution pre-date the Immovable Property By-Law,
- The properties are not City owned any more.

Accordingly the Branch is proceeding with advertising the closure in the Government Gazette.

3.5 National Environmental Management Act, 107 1998 (NEMA)

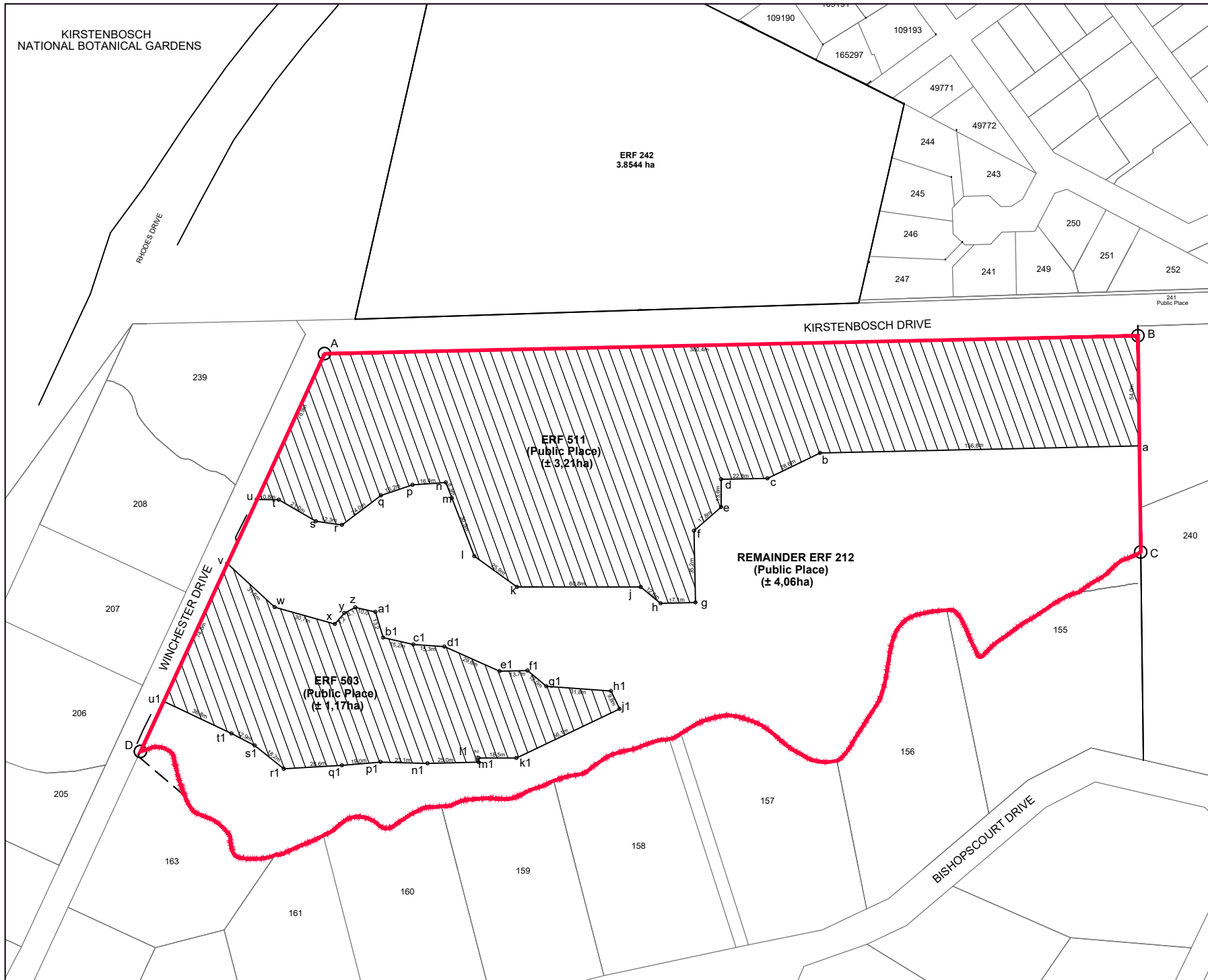
A Basic Assessment in terms of NEMA is in process because a number of listed activities in terms of NEMA are triggered. These are discussed in more detail in the Basic Assessment Report, but the NEMA and EIA Regulations include the following listed activities:

- Activity Number 19 of Listing Notice 1 (GN No. R. 327)

KIRSTENBOSCH
NATIONAL BOTANICAL GARDENS

ERF 242
3.8544 ha

ERF 212 BISHOPSCOURT



— BOUNDARY OF ERF 212

SOURCE:
Contours Erf 212 : WP GEOMATICS Nov 2017
Contours Erf 242 : Joubert & Brink 02/08/2018
Cadastral Erf 212 & 242 : dh&a L1184 Oct 2018

CLOSURE OF PUBLIC PLACE ERF 503 AND ERF 511 BISHOPSCOURT

 SCALE 1:2500	 PLANNING PARTNERS
SEPTEMBER 2020	Figure 9

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock or more than 10 cubic metres from a watercourse.

- Activity Number 12 (i) (i) of Listing Notice 3 (GN No. R. 327)

The clearance of an area of 300 square metres or more of indigenous vegetation in the Western Cape within any critically endangered ecosystem or endangered ecosystem listed in terms of Section 52 of NEMA.

The proposal does not involve any filling or dredging of the main stream, but a wetland and drainage channel in the eastern part of the site will be filled in. Vegetation will be cleared to make way for development, and while it is evident that there are no large areas of indigenous vegetation on site, small pockets do occur within the riparian areas as well as in the form of some indigenous trees. It is for these reasons that the specific listed activities have been identified.

The reference number of the Department of Environmental Affairs and Development Planning (DEA&DP) for the NEMA application is 16/3/3/1/A46/7/2046/20. This planning application has been formulated in association with the environmental specialist studies and process undertaken in terms of NEMA. The Final BAR was submitted to DEA&DP on 29th January 2021. The annexures to this report contain relevant specialist studies and complete information relating to the NEMA process can be obtained from the Chand Environmental website at <https://www.chand.co.za/the-know-how/#projects>

3.6 National Water Act

The following activities are triggered in terms of the National Water Act:

- Section 21(c)
Impeding or diverting the flow of water in a watercourse;
- Section 21(i)
Altering the bed, banks, course or characteristics of a watercourse;
- Section 21 (j)
Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people.

Infilling of the wetland and drainage channel in the western part of the site is the reason for the trigger. Application has been made to the National Department of Water and Sanitation for a General Authorisation and Water Use License Authorisation for Erf 242 and Erf 212 respectively.

3.7 National Heritage Resources Act

The following activities are triggered in terms of the National Heritage Resources Act:

- Section 38(1)(a)
The construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;
- Section 38(1)(c)
Any development or other activity which will change the character of a site-
(i) exceeding 5 000 m² in extent;

A Heritage Impact Assessment (HIA) has been undertaken as part of the Basic Assessment and in accordance with the requirements of Heritage Act. The detailed layout was amended

in response to issues raised by Heritage Western Cape, particularly with regard to public access to the spring.

4 POLICY

4.1 Municipal Spatial Development Framework (2018)

The Municipal Spatial Development Framework (MSDF) aims to give spatial expression to the vision of the Municipality and of the Integrated Development Plan. It is a broad-based document and does not control development or land use proposals at a micro-scale (e.g. individual properties). It is however relevant in setting out overarching planning policies adopted by the Municipality, and development applications need to be evaluated in terms of these policies.

Figure 10 shows the location of Protea Village in relation to the Municipal Spatial Development Framework. The site is located within an area designated as “Consolidation Area”. In terms of the MSDF this is an area where the City is committed to servicing existing communities and where new development will be permitted subject to infrastructure capacity. The proposed development is therefore consistent with the MSDF.

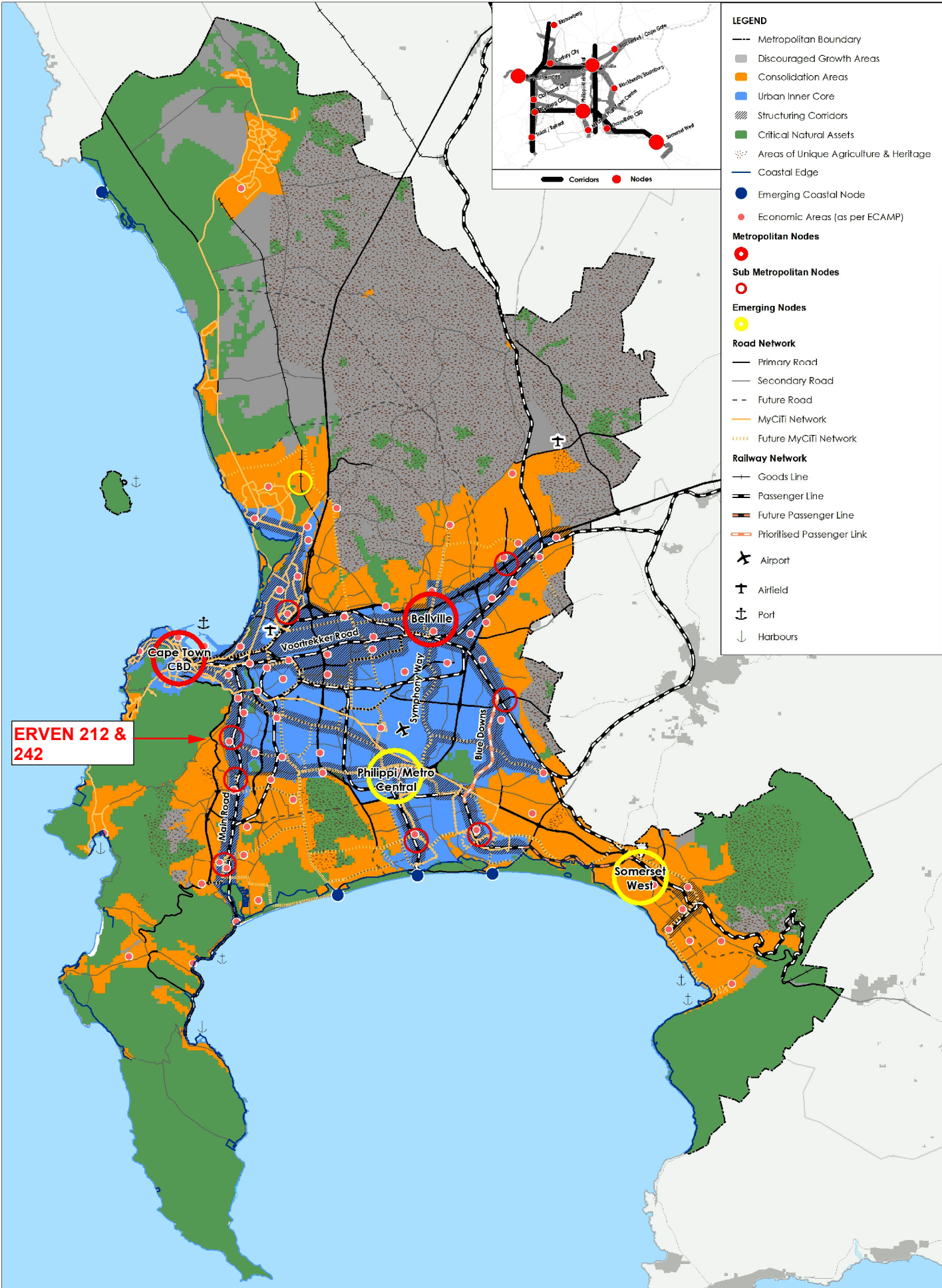
4.2 Southern District Plan

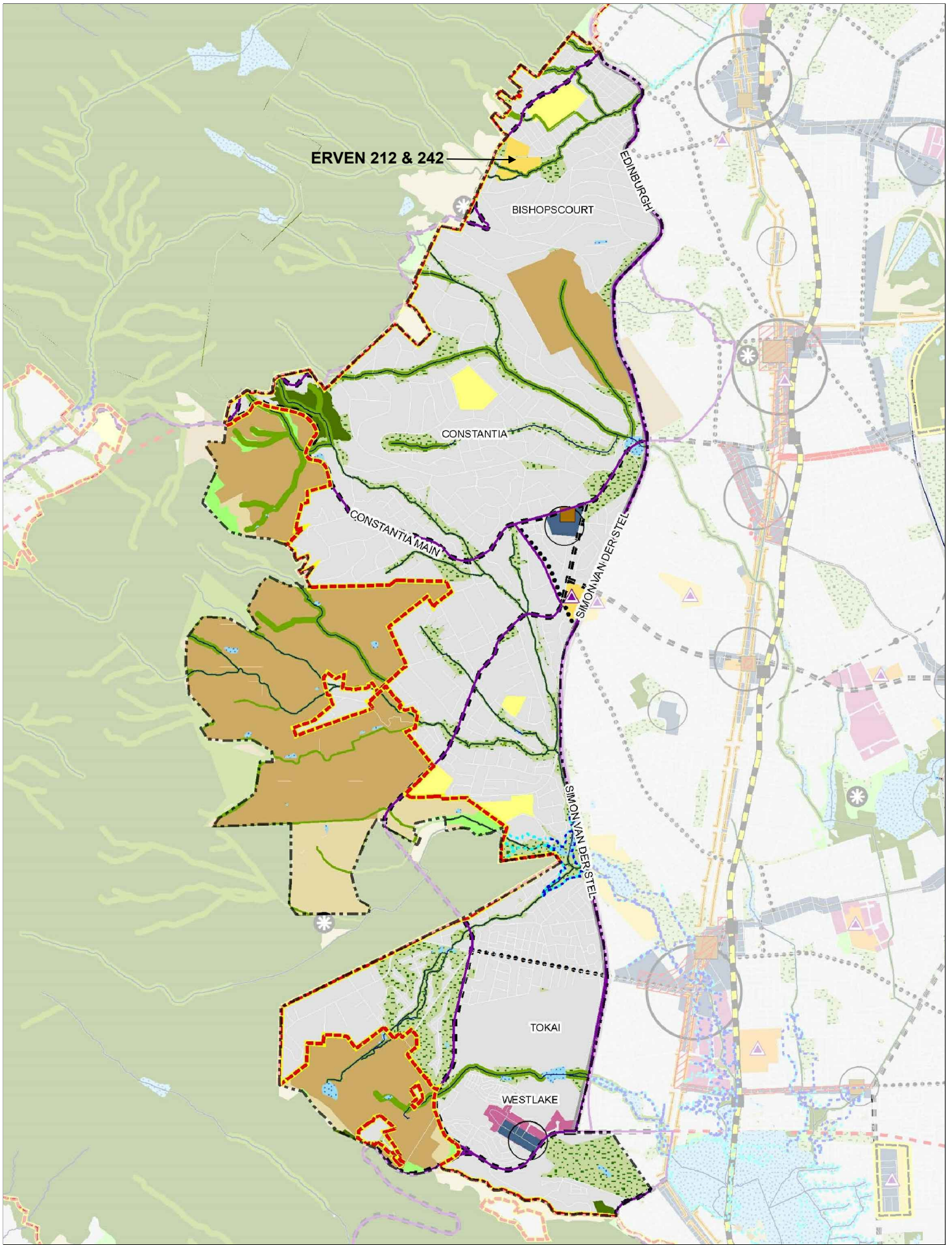
Protea Village is situated within the Southern District: Sub-District 2 (Bishopscourt-Constantia-Tokai). The District Plan identifies the Protea Village erven, Erven 212 and 242, as new development areas and discusses the site in terms of Spatial Development objectives and supporting land use guidelines. The following table is an extract from the District Plan and **Figure 11** shows the locality of the subject property in Sub-District 2. The site is clearly identified for “Potential Medium Density Development”.

Extract of Sub-District Guidelines

Protea Village: Erven 242 and 212: Size 12.3ha	
<ul style="list-style-type: none"> • Future Use: Residential infill. • Development Opportunities <ul style="list-style-type: none"> ○ Publicly owned (erf 212 CoCT; erf 242 Nat. Govt) ○ Relatively large site(s) ○ Relatively developable area ○ Highly accessible site(s) • Development Constraints <ul style="list-style-type: none"> ○ Approved land claim ○ Environmental issues riverine open space and spring(s), trees, and heritage ○ potentially very expensive real estate (re- market value) with associated community expectations. 	<ol style="list-style-type: none"> 1. The most appropriate future use of this site should be medium density housing. 2. The site is the subject of an approved land claim, and this development process should be respected. To this extent it may be necessary to permit some limited additional compatible and appropriate development to allow a feasible development outcome. 3. It is likely that significant environmental (riverine open space re- Liesbeek R and another stream, as well as at least 1 spring) and heritage issues will preclude a significant portion of erf 212 from being developed. Furthermore the development should integrate with identified noteworthy trees on the site(s). 4. Attention should be given to optimizing the interface between the development and Kirstenbosch Road, and also with the streams running through erf 212.

The table in the District Plan contains 4 notes or guidelines for development. These are discussed below in relation to the proposal, and it is clear that the proposal complies with the guidelines. “1. *The most appropriate future use of this site should be medium density housing*”.





ERVEN 212 & 242

BISHOPSCOURT

EDINBURGH

CONSTANTIA

CONSTANTIA MAIN

SIMON VAN DER STEL

SIMON VAN DER STEL

TOKAI

WESTLAKE

Broad Provincial Spatial Planning Categories

- Core 1
- Core 2
- Buffer 1
- Buffer 2
- Intensive Agriculture
- Open Space
- Potential Low Density Development
- Potential Medium Density Development

- Existing General Industrial
- Mixed Use Intensification
- Urban Civic Upgrade
- Strategic Sites
- Cemetery
- Destination Places
- Inclusionary Housing

- Scenic Routes
- Urban Edge
- Critical Public Link
- Railway Line Upgrade
- Railway Station Upgrade
- Waterbodies
- 50 yr Floodline
- 100 yr Floodline

Civic Precincts :

- Higher order
- Local

Nodes :

- Local Node

Landuse Transport Network :

- Connector Route
- District Structuring Routes

ERVEN 212 & 242 BISHOPSCOURT

SOUTHERN DISTRICT PLAN



SEPTEMBER 2020

Figure 11

Approximately 4 ha of Erf 212 cannot be developed due to the stream and wetland areas. Excluding this land and taking into account the developable area of both Erf 212 and 242, the proposed density will be ± 20 dwelling units per hectare, which is consistent with the medium density recommendation.

“2. The site is the subject of an approved land claim, and this development process should be respected. To this extent it may be necessary to permit some limited additional compatible and appropriate development to allow a feasible development outcome”.

The primary aim of the application is to give effect to the land restitution award and provide decent homes for the CPA members. The other developments of upmarket housing and lifestyle village are included to provide a cross subsidy to fund the costs of building the infrastructure and CPA members' houses.

“3. It is likely that significant environmental (riverine open space re- Liesbeeck River and another stream, as well as at least 1 spring) and heritage issues will preclude a significant portion of Erf 212 from being developed. Furthermore, the development should integrate with identified noteworthy trees on the site(s).”

The Basic Assessment has investigated environmental conditions on the subject properties. Arising from this ± 4.06 ha of land has been reserved as riverine corridor and public open space. Trees will be retained as far as possible, however due to development requirements and the age of some trees, it will be necessary to remove some of these to ensure the safety of residents as well as the general public.

“4. Attention should be given to optimizing the interface between the development and Kirstenbosch Road, and also with the streams running through erf 212.”

The proposal includes improved landscaping along the portion of Kirstenbosch Drive that runs adjacent to the development. The road reserve has been set back to incorporate some of the oak trees and the boundary walls / fences will be designed to provide an attractive interface with the street, while still providing the required security and privacy. The interface between houses, residential erven and the stream will be carefully managed.

4.3 Management of Urban Stormwater Impacts Policy

The Management of Urban Stormwater Impacts Policy was adopted by the City of Cape Town in order to minimise the negative impacts of stormwater runoff from developed areas. The policy introduces water sensitive urban design principles to urban planning and stormwater management in the metropolitan area, with the following objectives:

- Improve quality of urban stormwater runoff
- Control quantity and rate of stormwater runoff
- Encourage natural groundwater recharge

In terms of this policy new developments must be planned and designed to incorporate sustainable urban drainage systems (SUDS) in accordance with the City's stormwater management planning and design guidelines. When determining criteria for the application of sustainable urban drainage systems, Council will consider the following:

- *The size of the development*

Erf 212 measures approximately 8.4ha, but only approximately 4.2ha will be developed for residential purposes with associated roads and open space. The remaining land will be open space that the public can access. Erf 242 measures approximately 3.85ha and will be entirely

developed for residential purposes with associated roads and open spaces. The size of the property is therefore modest, but nevertheless capable of incorporating SUDS principles.

- *The type of the development (e.g. residential, industrial, commercial)*

The proposal is for residential development of different densities and erf sizes, together with a large area of public open space. Provision is made for SUDS in the design of an integrated drainage and stormwater detention system. However, this is a restitution project and funding constraints are present.

- *The location of the development site*

The properties are located in an established low- density residential area with direct access to an existing watercourse, and open space forms part of the site. It is sensible to use this open space as part of the SUDS.

- *The sensitivity, importance and the potential for rehabilitation of the receiving waters;*

A stream traverses the site and development is set back in accordance with the requirements of the aquatic study. The stream and wetland are important aquatic features and so the SUDS makes use of man-made stormwater detention ponds that will be landscaped and managed so as to be compatible with the existing ponds and wetlands. In this way stormwater generally will be intercepted and cleansed before entering the stream.

- *Existing Catchment and River Management Plans for the area;*

The stormwater system fits in with the established Catchment and River Management Plans prepared by the Municipality.

- *Existing Stormwater Masterplans for the area*

The stormwater system fits in with the established Stormwater Master Plans prepared by the Municipality.

4.4 Floodplain and River Corridor Management Policy

The City of Cape Town adopted the Floodplain and River Corridor Management Plan in order to:

- Reduce the impact of flooding on community livelihoods and regional economies
- Safeguard human health, protect natural aquatic environments and improve and maintain recreational water quality.

The policy states that “*any new land use, development, activity or building must be appropriate for the anticipated flood risk and geomorphological process requirements and compatible with the ecological buffer and socio-economic requirements, whilst allowing access for maintenance*”. With regard to formal residential development, the policy requires that floors must be constructed above the 1:100-year flood level and that basements, for non-habitable purposes, must be flood proofed to 1:50 year flood level.

During the planning stage of this project the 1:50 and 1:100 floodlines were determined and the proposed development is well above both floodlines. Floor levels and basements will therefore not be affected by floods.

4.5 City of Cape Town Densification Policy

The City has adopted a densification policy in order to promote a more efficient and sustainable urban structure. This policy document defines densification as:

“The increased use of space, both horizontally and vertically, within existing areas/properties and new developments, accompanied by an increased number of units and/or population threshold”.

Relevant aspects of the policy are discussed below in relation to the proposal, and it is clear that the proposal complies with the policy.

- *Densification Policy 1*

The City aims to achieve a minimum average gross base density of 25du/ha in the next 20 to 30 years’ and will aim for a higher gross base density thereafter.

This proposal is for medium density residential development and will contribute to the objective of increasing density in what is currently a very low-density suburban area.

- *Densification Policy 2*

The City will promote densification in all areas. However, importantly, a ‘one size fits all’ approach will not guide density decisions. Higher levels of densification will be encouraged at specific spatial locations, particularly in areas with good transport accessibility, at concentrations of employment, commercial development and/or social amenities, and in areas of high amenity e.g. coastal nodes. Small scale incremental densification should be permitted across the city, where appropriate and feasible in terms of infrastructure availability.

The site has been identified in the District Plan for medium density development and infrastructure is available.

- *Densification Policy 6*

The determination of the appropriate location, height, scale, form and orientation of a higher-density development in a particular location should be guided by the density decision-making framework. The following factors must be considered:

- *Generic considerations for densification related to the suitability of the area for land use intensification, such as surrounding land use character; access to public transport; proximity to places of employment, services and social facilities; proximity to public open space, and infrastructure availability (existing and planned)*

The height and scale of the proposed development is consistent with the surrounding development. Community facilities such as a local shop, open space, church and school all exist in the vicinity.

4.6 City of Cape Town Gated Community Policy

The gated community policy was devised to provide guidelines for appropriate gated developments and enable decision makers to assess the appropriateness of gated development proposals. The Protea Village proposal includes a component of public accessible development with public streets and open spaces, and components of private (gated development) with private roads and spaces. The proposal is generally compliant with

the Gated Community Policy. The following criteria are used to assess proposals involving gated communities.

- *Conventional and alternative security measures*

When a proposal for a gated community is submitted the applicant must display that alternative security measures have been investigated and considered.

The site is situated within an area that is characterised by large single residential properties with high walls and individual security fences. The CPA members have stated they specifically do not want to live in a gated village. The public township component will be made secure by the single access and high level of community surveillance. However good security must be provided for the development that will be used to cross subsidise the CPA members' houses, in order to realise good property values.

- *Access monitoring*

Where public roads are involved, this option only allows for monitoring access to a development or area, without erecting gates, booms or any other kind of physical barrier or obstruction that may prevent general public access.

Erf 242 will have conventional housing with public roads. Access monitoring will occur through surveillance, and no gates or booms will obstruct general public access. The control of public access will only occur to Erf 503 and portions of Erf 511, but these portions will have private roads.

- *Access control*

Where entirely private estates are concerned, full access control is permitted.

Erf 503 and portions of Erf 511 will have private roads and entrances will be controlled by security gates. However, the public is not prevented from accessing the public open space on Rem Erf 212.

- *Location and scale*

Large scale gated developments that take on the form of mini suburbs have a detrimental impact on city form, connectivity and mobility, and should be avoided by restricting the scale thereof.

Only small portions of the subject properties will be developed for gated developments, and due to this small scale there will not be a detrimental impact on city form and connectivity.

- *General public access and traffic implications*

A gated community may not preclude practical access to public spaces and amenities.

Pedestrian and motor vehicle access to the public open space is not precluded. The general public will still have access to the open space and recreational area and public parking is provided, improving upon current informal public parking arrangements.

- *Pedestrian and other non-motorised movement*

In considering gated community proposals, it is essential that continuous and convenient access for pedestrians and any other non-motorised forms of movement (eg. cycling) be protected and prioritised.

The open space area on Remainder Erf 212 will remain accessible to the general public and to pedestrians. A sidewalk that also accommodates a cycle lane is proposed on the southern side of Kirstenbosch Drive and public footpaths will traverse the open space.

- *Emergency services and law enforcement access*

Ensure uninterrupted emergency, law enforcement and other service to gated developments and areas.

The development will provide 24-hour full access to all emergency service vehicles. Provision has been made to accommodate such vehicles.

- *Layout*

An important and fundamental aspect of gated community developments is their detailed internal layout.

The development will be fenced with a brick wall and clear-vu fencing which will provide visual permeability. An entrance feature is proposed to further articulate the street façade of the development. There will be no “canyon” effect as referred to in the policy. The internal layout is appropriate for the site and needs of the project

- *Visual impact and interfaces (edges)*

Attempt to reduce and mitigate some of the potential and adverse impacts of gated developments on urban form.

The gated components of the development will not have continuous blank high walls alongside the street and river corridor. The perimeter will be articulated with a combination of visually permeable and impermeable material and landscaping.

- *Services and Infrastructure*

Any gated development or area proposal should also be carefully considered in respect of its potential impact on existing services and infrastructure in the surrounding area.

Council’s services will not be negatively impacted by the development.

- *Retrospective conversions and closures*

Additional criteria apply to existing developments to be converted to gated communities.

This is a new proposed development, not a retrospective conversion.

- *Service and pedestrian lanes/passages and public footpaths*

Servitude or sanitary lanes must be carefully considered in the case of retrospective conversions

There are no such lanes in this proposal.

- *Public property administration requirements*

Council's By-Laws and policies must be complied with and relevant applications must be submitted and approved.

The relevant applications are submitted in this report.

4.7 City of Cape Town Urban Design Policy

The Urban Design Policy has been formulated to create holistic and sustainable human settlements, by shaping the built environment to respond to the natural, physical, social and economic factors that influence the form of human settlement. Relevant objectives of the policy are discussed below and it is considered that the development proposal responds appropriately to the objectives.

- **Objective 1**

Ensure that development contributes positively to the urban structure of the city to create integrated and legible places and neighbourhoods.

This is a land restitution project with a market related residential component to provide cross subsidies for the construction of services and houses for the CPA members. The mixed residential typologies and socio-economic variety will contribute positively to the urban structure of the city. The layout is logical and legible and responds to the environmental features of the site and needs of the CPA members.

- **Objective 3**

Ensure that developments contribute to the creation of safe and secure communities.

The design will contribute to safe and secure communities, while still providing for public access.

- **Objective 4**

Ensure opportunities and amenities are accessible and that people move about easily and efficiently.

The project is located close to various amenities including stone cottages, corner shop, church, creche and public open space. The design facilitates easy access to these amenities. Opportunities are also provided for people to access the public open space alongside the streams and to enjoy the ponds that exist on the site.

- **Objective 5**

Promote development intensity and diversity and adaptability

The mixed residential typologies and socio-economic variety will provide diversity, and the density of ± 20 du/ha contributes to an appropriate development intensity.

- **Objective 6**

Ensure closure and positive interfaces onto the public realm.

Development has been adequately set back from the streams and provision has been made for public pathways in the public open spaces. Visually permeable fencing will be used between the residential plots and public open space. Landscaping, including setback of plot boundaries to retain existing oak trees, will enhance the experience along Kirstenbosch Drive.

- **Objective 8**

Development should protect, value and enhance the natural environment through sustainable design.

The layout was informed by environmental investigations and heritage studies. Boundaries of development have been pulled back from the stream creating sustainable wetland buffers. Houses will be orientated to optimise views and energy efficient design will be incorporated in design guidelines. The layout responds well to the environmental elements that occur on site such as trees, watercourses, wetlands and buffers.

- **Objective 9**

Development should respect and enhance the heritage, character and unique identity of the City and its neighbourhoods

A heritage study was undertaken and the development proposal was informed by the history, character and unique identity of the Protea Village site and the needs of the CPA members.

5. ENGINEERING SERVICES

The engineering services for the project have been investigated by Neil Lyners & Associates. A full report for civil and electrical services is attached in **Annexure 7**, and a summary is provided in the following section.

5.1 Civil Engineering Services

5.1.1 Internal Road Infrastructure

The structural design period for all pavement layers will be 20 years. Structural design of layers will be in accordance with the TRH4 and the “Red Book” requirements. All the aggregates specified for pavement layers will comply with the materials approved by the Municipality. In certain areas, however, roads will be constructed at narrower widths to allow as many trees as possible to be retained. The geometric layout of the roads will therefore take into account the existing trees, within the constraints of the narrow road reserve and minimum road widths to allow refuse removal and safe access.

Road Reserve	“Blacktop” width	Notes
8m	3.5m to 5.0m	Width to vary to accommodate trees
10m to 12m	6.0m	At access to Erf 212 and Erf 242

5.1.2 Water supply

The City of Cape Town has provided confirmation that sufficient capacity exists in the water and sewer network. This confirmation was based on an initial water demand estimate of 149.6 kℓ/day, but the predicted water demand of the current development is significantly less at 103.4

kℓ/day.

According to enquiries with CoCT, sufficient residual pressure exists, and uPVC pipes of various sizes (min diameter 110mm) to withstand a working pressure of at least 1 600kPa will be used. Positioning of valves and fire hydrants will comply with the City's requirements. The water connection will be made in Winchester Road and the municipal pipe will be extended along Kirstenbosch Drive. The proposed layout is shown on DWG 15108-Fig 2 included in the services report. Bulk meters will be provided for the four "gated" villages on Erven 503 and 511 and plots on Erf 242 will be individually metered.

5.1.3 Sewage disposal

The sewer pipes will comprise uPVC pipes of various diameters (Class 34) and manholes will conform to the City's minimum requirements to minimize ground water infiltration. A small sewage pumping station will be constructed to service the proposed 10 plots on Erf 503. A rising main will connect to the existing sewer in Winchester Road. Sewage from Erf 511 and Erf 242 will gravitate to a sewer manhole in Kirstenbosch Drive.

5.1.4 Floodlines and stormwater disposal/treatment

Graeme McGill Consulting (GMC) has determined the 1:50 and 1:100-year recurrence interval floodlines and has compiled a Stormwater Management Plan for the project.

Two retention ponds will be constructed as part of the development to restrict the peak post development runoff to that of the current pre-development runoff. All stormwater will be treated in accordance with the City of Cape Town's latest Stormwater Management Planning and Design Guidelines for new developments. Special care will be taken in the design to comply with the City's Sustainable Urban Drainage (SUD's) model and this will be incorporated into the design model.

5.1.5 Solid waste management

The removal and disposal of solid waste will comply with the requirements of the City of Cape Town Municipality. The proposed development falls within the refuse removal service area of The City. Refuse will be collected from individual erven on Erf 242 as this will incorporate public streets. Refuse collection from the various gated components of the development to refuse facilities in compliance with the City of Cape Town requirements will be the responsibility of the home-owners association. The City of Cape Town will collect the refuse from these facilities.

5.1.6 Ducting for Telecommunications

Ducting will be installed to comply with the requirements of telecommunications and fibre service providers and the City of Cape Town's Electrical Department.

5.2 Electrical Engineering Services

It is estimated that the development will require an electrical supply of 780 kVA. The CoCT: Energy Directorate has confirmed that there is sufficient capacity in the electrical network available for the proposed development. An existing 11kV cable in Rhodes Drive will be cut and extended with new 11kV cables along Kirstenbosch Drive. A new miniature substation will be provided and will be fed from the new cables and installed near the proposed central entrance to Erf 511 and be accommodated on Erf 671 which will be transferred to the City of Cape Town.

From the new electrical substation, low voltage underground cable feeders will supply the individual underground reticulation networks for Erven 503, 511 and 242.

The existing streetlights along Kirstenbosch Drive will be retained and new streetlights will be provided for the internal roads.

6. TRANSPORT IMPACT ASSESSMENT

A transport impact assessment was undertaken by Innovative Transport Solutions. The purpose of the assessment was to establish the impact of the proposed development on the surrounding road network and to recommend appropriate mitigation measures, if required. The full assessment is included in this report as **Annexure 8**, and a brief description of the conclusions and recommendations is provided below.

The proposed development is expected to generate approximately 161 trips during both peak hour periods. The analyses indicate that no capacity improvements are required to mitigate the impact of the development. Although Upper Bishopscourt/Edinburgh Drive intersection is currently experiencing congestion, this is due to regional traffic along the M3 which cannot be addressed as part of the proposed development.

6.1 Access to the Site

- The main access is proposed on Kirstenbosch Drive with one access to Erf 242 approximately 240m from the Winchester/ Kirstenbosch Drive intersection, and another access on the opposite side to Erf 511.
- A second access to Erf 511 is proposed along Winchester Drive which will provide access to the 5 residential erven located there.
- A third access is proposed further along Winchester Drive, which will provide access to the residential erven on Erf 503.
- Access to a public parking area is provided from Kirstenbosch Drive.

6.2 Public Transport

- Public transport embayments will be provided at the main access, along Kirstenbosch Drive.

6.3 Parking

The following parking rates are recommended:

- 2 bays per dwelling unit for high-income residential units.
- 1 bay per dwelling unit for dwelling units developed for the Protea Village community homes.
- 16 bays in a public parking area off Kirstenbosch Drive.

6.4 Non-motorised Transport

- A sidewalk will be provided along the southern side of Kirstenbosch Drive from Rhodes Avenue to the Arambrook Hotel. The sidewalk should also be able to accommodate cyclists.

7. ENVIRONMENTAL STUDIES

The project is subject to a Basic Assessment in terms of NEMA to determine the suitability of the site for development. Various environmental and heritage investigations have been conducted, which are contained in the full BAR report. The studies informed the layout and design of the development proposal. For the purpose of this application, a brief summary of key investigations is discussed below.

7.1 Visual Impact Assessment

A visual impact assessment was undertaken by David Gibbs. The full report is included as **Annexure 11**, but the conclusions of the visual specialist are provided here.

Although the proposal is certain to effect a noticeable change to the status quo, given that the site is fairly large in extent, and that some vegetation cover will be lost as a result of development, it is clear that the proposal has been informed by, and responds sensitively to, environmental, visual and heritage considerations. The proposal is well conceived and entirely sympathetic to its context. The proposal is not only appropriate, but in fact desirable.

It is noted that significant portions of the site will remain within the public realm, notably the riparian corridor with its associated wetlands, pools and pedestrian pathways. The existing vegetation that will remain including mature specimen trees identified in the tree survey will contribute to the visual amelioration of the development; which will seem to fit within the environment, rather than impose upon it.

The 'rural' quality of Kirstenbosch Drive is a visual/spatial resource to protect, as far as possible, and therefore the interface of the development will need to be carefully handled. Responding appropriately to the existing relaxed rural landscape character will be imperative. This will be achieved partly by the planning layout, which allows for a general road reserve/verge along Kirstenbosch Drive, but also through the design and implementation of appropriate landscape measures. Architectural detail information is likely to develop further but should reflect materials and details sympathetic to the environment.

7.2 Heritage Assessment

A heritage impact assessment was conducted by ACO Associates. A summary of the findings of the study is provided below and the full report is attached as **Annexure 10**.

7.2.1 Landscape, setting and visual character

The sylvan landscape of the project area in its original wooded setting has changed significantly since the start of the 20th century. Although the site and surroundings are attractive, its quality is in part a result of the apartheid period of forced removals and sterilization of the site. There were previously houses, fields and vegetable gardens which were flattened, people were relocated and the area effectively re-landscaped as an urban park. Trees were a very important part of the environment, especially on Erf 212 but in the residential area as well. The trees provided the visual continuity of the site with Wynberg Hill, the wooded eastern slopes of Table Mountain, Constantia Nek and Kirstenbosch. The wooded quality of the site within the Bishopscourt context is a strong indicator that contributes to the sense of place.

7.2.2 The Liesbeeck and its tributaries

This attractive area has value to inhabitants and continues to play an important role in the quality of the area. In keeping with the trend of successful rehabilitation of the Liesbeeck in

recent years, Erf 212 presents the opportunity for both the conservation and creation of a high quality public open space and riverine zone which can continue to be enjoyed by the public. This key element needs to be framed in a generous buffer zone which will help impart and continue the woodland quality of the area.

The spring, which is situated in the wetland part of the site, is considered a very important place of memory by the community. The Claimant community has indicated that it is not only a social space but it embodies the qualities and character of Protea Village.

7.2.3 Surviving places of significance

Many of the surviving places of significance lie off the site – notably Hussein’s store and bus stop, the school steps, and the Church of the Good Shepherd. These will not be physically affected by the proposed development but are likely to become enlivened by the return of the residents.

Kirstenbosch Drive is a historically important road and place of memory that will be affected by the development. Today, it is a slightly informal tree-lined avenue and an important scenic access route to Kirstenbosch. It is important that as much of the quality of Kirstenbosch Drive is conserved through the retention of wide informal verges, mature trees and the historic cobbled roadside gutters that remain in place today.

7.2.4 Archaeology

On first appearance the site is sanitised, however there is a likelihood that floors, paths and wall footings may have survived in places although there is very little to be seen on site today. These are likely to become apparent during redevelopment of the site. The need for archaeological mitigation of possible foundations of 19th and 20th century structures with likely moderate significance needs to be balanced against the time and cost of the work as opposed to the need for restorative justice. It is considered that the benefits with archaeological mitigation on what appears to be a damaged and fragmented site are not high compared to the benefit of getting the community back onto site as timeously as possible.

7.2.5 Public response

The greatest public concern revolves around the loss of the amenity value of Erf 212 and the riparian natural areas. This matter has been tested in court in favour of the CPA members. The development plan has been prepared so that significant mitigation has been achieved in that a riparian zone has been identified and will be used as open space by the general public.

7.3 Aquatic Systems

The aquatic system on site has been studied by the Freshwater Consulting Group. Extracts from the aquatic report are provided below and the full report is attached as **Annexure 12**.

The development site includes two rivers, which join to form the Liesbeeck River, and several wetland seeps. Of the latter, the wetlands on Erf 242 are small, highly altered and in some cases artificial. Their habitat value is low and their functional value could be effectively mitigated/replicated in the planned stormwater management system. The natural wetland on site has a conservation importance of Low to Moderate only on the grounds of its cumulative contribution to stormwater management.

Although the same applies to the smallest wetlands on Erf 212, this erf includes a large seep wetland which, despite on-site disturbance and having already been infilled and diverted in its reaches downstream of the site to support other residential development in the area, is still regarded as of high conservation importance by virtue of its habitat and functional attributes.

Loss of this wetland without mitigation is considered an impact of high significance. Mitigation measures have however been recommended and included in the development design. These include addressing functional losses through stormwater design and a degree of habitat and functional loss through the creation of a new alignment for the seep, such that it enters the Liesbeek River on the site, rather than further downstream. This re-alignment would be done in a manner that allows for the creation of a wide wetland swale, similar in character if not extent, to the wetlands that would be lost as a part of the development. With such mitigation measures in place, the implications of the outright loss of wetland have been assessed as of Medium significance.

While the proposed development would clearly have a significant impact on aquatic ecosystems on the site, it is important that its impact on the downstream Liesbeek River should be as low as possible. This is particularly important as the Liesbeek River is one of only a few rivers in the City where water quality is still in an “acceptable” condition. Compliance with existing legislation and policy relating to stormwater management will be important to ensure that water quality in the river remains in an acceptable condition. This has been addressed in detail in the stormwater management plan for the project. It will be important for the City of Cape Town to manage the public open space and stormwater ponds in a responsible manner.

8. DEVELOPMENT PROPOSAL

8.1 Overview

The development proposal has been informed by the requirements of the 86 families of the Claimant community and results of environmental and engineering investigations. **Figure 2** is an illustrative plan of the proposal and **Figure 12** is a composite plan showing internal subdivision for the site once the full development has been completed. It should be noted however that this application does not include all of the internal subdivisions for reasons that will be explained later.

Erf 242, north of Kirstenbosch Drive, will be developed to create 86 residential erven, one for each of the 86 families of the Claimant community with associated internal public streets and public open space. South of Kirstenbosch Drive it is intended to establish 15 upmarket residential stands, a lifestyle village and associated uses on the developable portions of the site, while the Remainder will be public open space for use by the community and general public. The upmarket residential stands and the Mews development will be sold on the open market, as part of a funding strategy to cross-subsidise the construction of services and of the 86 Claimant houses on Erf 242. The overarching aim is to develop a well-integrated sustainable settlement for the new residents of Protea Village, and to realise successful land reform and restoration for the 86 families of the Protea Village community.

The 86 erven for the 86 CPA members were designed to retain as many trees as practically possible, while at the same time allowing each Claimant to receive a plot of 300m². A number of small pocket parks are included in the development to provide amenity for the residents, and importantly to preserve clusters of existing trees. The internal roads have variable reserve widths in order to retain trees of significance. A pedestrian gate is provided directly from the village to the stone cottages.

15 large residential plots are proposed on Erven 503 and 511 which will take access off Winchester Avenue. These plots will generally look out over the internal open space system and are structured around two short cul de sac roads capable of access control. These plots will average 1000 m² in extent in order to optimise sale prices which will be necessary to optimise the cross subsidy for the CPA members.

INTERNAL SUBDIVISION OF ERVEN 511, 503 (Formally part of Erf 212) and ERF 242 BISHOPSCOURT

ERF 242

Colour	Zoning	Land Use	Portion No	No. Erven	Area (ha)	% of Area
Yellow	Single Residential 1	Residential	532 - 617	86	2,62	68
Green	Open Space 2	Public Open Space	618 - 621	4	0,13	3
Grey	Transport 2	Public Street	622 - 624	3	1,10	29
Total				93	3,85	100

ERF 503

Colour	Zoning	Land Use	Portion No	No. Erven	Area (ha)	% of Area
Yellow	Single Residential 1	Residential	630 - 639	10	1,00	85
Yellow	Single Residential 1	Private Road Utility Services	670	1	0,17	15
Total				11	1,17	100

ERF 511

Colour	Zoning	Land Use	Portion No	No. Erven	Area (ha)	% of Area
Yellow	Single Residential 1	Residential	625 - 629	5	0,51	16
Yellow	Single Residential 1	Residential	640 - 667	28	1,47	46
Yellow	Single Residential 1	Private Road	668 - 669	2	0,35	11
Orange	General Residential 1	Residential	514	1	0,74	23
Purple	Utility	Electrical Substation	671	1	-	-
Grey	Transport 2	Public Street	515	1	0,09	3
Green	Open Space 2	Public Open Space	516	1	0,05	1
Total				39	3,21	100

- All portions will be individually accessed from relevant street frontage.
- All areas and dimensions are approximate.

15 Street number

PROTEA VILLAGE

PROPOSED COMPOSITE SUBDIVISION

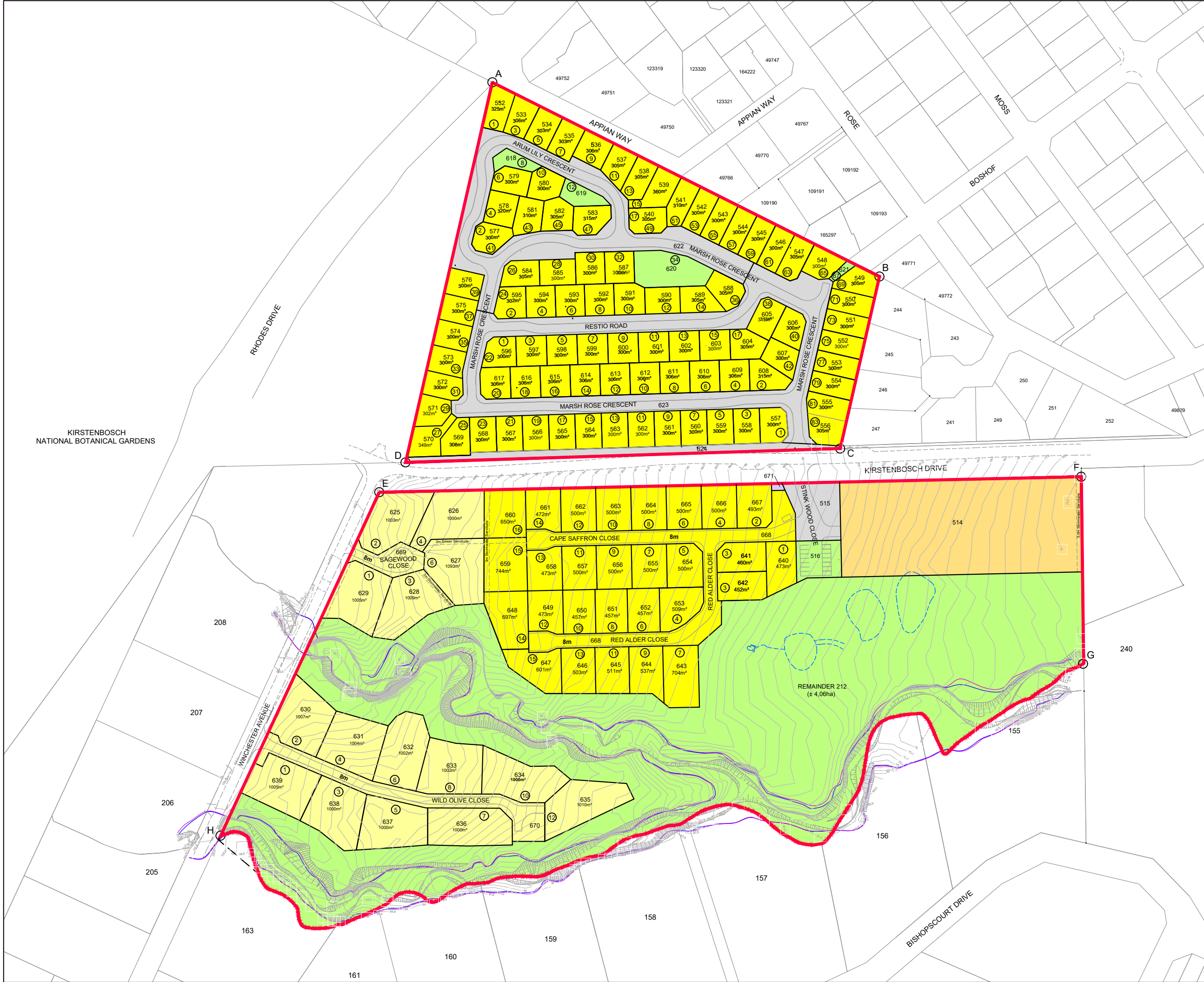


SCALE 1:2000



NOVEMBER 2021

Figure 12



KIRSTENBOSCH NATIONAL BOTANICAL GARDENS

A gated village with a mixture of erf sizes is proposed adjacent to Kirstenbosch Drive and overlooking the internal public open space on Rem Erf 212. On the one side of the village are 28 medium sized residential erven that will be developed with individual dwelling houses. On the other side of the village is a mews development of 22 double storey row houses. In the current application the row house erven will not be individually subdivided in order to provide flexibility for detailed design. Therefore a General Residential 1 erf (i.e. Erf 514) will be created for the row houses and internal subdivision will take place in the future.

The Remainder of Erf 212 is allocated as public open space, containing the streams and buffer areas. In addition, a set of stormwater detention ponds has been carefully designed to accommodate stormwater from the development, while at the same time avoiding disturbance to the spring and its associated wetland.

Below is a table indicating the future land use and zoning for the subject properties.

Erven		Zoning	Land Use	Area (ha)	% of Site
Erf 242		Single Residential 1	86 Dwelling houses	2.62	68
		Open Space 2	Public open space	0.13	3
		Transport 2	Public street	1.10	29
		Total			3.85
Erf 212	Erf 503	Single Residential 1	10 Dwelling houses	1.00	11.8
		Single Residential 1	Private Road	0.17	2
	Erf 511	Single Residential 1	33 Dwelling houses	1.98	23.5
		General Residential 1	22 Townhouses & Access Driveway	0.74	8.8
		Single Residential 1	Private Road	0.35	4.1
		Transport 2	Public Street	0.09	1.1
		Open Space 2	Public Open Space	0.05	0.6
	Rem Erf 212	Open Space 2	Public Open Space	4.06	48.1
	Total			8.44	100

8.2 Landscaping

The development layout on the site has retained many existing trees, which will provide an immediate landscape effect. As many trees as possible will be left in the public open space areas, but dangerous trees will be removed in collaboration with Council. Poplars and other invasive trees along the riverine corridor, including the stormwater ponds area will be removed. The intention is for the properties to be sold or leased with existing trees, and the future owners/lessees may decide to keep the trees or remove them. New trees will be planted, where appropriate, to retain the sylvan nature of the site. Any new planting will consist of appropriate indigenous vegetation. Below is an overall landscape concept for the development.

Overall landscape intent



It is proposed to develop small pocket parks on Rem Erf 242, which are to be zoned Public Open Space. The Remainder of Erf 212 will also be zoned Public Open Space and will remain in the ownership of the City of Cape Town. No development will occur within the riverine corridor and appropriate buffers have been defined by a freshwater ecologist. Footpaths will be provided in accordance with current desire lines and will consist of narrow earth paths.

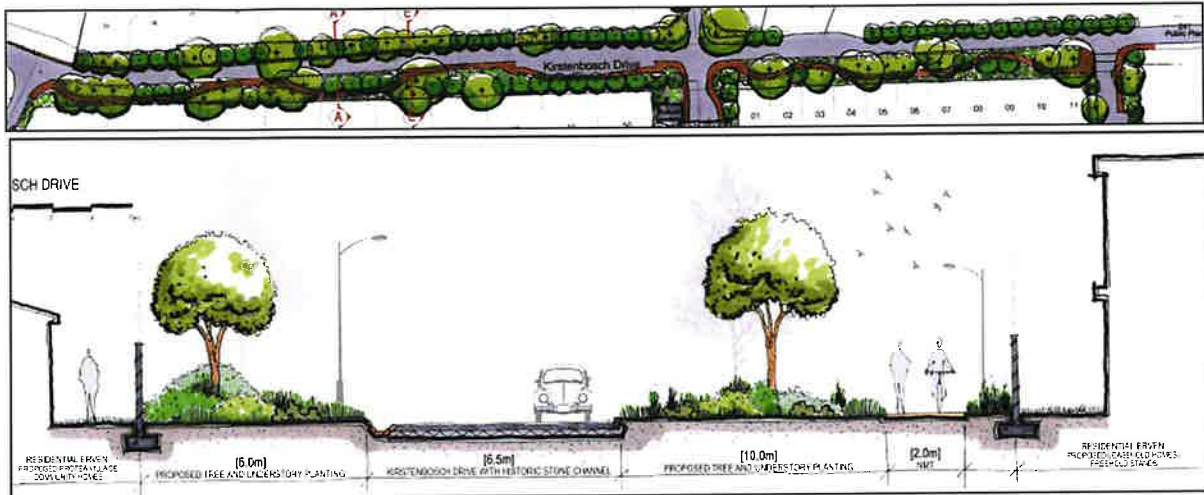
Stormwater ponds will be constructed in the eastern area of Rem Erf 212 which will be landscaped to resemble green wetland areas. The image below illustrates the landscaping intent of the stormwater ponds.

Proposed Stormwater Ponds



The character of Kirstenbosch Drive as a tree lined avenue will be preserved through maintaining the current road width, historic stone channel and existing 'healthy' oak trees. The existing trees will be inter-planted with indigenous trees by the City of Cape Town. A non-motorised pathway, consisting of a laterite cycle path and pedestrian walkway will be constructed along the southern edge of Kirstenbosch Drive. The pathway will wind around trees and local indigenous shrubs will be planted under the trees, alongside the walkway. Below is a cross section of Kirstenbosch Drive, illustrating the intent.

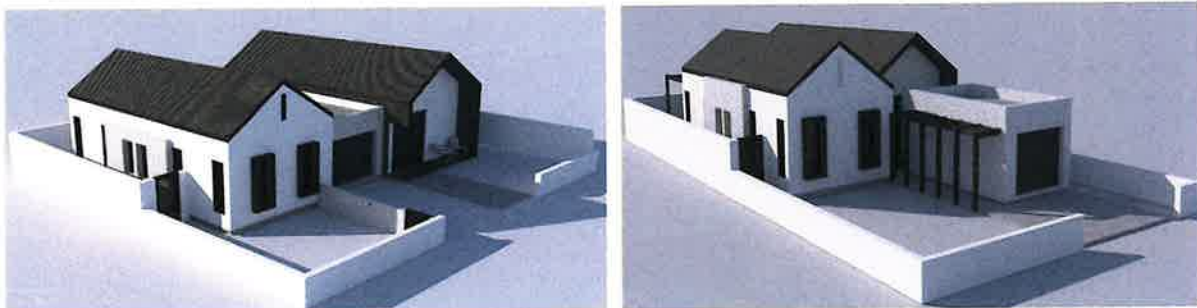
Kirstenbosch Drive: Landscape Intent



8.3 Architecture

The residential stands for members of the Protea Village community on Erf 242 are approximately 300m² in extent and intended to each accommodate an individual dwelling house. The final size of the houses will be determined by the financial resources that can be provided by the proposed development on Erven 503 and 511. The following sketches illustrate the preliminary architectural proposal for the units on Erf 242.

Architectural Concept for Erf 242



The dominant roof will be a pitched form with minor roofs as flat or low pitch elements. Regular doors and windows will fit in with the geometry of the structure. Simple architectural guidelines (refer to **Annexure 9**) are provided to ensure that any future house extensions are compatible with the initial development. Low boundary walls within the village are proposed to contribute to a sense of community and social interaction.

The sketch below provides an image of what the CPA members' village could look like. It must be emphasized that the size and specification of homes will depend on the funds that can be generated from development on Erven 503 and 511, and so the imagery is indicative only at this stage. However, all homes will be of a good quality. The final house designs will be formalised when there is sufficient certainty about the available funds.

Proposed Protea Village Community Homes



The large plots on Erven 503 and 511 will contain large contemporary homes designed to fit in with the character of the area. Architectural design guidelines have been prepared to guide the design of houses in this precinct, and a homeowner's association will be created to enforce the guidelines. Homeowners will be encouraged to retain mature trees. Architectural elements such as stone and timber cladding are recommended to integrate the architecture with the natural setting. Some images of the proposed architecture are provided below.

Proposed larger estate house design elements



The lifestyle village will have two residential typologies. Located on the medium sized plots will be individual dwelling houses, designed around an architectural theme similar to the CPA

members' village. In the eastern part of the village will be a mews development with row houses. It is proposed that these will be double storey semi-detached units that may make use of stone and timber cladding in the architectural style. Similar elements of major pitched roof and flat minor roof forms will also apply. An indication of the proposed architectural style for the mews development is illustrated below, but it must be noted that the imagery is indicative only. The proposed Architectural Guidelines are contained in **Annexure 9**.

Indicative Design for Mews Units for Erf 514



9. STATUTORY PLANNING APPLICATIONS

In order to develop the properties, a number of statutory planning processes are required. The first process involved application for subdivision to define the land for development on Erf 212. This subdivision was submitted and approved in September 2019 in terms of Section 67 of the MPBL. The approval is included as **Annexure 6**. Thus, the original Erf 212 now comprises two Portions and a Remainder. Portion 1 measures approximately 3.2ha and has been assigned a new erf number, Erf 511. Portion 2 measures approximately 1.17ha and has been assigned a new erf number, Erf 503. Remainder Erf 212 measures approximately 4.06ha, will remain owned by the City of Cape Town as a Public Place. Erf 242 was not affected by the 2019 application.

Surveyor General Diagrams for Erven 503 and 511 have been approved and the transfer of these erven, as well as Erf 242, have been effected to the PVCPA recently.

The current application for deletion of a restrictive condition, rezoning, subdivision, consent and regulation departure is another step in the process to obtain development rights. This is a composite application that involves several properties which constitute one integrated project. The plans to be endorsed by the Municipality are contained in the body of the report for ease of reading and have been provided as a set in **Annexure 14**, for endorsement by the City.

These properties require the following statutory planning applications:

9.1 Deletion of Restrictive Condition of Title

Section 42(g) of the By-Law makes provision for the amendment, suspension or deletion of restrictive conditions of title. Erven 503 and 511, which are held under the same title deed, are subject to two restrictive conditions of title contained in Deed of Transfer T29515/2021.

Conditions 1.B and 1.D are applicable to Erf 511, while Conditions 2.B and 2.D are applicable to Erf 503. The wording of B and D for 1 and 2 is exactly the same for both erven.

Conditions B and D state:

B. *Subject to the following conditions contained in Amended Deed of Grant dated 15th June 1901 (Cape Quitrents Volume 40 No 20), namely:-*

(b) *That the waggon roads running over the land shall remain free and undisturbed.*

D. *Subject to and with the benefit of the following conditions contained in Deed of Transfer No 7596 dated 26th July 1938 as having been then imposed in favour of Bishops Court Estate Cape (Proprietary) Limited and its successors as owners of the land held under Deed of Transfer no. 7596 dated 26th July 1938, namely: -*

That in any subdivision of "Bishops Court" or Lot C.S. held by Certificate of Registered Title dated the 26th July 1938, No 7595 in favour of the Council of the Colonial Bishopricks Fund, the lots bordering on each boundary thereof shall be similar in extent to the lots of the land hereby conveyed on opposite side of such boundary lines.

Condition B relates to access ways, while Condition D limits the size of the erven to be created from the subdivision. As described in Section 2.3, it is only necessary to delete the condition relating to erf sizes, as it affects the further internal subdivision of both erven.

It has been established that Lot C.S. is now known as Erf 239 Bishops Court and that this property is located opposite the boundary lines of subdivided Erf 212. Erf 239 measures approximately 4 924m². The proposed new erven to be created from the further subdivision of erven 503 and 511 will range in size between ±240m² and ±1000m².

For these reasons, it is necessary to make application to delete Conditions, 1.D and 2.D. It is however not necessary to amend Condition 3 because this condition and its clauses do not affect the proposed development.

9.1.1 Criteria

Section 48(4) of the MPBL, read with Section 39(5) of the Land Use Planning Act (LUPA), stipulates criteria that must be considered when assessing the removal, suspension or amendment of restrictive conditions of title. These criteria are dealt with below together with a statement about how the criteria relate to the current application.

(a) *The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;*

There are no financial benefits currently enjoyed by the dominant tenement due to these title deed conditions.

(b) *The personal benefits which accrue to the holder of the rights in terms of the restrictive condition;*

The land unit size condition is not in favour of any individual person. This condition prevents the optimal development of restitution land and the holder of the rights does not currently accrue any personal benefit from the restrictive condition.

- (c) *The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;*

The restrictive condition prevents the CPA members from developing the land optimally that was returned to them through the land restitution process. Removal of these conditions will facilitate the provision of houses and services for the CPA members. In order for the CPA members to return to live on Erf 242, it is necessary for erven 503 and 511 to be further subdivided into smaller portions and to be developed so that funds can be generated from the sale and lease of the subdivided portions to fund the construction of claimant houses and services on Erf 242.

- (d) *The social benefit of the restrictive condition remaining in place in its existing form;*

There is currently no social benefit to the restrictive condition being retained. The perpetuation of large suburban plots on the subject properties would be contrary to land use policies for the site and would prevent land restitution because the 86 CPA members would not be able to obtain homes with subdivision sizes as required by Condition D. Maintaining the condition will therefore result in social harm.

- (e) *The social benefit of the removal, suspension or amendment of the restrictive condition; and*

Removal of the restrictive condition will facilitate the restitution of land by allowing development of smaller residential erven. The sale and lease of erven on Erf 503 and 511 will raise funds for the houses and services on Erf 242, which will enable the 86 Claimant families to return to the land. The City's policies support development of the property for medium density housing and removal of Condition "D" will facilitate this policy.

- (f) *Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights*

The deletion of the condition will remove rights enjoyed by the beneficiary relating to subdivision size on or over Erven 503 and 511 and the erven resulting from the subdivision of the aforementioned erven.

9.1.2 General motivation for deletion of Restrictive Conditions of Title

- Erven 503 and 511 are part of a land restitution process, and for this process to occur, it is necessary to develop plots with a range of erf sizes and unencumbered by unneeded rights of way. The scale of restitution required and the economic circumstances are such that development will not be possible with large subdivisions as contemplated by Condition D.
- The CPA members wish to return to live on the land from which they were removed and it is necessary to subdivide Erven 502 and 511 into smaller land units to sell and lease to private entities to generate the funds required for construction. There is a very limited market for large erven and the funds generated would be

insufficient. However the market for smaller erven is bigger, more units can be developed and the funds generated would be greater.

- This condition is onerous and limits the development potential of the land, which is intended for medium density housing in terms of Municipal policy. The formulation of this policy went through a public and statutory process, and in the interests of the broader community and city planning, that process should not be frustrated by an old title deed condition that was formulated in a previous era.

9.2 Rezoning

Erf 212 is zoned Agricultural and therefore the recent subdivisions of Erf 503 and 511 are also zoned Agricultural. Erf 242 is shown to have a split zoning of General Residential 1: Group Housing and Agricultural, in terms of the City of Cape Town Development Management Scheme. City officials have advised that the zoning for Erf 242, as shown on the City's zoning map, is questionable and the correct zoning may be "Limited Use Zone". This is inconsequential for the purpose of the current application because Erf 242 will be rezoned to Subdivisional Area, which is an appropriate zone and interim stage for the development.

The Schedule 8 condition restricts the number of dwelling units on Erf 242, Bishopscourt to 60. Application for a permanent departure from the Schedule 8 provision, is required to permit rezoning to subdivisional area for the purpose of 86 residential units on Erf 242, Bishopscourt.

Application is made to rezone Erven 503, 511 and 242 Bishopscourt to Subdivisional Area for residential development and associated uses including roads and open space. **Figure 13** shows the land to be rezoned to Subdivisional Area. It is a requirement of the MPBL that densities must be specified for rezoning to Subdivisional Area, and the densities will be in accordance with the following table:

Densities of Land Zoned Subdivisional Area

Land Unit	Gross Density (dwelling units per hectare)		
	No of units	Area (ha)	Density
Erf 503 Bishopscourt	10	1.17	8.55 du/ha
Erf 511 Bishopscourt	55	3.21	17.13 du/ha
Erf 242 Bishopscourt	86	3.85	22.33 du/ha

This application also involves rezoning of Rem Erf 212 from Agricultural to Open Space 2 (Public Open Space). There is no sense in retaining the existing Agricultural zoning for this property because its intended use is as public open space.



Once the subdivision of land that is zoned Subdivisional Area is confirmed, a deemed zoning applies to individual land units as shown on the plan of subdivision. In terms of this deemed zoning the residential plots on Erf 242 will be zoned Single Residential 1 and these will be used for the establishment of the 86 Claimant houses. The public street will be zoned Transport Zone 2 and the open space will be zoned Open Space 2.

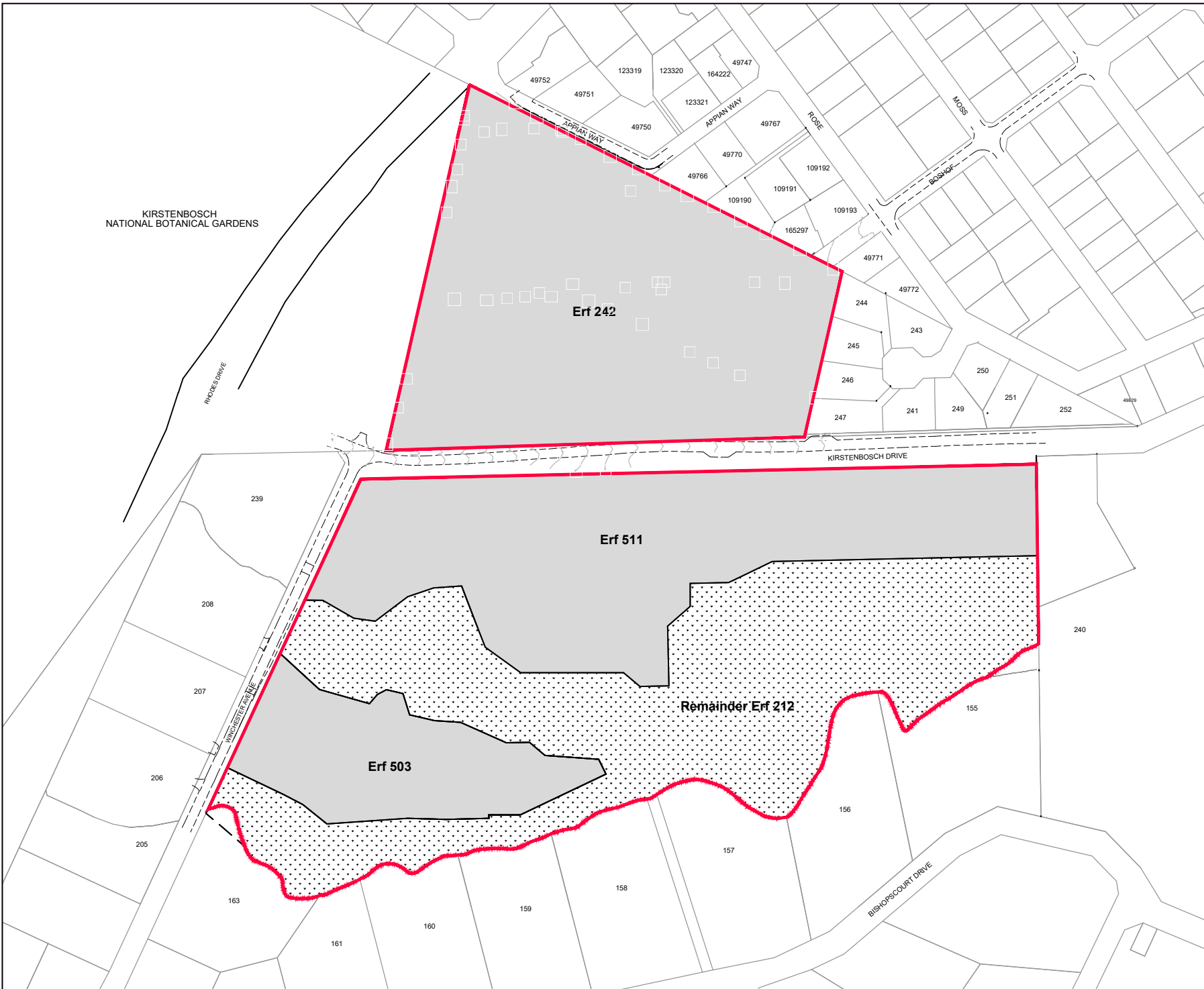
The residential plots and the internal roads on Erven 503 and 511 will be zoned Single Residential 1 and the row house site will be zoned General Residential 1.

9.2.1 Motivation for Rezoning

General motivation in terms of the principles of the National Spatial Land Use Management Act (SPLUMA) and Land Use Planning Act (LUPA) is provided in Section 10. The following specific motivation is provided for rezoning:

**ERF 212
BISHOPSCOURT**

-  Area rezoned to Subdivisional Area Zone
-  Area rezoned to Open Space 2 (Public Open Space)



KIRSTENBOSCH
NATIONAL BOTANICAL GARDENS

Erf 242

Erf 511

Remainder Erf 212

Erf 503

PROTEA VILLAGE

REZONING


SCALE 1:3000

PLANNING
PARTNERS 

NOVEMBER 2021

FIGURE 13

- This is restitution land, which needs to be developed for the CPA members in order for restitution to occur, and rezoning is required to permit development.
- The development plan and consequent zoning responds to the environmental features of the site and requirements of the CPA members. The layout and deemed zoning is a logical and sensible planning solution.
- The zoning is desirable for the reasons set out in this motivation report.
- The zoning is consistent with Council policies as explained in this motivation report.

9.3 Regulation Departures

9.3.1 Schedule 8 Conditions deemed to be Development Rules

The six Schedule 8 Conditions contained in S8/214 that apply to Erf 242 Bishopscourt are reproduced below.

1. The height of any building or buildings erected on the property concerned shall not exceed two storeys.
2. Not more than 60 Dwelling Units shall be erected on the property concerned.
3. No trees on the property concerned shall be destroyed or removed without the prior written consent of the City Engineer.
4. Before developing the property, the owner shall submit plans prepared by suitably qualified professional persons showing details of roofing, façade treatment, grading, drainage, paving and the landscaping of all areas not built upon to the satisfaction of the City Engineer.
5. All areas not built upon shall be landscaped, planted and maintained by the owners to the satisfaction of the City Engineer.
6. Vehicular access to and from the property concerned shall be to the satisfaction of the City Engineer.

It is not necessary to depart from Condition 1, as dwelling houses will not exceed two storeys.

Application is made in terms of Section 42(b) for a permanent departure from Conditions 2 to 6 the aforementioned conditions, as discussed below.

9.3.2 Motivation for the Regulation Departure

Motivation for the regulation departure applicable to Conditions 3, 4, 5 and 6 are dealt with separately from the motivation for the departure applicable to Condition 2.

- (a) The regulation departure applied for regarding conditions 3 to 6, should be granted for the following reasons:

The office of the City Engineer no longer exists and his functions have now been assigned in terms of the City of Cape Town's current administrative structure and system of delegations.

- Condition 3: Following on two tree studies conducted as part of the application by a landscape architect and arborist respectively, conservation worthy trees have been identified and presented in Figure 6.
- Condition 4: Contingent on the approval of this composite application, Building Plans will be submitted by registered architects, in accordance with a defined set of architectural guidelines and in terms of a common architectural theme that will

guide construction of homes on Erf 242. Figure 2 illustrates the landscape intent for the property.

- Condition 5: Landscaping of the site is described in Section 8.2 of this submission.
- Condition 6: A comprehensive Traffic Impact Assessment (enclosed in Annexure 8) supports the application, including consideration to the proposed access to the site.

Conditions 3 to 6, contained in S8/214 are superfluous, cumbersome to administer, and represent an unnecessary additional level of control that will be replaced with appropriate conditions of approval, contingent on the approval of this composite application.

No member of the public, adjoining neighbour or the Municipality will be negatively affected by the granting of this departure.

Application is made to depart from Conditions 2 to 6 in their entirety and for Council to impose appropriate conditions as may be required to control and manage the development of Erf 242, Bishopscourt, in terms of Section 42(b) of the MPBL.

- (b) The regulation departure applied for regarding Condition 2 should be granted for the following reasons:

The main purpose of this application is to restore the property to and facilitate the creation of 86 properties for the return and occupation of a community who were dispossessed of their land and homes during the Apartheid Era, on Erf 242, Bishopscourt.

Maintaining the limitation of 60 dwelling units would prevent some of the families the right to return to their land based on a use restriction imposed after their dispossession.

The layout and design of the internal subdivision of Erf 242 has been the subject of an exhaustive environmental and planning process, which has taken the site features, context potential impacts on adjoining properties and broader public into account. This included applying the various municipal policies, including the MSDF, District Plan, Densification Policy etc. to Erf 242, Bishopscourt as set out in Section 4 of this motivation report.

The development proposals for Erf 242 are well aligned with these planning instruments and policies, and there is no compelling reason to limit the number of dwelling units to be accommodated on Erf 242, to 60. In addition, the development of Erf 242 will be done in accordance with a defined set of architectural guidelines and be developed in terms of a common architectural theme that will guide construction of the 86 single residential properties to be created.

Based on the information presented in this application, there is no valid reason to justify the 60 dwelling unit limitation in this instance. Maintaining it, will prevent the proper intent of the land claim restitution.

Application is therefore made to depart from the Schedule 8 condition to permit the creation of 86 single residential properties on Erf 242, Bishopscourt in terms of Section 42(b) of the MPBL.

9.4 Subdivision

9.4.1 Subdivision of Erf 511 Bishopscourt

As previously stated, subdivision of Erf 212 has been approved to create two portions (Erven 503 and 511) and a Remainder. **Figure 14** shows this approved subdivision superimposed on an aerial photograph. This illustrates the extensive public open space component that will be retained and how the streams form an essential part of the public open space. It also depicts the development area which will be further subdivided.

Application is hereby made to subdivide Erf 511 Bishopscourt into intermediate land units, which will then be further subdivided into the final residential erven planned for the project. The first step is shown in **Figure 15**, which is a “block subdivision” of Erf 511. It is probable that the different components will be developed and marketed in phases. For example, the medium sized residential erven on Erf 511 (unregistered erf 513) may be sold off first because there is an expected market demand and this will generate required cash flow. By contrast the Mews development on unregistered Erf 514 is likely to be developed at a later stage once more detailed design has been undertaken in response to a targeted marketing campaign. Separate erven for these separate components will facilitate this phased process.

Note that a public street portion has been created, (unregistered Erf 515) which will provide access to the public open space, and also access to the future residential developments on either side. Parking for the public open space and riverine system will be provided on unregistered Erf 516. Both the public street and public open space portions will be transferred to the City of Cape Town. Erven 515 and 516 will accommodate stormwater pipes that lead stormwater from Erf 242 and other parts of the development to the stormwater detention ponds that will be installed on Rem Erf 212.

9.4.2 Subdivision of Erven 512 and 513 Bishopscourt

The next step in the subdivision process is depicted in **Figure 16**. This involves the internal subdivision of unregistered Erven 512 and 513.

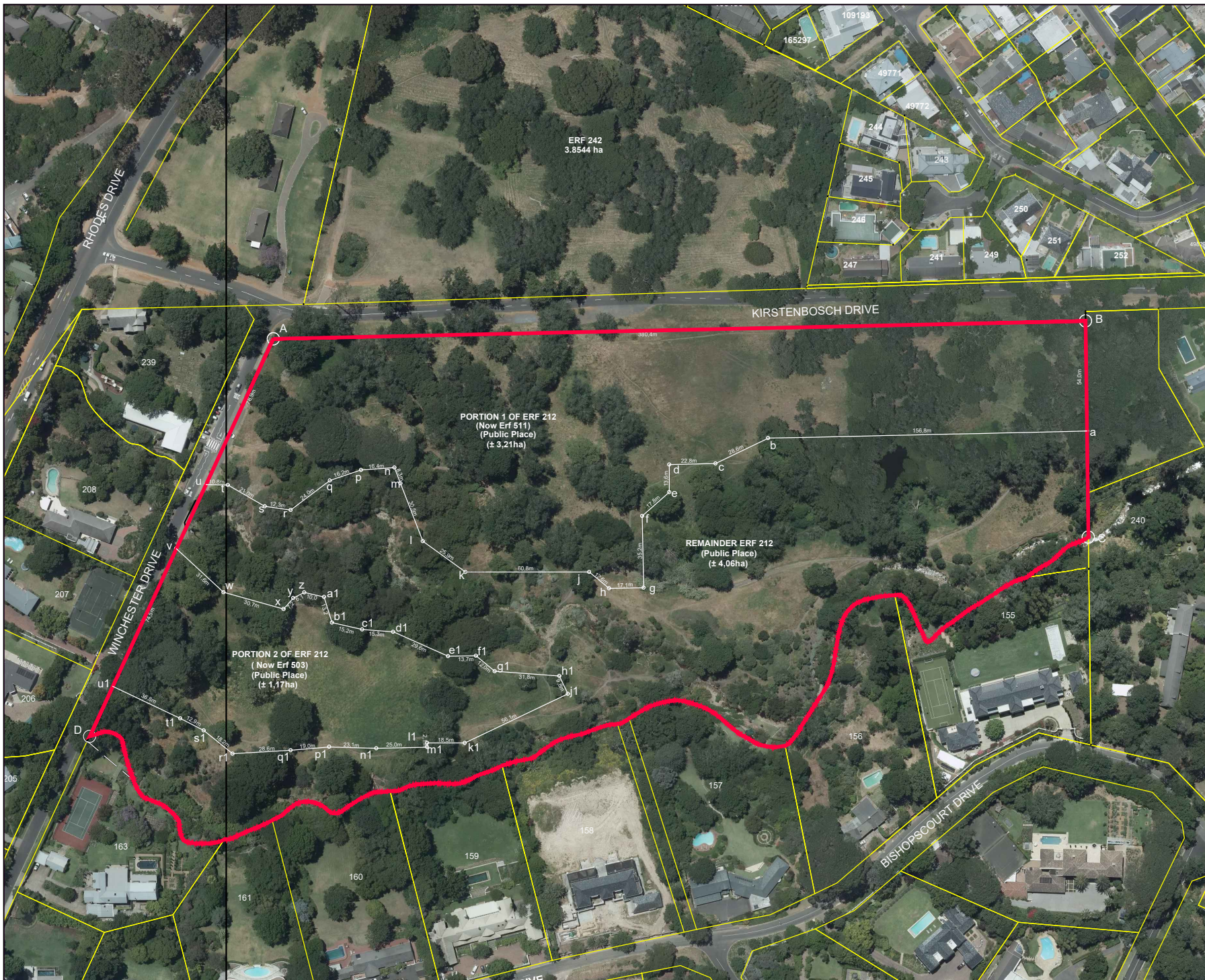
An enclave of 5 large residential erven is located on unregistered Erf 512, accessed by a short cul de sac from Winchester Drive, and the erf boundaries respond to the stream setback requirements as defined in the environmental process. Necessary stormwater and sewer servitudes are incorporated in the plan of subdivision. The residential plots and access road will have a deemed zoning of Single Residential 1.

Erf 513 will be subdivided to create the lifestyle village. The entrance is via the public road to be established on unregistered Erf 515 which leads from Kirstenbosch Drive. An access control gate will be established at the entrance, and this will lead into a private road that branches into two spurs and that connect with the individual residential plots. The internal culs de sac are appropriate because vehicles will move slowly and there will be no extraneous traffic. An electrical substation site is provided at the entrance.

The medium sized plots are predominantly 500m² in extent, with some smaller and some larger plots. Provision is made for a total of 28 medium sized plots. Only low walls and fences will be permitted alongside the internal street and gardens will be encouraged to merge with the planted verges of the road reserve. In this way a more open feel will be created along the internal roads. In terms of the subdivision shown in **Figure 16**, the residential plots will have a deemed zoning of Single Residential 1, and the internal roads and common property will be zoned Open Space 3.

Access to the mews development on unregistered Erf 514 will be via the public road to be established on unregistered Erf 515 which leads from Kirstenbosch Drive. This property



**SUBDIVISION OF
ERF 212
BISHOPSCOURT**



- NOTES:**
1. The Figure ABC middle of river D represent Erf 212 Bishopscourt which measures ± 8,44ha in extent vide Dgm 1581 / 1965 annexed to D / T 1974 --33794
 2. The middle of the river has been drawn from General Plan 1013LD vide Dgm 11863 / 1952 and not surveyed.
 3. The Figure ABabcdefghijklmnopqrstu represents Portion 1 of Erf 212 (Now Erf 511) Bishopscourt.
 4. The Figure vwxyza1b1c1d1e1f1g1h1j1k1l1m1n1p1q1r1s1t1u represents Portion 2 of Erf 212 (Now Erf 503) Bishopscourt
 5. All areas and dimensions are approximate.

— BOUNDARY OF ERF 212

**SUBDIVISION OF ERF 212
BISHOPSCOURT**

 SCALE 1:2500	 PLANNING PARTNERS
SEPTEMBER 2020	Figure 14

**INTERNAL SUBDIVISION OF
ERF 511
BISHOPSCOURT**

Colour		Zoning	Use
	512	Subdivisional Area	5 Residential Erven
	513	Subdivisional Area	28 Residential Erven
	514	General Residential 1	22 Group Housing Units
	515	Transport 2	Public Street
	516 Rem 212	Open Space 2	Public Open Space

NOTES:

1. The Figure ABAbcdefghjklmnopqrstu represents Erf 511 Bishopscourt which measures ± 3,21ha in extent
2. Erf 511 Bishopscourt shall be subdivided and the subdivisions shall have the deemed zoning as shown.
3. All portions will be individually accessed from relevant street frontage.
4. All areas and dimensions are approximate.

Proposed access point

Approximate position of existing access point

BLOCK SUBDIVISION

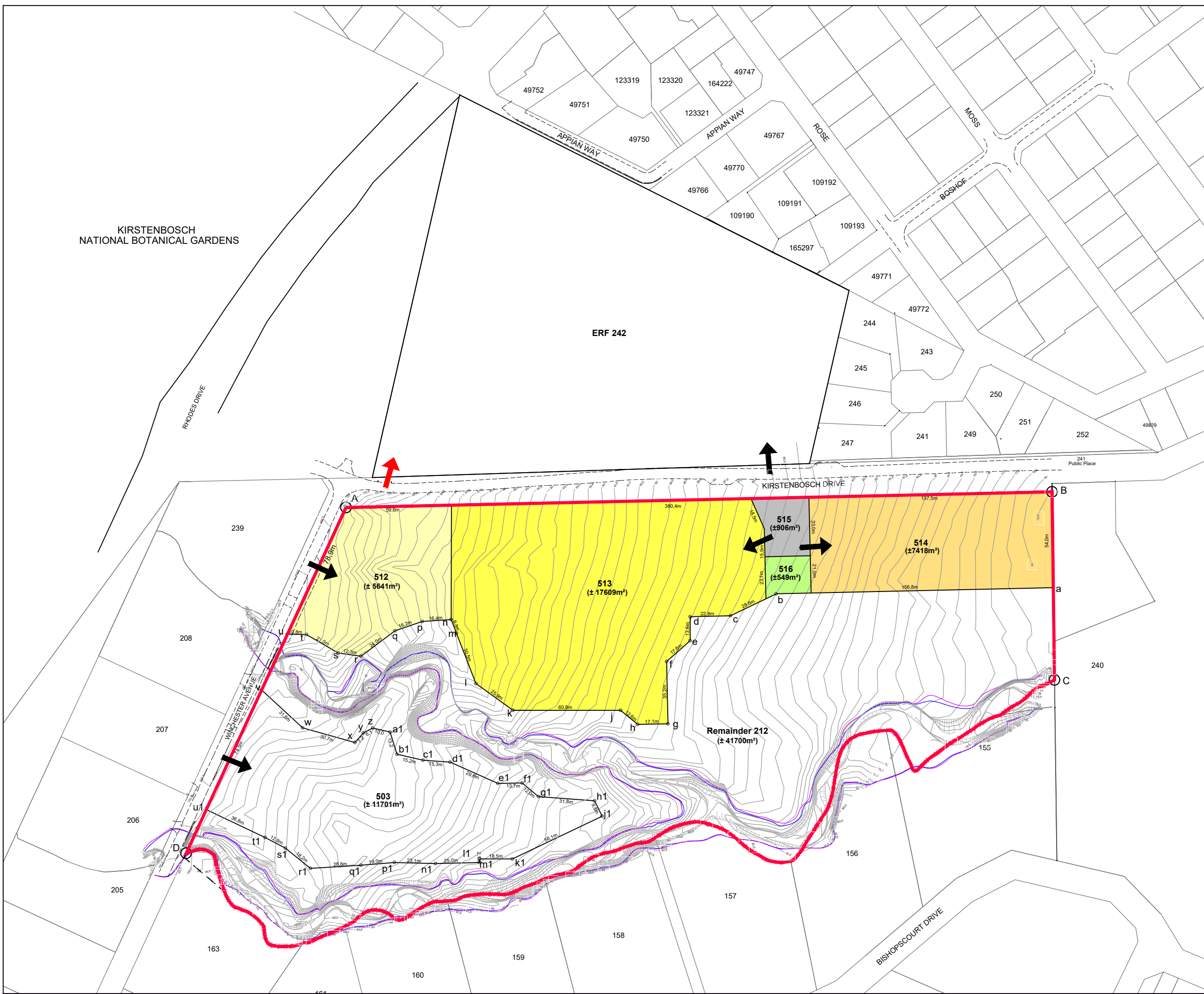


SCALE 1:2000

NOVEMBER 2021



Figure 15



KIRSTENBOSCH
NATIONAL BOTANICAL GARDENS

ERF 242

Remainder 212
(± 41700m²)

512
(± 5641m²)

513
(± 17609m²)

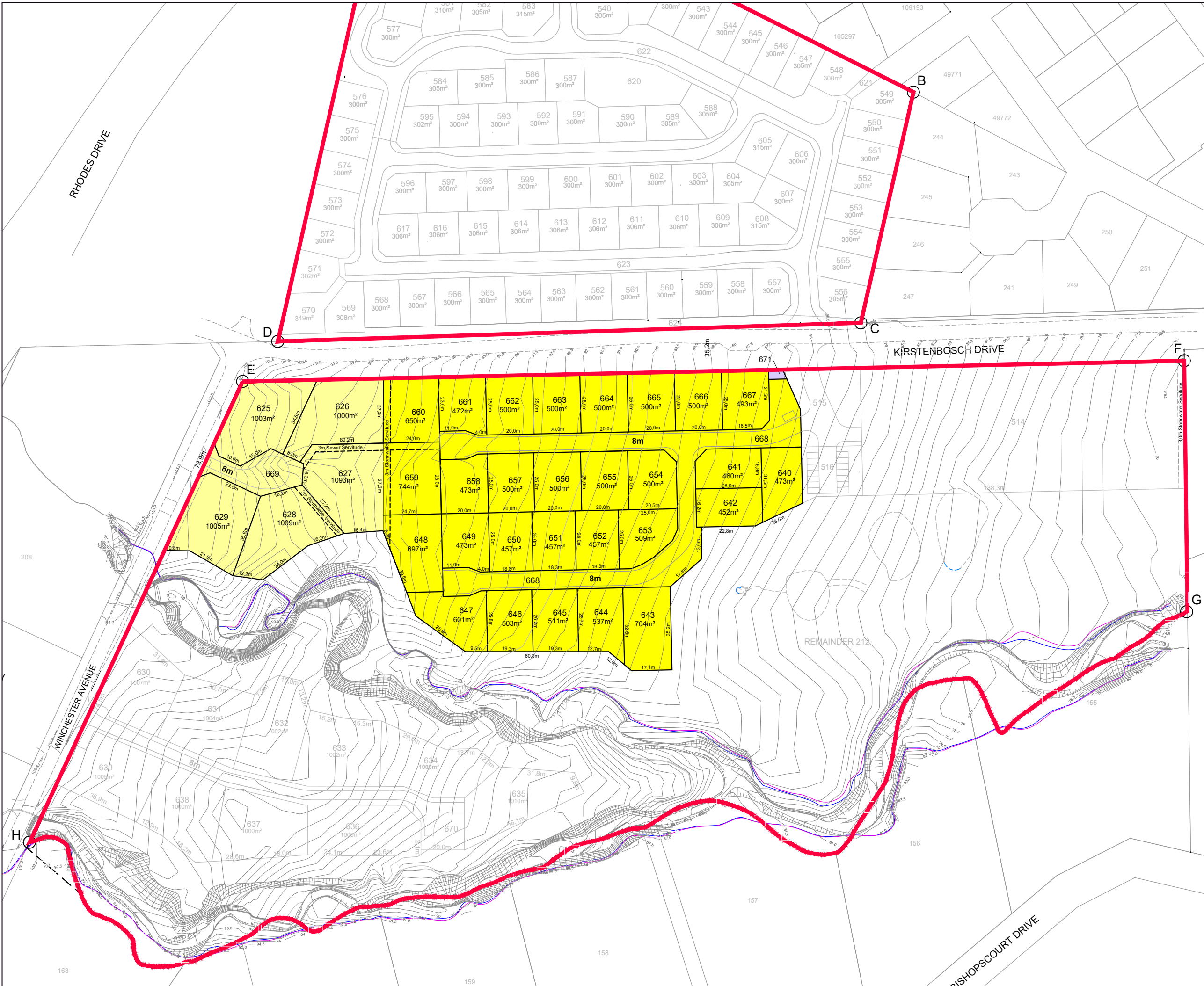
515
(± 906m²)

516
(± 549m²)

514
(± 7418m²)

503
(± 11701m²)

INTERNAL SUBDIVISION OF ERVEN 512 & 513 BISHOPSCOURT



ERVEN 512 & 513

Colour	Zoning	Land Use	Portion No.	No. Erven	Area (ha)	% of Area
Yellow	Single Residential 1	Residential	625 - 629	5	0,51	22
Yellow	Single Residential 1	Residential	640 - 667	28	1,47	63
Yellow	Single Residential 1	Private Road	668 - 669	2	0,35	15
Purple	Utility	Electrical Substation	671	1	-	-
				36	2,33	100

1. All portions will be individually accessed from relevant street frontage.
2. All areas and dimensions are approximate.

PROTEA VILLAGE

PROPOSED SUBDIVISION

SCALE 1:1500



NOVEMBER 2021

Figure 16

retains the zone of General Residential 1 that was established in terms of the block subdivision, and will not be further subdivided at this stage. The cadastral boundaries of the internal subdivision will need to respond to the detailed architectural design of the houses, which has not yet been finalised. It is also possible that the town houses may be developed as a sectional title scheme, and internal subdivision may not be required.

9.4.3 Subdivision of Erf 503 Bishopscourt

An enclave of 10 large residential erven is located on Erf 503, accessed by a short cul de sac from Winchester Drive. The erf boundaries respond to the stream setback requirements as defined in the environmental process, and a sewer pump station will be located in the private road reserve at the end of the cul de sac. The residential plots and access road will have a deemed zoning of Single Residential 1.

Figure 17 depicts the subdivision of Erf 503. This subdivision plan is kept separate from the other subdivision plans because it is anticipated that development of Erf 503 will not take place during the initial stages. The market for large properties is currently limited and focus will initially be on the other parts of the development where servicing can be efficiently provided.

9.4.4 Subdivision of Erf 242 Bishopscourt

Erf 242 Bishopscourt will be subdivided to accommodate 86 single residential erven for the 86 Claimant families, with associated public street and public open space. The average size of erven will be approximately 300m², and the CPA members will each have approximately equal size erven. **Figure 18** shows the proposed subdivision of Erf 242.

The main access is from Kirstenbosch Drive, and a strip of land on the northern side of this Drive has been created as additional road reserve. In this strip there are a number of established oak trees which help to create a sylvian character for the road. Widening the road reserve as proposed will help to preserve these trees.

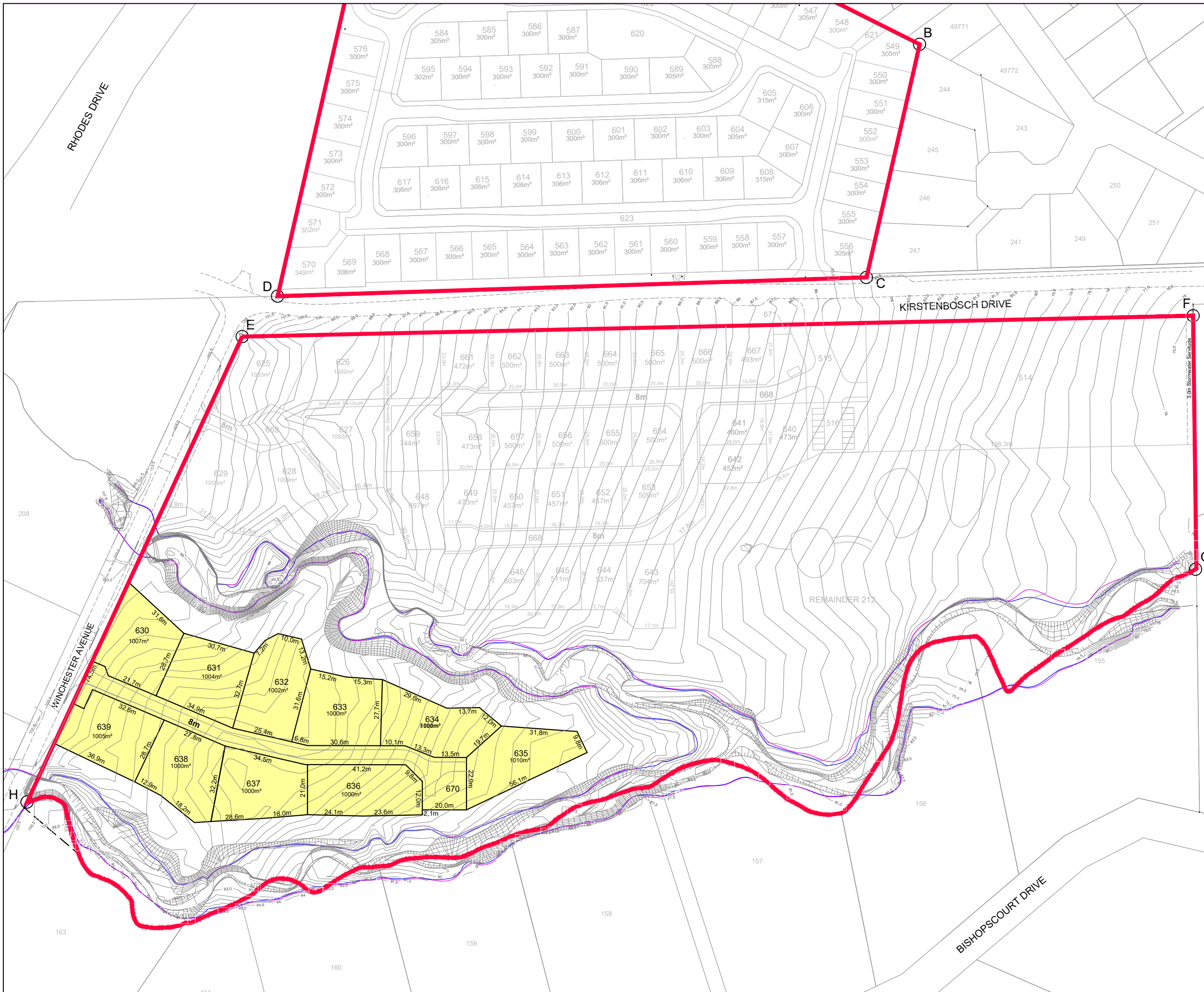
The internal roads will be public streets and the road reserves have irregular shapes in order to accommodate existing trees. Three pocket parks are provided for use by the community and these are located at sites where there is a significant cluster of trees worthy of retention. One of the internal roads runs adjacent to the boundary of the stone cottages in order to facilitate access by the CPA members to these cottages. A pedestrian gate will connect the cottages and the Claimant's village. This arrangement also promotes a more attractive interface because houses fronting the road will face towards the cottages. A fourth open space is provided in the north eastern corner to accommodate a stormwater overflow. This is designed to take any overflow into the stormwater system along Boshoff Road.

9.4.5 Motivation for Subdivision

General motivation in terms of the principles of the National Spatial Land Use Management Act (SPLUMA) and Land Use Planning Act (LUPA) is provided in Section 10. The following specific motivation is provided for subdivision:

- This is restitution land, which needs to be developed for the 86 CPA members in order for restitution to occur, and subdivision is required to permit development.
- The development plan and consequent subdivision responds to the environmental features of the site and requirements of the CPA members. The layout is a logical and sensible planning solution.
- The subdivision is desirable for the reasons set out in this motivation report.

INTERNAL SUBDIVISION OF ERF 503 BISHOPSCOURT



ERF 503

Colour	Zoning	Land Use	Portion No	No. Erven	Area (ha)	% of Area
Yellow	Single Residential 1	Residential	630 - 639	10	1,00	85
Yellow	Single Residential 1	Private Road Utility Services	670	1	0,17	15
Total				11	1,17	100

1. All portions will be individually accessed from relevant street frontage.
2. All areas and dimensions are approximate.

PROTEA VILLAGE

PROPOSED SUBDIVISION



SCALE 1:1500



PLANNING PARTNERS

NOVEMBER 2021 **Figure 17**

INTERNAL SUBDIVISION OF ERF 242 BISHOPSCOURT

Colour	Zoning	Land Use	Portion No.	No. Erven	Area (ha)	% of Area
Yellow	Single Residential 1	Residential	1 - 86	86	2,62	68
Light Green	Open Space 2	Public Open Space	87 - 90	4	0,13	3
Grey	Transport 2	Public Street	91 - 93	3	1,10	29
Total					3,85	100

NOTES:

- The figure A B C D represents Erf 242 Bishopscourt being 3.8544 Hectares in extent vide Dgm 9158/1967 annexed to D/T 1968 - - 16735
- All portions will be individually accessed from relevant street frontage.
- All areas and dimensions are approximate.

 BOUNDARY OF ERF 242

SOURCE:

Contours Erf 212 : WP GEOMATICS Nov 2017
Contours Erf 242 : Joubert & Brink 02/08/2018
Cadastral Erf 212 & 242 : dh&a L1184 Oct 2018

PROTEA VILLAGE

**ERF 242
PROPOSED SUBDIVISION**



SCALE 1:1500

NOVEMBER 2021



Figure 18



- The subdivision is consistent with Council policies as explained in this motivation report.

9.4.6 Street Naming and Numbering

The City of Cape Town has a Street Naming & Numbering Policy that must be complied with at the stage of subdivision when streets are created as a consequence of the subdivision. The policy requires that the applicant must select street names that among other, reflect the city's multi-cultural diversity and contribute to community identity and cohesion. The names must not be duplicates of names within a 5km radius of the street to be named and should not be the name of a living person or a deceased person earlier than 5 years of their passing.

Planning Partners has liaised with the City of Cape Town's GIS Branch regarding the road names and numbering of the properties to be created. A list of preferred road names with an alternate for each was sent to the GIS branch, as well as a plan indicating the preferred road names and numbering. The GIS branch indicated the road names shown on **Figure 12** are not duplicated by existing road names in the vicinity, as well as confirming the numbering allocation to the properties depicted on **Figure 12**. The road name theme for the site (parent Erf 242) to the north of Kirstenbosch Drive are based on Protea and Fynbos names, while the road name theme for the site to the south of Kirstenbosch Drive (parent Erf 212) are trees that are endemic to Table Mountain.

E-mail correspondence between Planning Partners and the GIS Section attesting to this is contained in **Annexure 13**.

9.5 Consent Use

The Municipal Planning By-Law makes provision for consent use for utility services and it is necessary to apply for Consent Use for the purpose of a sewerage pump station on a portion on Erf 670. An utility service is permitted with consent on a land unit zoned Single Residential 1 which is to be the deemed zoning of Erf 670. The electrical substation will be installed on Erf 671 at the entrance to the development and will have a deemed zoning of Utility Zone. This type of infrastructure is a primary use in this zone and therefore no consent for it is required. Erf 671 will be transferred to the City of Cape Town, while Erf 670 will be owned by the Home Owners' Association.

9.5.1 Motivation for Consent Use

- The proposed development requires a pump station in order for sewage to be pumped to the municipal network;
- The location of the pump station is appropriate, does not impact on any environmental feature and is easily accessible.

9.6 Servitudes

A number of servitudes are required to accommodate utility services. These are shown on the various plans of subdivision and summarised below:

- 9.6.1 A 3m wide stormwater servitude is provided on unregistered Erf 512 over one of the large residential stands to channel stormwater from these stands to the public open space.
- 9.6.2 A 3m wide sewer servitude is provided on unregistered Erf 512 over one of the large residential stands to channel sewerage from these stands into the sewer network across the lifestyle village.

9.6.3 A 3m wide stormwater servitude will be registered along the western boundary of the lifestyle village.

9.6.4 All private roads shall be utility corridor servitudes. As such they will be able to accommodate any required services such as telecommunications, stormwater, water or sewage infrastructure.

9.7 Phasing

Section 42(e) of the MPBL makes provision for the implementation of a subdivision in phases, and it is probable that the project will be implemented in phases. Internal civil and electrical services will only commence once sufficient pre-sales have been achieved to secure sufficient funds for the applicable project. Finalisation of services and clearance for transfer is expected to take place in phases.

Figure 19 is a plan depicting the proposed phasing of development, **Figure 20** depicts the combined engineering services drawing as prepared by the project civil engineer and includes water, sewer, sleeves, stormwater and electrical services, while **Figure 21** provides 6 possible scenarios regarding the estimated timeline for the completion of the entire subdivision. **Figures 19, 20** and **21** are to be read in unison as together they provide the information required in terms of the MPBL pertaining to a phasing plan. In all circumstances the priority is to develop the CPA members' village as soon as possible and transfer the individual erven to the eligible CPA members. This can only occur once houses are built and these can only commence once sufficient funding has been generated from pre-sales of the other components of the project.

10. MOTIVATION FOR THE DEVELOPMENT IN TERMS OF PLANNING LEGISLATION

10.1 Motivation in terms of Land Use Planning Act

Land use planning principles guide decisions about the sustainable utilisation and development of land. The Land Use Planning Act (LUPA) and Spatial Planning and Land Use Management Act (SPLUMA) list these principles and it is necessary for the proposed development to incorporate and comply with the principles where applicable. Relevant land use principles are discussed below:

10.1.1 Spatial Justice

This project reflects spatial justice because it is a restitution project. It will result in people who were previously forcibly removed, returning to the land and owning their own homes.

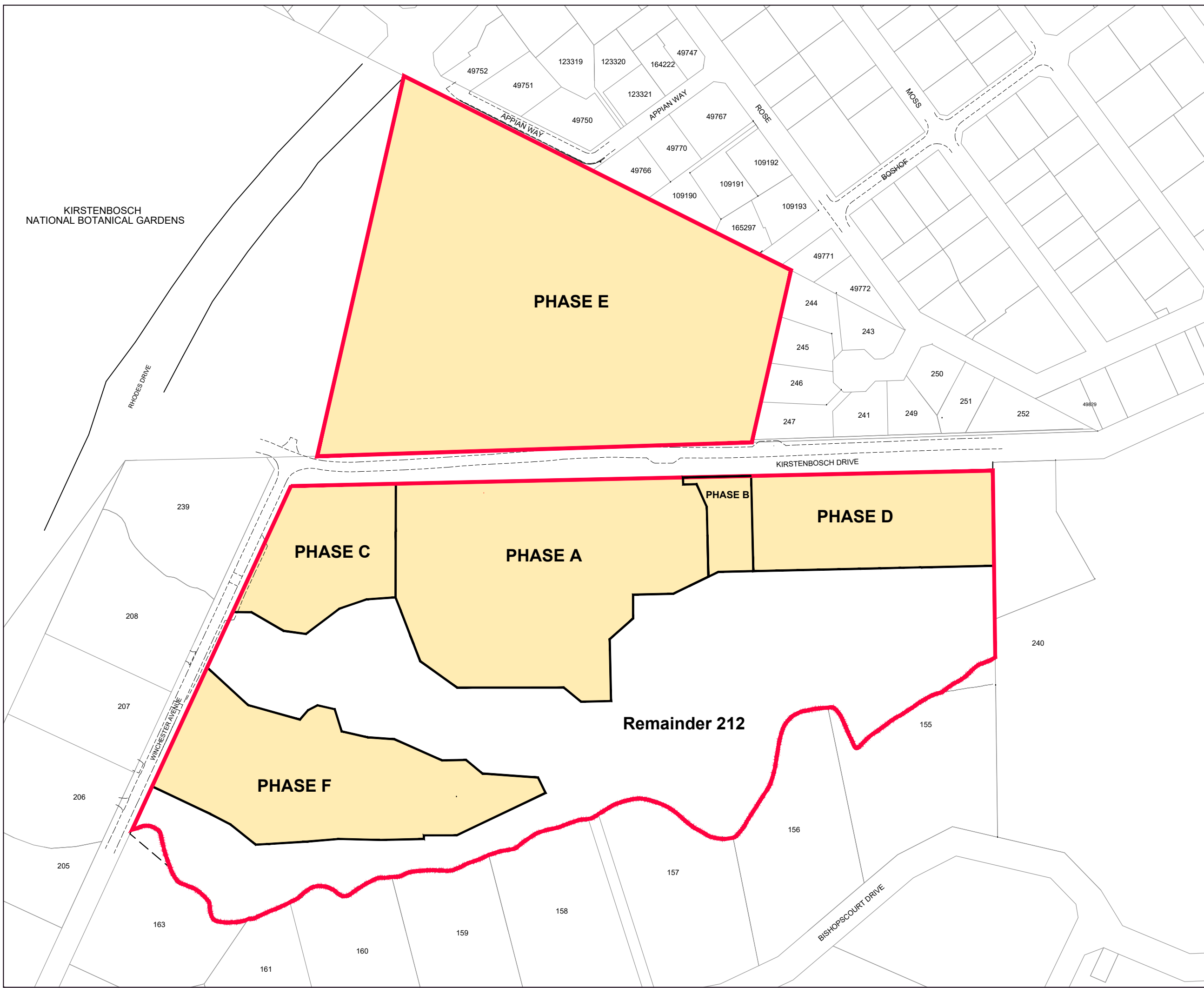
10.1.2 Spatial Sustainability

Development will occur within an established residential area that has existing services connections. The development sites are undergoing a Basic Assessment and a suitable and appropriate development proposal has emerged from the environmental investigations.

10.1.3 Efficiency

The project makes use of well-located suitable land identified for medium density development. Existing service infrastructure is available and has capacity. Connections to the surrounding road network are good. Local community facilities are available and easily accessible.

**ERF 212 & 242
BISHOPSCOURT**



KIRSTENBOSCH
NATIONAL BOTANICAL GARDENS

NOTES:

1. This plan must be read in conjunction with Figure 20 and 21.
2. Estimated timeline for the completion of the entire subdivision = refer to Figure 21.
3. Engineering services to Engineer's standards and to the satisfaction of the City's Engineers and other service branches.
4. Internal civil and electrical services to be installed to the Engineer's satisfaction and in accordance with approved Engineering services drawings.
5. City of Cape Town to provide bulk and link civil and electrical services and to ensure that this does not withhold or delay the granting of certificates contemplated in section 137 of the MPBL.
6. Engineering services indicated on Figure 20.
7. Mitigating measures to be implemented as per approved EMP.

PROTEA VILLAGE

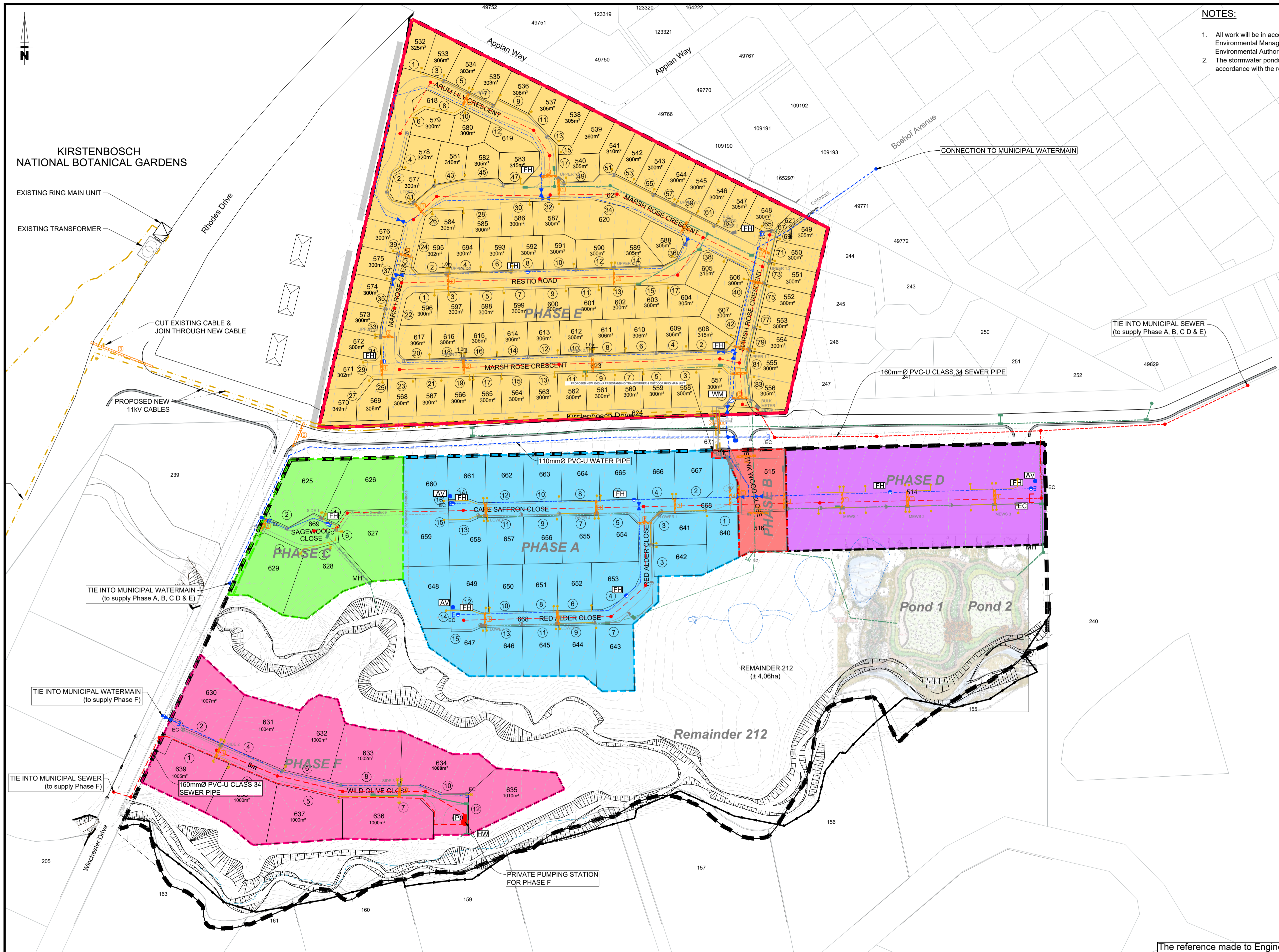
PHASING PLAN

SCALE 1:2000



NOVEMBER 2021

FIGURE 19



- NOTES:**
- All work will be in accordance with the approved Environmental Management Programme and Environmental Authorisation.
 - The stormwater ponds will be constructed in accordance with the requirements of the SWMP.

LEGEND

PROPOSED SERVICES

- PHASE A
- PHASE B
- PHASE C
- PHASE D
- PHASE E
- PHASE F

- SIDEWALK
- STORMWATER CATCHPIT
- STORMWATER MANHOLE
- STORMWATER HEADWALL
- STORMWATER PIPE
- SEWER MANHOLE
- SEWER PIPELINE
- WATER VALVE
- WATER END CAP
- WATER METER
- WATER PIPELINE

MEDIUM VOLTAGE LEGEND

DESCRIPTION	NEW	EXISTING
1000kVA MINIATURE SUBSTATION		
POLE-MOUNTED TRANSFORMER		
RING-MAIN UNIT		
MEDIUM VOLTAGE CABLE		
CABLE JOINTS		

NOTES

- ALL CABLES SHOWN ARE OF SPEC. SANS TABLE 17 120mm² x 3C Alu MINIATURE SUBSTATION TO CONSIST OF 1000kVA FREESTANDING TRANSFORMER AND OUTDOOR RING-MAIN UNIT

LOW VOLTAGE LEGEND

DESCRIPTION	NEW	EXISTING
1000kVA MINIATURE SUBSTATION		
POLE-MOUNTED TRANSFORMER		
RING-MAIN UNIT		
9-WAY DISTRIBUTION KIOSK/COCT METER BOARD		
LOW VOLTAGE CABLE		

NOTES

- ALL CABLES TO BE TYPE: PVC SWA PVC PVC 4C COPPER ALL RELEVANT CABLE SIZES SHOWN ON DRAWING

ELECTRICAL CONSUMERS LEGEND

DESCRIPTION	NEW	EXISTING
1000kVA MINIATURE SUBSTATION		
POLE-MOUNTED TRANSFORMER		
RING-MAIN UNIT		
9-WAY DISTRIBUTION KIOSK		
SINGLE-PHASE CONSUMER CONNECTION		
THREE-PHASE CONSUMER CONNECTION		
CONSUMER CABLE		

NOTES

- ALL CONSUMER CABLE TO BE TYPE: PVC SWA PVC PVC 16mm² x 2C Cu

STREETLIGHTING LEGEND

DESCRIPTION	NEW	EXISTING
1000kVA MINIATURE SUBSTATION		
POLE-MOUNTED TRANSFORMER		
RING-MAIN UNIT		
BULK METER KIOSK/COCT METER BOARD		
PUBLIC STREETLIGHT		
STREETLIGHT CABLE		
PRIVATE STREETLIGHT		

NOTES

- PUBLIC STREETLIGHT SPEC: BEKA 37W LED LUME ON 6m MH POLE
- STREETLIGHT CABLE TO BE OF TYPE: 25mm² x 4C Alu
- PRIVATE STREETLIGHT SPEC: BEKA 43W ZELA ON 4m MH POLE

ELECTRICAL SLEEVES LEGEND

DESCRIPTION	NEW	EXISTING
110mm Ø PVC SLEEVE		
160mm Ø PVC SLEEVE		
110mm Ø PVC SLEEVE (RAMBORE)		
160mm Ø PVC SLEEVE (RAMBORE)		

NOTES

- 2 - INDICATES NO. OF SLEEVES TO BE INSTALLED AT SPECIFIED POSITION

The reference made to Engineer will also refer to Employer's Agent for GCC 2015 Contracts

SCALEBAR

0 10 20 30 40 50 m

Scale 1:1000

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All dimensions must be verified on site before the works commence. Refer any discrepancies to the Engineer.

REV	DESCRIPTION	DATE	REV BY	CHKD
A	FOR INFORMATION		A	A A A

REVISIONS

DESIGNED	JB
DRAWN	JB
CHECKED	MF

CONSULTING ENGINEERS

LYNERS

PO Box 4901
TYGERVALLEY
7530

Tel: 021 914 0300/Fax: 021 914 0437
email: bellville@lyniers.co.za

APPROVED

ENGINEERS: _____

DATE: 2021-11-03

APPROVED

CLIENT: _____

DATE: _____

CLIENT

PROJECT

TITLE

PROTEA VILLAGE BISHOPS COURT **20**

PROPOSED ENGINEERING SERVICES AND PHASING LAYOUT

Layout 2019-08-13

SCALE on A1	SHEET
1:1000	1 OF 1
CONTRACT No.	PROJECT No.
	15108
DRAWING No.	REV
15108-C-000-10	A
COORDINATE SYSTEM:	

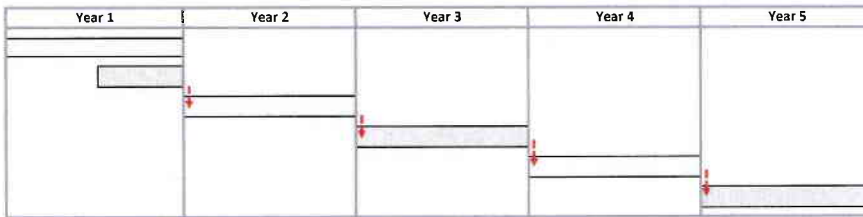
Protea Village | Indicative Phasing Plan

To be read in conjunction with "Figure 19 _ Phasing Plan: November 2021"

Errors & Omissions Excepted

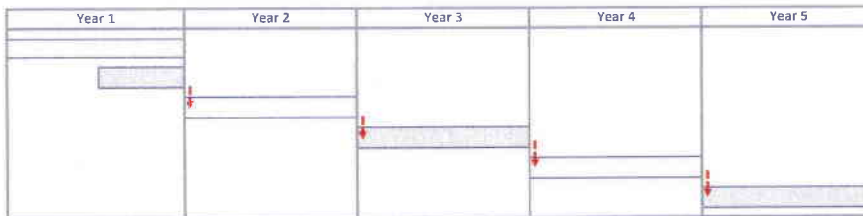
Scenario ①

- 1 Phase A
- 2 Phase B
- 3 Phase C
- 4 Phase D
- 5 Phase E
- 6 Phase F



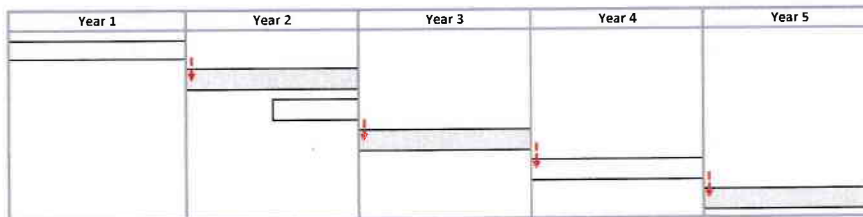
Scenario ②

- 1 Phase A
- 2 Phase B
- 3 Phase D
- 4 Phase C
- 5 Phase E
- 6 Phase F



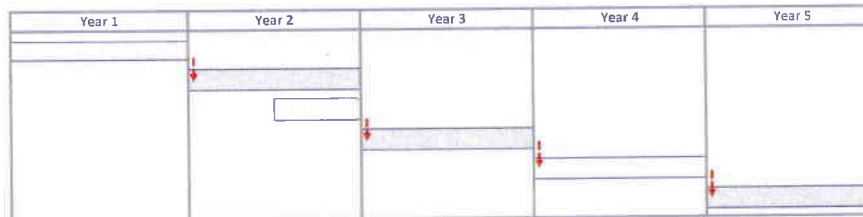
Scenario ③

- 1 Phase C
- 2 Phase A
- 3 Phase B
- 4 Phase D
- 5 Phase E
- 6 Phase F



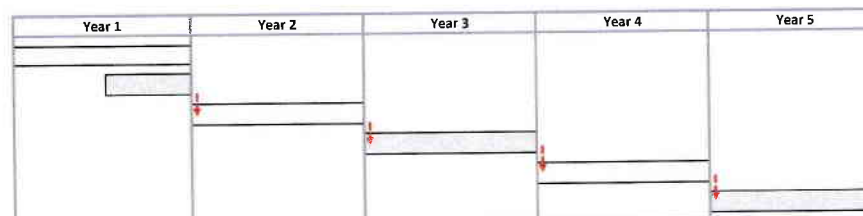
Scenario ④

- 1 Phase C
- 2 Phase D
- 3 Phase B
- 4 Phase A
- 5 Phase E
- 6 Phase F



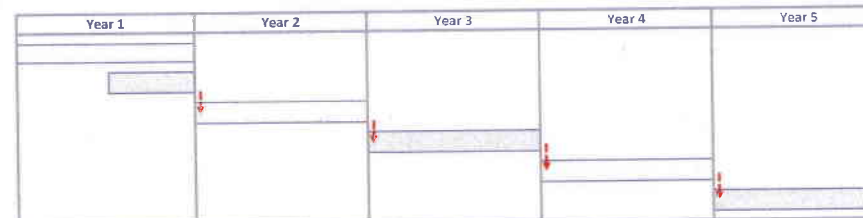
Scenario ⑤

- 1 Phase D
- 2 Phase B
- 3 Phase C
- 4 Phase A
- 5 Phase E
- 6 Phase F



Scenario ⑥

- 1 Phase D
- 2 Phase B
- 3 Phase A
- 4 Phase C
- 5 Phase E
- 6 Phase F



Notes:

- 1) The Engineering Services for each phase will be able to function independently and in sequence for each scenario - to be read in conjunction with Figure 20.
- 2) The Phasing Plan will be implemented in response to Market requirements and feedback.
- 3) The Phasing Plan will be implemented in response to provision of Bulk & Link Services by City of Cape Town.
- 4) The proposed timeline for completion of the entire subdivision is estimated at 5-years post-approval.
- 5) Where possible, the proposed timeline for the Phasing Plan will be expedited.

10.1.4 Good Administration

The required statutory processes have thus far been complied with and this application is another step in the process to implement the project.

10.1.5 Spatial Resilience

The project will enable a community that was previously displaced, to return and live in a sustainable manner.

10.2 Motivation in terms of the Municipal Planning By-law

Section 99 of the MPBL provides guidance about matters which must be considered when an application comes before Council. The various criteria are applied to the application.

10.2.1 Minimum Requirements for an Application

(i) Consistent with the Cape Town Spatial Development Framework

The site is located within an area designated as "Consolidation Area". In terms of the MSDF this is an area where the City is committed to servicing existing communities and where new development will be permitted subject to infrastructure capacity. The proposed development is therefore consistent with the MSDF and a deviation from it is not required.

(ii) Impact of Permanent Departure(s)

Departures from the 6 Schedule 8 conditions which are deemed to be part of the Development Rules of the DMS.

One of the conditions restricts the number of dwellings to 60 and was imposed on the site after the beneficiary community was dispossessed. It prevents the development of Erf 242 as currently proposed, i.e. for 86 single residential properties. It is contended that maintaining the condition would be prejudicial to the land claimants. The potential impacts on adjoining neighbours and the broader public are addressed in the application. The granting of this departure will ensure that an historic injustice can be corrected, while ensuring the equitable application of the City of Cape Town's zoning provisions the 86 single residential erven to be created.

The other 5 could be accommodated, but are no longer aligned with the current administrative structure and system of delegations that apply in the City of Cape Town. Application is therefore made to depart from them and for the City to impose new appropriate conditions of approval as may be required, to ensure the orderly development of the site.

10.2.2 Other Relevant Considerations

(a) Consistent with the Applicable District Spatial Development Framework

Protea Village is situated within the Southern District: Sub-District 2 (Bishopscourt-Constantia-Tokai). The District Plan identifies the overall development site for "Potential Medium Density Development". The proposal is for medium density residential development and will contribute to the objective of increasing density in what is currently a very low-density suburban area. The proposal is therefore consistent with the approval district SDF.

(b) Compliance with the Provisions of the City of Cape Town Development Management Scheme

Currently the subject properties are not zoned in a manner that will permit the proposed development and therefore require rezoning and consent amongst other applications. The General Residential 1, Single Residential 1 and Open Space 2 and 3 zones have been selected from the DMS as the most suitable zones for the proposal because the permitted development parameters of these zones are mostly consistent with the proposal. The DMS further makes provision for a Consent Use, required for the electrical sub-station and sewerage pump station to service the site.

(c) Any applicable policy to guide decision making

There are various planning policies that guide decision making in this instance, including the MSDP, Southern District Plan, Management of Urban Stormwater Impacts, Densification Policy, Gated Community Policy and Urban Design Policy. All of these policies have been considered in relation to the proposal in Section 4 of this application and it is concluded that the proposal is in accordance with the spirit and intent of these policies.

(d) Extent of Desirability

The desirability criteria as contemplated in Section 99(3) have been applied to the proposal. This evaluation is contained in section 9.3 and the proposal is considered to be desirable.

(e) Impact on Existing Rights

The development proposal does not impact on existing rights. While the public has previously had access to the site, the subject properties are not currently public open space. However a large portion will be rezoned to public open space and retained by the City of Cape Town.

(f) Criteria to be taken cognizance of if consolidation is involved

This is not applicable as no land units are to be consolidated.

g) Other considerations prescribed in relevant National or Provincial legislation, including the Development Principles in Section 7 of the Spatial Planning and Land Use Management Act

The proposal is in general compliance with the Development Principles as contained in SPLUMA as demonstrated in Section 10.

(h) Application complies with the requirements of the MPBL

The proposal complies with the requirements of the MPBL and this application is submitted in terms of that By-Law.

10.2.3 Desirability of the Land Use Contemplated

(i) Socio - Economic impact

The development will have a significant positive economic impact for the 86 Members of the Protea Village Communal Property Association. Members will own their own homes which will be valuable assets. Over time Members will be able to access additional finance to use their homes as security. CPA members will be able to move back to the land from which they were removed and once again form a community. The project will contribute to social integration in an area which lacks diversity.

(ii) Compatibility with surrounding land uses

The project involves residential development which is in keeping with the surrounding land uses.

(iii) Impact on the external engineering services

The development will connect to existing external engineering services, which has sufficient capacity. There will be no negative impact on existing services.

(iv) Impact on safety, health and wellbeing of the surrounding community

There will be no negative impact on the safety, health and wellbeing of the surrounding community.

(v) Impact on heritage

The return of the CPA members to the land from which they were forcibly removed is a significant positive heritage impact.

(vi) Impact on the Biophysical environment

The basic environmental assessment has informed the development proposal and setbacks are incorporated from sensitive areas, such as the stream that traverses Erf 212. The sustainability of the system will be maintained with the implementation of the recommended mitigation measures. Existing trees will be retained as far as possible. The current degraded wetland will be upgraded and two stormwater detention ponds will be constructed.

(vii) Traffic impacts, parking, access and other transport related considerations

A traffic impact assessment was undertaken and it was determined that the traffic impact is very modest. A pedestrian walkway that also accommodates a cycle lane is proposed along the southern boundary of Kirstenbosch Drive as well as a bus embayment.

(viii) Whether the imposition of conditions can mitigate an adverse impact of the proposed land use

Council is requested to impose reasonable and sensible conditions.

11. CONCLUSION

The site is restitution land and when it was awarded to the CPA members in 2006, it was always intended to be developed. The type of development, layout and design has been informed by environmental investigations undertaken in terms of the Basic Assessment for Phase 1. The development proposal was further informed by the wishes of the CPA members and the business model has been extensively discussed with the City of Cape Town and the Department of Agriculture, Land Reform and Rural Development

The CPA members will return to live on Erf 242, while the properties on Erven 503 and 511 will be sold or leased to third parties in order to raise finance and cross subsidise the infrastructure and 86 houses for the 86 CPA members. A significant amount of the site will be retained as public open space. This project reflects a great many of the principles from the Spatial Planning and Land Use Management Act and the Land Use Planning Act. It is highly desirable and deserves to be approved speedily so that the CPA members can return home.

**PLANNING PARTNERS
NOVEMBER 2021**