

Date: April 2020 – Rev 3  
Ref: 10554 (Daniel Hellenberg)



## APPLICATION FOR COUNCILS CONSENT: ERF 173848 THORNTON, 7 THOR CIRCLE

### 1. INTRODUCTION AND APPLICATIONS

The purpose of this report is to motivate the applications required to permit a freestanding base telecommunication station on Erf 173848 Thornton ('the property'). The following applications are required in terms of Section 42 of the City of Cape Town's Municipal Planning By-Law, 2015 ('MPBL'):

Section 42(i): Consent in terms of the Development Management Scheme ('DMS')

The following documents are attached to this report:

- Annexure A:** Application Form
- Annexure B:** Copy of the Title Deed
- Annexure C:** Power of Attorney & Resolution
- Annexure D:** SG Diagram
- Annexure E:** Conveyancer's Certificate
- Annexure F:** Site Development Plans
- Annexure G:** Previously Approved Building Plans
- Annexure H:** Environmental Authorisation

### 2. THE PROPERTY

#### 2.1 Ownership and Title Deed

Erf 173848 Thornton is registered in the name of the *HEIDEVELD DEVELOPMENT (PTY) LTD*, measures 7987m<sup>2</sup> in extent, and is held by Deed of Transfer No. T42825/10– see **Annexure B**, attached. The Provincial Government has leased a portion of the property to American Tower Corporation (ATC) South Africa who has duly authorised *Thomas Brian Brummer* to submit the application on behalf of the company; a Power of Attorney and Resolution are attached hereto as **Annexure C**.

## 2.2 Locality

With reference to the **Locality Map**, below, the property is located at Thornton.



*Figure 1: Locality Map*

The **Aerial Photograph**, below, illustrates that the property is situated at Thor Circle.



*Figure 2: Aerial Photograph*

### 2.3 Site particulars

The property is currently improved with a Business Park and a previously approved building plans for a freestanding base telecommunication station. Access to the property is taken from Thor Circle. This part of Thornton is characterised by predominantly Industrial Business area, residential dwelling houses, open space and Cape Town Fresh produce market across Viking Way, as can be seen on the image below.



*Figure 3: Existing character of this part of Thornton*



*Figure 4: The base station in relation to the surrounding built form*

## 2.4 Surveyor General's Diagrams

The **Noting Sheet**, below, indicates the context of the property in relation to the surrounding erven and street network.

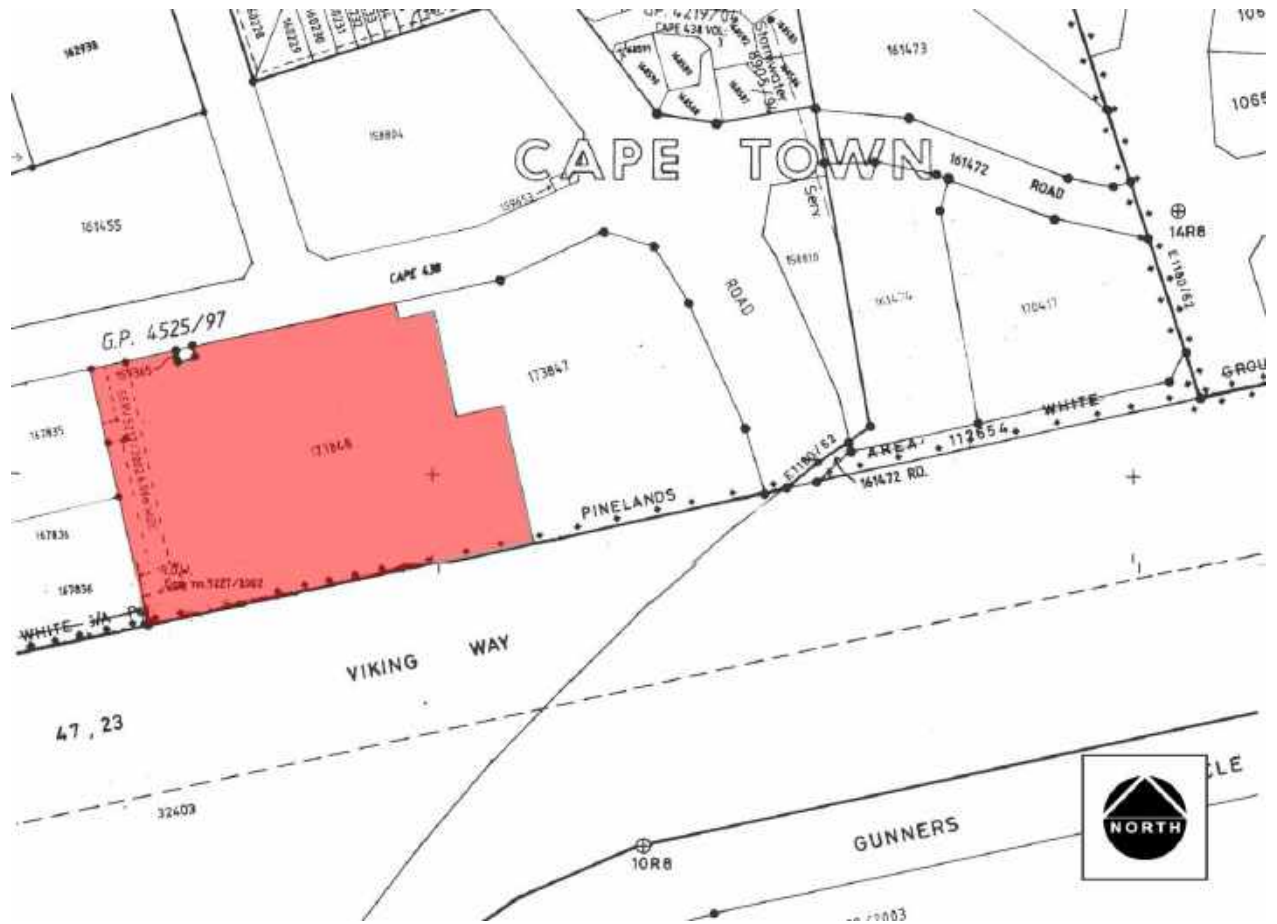
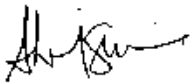
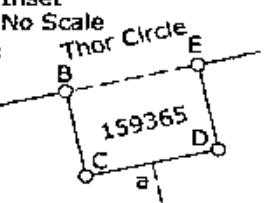
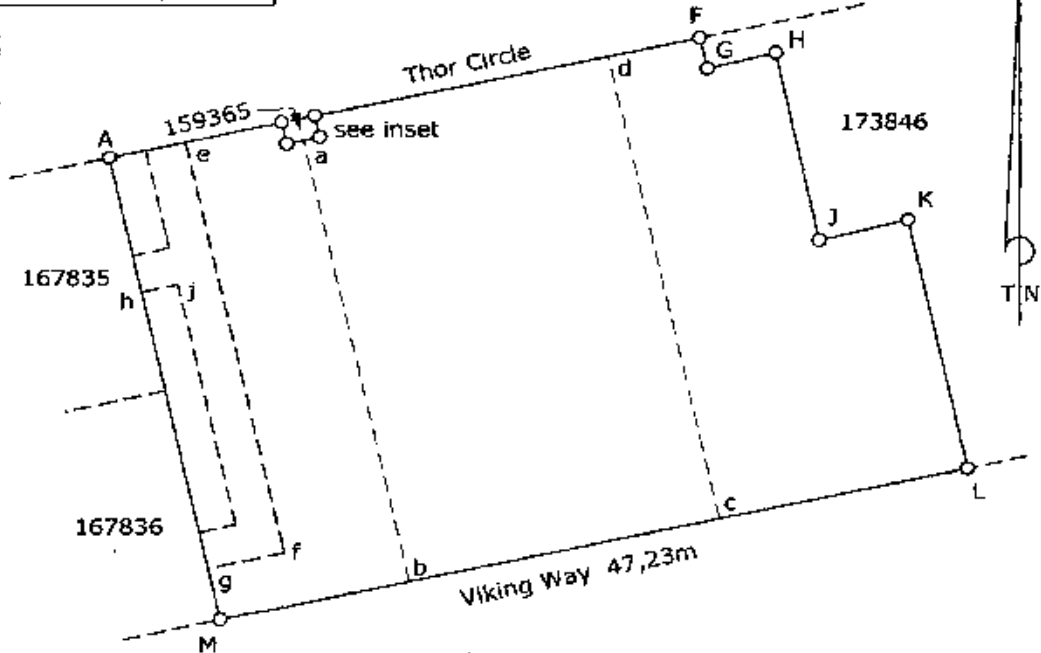



Figure 5: Noting Sheet

The **Surveyor General** (SG No. 2835/2009) for the property that has been obtained from the office of the Surveyor General, a copy of which is attached hereto as **Annexure D**.

**david hellig & abrahamse**  
**professional land surveyors ref L9405**

**OFFICE COPY**

<b>Erf 173848 CAPE TOWN</b>		S.G. No. 2835/2009
<b>Components:</b> 1. The figure A B C a b M represents the Remainder Erf 167834 Cape Town vide Dgm. No. 5214/2002 annexed to D/T 2003 - - 27213 2. The figure a D E d c b represents Erf 158807 Cape Town, vide General Plan 4525/1997 3. The figure d F G H J K L c represents the Remainder Erf 158808 Cape Town, vide Dgm No. 2832/2009 annexed to D/T 2000 - - 59876		Approved  for Surveyor-General 2009.07.07
<b>Inset</b> No Scale 	<b>Servitude Notes:</b> 1. The line e f represents the eastern boundary of a servitude right of way 6,00m wide vide Dgm No. 5227/2002 D/T 2003- -27214 2. The lines f g and h j represent the southern boundaries of a servitude right of way 6,00m wide vide Dgm No. 5227/2002 D/T 2003- -27214	
		
Scale 1: 1000 The figure A B C D E F G H J K L M represents 7987 Square metres of land, being <b>Erf 173848 CAPE TOWN (comprising 1 - 3 above)</b> Situate at Epping in the City of Cape Town Province of the Western Cape Administrative District of Cape Compiled in May 2009		
by me  R.C. Abrahamse (PLS0002) Professional Land Surveyor		
This diagram is annexed to No. <u>142825/2010</u> dated i.f.o. Registrar of Deeds	The original diagram are as quoted above	File No. CAPE 438 Vol. 3 CAPE 438 Vol. 4 S.R. No. Compiled Comp. BHSX-2322(M851) Gen. Plan. 4525/1997 LPI C0160007

173848 Cape Town

Figure 6: SG Diagram

## 2.5 Conveyancers Certificate

The Conveyancer's Certificate has been prepared by *Mike Rhodes Collins* from *Cliffe Dekker Hofmeyr Inc* and confirms that there are no restrictive conditions, servitudes or endorsements in the Title Deed prohibiting the proposed use on the property – a copy of the Certificate is attached as **Annexure E**.

## 3. HISTORICAL BACKGROUND

ATC South Africa (Client) bought Cell C's Telecommunication infrastructure for this site in 2011 where Cell C has then shared their information with ATC.

Documentation regarding the Temporary Departure was requested but nothing could be found from Cell C or ATC. A Zoning Certificate was requested from the District Office for the property, hoping to obtain information from the City, but no relevant information could be found.

Building plans were approved in October 2004. It is to be noted that the freestanding base telecommunication station still exists on the property. The current application is to obtain the necessary approval in terms of the current By-Law to permit the existing base station on the property.

## 4. ZONING

### 4.1 Base Zoning

The zoning of properties in Cape Town is controlled by the provisions of the DMS, being Schedule III of the MPBL. Below is an extract of the Council's **Zoning Map** that indicates that the property is zoned Mixed Use sub-zoning 2 (MU2).



Figure 7: Extract of the City of Cape Town's Zoning Map

The following use restrictions apply to a property in this zoning:

- (a) **Primary uses** are business premises, industry, dwelling house, second dwelling, boarding house, flats, place of instruction, place of worship, institution, hospital, place of assembly, place of entertainment, hotel, conference facility, authority use, utility service, rooftop base telecommunication station, transport use, multiple parking garage, private road, filming and open space.
- (b) **Consent uses** are adult shop, adult entertainment business, adult services, informal trading, expo centre, scrap yard, freestanding base telecommunication station, wind turbine infrastructure, helicopter landing pad, service station, recycling centre, veterinary practice and motor repair garage.

With reference to the above, freestanding base telecommunication station is defined in the DMS as follows:

*'freestanding base telecommunication station' means a freestanding support structure on land or anchored to land and used to accommodate telecommunication infrastructure for the transmitting or receiving of electronic communication signals, and may include an access road to such facility.*

#### **4.2 General provisions**

In terms of Item 130 of the DMS, where a base telecommunication station is a primary or consent use the following provisions are applicable:

- (1) A rooftop or freestanding base telecommunication station which may be erected as a primary or consent use in terms of this development management scheme, shall be subject to any relevant requirements of the National Environmental Management Act.
- (2) A rooftop base telecommunication station may not extend more than 3m in height above the part of the building that it is attached to without the prior approval of the City.
- (3) A freestanding base telecommunication station is not subject to the development rules pertaining to height in the applicable base zoning insofar as it does not exceed a maximum height of 25m.

### **5. DEVELOPMENT PROPOSAL**

#### **5.1 Site Development Plans/Proposal**

An application for Council's consent is proposed to permit a freestanding base telecommunication station on the property.

With reference to **Annexure F**, attached, Site Development Plans (SDPs) have been prepared by *Corné Briedenhann*. The proposal can be summarised as follows:

- The proposed structure will comprise the following:
  - 25.0m high cell mast
  - 2x3 Sector antennae
  - 1x6 Sector antenna
  - A 2.4 high palisade fence
  - 1 proposed equipment cabinet and 2 proposed equipment containers
  - 1 existing equipment container
  - Microwave dishes attached to the mast
  - Inspection platforms

- The proposed base station will occupy a portion of property which is measure 168m<sup>2</sup> in extent.
- The base station is enclosed by a palisade fence.
- Access to the site is obtained from Thor Circle.

## **5.2 Development Management Scheme**

The freestanding base telecommunication station is a consent use in the MU2 zone.

### *(a) Floor factor*

The property measures 7987m<sup>2</sup> in extent with a permissible floor factor of 4 (floor space of 31 948m<sup>2</sup>). The existing equipment rooms will not be extended with the existing floor area of 168m<sup>2</sup> the existing building being 3784m<sup>2</sup>. The total floor space is 3806m<sup>2</sup> and complies with Item 64(a) of the DMS.

### *(b) Coverage*

The coverage of the building is 3806m<sup>2</sup> (47%) which complies with the prescribed coverage of 100% as per Item 64(a) of the DMS.

### *(c) Height (The height is controlled by Item 130 (3))*

In terms of Item 64(a) of the DMS, the maximum permissible height of a building shall be measured from the existing ground level of the building to a maximum of 25m to the top of the roof. However, Item 130(3) of the DMS, a freestanding base telecommunication station is not subject to the development rules pertaining to height in the applicable base zoning insofar as it does not exceed a maximum height of 25m. The base station complies with the DMS.

### *(d) Building lines*

The freestanding telecommunication station complies with the prescribed building lines for MU2 in terms of Item 64(c)(1) of the DMS.

## **6. APPLICATIONS**

### **6.1.1 Council's consent**

In terms of Section 42(i) of the MPBL, application is hereby made for City's consent in terms of Item 63(b) of the DMS to permit a freestanding base telecommunication station in a Mixed-use sub-zone 2 (MU2).

## **7. ADJUDICATION AND MOTIVATION**

### **7.1 Applications in terms of the Development Management Scheme**

#### **7.1.1 Section 99 of the DMS: Adjudication Criteria**

Section 99 of the MPBL relates to the adjudication of applications, and prescribes as follows:

- (1) *An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements –*

- (a) *the application must comply with the requirements of this By-Law;*
  - (b) *the proposed land use must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible;*
  - (c) *the proposed land use must be desirable as contemplated in subsection (3); and*
  - (d) *in the case of an application for a departure to alter the development rules relating to permitted floor space or height, approval of the application would not have the effect of granting the property the development rules of the next subzone within a zone.*
- (2) *If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision maker must consider all relevant considerations including, where relevant, the following –*
- (a) *any applicable spatial development framework;*
  - (b) *relevant criteria contemplated in the development management scheme;*
  - (c) *any applicable policy approved by the City to guide decision making;*
  - (d) *the extent of desirability of the proposed land use as contemplated in subsection (3);*
  - (e) *impact on existing rights (other than the right to be protected against trade competition);*
  - (f) *in an application for the consolidation of land unit –*
    - (i) *the scale and design of the development;*
    - (ii) *the impact of the building massing;*
    - (iii) *the impact on surrounding properties; and*
  - (g) *other considerations prescribed in relevant national or provincial legislation.*
- (3) *The following considerations are relevant to the assessment under subsection 1(c) of whether, and under subsection (2)(d) of the extent to which, the proposed land use would be desirable –*
- (a) *socio-economic impact*
  - (b) *compatibility with surrounding uses;*
  - (c) *impact on the external engineering services;*
  - (d) *impact on safety, health and wellbeing of the surrounding community;*
  - (e) *impact on heritage*
  - (f) *impact on the biophysical environment;*
  - (g) *traffic impacts, parking, access and other transport related considerations; and*
  - (h) *whether the imposition of conditions can mitigate an adverse impact of the proposed land use;*

### **7.1.2 Motivation in terms of Section 99(1) of the DMS**

The application complies with the following minimum threshold requirements:

- (a) The application complies with the **requirements of the MPBL** (the application is motivated in terms of the relevant adjudication criteria with all required documents submitted with the application).
- (b) The proposed land use is **consistent with the Municipal Spatial Development Framework ('MSDF')**; in this regard, no deviation from the MSDF is required.
- (c) The proposed **land use is desirable** as contemplated in subsection (3); this will more comprehensively be addressed in Section 7.2, below.

### **7.1.3 Motivation in terms of Section 99(2) of the DMS**

The application complies with the following relevant considerations:

(a) Applicable Spatial Development Frameworks

The City of Cape Town's Municipal Spatial Development Framework and the Table Bay District Plan are relevant to consider in motivating this application:

**Cape Town's Municipal Spatial Development Framework, 2018**

The Cape Town's Municipal Spatial Development Framework ('MSDF') was approved by Council on 25<sup>th</sup> April 2018, and Gazetted on 9<sup>th</sup> May 2018.

The MSDF motivates for land use intensification based on transit-oriented development ('TOD'). This implies a greater mix of residential and non-residential land use (diversification) through the increased use of space, both vertically and horizontally (densification).

The proposal complies with Policy 20 of the MSDF which states that the City should harness advances in telecommunication to enable resource efficient development. The site is located in an Incremental Growth and Consolidation Area, which is an area suitable for contextually appropriate urban development.

**Table Bay District Plan, 2012**

The MSDF guides the proposals contained in the more detailed District Plans. The District Plan is divided into 4 sub-district areas; the subject property falls within the *Greater Eastern Sub-District Area*, as can be seen on the map below.



Figure 8: Extract of the Sub-district map

The District plan designates the area for “urban development”, which includes “*buildings and infrastructure with a residential purpose as well as offices, shops, community facilities and other associated buildings, infrastructure and public open space necessary to provide for the proper functioning of urban areas, amenity and recreation.*”

The proposal complies with the District plan which advocates for upgrade of existing installations, land within the structure plan designated as buffer 1 or buffer 2 may be used for the establishment of space extensive essential engineering infrastructure services and installations such as municipal engineering services, power substations, landfill sites, wind turbine infrastructure and for telecommunications purposes, subject to any necessary environmental authorisations. The environmental authorisation was been issued by DEADP and is attached to this report. Granting the approval of this application will result in regularising the existing telecommunication station on the property.

(b) Relevant Criteria in the DMS

The application complies with relevant criteria contemplated in the DMS, i.e. the proposal is desirable when assessed in terms of the adjudication criteria set in out Section 99.

(c) Applicable Policies Approved by the City

The proposal complies with the following approved Council Policies:

<b>TELECOMMUNICATION MAST INFRASTRUCTURE POLICY, 2015</b>	
The overarching premise is to facilitate the growth of new and existing telecommunications systems and facilitate the provision of Telecommunication Mast Infrastructure (TMI) in an efficient, cost-effective, environmentally appropriate and sustainable way.	
The proposed base station complies with the objectives of the policy for the reasons mentioned in the table below:	
<b>Objectives</b>	<b>Compliance</b>
<u>Objective 1:</u> To improve and maintain communication	The application is in line with this objective as it aims to provide inhabitants and visitors to the area with efficient and effective voice and data coverage.
<u>Objective 2:</u> <i>To insure that the TMI is placed in the best possible location</i>	The site is improved with an Office and Industrial buildings, and the base station located towards the South Western boundary line. The proposed base station has been located in approximately 155m away from the nearest residential dwellings and also 20m away from the office building. Its location allows it to have minimal impact on the surrounding neighbourhood character. The location of the base station is considered appropriate.
<u>Objective 3:</u> To ensure the co-location or sharing of TMI wherever possible	There are no existing masts in the nearby vicinity which can be used for co-location. Without the addition of this TMI the coverage for the local community will be insufficient as seen in the SDP coverage map <b>Annexure F</b> . The freestanding base station is

	currently used for co-location and currently serves 4 network service providers.
<u>Objective 4:</u> To retain the visual integrity, special character and amenity of the City of Cape Town	The proposal is in line with this objective as the base station will have a smaller impact than other types of masts, e.g. lattice mast. Furthermore, the mast has limited visual impact given its location on the property.  The character of the area will not change as the base station already exists on the property.
<u>Objective 5:</u> To design with the landscape and use modern mitigation measures to reduce impact	The monopole mast has been designed in a way of lessening the visual impact. The height of base station is 25.0m high. The mast design fits in with the surrounding landscape.
<u>Objective 6:</u> To retain and improve the environmental and heritage quality of the public arena	No changes will be made to the environment or cultural surroundings and the proposed site itself does not have any heritage significance or biophysical resources.
<u>Objective 7:</u> To preserve areas of environmental or heritage significance	The proposed base station will have no effect on the natural or cultural aspects of the area as the surroundings will not undergo change or destruction as a result of this proposal. The site is not located within a Heritage Protecting Overlay Zone and the proposal will not have any impact on heritage resources.  The Department of Environmental Affairs and Development Planning (DEADP) issued an environmental authorisation, attached as <b>Annexure H</b> , stating that our client is authorised to undertake the activity on the property.
<u>Objective 8:</u> TMI must be situated and operated in a manner so as not to interfere with any other utility functions	The proposed base station will be connected to the existing power supply. No utility services are located nearby.
<u>Objective 9:</u> Where possible TMI should be placed on other structures such as light posts, road signs etc.	There are no other structures located in close proximity of the proposed base station to allow the installation of the TMI.
<u>Objective 10:</u> To protect the health, safety and well-being of the inhabitants of Cape Town	The application is in line with this objective as there is no conclusive evidence that cell masts pose health risks. An evaluation of health impacts will be given on section 7.1.4 below.

(d) Desirability of the Proposed Use

The proposed freestanding base station is desirable. Section 7.2, below, will address the desirability of the specific applications in more detail.

(e) Impact on Existing Rights

The impact of the proposal on existing rights will be comprehensively addressed in Section 7.2, below; however, it will be conclusively demonstrated that the application will have no negative impact on abutting property owners or existing rights concerned.

(f) Relevant National or Provincial Legislation

The applications comply with all other National and Provincial legislation.

#### **7.1.4 Motivation in terms of Section 99(3) of the DMS**

The application complies with the following relevant considerations:

(a) Socio-economic Impact

The community and commuters will enjoy improved network coverage. This will improve electronic communication, access to safety, emergency and other public services. The social benefits to the community will be substantial.

(b) Compatibility with Surrounding Uses

The site is adjacent to business offices and an industrial area, the utilisation of the property to allow the telecommunication base station will be mutually beneficial for all residents. There will be an improved network coverage provided by the proposed telecommunication base station. The base station will be compatible with surrounding uses.

(c) Impact on External Engineering Services

The proposed use will have no negative impact on engineering services. The base station already exists on the property and is connected to the existing power supply. Council's Service Branches will comment on the application and provide appropriate conditions to be imposed upon approval of the application.

(d) Impact on Safety, Health & Wellbeing of the Surrounding Community

As can be seen on the images below, no antennae are located so that habitable structure are within the 50m radius public safety zone directly in front of the antennae at the same height. The proposal will not impact on the health or wellbeing of the neighbours as no health risks from such infrastructure is anticipated. Furthermore, the control of radiation from the cell mast is controlled by National and international legislation.

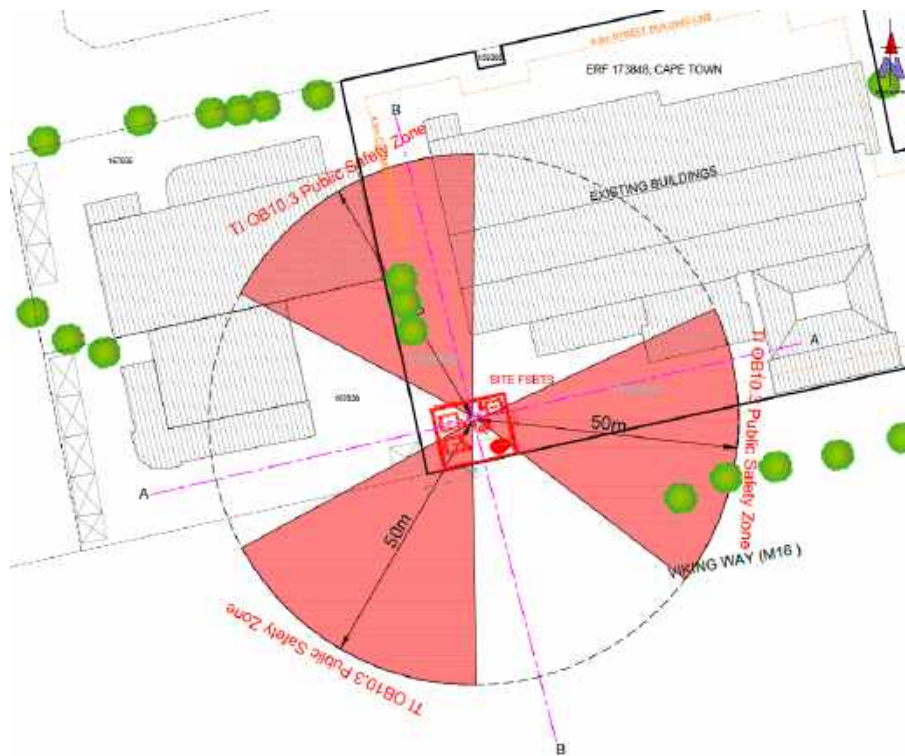


Figure 9: 50m public safety zone

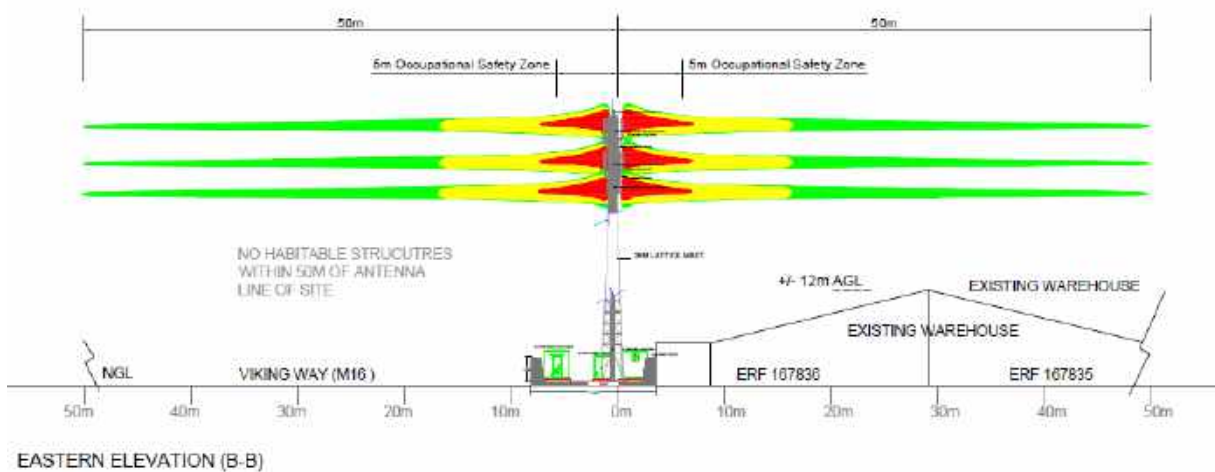
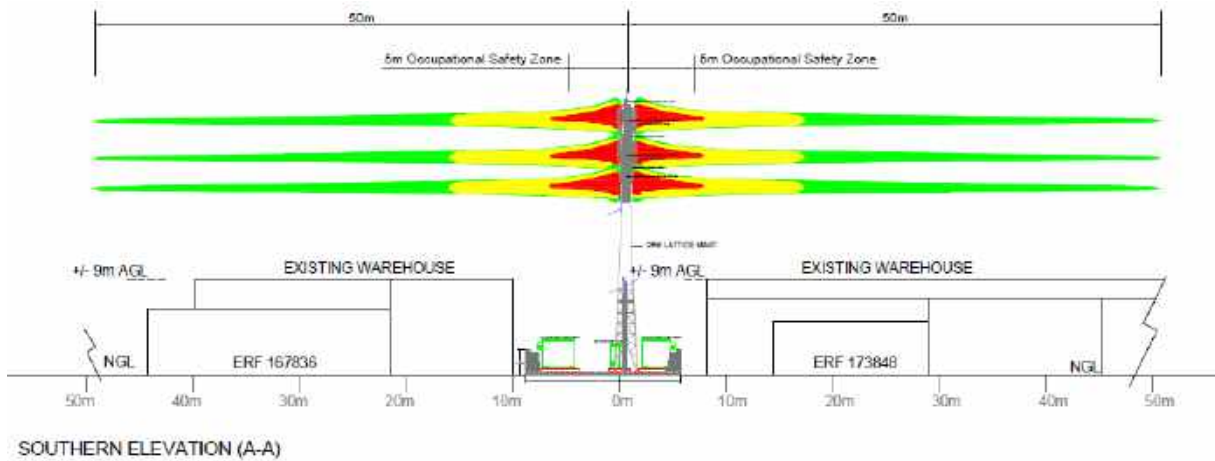


Figure 10: 50m public safety zone elevation showing surrounding environment

(e) Impact on Heritage

The subject property does not fall within any HPOZ and the freestanding base station is not older than 60 years. There will be no impact on any heritage resources.

(f) Impact on the Biophysical Environment

The base station already exists and no trees will be removed. The application will not have a negative impact on the biophysical environment. An environmental authorisation has been issued by DEADP and is attached as **Annexure I**.

(g) Traffic, Transport, Parking and Access

The proposed telecommunication station will have no impact on transport or traffic related consideration. Access to the proposed use will still be taken from Thor Circle and all vehicles will exit the property on forward gear.

(h) Imposition of Conditions and Mitigation of Adverse Impacts

It is not anticipated that conditions of approval will be necessary to mitigate potential adverse impacts of the proposal. However, the approval can be subject to the SDP to limit the scale of the proposal.

## 7.2 Desirability and Impact on Existing Rights Relating to Specific Applications

### Consent

A freestanding base telecommunication station is permitted as a consent use in a Mixed-use sub-zone 2 (MU2). Unlike in the past where the property was rezoned and regularised by way of a Temporary Departure, the operation of this base station only requires Council's Consent. Consent uses are secondary land use rights in terms of zoning provisions. In this regard, a rezoning is not required to regularise the use of base station on the property.

The freestanding base station is compatible with surrounding uses, and the established built environment. The property will be developed within the permissible development parameters.

The proposed base station will increase capacity and improved voice and data network coverage in response to an increase in cellular users in the surrounding area and greater demand on the existing network due to increased use of various hand held devices that are dependent on American Tower Corporation (ATC) technology.

The base station on Erf 173848 currently serves 4 network service providers which cover 500m radius towards the South-Western part of Thornton. The network coverage from both properties can be seen in the map below.



*Figure 11: Network coverage map*

With reference to the information provided by the Cell C online network coverage map, it has been estimated that the predicted coverage after removal of the subject base station (Erf 173848) would create a gap in network coverage and could be more severe than estimated. It is therefore motivated that the base station be retained to alleviate pressure and to cater for the ever-increasing demand for network coverage. The location of the base station on Erf 173848 is considered appropriate to serve the community in its proximity and complies with the Telecommunication Mast Infrastructure Policy.

The base station will not interfere with the current industrial activities or impact of the surrounding land uses. The base station complies with Department: Environmental Affairs and Development Planning policy on sharing of cellular infrastructure.

Although antennae and base station emit radio waves, their frequency is not high enough to pose a health risk. The Department of Health has published electromagnetic frequency (EMF) exposure limit guidelines based on International Commission on Non-Ionising Radiation Protection (ICNIRP) guidelines. The proposed base station will not pose any health risks.

The proposal will be secure due to its locality within a 2.4m high palisade fence and will be accessible to contractors for maintenance purposes.

The proposed base station is in no way intrusive and does not pose any negative implications on the surrounding population and environment.

The proposal makes provision for other service providers to use this mast for their equipment and consequently conforms to the Telecommunication Policy of the City.

The height of the base station is considered appropriate in scale and does not have an impact on the character of the area. It must be noted that the base station already exists on the property.

## **CONCLUSION**

Application is made in terms of Section 42 of the MPBL for Council's consent to permit a freestanding base telecommunication station on the property. The proposed land use is desirable as it is ideally located and will not serve as a source of nuisance to abutting property owners. The proposal will have a negligible, if any, impact on existing traffic flows.

Given the above, and considering the proposed land use, it is clear that the proposal is in keeping with the character of the area and the application will not have any negative impact on the public or any existing rights. The proposed development satisfies the adjudication criteria of the relevant legislation, and as such should be **approved** by the Council.

**TOMMY BRUMMER TOWN PLANNERS**