



## Knysna

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MEMORANDUM

# REPORT

**To: AMM & Portfolio Chairperson Planning & Integrated Human Settlements**     **From: Director: Planning & Development**

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**Date: 2018-10-19**

**Cc: Manager: Town Planning & Building Control**

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### **Purpose:**

The purpose of this report is to provide an oversight comment from my office on the draft report that was submitted for inclusion on the Section 80 Portfolio Committee agenda for Planning & Integrated Human Settlements by the Manager: Town Planning & Building Control in accordance with an Order of the High Court.

### **Background:**

The matter was previously resolved by Council on technical merits and was remitted for consideration of the merits.

### **Motivation:**

Some of the concerns that need to be clarified for Council relates to the status of the application regarding the application timeframes, the public participation process and the quality of the assessment.

#### Application Timeframes

It is stated that the application was submitted in 2008 and that it was "dormant" until the end of 2015, yet still "active". The implication of this scenario is that the motivation is outdated and any public inputs from authorities and the public may be influenced by various changed circumstances and policy and legislative frameworks at the time of Council making its decision. This needs explanation for Council, so that they can determine whether the application before them is being validly considered.

Furthermore, there is only vague reference to the dates of revival of this "dormant" application. And no proof of formal requests and processes by which this application came to be active, again. The department should provide this information and proof of these communications for thoroughness.

There are also conflicting and irreconcilable statements by the author of the report that the 2008 application was "dormant" and that it had remained "active" since 2008.

#### Public Participation

Comments, objections and responses from the applicant from the public participation in 2008/2009 are submitted as attachments to the application, but the merits are not assessed against current Council



Policy and legislative restrictions, in order for Council to understand the parameters for their decision and reconcile with the recommendations of the author of the report.

Objections submitted during the 2015/2016 public participation process are submitted as attachments, and while it is stated that the applicant's response and explanatory notes are attached as Annexures "E" and "J". These annexures do not constitute any responses and no other annexures address this either. Nevertheless, the merits of the submitted objections are not assessed against current Council Policy and legislative restrictions, in order for Council to understand the parameters for their decision and reconcile with the recommendations of the author of the report. The objectors claim, inter alia, that they either have not been informed as affected parties or that their letters have been delivered on a Friday, before the closing date on the following Monday. The objectors request for an extension of the commenting period, in order to consider their positions and solicit technical consultations, where applicable. There is no discussion on the outcome of this request.

Furthermore, it is noted from the submitted addendums that there in 2008, 125 affected neighbours were informed of the application via registered mail, while in 2016, only 12 affected neighbours were informed of the application via registered mail. There is no explanation for this provided by the author of the report. In the light of the claims of objectors that they were not adequately informed, this issue has a material impact on the evaluation and assessment of the application.

The merits in the objections regarding bulk service provision, noise disturbance that will be generated by the proposed densified land uses, the implications for privacy and views that will impact on other property values, road safety concerns, security concerns, environmental health issues and bulk factor and density concerns are not assessed by the author of the report.

The comment from the department of water Affairs and Forestry indicated that they would not support the rezoning and subdivision application without the submission of the stated information. Their comment is, wrongly, included in the conditions of approval. This is not the correct treatment of the contents of the comment. This creates a duty for Knysna Municipality, which compliance Council must consider in deciding on this application. It is not an output for the applicant. The proof that the Municipal Department complied with the requirements from the Department of Water Affairs, should have been submitted with this application, so that Council can be assured that their decision does not conflict with the functional requirements of other authorities.

There is further conflict between the recommendation of the author of the report and the comment stated by the municipal chief town planner regarding the policy provisions for general residential zoning in this area. There is no assessment regarding the statement from the chief town planner that general residential land use is not supported.

The advertisement annexed for the 2015/2016 process is not the same as that of 2008/2009. The discrepancies between the two adverts are set out, below.



<b>Relevant Zoning</b>	<b>2008/2009</b>	<b>2015/2016</b>
Single Residential	19	13/17*
Group Housing	75	158
General Residential	6	3
Resort	1	1
Local Business	1	0
Private Open Spaces and Private Roads	4	14

\*English and Afrikaans Adverts have different quantities.

This has an implication both for whether the applicant intended for the original application to be considered or whether they desired new parameters. The author of the report also does not opine on why he dismisses the parameters advertised in the 2015/2016 process and makes recommendations in terms of the 2008/2009 process, even under circumstances where the later advert was for less general residential and no business zone.

An objector has further stated that there is an additional motivation report on the 2015/2016 advertised process on Marike Vreken's Website. This additional motivation is not submitted, but on perusal of the website, the document is an extract of information submitted as part of their environmental application.

The discrepancies regarding the public participation will place a risk of review proceedings from the neighbouring property owners should the recommendations of the author of the report be accepted.

#### Quality of the Assessment

This Planning assessment reiterates the applicant's motivation application, but does not provide sufficient detail of an objective assessment on the merits of the application and considered objections against stated law and policy guidelines. There are various issues of concern.

The approach of the author of the report in concluding the recommendations is based on a limited interpretation of section 36 of the Land Use Planning Ordinance. The report has copied and pasted extracts of the applicant's motivation report, but rarely provides an assessment or comment thereof. In general, there is no explanation or assessment for the convenience of Council of what the policy prescribes such as densification parameters for the area and each intended zoning is.

The description of some of the contents of some annexures are incorrect.

The rationale is predominantly copied from the applicant's motivation report. In one instance, it also conflicts with current planning policy approaches. The author of the assessment report states that "residents of Knysna Heights have expressed their concern about rising level of crime that is experienced on the neighbourhood. Vagrants can easily hide on large portions of vacant land. The proposed development should serve as a buffer between the lower income areas of Wit Lokasie and the higher



income areas of Knysna Heights". This assumes that crime comes from White Location. This rationale promotes residential developments that create buffers between wealthy and poor communities. Spatial redress should be achieved through integration of communities. As a municipality, we cannot reconcile with the reasoning contained in this report.

There is no logical explanation of the reasons why the author's makes his specific recommendations, such as the factors that were considered and how those factors satisfy the criteria listed in Section 36(2) of LUPO. In addition to the recommendations, the conditions for approval also do not reconcile with the information submitted or discussed in the assessment. The reference to a traffic impact assessment is a case in point, as there is none submitted and no discussion thereof in the report. There is also an intersection that must be upgraded that has no bearing on the footprint area of the development application. Furthermore, there are requirements for service provision and upgrades that conflicts with the certification from the (Acting) Director; Technical Services that there is sufficient bulk services available to support the proposed development.

#### **Financial/Legal Implications:**

The approval of the development in accordance with the recommendation of the author of the report, may result in a review application, similar to that brought in the case of Pierpoint where insufficient notice of an application was given to the neighbours, after a long lapse of time between an application made on the same factors after a long time lapse.

#### **Recommendation:**

*It is be recommended that Council cannot consider this application at this time, specifically in the light of the discrepancies regarding what is being applied for between the original application and the latest published advertisement, as well as the inadequate public participation that has taken place. It is further recommended that the applicant be advised to submit a revised application in terms of SPLUMA, setting out their application clearly. It is also recommended that a full public participation process must be undertaken as part thereof, wherein all the affected parties and property owners must be informed in writing of the application, including the objectors who were not informed or informed late, during the previous round of public participation.*

