

— **MOTIVATING MEMORANDUM** —

in support of an application lodged by virtue of  
S.15(2)(b) and (f) of the Knysna Municipality Spatial Planning  
and Land Use Management By-law of 2021  
for departures from the street building line as determined by  
Knysna Zoning Scheme By-law, 2020  
and to remove restrictive title conditions in respect of  
**Erf 204, Brenton**  
situated in the jurisdiction of the  
Knysna Local Municipality

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## 1. **BACKGROUND**

The owners bought the subject property recently but during the transaction, it was discovered that the approved building plans do not correspond with the reality because an as-built laundry at lower ground floor level does not appear on said plans.

The sellers are not citizens of South Africa and returned to their homeland without correcting the problem. As a remedy, they appointed their conveyancing attorneys to see to the necessary corrections. The attorneys, Messrs A Chimes van Wyk from George, consequently appointed a professional team to act on their behalf in this matter.

As the sellers and buyers already concluded the sale, Messrs A Chimes van Wyk attorneys arranged that the new owners issue the required appointments as can be seen in **Annexure A** – the Power of Attorney.

During the preparation of this application it was discovered that, although the single garage on upper ground floor level do appear on the approved building plans, it encroaches upon the building line restriction as stipulated in the property's Title Deed.

## 2. **A SUMMARY OF THE APPLICATION**

This application, lodged by virtue of Sections 15(2)(b) and (f) of the Knysna Municipality Spatial Planning and Land Use Management By-law of 2021, consists of the following components:

- (a) An application for a permanent departure from the street building line of 4,5 m to 1,37 m to permit an as-built laundry at lower ground level, built under the slab connecting the single garage to Agapanthus Avenue.
- (b) An application to remove Condition E.6(b) from the Title Deed in order to allow the owners to exercise their primary land use rights at a later stage namely, to build a second dwelling of not more than 60 m<sup>2</sup> on the property.
- (c) An application to remove Condition E.6(d) from the Title Deed thereby enabling the Knysna Zoning Scheme to be the sole determinant of the building lines on the property.

Refer to **Annexures F, G, H and I** which explain the situation graphically.

## 3. **THE SUBJECT PROPERTY**

### 3.1. **Property description**

The **subject property** is Erf 204, Brenton.

### 3.2. **Locality**

The position of the property is indicated on the attached Locality Plan, attached as **Annexure C**. The physical address is 204 Agapanthus Avenue, Brenton-on-Sea. This location places the subject property in the jurisdiction of the Knysna Local Municipality which falls within the boundaries of the Eden District Municipality of the Western Cape Province.

### 3.3. **Title Deed**

The subject property is currently registered by virtue of Deed of Transfer T13701/2022 as per attached **Annexure B**.

The following conditions contained in the Title Deed have relevance to this application:

- (a) Condition E.6(b) prohibits more than one dwelling and reads as follows:

(b) dit mag alleen gebruik word vir die doel om een woning, tesame met die buitegeboue wat gewoonlik in verband daarmee gebruik word, daarop op te rig;

- (b) Condition E.6(d) determines a street building line of 15 Cape feet (4,72 m), a rear building line of 10 Cape feet (3,15 m) and side building lines of 5 Cape feet (1,57 m) and reads as follows:

(d) geen gebou of struktuur of enige gedeelte daarvan, behalwe grensmure en heinings, mag nader as 15 voet van die straatlyn wat 'n grens van hierdie erf uitmaak, opgerig word nie, asook nie binne 10 voet van die agtergrens of 5 voet van die sygrens gemeen daaraan e naan 'n aangrensende erf nie; met dien verstande dat 'n buitegebou van nie hoer as 10 voet nie, gemeet van die vloer tot by die muurplaat, met die toestemming van die plaaslike owerheid binne die hierbo voorgeskrewe syruimte vir 'n afstand van 30 voet gereken van die agtergrens opgerig mag word. Wanneer enige twee of meer erwe gekonsolideer word, is hierdie voorwaarde op die gekonsolideerde oppervlakte as een erf van toepassing.

#### 3.4. **Ownership**

The subject property is registered in the names of **David Steven de Villiers** and **Marilize de Villiers**.

#### 3.5. **Bonds**

The subject property is bonded and the consent of the bondholder (Standard Bank of South Africa), has been obtained as shown in **Annexure N**.

#### 3.6. **Surveyor General Diagram**

The subject property appears on SG General Plan 10313/58 as shown in **Annexure D**.

#### 3.7. **Size**

According to its Title Deed, the subject property is 1 248 m<sup>2</sup> in extent.

#### 3.8. **Zoning Scheme**

As shown on the Zoning Plan (**Annexure E**), which contains an extract of Zoning Scheme Map KN E2 of the Knysna Zoning Scheme By-law of 2020, the subject property falls in the **Single Residential Zone I** zone.

The building lines for Dwelling Houses in this zone are:

- 4,5 m along street boundaries; and
- 2,0 m along rear and side boundaries.

The maximum permissible coverage in this zone is 50%.

The maximum height of buildings in this zone is two storeys with a maximum of 8,5 m above Natural Ground Level [NGL].

As a primary right in this zone, a second or additional dwelling of not more than 60 m<sup>2</sup> can be built.

### 4. **THE EXISTING DEVELOPMENT AND INCONSISTENCIES WITH THE ZONING SCHEME AND TITLE DEED**

#### 4.1. **Description of the existing development**

The development of the property consists of a dwelling house with the normal outbuildings. On the sea side of the dwelling a swimming pool is found.

The various components of the development are analysed in the table below.

AREAS & COVERAGE	
STRUCTURE	AREA
<b>EXISTING AREAS</b>	
Garage	27.66 m <sup>2</sup>
Middle & Upper floors	194.40 m <sup>2</sup>
Lower floor	86.85 m <sup>2</sup>
Covered deck	38.60 m <sup>2</sup>
<b>Total Existing</b>	<b>347.51 m<sup>2</sup></b>
<b>NEW AREAS</b>	
Laundry & passage	14.14 m <sup>2</sup>
As-built storage/cavity	28.30 m <sup>2</sup>
<b>Total New</b>	<b>42.44 m<sup>2</sup></b>
<b>TOTAL EXISTING AND NEW</b>	<b>389.95 m<sup>2</sup></b>
<b>EXISTING COVERAGE</b>	
Dwelling	272.00 m <sup>2</sup>
<b>Total Existing</b>	<b>272.00 m<sup>2</sup></b>
<b>NEW COVERAGE</b>	
None	0.00 m <sup>2</sup>
<b>Total New</b>	<b>0.00 m<sup>2</sup></b>
<b>COVERAGE</b>	
Existing	272.00 m <sup>2</sup>
New	0.00 m <sup>2</sup>
<b>TOTAL</b>	<b>272.00 m<sup>2</sup></b>
Stand size	1248.00 m <sup>2</sup>
<b>Coverage percentage</b>	<b>21.79 %</b>

Except for the transgression of the street building line (discussed hereafter), all the development control measures determined by the Knysna Zoning Scheme are adhered to.

#### 4.2. Analysis of the building line transgression

When the property recent changed hands, the buyers discovered that the approved building plans do not show the laundry at lower ground floor level. The plans looked at were approved on 21 July 2003 and they were for an addition to the dwelling – see **Annexures L1 to L4**.

As shown on **Annexure F** (Building Plan – proposed) and **Annexure G** (SDP), this laundry is placed in the building restriction area and underneath the slab which connects the street with the single garage. **Annexure H** details the position of the laundry in respect of the Zoning Scheme’s 4,5 m street building lines and the Title Deed’s street building line of 15 Cape feet (4,72 m). The laundry is separated from the main building by a passage as can be seen on the said annexures as well as **Annexure I** (Photograph).

To correct the transgression, the building line has to be relaxed to 1,37 m as shown on **Annexure H**. Condition E.6(d) of the property’s Title Deed will also have to be removed as it determines a street building line of 15 Cape feet (4,72 m).

As mentioned, during the preparation of the application it was discovered that the single garage at upper ground floor level is also encroaching on the street building line as specified by the Knysna Zoning Scheme as well as the property’s Title Deed. Since this structure does appear on the approved building plans (see **Annexures L1 to L4**), it can be assumed that the Zoning Scheme’s building line has been relaxed. However, title restriction E.6(d) still forbids this situation which has to be amended by means of this application.

## 5. SPATIAL PLANNING POLICIES AND GUIDELINES

Land development, however small or large, should be measured and tested against the guiding policy frameworks applicable in the area of concern.

## 5.1. National level

### SPLUMA Development Principles

Although the proposed development is of a very limited scale, it can be regarded as in support of the SPLUMA development principles (Section 7 of Act 16 of 2013), of **Spatial Sustainability** and **Efficiency** in that:

- it will promote and stimulate the effective and equitable functioning of land markets;
- it will promote land development in locations that are sustainable and limit urban sprawl; and
- it will contribute to the optimized use of existing resources and infrastructure.

The principle of **Spatial Justice** is not relevant to this limited scale development proposal as its approval will not at all impact the current spatial balances at national, provincial or local level.

The principle of **Spatial Resilience** refers to the flexibility of, among others, Land Use Management systems to protect vulnerable communities against economic and/or environmental shocks. No environmental shock necessitating the requested departures from the Zoning Scheme stipulations has been experienced. Even the economic shock of the Covid-19 pandemic did not influence this case and therefore it is argued that this principle is not relevant.

The principle of **Good Administration** places an onus on the spheres of government to perform and consequently protect broad society and, in this case, the applicant and affected members of the relevant area. The only contribution the applicant can make, is to co-operate to ensure that the municipality has the necessary information, fees, documentation, etc. to enable them to expedite the procedures thereby complying with this principle. To our opinion this duty has been fulfilled.

## 5.2. Provincial level

The following spatial goals are defined in the Western Cape Provincial SDF:

“To address the spatial challenges identified the PSDF takes the Western Cape on a path towards:

- more inclusivity, productivity, competitiveness and opportunities in urban and rural space-economies;
- better protection of spatial assets (e.g. cultural and scenic landscapes) and strengthened resilience of natural and built environments; and
- improved effectiveness in the governance of urban and rural areas.”

Working towards a new approach and steered by the abovementioned spatial goals, the Western Cape Provincial SDF provides the following key transitions.

PSDF THEME	FROM	TO
RESOURCES	Mainly curative interventions	More preventative interventions
	Resource consumption living	Sustainable living technologies
	Reactive protection of natural, scenic and agricultural resources	Proactive management of resources as social, economic and environmental assets
SPACE ECONOMY	Fragmented planning and management of economic infrastructure	Spatially aligned infrastructure planning, prioritisation and investment
	Limited economic opportunities	Variety of livelihood and income opportunities
	Unbalanced rural and urban space economies	Balanced rural and urban space economies built around green and information technologies
SETTLEMENT	Suburban approaches to settlement	Urban approaches to settlement
	Emphasis on ‘greenfields’ development and low density sprawl	Emphasis on ‘brownfields’ development
	Low density sprawl	Increased densities in appropriate locations aligned with resources and space-economy

PSDF THEME	FROM	TO
	Segregated land use activities	Integration of complementary land uses
	Car dependent neighbourhoods and private mobility focus	Public transport orientation and walkable neighbourhoods
	Poor quality public spaces	High quality public spaces
	Fragmented, isolated and inefficient community facilities	Integrated, clustered and well located community facilities
	Focus on private property rights and developer led growth	Balancing private and public property rights and increased public direction on growth
	Exclusionary land markets and top-down delivery	Inclusionary land markets and partnerships with beneficiaries in delivery
	Limited tenure options and standardised housing types	Diverse options and wider range of housing typologies
	Delivering finished houses through large contracts and public finance and with standard levels of service	Progressive housing improvements and incremental development through public, private and community finance with differentiated levels of service

Evaluating the proposals contained in this application against the listed items, it is obvious that almost every box can be ticked as a desired outcome.

Introducing the Spatial Framework, the Western Cape Provincial SDF defines the following spatial planning themes:

“In fulfilment of the mandate ascribed to it in SPLUMA and to take forward the Province’s spatial development agenda, this chapter sets out the policy framework within which the Western Cape Government will carry out its spatial planning responsibilities. The policy framework covers Provincial spatial planning’s three interrelated themes (see Diagram 8), namely:

1. Sustainable use of the Western Cape’s spatial assets (3.1),
2. Opening-up opportunities in the Provincial space-economy (3.2), and
3. Developing integrated and sustainable settlements (3.3).

Each of these spatial themes contributes to the achievement of the Western Cape’s strategic objectives (see Table 9). For each theme key challenges as distilled from the Provincial spatial profile (separately documented in PSDF Annexure 1) and their spatial implications are noted and Provincial policies for dealing with them are presented.”

The Spatial Policy Framework flowing from this thematic approach, can be condensed by heading, as shown below:

### PROVINCIAL SPATIAL POLICIES

THEME	POLICY	COMPLIANCE OF PROPOSAL	
<b>RESOURCES</b>	R1	Protect biodiversity and ecosystem services	No negative effect
	R2	Safeguard inland and coastal water resources and manage the sustainable use of water	No negative effect
	R3	Safeguard the Western Cape’s agricultural and mineral resources, and manage their sustainable use	No negative effect
	R4	Recycle and recover waste, deliver clean sources of energy to urban consumers, shift from private to public transport, and adapt to and mitigate against climate change	In support
	R5	Safeguard cultural and scenic assets	No negative effect
<b>SPACE ECONOMY</b>	E1	Use regional infrastructure investment to leverage economic growth	In support
	E2	Diversify and strengthen the rural economy	No negative effect

THEME	POLICY		COMPLIANCE OF PROPOSAL
	E3	Revitalise and strengthen urban space-economies as engine of growth	In support
SETTLEMENT	S1	Protect, manage and enhance sense of place, cultural and scenic landscapes	In support
	S2	Improve inter and intra-regional accessibility	In support
	S3	Promote compact, mixed use and integrated settlements	In support
	S4	Balance and coordinate the delivery of facilities and social services	In support
	S5	Promote sustainable, integrated and inclusive housing in formal and informal markets	In support

### 5.3. District level

The Eden District SDF of 2017, which inter alia covers the area of jurisdiction of the Knysna Local Municipality, provides guidance regarding the spatial development of the area of the Eden District Municipality.

The following spatial policies and guidelines were identified, and the proposed development is evaluated against each to test compliance.

1. ECONOMY & ENVIRONMENT		
SPATIAL POLICY	GUIDELINE	COMPLIANCE OF PROPOSAL
Policy 1.1. Establish, manage and market the Garden Route and Klein Karoo as two unique sub-regions of Eden	Guideline 1.1.1. Contain development and manage rural areas through appropriate application of SPCs	In support
	Guideline 1.1.2. Protect and conserve Eden District's important terrestrial, aquatic and marine habitats	No negative effect
Policy 1.2. Protect the district cultural landscape and heritage resources	Guideline 1.2.3. Identify and protect scenic and cultural landscapes in Eden District	No negative effect
Policy 1.3. Grow an inclusive agricultural economy	Guideline 1.3.4. Support an inclusive and accessible agricultural value chain	No negative effect
Policy 1.4. Facilitate inclusive and equitable, managed public access to the coastline and estuaries	Guideline 1.4.5. Support inclusive and equitable, managed public access to the coastline and estuaries	No negative effect
Policy 1.5. Manage development along the coastline in a sustainable and precautionary manner	Guideline 1.5.6. Coastal management	No negative effect
Policy 1.6. Manage and mitigate flood risk	Guideline 1.6.7. Flood risk mitigation	Complies
Policy 1.7. Mitigate fire risks and impacts on disaster management	Guideline 1.7.8. Implement veld fire management zones	In support
	Guideline 1.7.9. Alien Vegetation Management	No negative effect
Policy 1.8. Manage regional infrastructure implementation and maintenance		In support

2. ACCESS		
POLICY	GUIDELINE	COMPLIANCE OF PROPOSAL
Policy 2.1. Rationalise the regional access network	Guideline 2.1.1. Review need, appropriate location and impacts of the N2 bypass	No negative effect
	Guideline 2.1.2. Upgrade the R62 to accommodate regional tour buses and freight traffic	No negative effect

2. ACCESS		
POLICY	GUIDELINE	COMPLIANCE OF PROPOSAL
	Guideline 2.1.3. Improve freight, tourism and emergency management connectivity	No negative effect
	Guideline 2.1.4. Revitalise railway infrastructure, improving national / multiregional access	No negative effect
Policy 2.2. Prioritise access infrastructure and services to support the identified role and hierarchy of towns within the regional space economy	Guideline 2.2.5. Cluster social facilities to optimise equitable access and spatial efficiency	In support
	Guideline 2.2.6. Locate regional facilities at the most accessible points in regional nodes	In support
Policy 2.3. Contain settlement footprints and land use mix to promote walkability in towns		In support
Policy 2.4. Promote a balanced approach to mobility and access at the regional and local level	Guideline 2.4.7. Promote transit oriented development (TOD )	In support
	Guideline 2.4.8. Ensure complete streets where regional routes go through towns	No negative effect

3. GROWTH MANAGEMENT		
POLICY	GUIDELINE	COMPLIANCE OF PROPOSAL
Policy 3.1. Direct and encourage growth to match capacity, resources and opportunity in relation to the regional socio-economic hierarchy of cities and towns	Guideline 3.1.1. Align growth with infrastructure and fiscal capacity	In support
	Guideline 3.1.2. Roles of regional service centres	No negative effect
	Guideline 3.1.3. Role and investment focus of specialised coastal centres	In support
	Guideline 3.1.4. Development approach to rural settlements	In support
Policy 3.2. Contain settlement sprawl	Guideline 3.2.5. Urban edge guidelines	In support
	Guideline 3.2.6. Manage development in rural and agricultural landscapes	In support
Policy 3.3. Optimise existing infrastructure capacity and economic opportunity by directing mixed use, higher density development to areas of opportunity	Guideline 3.3.7. Promote compact development	In support
	Guideline 3.3.8. Prioritise inclusive mixed used development over peripheral mono-functional development	In support
	Guideline 3.3.9. Ensure the development of strong resilient towns and places	In support
Policy 3.4. Rationalise and cluster regional facilities for sustainable provision and operations	Guideline 3.4.10. Cluster regional social facilities to enhance accessibility	In support
Policy 3.5. Optimise existing social facilities through rationalisation and strategic infill	Guideline 3.5.11. Cede surplus land to the authority responsible for housing delivery	In support
	Guideline 3.5.12. Develop multifunctional facilities	In support

#### 5.4. Local level

Spatial development at local level is inter alia guided by the Knysna Spatial Development Framework of 2017.

According to this framework the subject property falls within the urban edge and is thus suitable for urban development.

The overriding intention of the **Spatial Vision** is to build the Knysna municipal area as a “complete”, just and inclusive ecosystem, society and economy where all can participate without undermining the resources needed to sustain future generations.

The SDF’s three **Spatial Strategies**, aligned with those of the Eden SDF, are:

- The environment IS the economy.
- Equitable and inclusive access for spatial justice improving economic and social inclusion.
- Sustainable and smart growth management and optimising resources – doing more with less.

The all-embracing logic is to establish a clear role and hierarchy of settlements and connections between them to achieve equitable access for balanced and spatially just settlements.

In this context **Figure 17: Knysna Spatial Vision and Concept** defines Sedgefield as a “coastal town (direct new growth)”.

The **overall spatial concept** has an all-encompassing aim to **re-establish balance** which speaks to many dimensions of the spatial organisation and future of the municipal area and will include:

- balance between development and the environment to ensure that growth is spatially just, financially viable and environmentally responsible by working towards compact, vibrant, liveable and efficient settlements;
- balance between settlements in relation to the allocation of and access to resources, recognising and consolidating their varied economic and social roles;
- balance within settlements in terms of built versus natural areas, land use mix and range of housing and economic areas to create complete neighbourhoods, towns and villages;
- balance between the nature and location of growth and the impacts on environmental, financial and infrastructure capacity and resources;
- balance between supply and demand so that the fiscal sustainability of the municipality and its residents is assured;
- balance in the use of transport modes; and
- the regeneration of streets and public spaces to create “complete streets”.

The elements of this spatial concept are expanded in terms of the three **spatial strategies** mentioned above.

#### **This case**

According to the SDF the subject property falls within the **urban edge** and in the **Urban Development Spatial Planning Category [SPC]**. Its current zoning of **Single Residential Zone I** is not changing. This implies that the use will remain consistent with the SDF’s demarcation of **Urban Development**.

## **6. OTHER LEGISLATION**

### The National Environmental Act (Act 107 of 1998)

None of the activities listed in NEMA will be triggered by the proposed development nor is the subject property situated within the boundaries of a recognised Critical Biodiversity Area or a listed Threatened Ecosystem.

### The Building Standards Act (Act 103 of 1977)

Although an application for the approval of a building plan can only follow the successful completion of this application, it is appropriate to anticipate if such plans may have to be rejected by virtue of Section 7 of the Building Standards Act based on one or more of the following criteria:

- The building will probably or in fact disfigure the area in which it will be erected.
- The building will probably or in fact be unsightly or objectionable.
- The building will probably or in fact derogate the value of adjoining or neighbouring properties.
- The building will probably or in fact be dangerous to life or property.

It is proposed that none of these disqualifiers will apply as demonstrated throughout this memorandum.

## **7. MOTIVATION**

### 7.1. The removal of title restrictions

As discussed in paragraph 3.3 above, Condition E.6(b) of the property’s Title Deed prohibits a second dwelling and Condition E.6(d) determines a street building line of 4,72 m. The reasons for removing these conditions are:

- As mentioned before, the owners bought this property and discovered that the laundry on lower ground floor level encroaches the street building line without approval. Same with the single garage on upper ground floor level. To solve these contradictions, they have no other choice but to apply for the removal of Condition E.6(d).
- Although the owners do not have plans to build a second dwelling now, they know that the Knysna Zoning Scheme permits a second dwelling of not more than 60 m<sup>2</sup> as a primary right. To avoid future expenses, they proposed the removal of Condition E.6(b) while they are forced to apply for the removal of Condition E.6(d).

As motivation for the removal of these title restrictions, it is proposed that the municipality will, by virtue of its Zoning Scheme, retain control of these facets of land use management. Given the array of modern town planning control measures available to authorities, engaging conditions of title as a measure of controlling land use is old fashioned and rather impractical. Other than conditions protecting specific rights of beneficiaries, the removal of restrictive conditions of title will thus have no negative influence on the control of urban development.

#### The Knysna Municipality's Standard Municipal Land Use Planning By-law of 2016

According to Section 33(5) of the Knysna Municipality's Standard Municipal Land Use Planning By-law of 2016, when the Municipality considers an application for the removal, suspension or amendment of a restrictive condition, it must have regard to the following:

- 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;*
- the personal benefits which accrue to the holder of rights in terms of the restrictive condition;*
- the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;*
- the social benefit of the restrictive condition remaining in place in its existing form;*
- the social benefit of the removal, suspension or amendment of the restrictive condition; and*
- 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;*
- Whether the removal would be in the public interest.*

By approving the application for the removal of the said two title restrictions, none of these considerations nor the rights of any third party and/or broader society will be ignored or negatively affected. Furthermore, all other rights protected by virtue of the property's Title Deed will remain intact.

### **7.2. The impact on neighbouring properties**

#### Public participation

Due to practical considerations the neighbours have not been contacted for their comments. It is, however, assumed that no neighbour or his/her property will be affected negatively in any manner. This assumption is based on the following grounds:

- The limited scale of the structure encroaching upon the building line;
- The position of the relevant structure, below and obscured by the slab connecting Agapanthus Avenue with the garage; and
- The fact that this structure has been there for some time and did not invite any negative reactions up to now.

### **7.3. The amenity of the neighbourhood**

In the Brenton-on-Sea precinct a variety of building styles are found – some of lesser value and some significantly better. As discussed in paragraph 7.8 below, the challenging topography also influenced the character of the development in the neighbourhood by forcing many cases of building line encroachments.

It is proposed that the subject property represents development of a very good quality which can be regarded as an asset for the neighbourhood. One of the subjects of this application – the hidden laundry – is not visible from the street or from neighbour’s stands and can thus not have any influence on the streetscape of amenity of the neighbourhood. Even on closer inspection it cannot be faulted in terms of appearance. The secondary subject of this application – the single garage on upper ground floor level – has been built long ago and has never attracted any negative comments or community resistance.

#### **7.4. Building lines as instrument to control land development**

In the arsenal of development control instruments town planners have at their disposal, building lines are probably one of the oldest and most common. Below follow some reasons why the implementation of building lines may be necessary:

For health and safety:

- To ensure ventilation of air between buildings.
- To allow sunlight to reach streets and lower floors.
- To support fire prevention by the creation of gaps between buildings preventing fires from running uninterrupted from building to building.
- To create space for fire fighters to access burning buildings from all sides.
- To promote traffic safety by ensuring clear lines of sight at intersections and bends.

For services:

- To create space for engineering services (water, electricity and sewage) and other utilities (i.e. tele-communication lines).
- To reserve space for new roads and road widenings.

For development control and urban design:

- To allow for the creation of attractive streetscapes.
- To assist in the establishment of uniform areas.
- To assist with the control development densities.
- To support the creation of private living conditions

With this in mind, it is proposed that the approval of the requested departures will not defeat any of these purposes of building lines.

#### **7.5. Impact on engineering services**

No municipal engineering or other services found on the property will be affected.

#### **7.6. Impact on fire prevention**

The proposed departures will not cause a fire hazard nor will it impede any firefighting action on the subject property or neighbouring properties.

#### **7.7. Impact on roads and traffic**

The proposal will not have any effect on roads and traffic movements.

#### **7.8. The prevalence of precedents**

The terrain where the Brenton-on-Sea township was developed is challenging in many ways. As can be seen on **Annexure J** (Topography and Slopes) and **Annexure K** (Perspective of the terrain), many erven are affected by steep slopes. Inevitably this forced architects and builders to encroach upon building lines just to be able to develop feasible dwellings. This statement is supported by the long distance observation survey of probable encroachments as shown in **Annexure M** (Probable building line encroachments).

#### **7.9. Reasons for land use control measures**

Following on the previous paragraph, is the consideration of the reasons for imposing land use control measures and reasons for departing from those rules.

## Legislation

Looking at South African legislation, from the constitution down to the by-laws of local authorities, the message is clear – we have an obligation towards the sustainable development of our country. Land use management is said to be essential for cities, towns and villages to shape the future of their communities.

Section 156(1) of the Constitution of the Republic of South Africa confers on municipalities the executive authority and the right to administer municipal planning. The resulting sets of planning laws adopted by all tiers of government, gave birth to planning instruments that are used to shape economies and influence social and political life in cities and towns as well as in rural areas.

Against the backdrop of a series of Constitutional Court judgments, SPLUMA put municipalities at the epicentre of land use planning and land use management. Section 25 of SPLUMA determines the purpose of a land use scheme as follows:

*“A land use scheme must give effect to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates in order to promote—*

*(a) economic growth;*

*(b) social inclusion;*

*(c) efficient land development; and*

*d) minimal impact on public health, the environment and natural resources.”*

Section 28 of SPLUMA empowers municipalities to amend their land use schemes, thereby creating flexibility.

Looking at the Western Cape Land Use Planning Act, Act 3 of 2014 [LUPA], we find the following reasons for having land use schemes in S.23:

### ***“Purpose of zoning schemes***

***23. The purpose of a zoning scheme is to at least—***

*(a) make provision for orderly development and the welfare of the community; and*

*(b) determine use rights and development parameters, with due consideration of the principles referred to in Chapter VI.”*

The Knysna Spatial Planning and Land Use Management By-law of 2021 [SPLUMB], does not provide any reasons for or purpose of managing land use – it is merely designed as a tool to fulfil the municipality’s obligations derived from national and provincial levels.

The Knysna Zoning Scheme By-law of 2020, however, describes the purpose of the by-law vividly, thereby ensuring alignment with the empowering legislation:

### **Purpose Of Zoning Scheme**

**3.** The purpose of the zoning scheme is to:

(a) give effect to the municipal spatial development framework;

(b) make provision for orderly development and the welfare of the community; and

(c) determine use rights and development parameters, with due consideration of the principles referred to in the Land Use Planning Act (Act 3 of 2014).

## Reasons for departing from land use scheme conditions

Surely the common occurrence of deviations from the rules makes one question the rationale of land use controls – why do we have all these development restrictions if deviations are allowed so frequently?

Same as for departures in general, the answer for departures from building lines is simple: The use of building line restrictions is not a method of robbing landowners from developable land. It is merely a tool that is used to gradually shape attractive and practical urban landscapes and in the same time ensure that space is reserved for the reasons as outlined earlier. In this case the as-built structure is hidden from sight and will consequently have zero impact on the surrounding environment

The placing of the laundry below the slab at lower ground floor level was a very clever method to turn a weakness (the prevailing steep slopes) into a strength (cost saving building method).

Fortunately, case studies demonstrate that municipal town planners are generally using this tool correctly to create harmonious and efficient precincts where landowners are allowed to use their land optimally without damage to the amenity of the neighbourhood. The willingness of town planners to deviate from hard and fast rules – flexibility – is a sign of them keeping pace with modern trends, new perspectives and modern ideological approaches to urban development and land use management.

For this reason, it is argued that this application is expected to be considered objectively.

#### **7.10. General public interest**

- The application for the departures from the zoning scheme and removal of restrictive title conditions is consistent with what is possible for all property owners in Knysna—a standard legal procedure available to all property owners was followed.
- All rights of the surrounding property owners to the beneficial use and enjoyment of their properties that existed prior to the proposed redevelopment of this property, will remain intact.
- Traffic movements in the precinct will not change due to the approval of this application.
- From the perspective of aesthetics, the precinct cannot be negatively affected by the approval of this as-built structure.
- From the perspective of the security of neighbours' investments, it is also obvious that the existing improvement will lead to the subject property being more sought after which will drive its value northwards and eventually support the growth of property prices in the precinct.

#### **7.11. Desirability**

Viewed from all perspectives, the approval of the application:

- will not lead to conditions that may be harmful to property owners in the direct vicinity or in Knysna;
- will not cause any of the rights of affected landowners to be affected in any manner;
- will not damage the amenity of the area in any manner;
- will not be detrimental to property values in the neighbourhood;
- will not represent a real or potential threat to the health of the inhabitants or their neighbours;
- will not compromise safety, especially fire prevention and firefighting;
- will not detrimentally affect any existing or future engineering services;
- will not affect traffic conditions;
- will enable an attractive development with no negative visual impact; and
- will not impact nature.

#### **7.12. Spatial Planning policy and guidelines**

Under the heading “**5. SPATIAL PLANNING POLICIES AND GUIDELINES**” the compliance of the proposed land use with policies of all tiers of government was clearly shown. Rejecting or disapproving the application will most definitely be contra-productive in achieving the spatial planning goals and objectives of the province, the district and the local municipality.

### **8. CONCLUSION**

The practise of deviating from the standards of a zoning scheme or any other development control instrument, is as old as such instruments exist. To bluntly refuse a request for permission to deviate, is not only unreasonable but also highly irregular. Each case has to be considered independently and decisions should be based on, among others, the degree of deviation, the reasons for deviating as well as the impact on surrounding properties, the neighbourhood and the town.

It is argued that it has been vividly demonstrated that the existing encroachment of the street building line by the as-built laundry (a) is not in contrast with any town planning policy or guideline; (b) that the surrounding community has never expressed its dissatisfaction with the status quo; and (c) that no privacy or safety issues will arise as a result of the approval of this application.

Secondly, it is proposed that the removal of the title condition pertaining to a second dwelling, will align the property's land use rights with its primary rights as stipulated in Knysna's Zoning Scheme.

The approval of this application will thus not have any negative affect on the town or its people and will eventually contribute to the bettering of Knysna.

  
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