

Ref: Erf 3480,AvieSedge – R.00

ERF 3480, AVIEMORE ESTATE, SEDGEFIELD – PERMANENT DEPARTURE – BUILDING LINE DEPARTURE IN TERMS OF BYLAW SECTION 15(2)(B)

29 June 2022

We on behalf of the property owner, Silver Charm Investments, apply for a **Permanent Departure, the permanent departure of the rear building line.**

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ANNEXURES

Annexure A: Dept. Local Government Approval – Building Plan (2021)

Annexure B:

1. BACKGROUND

a. Background:

- i. Avimore Estate is a well-established estate in Sedgefield on the northern side of the N2 highway, before leaving Sedgefield. The property referred to on this application, is in the first phase of the development.
- ii. The property is situated against the rear boundary of the estate. This property and similar in line with it, are very steep. Finding balance to make the site workable is difficult. More of this is explained under point “b. The Application”
- iii. The building plans for the new residence were approved on 3 November 2021.
- iv. The Property was bought from the previous owner by Mr Pretorius and then during an off-plan sale, purchased by Silver Charm Investments (Pty) Ltd.
- v. At completion of the project Mrs Mbali Chilli inspected the dwelling for the occupation certificate to find that the retaining wall was illegally built over the rear three-meter building line. Mrs Mbali Chilli confirmed that an occupation certificate cannot be issued until the drawings are approved.
- vi. The requirement from council for the departure application is fully accepted and agreed upon. Incomplete information lead to the misunderstanding that the departure had to be applied for and the property owner, contractor and Loom Architecture studio was not aware of this requirement. None of the other properties seemed to have applied for the same departure. From the estate approval to the Knysna Municipality Building Plan Approval, no flags were raised concerning this matter. Without specifically referring to the retaining wall, Knysna Municipality approved the building plans.

b. The Application

Loom Architecture Studio have been appointed by Silver Charm Investments (Pty) Ltd (Refer to Annexure – Power of Attorney) to prepare and submit the required application documentation (refer to ANNEXURE F: Municipal Application Form) for:

- i. A permanent departure of the northern (Rear), in terms of Section 15(2)(b) of the Knysna Municipality: Spatial Planning and Land Use Management By-law (2021), to allow
- ii. Property description size & ownership

c. Property description size & ownership:

A copy of the title deed (Annexure) outlines the information of the property. The SG diagram is attached (Annexure

Title Deed Number:	T 37652
Title Deed Description:	Erf 176 Knysna, in the Municipality and Division of Knysna, Province of the Western Cape
Property Owners:	Silver Charm Investments (Pty) Ltd Esther Townsend
Bonds:	There is no bond registered on the property.
Property Size:	439m ²
Servitudes:	There are no servitudes registered over the property.
Title Deed Restrictions:	There are no restrictive title deed conditions that could prevent the departure application.

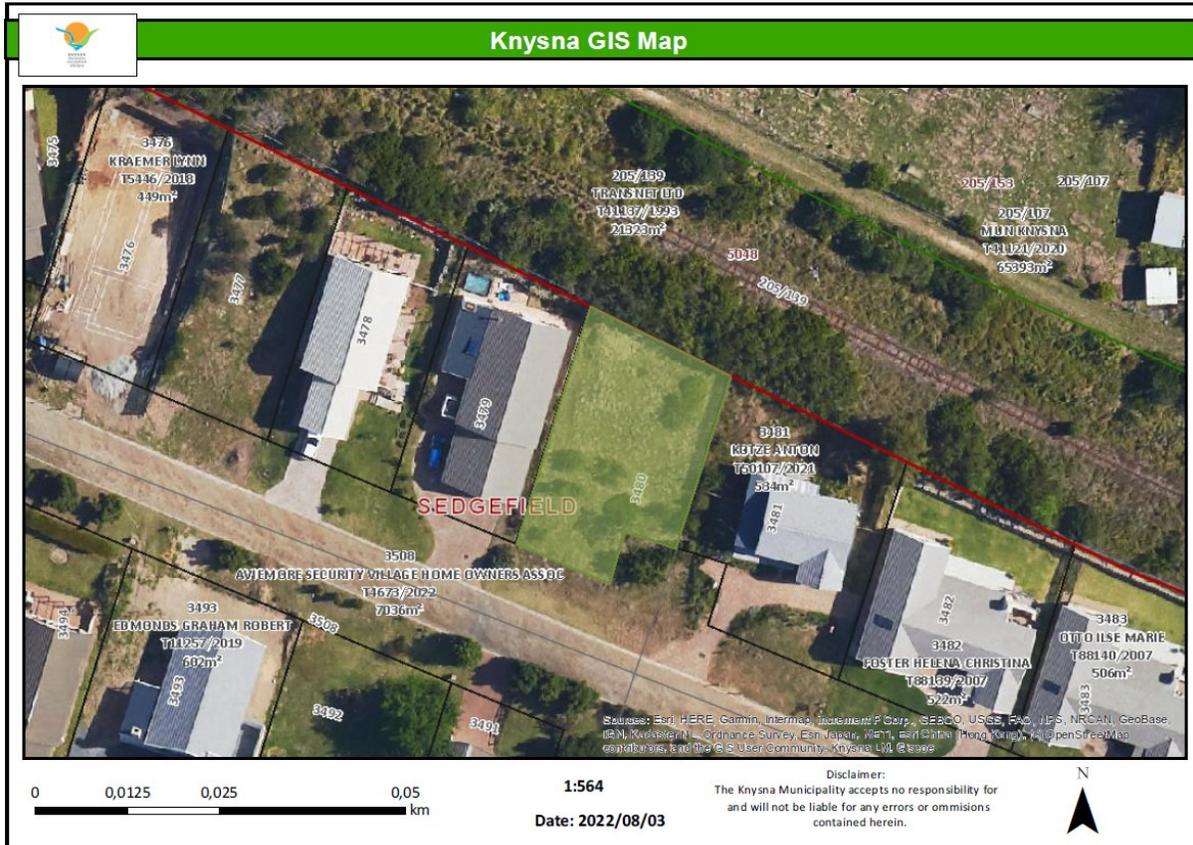
2. PROPOSAL

- a. Development Specification:
 - i. Completed new dwelling at 193.54m²
 - ii. Completed retaining wall at maximum 3,75 meters high to be approved as constructed over the existing 3 meter building line.
 - iii. Building line to be reduced to a 1 meter building line.
- b. Statutory Specifications
 - i. Permanent Departure:
 1. The Knysna Municipality: Zoning Scheme By-law (2020) describe a 3 meter building line for erven smaller than 500m², for a dwelling house in Single Residential Zone I.
 2. The block retaining wall has been built 1 meter from the boundary at its highest point, and 2 meters away from the property boundary at its lowest point.
- c. Knysna Municipality Bylaw (2020)
 - i. Non-Conforming Use:
 1. All building on the property is as per the approved building plans dated 13 November 2021 complies with the use.
 2. The erected retaining wall at 3,75 meters high over the building line requires the building line departure application.
- d. Services Infrastructure.
 - i. The departure application will have no impact on any engineering services.

3. CONTEXTUAL INFORMATION

a. Locality:

Erf 3480 Sedgefield is located at 33 Bushbuck Street, Aviemore Estate, Sedgefield, 6573.



GPS Coordinates: [-34.018718, 22.818991](#)

- b. Current Land Use & Zoning
 - i. Land Use: The property is currently used for single residential purposes and has a dwelling built on the site.
 - ii. Zoning: The erf is currently zoned “Single Residential 1” in terms of the Knysna Municipality: Zoning Scheme By-law.
- c. Character of the Area: The property is situated within the confines of Aviemore Estate and remains a residential property. The retaining wall constructed are similar to those of the neighbouring properties.
- d. Existing Policy Frameworks
 - i. Western Cape Provincial – An application for the permanent departure of the rear building line is not directly applicable to the special planning policies of the PSDF.
 - ii. Knysna Integrated Development Plan – No social economic challenges or services delivery will be influenced by the retaining wall building line permanent departure application
 - iii. Knysna Spatial Development Framework – The permanent departure application for the rear building line has no influence on the Knysna SDF.

4. MOTIVATION

- a. Assessment of Applications
 - i. Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The respective rights and obligations of all those involved – All neighbours as well as the Aviemore Estate Home Owners Association signed off on the permanent departure of the rear building line.

- ii. The estate allows the dwelling to be within 200mm from the neighbouring dwelling levels. In the case of erf 3480, a level between the 2 neighbours was chosen, as the levels deviate from the 200mm maximum, but still had to be within reason in its relationship to the neighbouring levels. These levels automatically lowered the dwelling so that the retaining wall would be required.
 - iii. The neighbouring properties have retaining walls and it was the only option to to the same.
 - iv. Due to the slope of the stand and the stand width, a 2–3-bedroom dwelling with a garage could only be built on the average level in relation to the neighbours. The slope of the stand is such that access to the garage would need to use a maximum slope for garage access. On maximum slope the garage and dwelling were built on the proposed level which in turn requires the retaining wall.
 - iv. To keep the dwelling within the front, sides, and rear building lines, only a certain amount of space would be left between the house and retaining wall to pass through. Thus, the retaining wall was built on the absolute maximum distance from the dwelling. The estate required that at least 1 meter of the natural ground level be preserved to protect the fence from falling over when soil stability is influenced.
- b. Consistency with Spatial Policy Directives – Not applicable.
- c. Consistency with the character of the Surrounding Area – No change in character. All dwellings on the same side of Bushbuck street have the same retaining wall to berm the high-level and difficult lay of the land.
- d. No Impact on Existing Land Use Rights – The land use is not being influenced by the building of the block retaining wall.
- e. Environmental Impact - No listed activities as contemplated by the National Environmental Management Act, 1998 (as amended) (NEMA) are triggered by this application.
- f. No Impact on Municipal Services – The connections to engineering services have been approved during the building plan application for the dwelling and installed accordingly.
- g. Desirability – The retaining wall has no negative impact on the character or acceptability of the development. The installation reflects the same purpose as neighbouring properties retaining walls.
- h. Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)
- i. Spatial Justice
 1. Past spatial and other development imbalances must be redressed through improved access to and use of land. – Not applicable
 2. Spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation. – Not Applicable for the retaining wall permanent departure application
 3. Land use management systems should include all areas of a municipality and specifically include provisions that are flexible and appropriate for the

- management of disadvantaged areas and informal settlements. – Not Applicable for the retaining wall permanent departure application
4. Land development procedures must include provisions that accommodate access to, and facilitation of, security of tenure and the incremental upgrading of informal areas. – Not Applicable for the retaining wall permanent departure application
 5. A competent authority contemplated in this Act or other relevant authority considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property will be affected by the outcome of the application. – Not Applicable for the retaining wall permanent departure application
 6. Promote land development that is spatially compact, resource-frugal and within the fiscal, institutional, and administrative means of the relevant competent authority in terms of this Act or other relevant authority – Not Applicable for the retaining wall permanent departure application
- ii. Spatial Sustainability:
1. Promote land development that is spatially compact, resource-frugal and within the fiscal, institutional and administrative means of the relevant competent authority in terms of this Act or other relevant authority – Property within the Sedgefield urban edge, existing municipal connections and no additional services required.
 2. Ensure that special consideration is given to the protection of prime, unique and high potential agricultural land. - Not Applicable for the retaining wall permanent departure application on a residential 1 use zone property.
 3. Uphold consistency of land use measures in accordance with environmental management instruments. - Not Applicable for the retaining wall permanent departure application on a residential 1 use zone property.
 4. Promote and stimulate the effective and equitable functioning of land markets. - Not Applicable for the retaining wall permanent departure application on a residential 1 use zone property.
 5. Consider all current and future costs to all parties for the provision of infrastructure and social services in land developments. - Not Applicable for the retaining wall permanent departure application on a residential 1 use zone property.
 6. Promote land development in locations that are sustainable and limit urban sprawl, and result in communities that are viable. - Not Applicable for the retaining wall permanent departure application on a residential 1 use zone property.
 7. Strive to ensure that the basic needs of all citizens are met in an affordable way. - Not Applicable for the retaining wall permanent departure application on a residential 1 use zone property.
 8. The sustained protection of the environment should be ensured. - Not Applicable for the retaining wall permanent departure application on a residential 1 use zone property.
- iii. Spatial Efficiency
None of the special efficiency principles are applicable to this application.
- iv. Spatial Resilience
Not applicable to the current application.
- v. Good Administration
All government departments must provide their sector inputs and comply with any other statutory requirements during the preparation or amendment of spatial development frameworks. -

i Conclusion:

1. The application is of a small scale and the retaining wall are similar to that of the retaining walls of existing neighbouring properties.
2. The permanent departure application meets the criteria as set out in The Spatial Planning and Land Use Management Act (SPLUMA) and the Knysna Land Use Planning Bylaw.
3. In spite of being existing, the departure is desirable to be in line with the need and requirement due to site levels, vehicle access and usable space around the dwelling, as well as match the existing tendencies and requirements of neighbouring properties.
4. In relation to the motivation this application is recommended and request the support of the relevant authorities.