

ERF 1941 KNYSNA

DEPARTURE & REMOVAL OF RESTRICTIVE TITLE CONDITIONS APPLICATIONS



Planning  Space
Town and Regional Planners

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LIST OF PLANS

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Annexure B: Title Deed

Annexure C: General Plan

Annexure D: Approved Building Plans

INFORMATION REQUIRED IN TERMS OF SECTION 38. OF THE BY-LAW

COMPULSORY INFORMATION AND DOCUMENTATION REQUIRED

	DEPARTURE	REMOVAL OF RESTRICTIVE CONDITION	ANNEXURE REFERENCE
Completed & signed application form	√	√	T2
Power of Attorney / Owner's consent (1)	√	√	Annexure A
Resolution (2)	√	√	N/A
Proof of registered ownership (3)	√	√	Annexure B
Bondholder's consent (if any)	√	√	N/A
Written motivation (4)	√	√	Main document
S.G. diagram / Extract of the general plan	√	√	Annexure C
Locality plan	√	√	Diagram 1
SDP / conceptual layout plan	√	√	Diagram 5
Subdivision plan [incl street name(s) &no]	-	-	Not required
Proof of payment of application fees	√	√	Attached
Copy of title deed	√	√	Annexure B
Conveyancer certificate (7)	√	√	Not required
Minutes of pre-application meeting (8)	√	√	Not available
Zoning plan	-	-	Diagram 3
Phasing plan	-	-	No Phasing required
Consolidation plan	-	-	Not required
Proof of lawful use right	-	-	Not required
Proof of failure of HOA (9)	-	-	Not required
Copy of original approval letter (s)	-	-	Not required
ADDITIONAL INFORMATION			
Approved Building Plans	√	√	Annexure D

1. INTRODUCTION

Planning Space Pty Ltd. has been appointed by Davkat Trust, the owner of Erf 1941 Knysna, to prepare and submit the following applications in terms of Section 15 (2) and Chapter IV of the Knysna Spatial Planning and Land Use Management By-Law 2021:

- i. Section 15 (2) (b): Application for a Departure from the provisions of the Knysna Zoning Scheme By-Law to relax the street building line from 4.5m to 0m to allow the existing encroaching carport as indicated on Site Plan KN1941-SP dated 17 November 2022, attached as Diagram 5.
- ii. Section 15 (2) (f): Application for Removal of Restrictive Title Deed Condition C (f) from Title Deed Nr T000008277/2012 which relates to building lines to allow the above-mentioned carport.

2. BACKGROUND

- Erf 1941 Knysna is a Single Residential I property that is situated in Leisure Island.
- The property was created in 1936 as can be seen from the attached General Plan (see Annexure C).
- On site, there is an existing dwelling house and outbuilding that were approved in 2000 as indicated on the approved Building Plans attached as Annexure D. There is also an existing encroaching carport which has not been authorised by the Local Authority.
- It is the intention to legalise the existing encroaching carport, hence this departure and removal of restrictive title deed condition application is being submitted prior the submission of Building Plans to the Building Control Office.
- Detailed proposal will be discussed in paragraph 4 of this motivating memorandum.

3. PROPERTY INFORMATION

3.1 LOCALITY

- Erf 1941 is situated at Nr.02 Horne Drive in Leisure Island.
- Leisure Island is an established residential suburb in Knysna, which is situated 6 km away from Knysna Central and can be accessed from George Rex Drive.

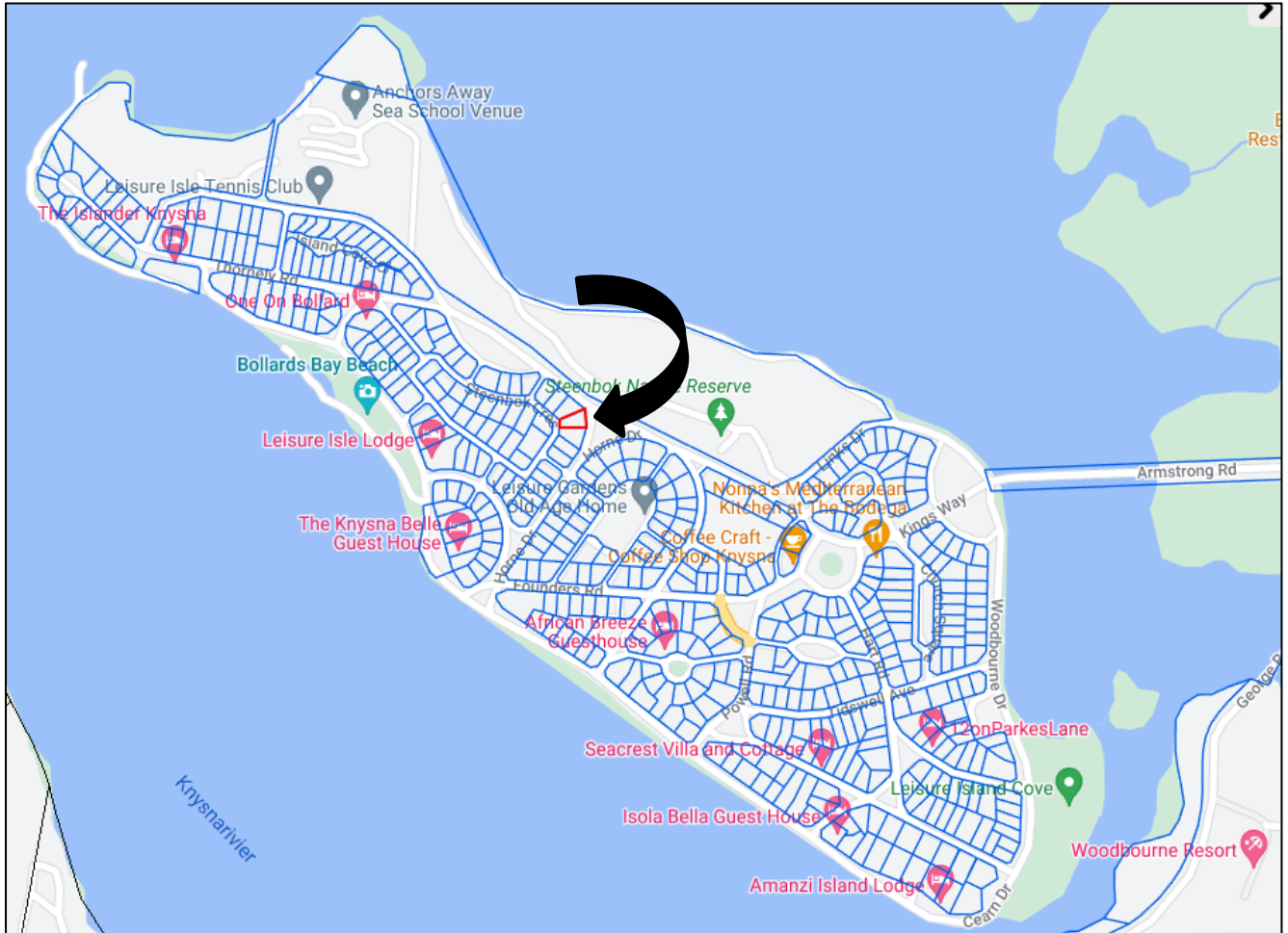


Figure 1: Extract indicating locality of the subject property.

3.2 PROPERTY DETAIL

Title Deed Description	Erf 1941, in the Municipality & Division of Knysna, Western Cape
21 Digit code	C03900050000194100000
Title Deed Number	T000008277/2012
S.G./GP Diagram Nr	GP 2395/1936 (attached as Annexure C)
Title Deed Restrictions	C (f)
Property Size	749 m ²
Property Owner	Davkat Trust
Bonds	None
Land Use	Residential
Zoning	Single Residential I

4. PROPOSAL

- The site contains an existing approved dwelling house and an outbuilding (containing a double garage on ground level and a family games room above the garage).
- The owners constructed a carport on their driveway, in front of the existing garage to provide protection for additional vehicles. They did not realise that they had to submit Building Plans for such temporary structure.
- The existing house and outbuilding were approved on 1.5m lateral building lines and have been built according to these approved plans (see Annexure D: Approved Building Plans).
- The existing carport is encroaching over the 4,5m Zoning Scheme Street building line. Therefore, departure application is required before Building Plans can be submitted.
- A separate application for the determination of contravention levies has been submitted.
- Condition C (f) of the Title Deed restricts the street building line to 5m and will have to be removed to accommodate the carport.
- The purpose of this application is to apply for the required town planning applications prior submitting Building Plans for the existing unauthorised carport to the Building Control Office.

4.1 DEPARTURE

The property is zoned Single Residential Zone I in terms of the Knysna Zoning Scheme By-Law that is applicable to the area. Development parameters are prescribed in the Knysna Zoning Scheme By-Law and Title Deed for the property. Erf 1941 Knysna measures 749 m² in extent. Single Residential 1 parameters pertaining to the site are stipulated on the below.

PARAMETER	KNYSNA ZONING SCHEME BY-LAW		TITLE DEED
BUILDING LINES	Street	4.5m	4.572m
	Lateral	2m	1.524m
	Rear	2m	1.524m
HEIGHT	8.5m		
COVERAGE 50%			
House	239m ²		
Outbuilding	53m ²		
Carport	37m ²		
TOTAL = 329m² (44%)			

An application for a Departure from the provisions of the Knysna Zoning Scheme By-Law is being submitted to the Council to relax the western street building line (Steenbok Crescent) from 4.5m to 0m in order to allow the existing encroaching carport.

4.2 REMOVAL OF RESTRICTIVE CONDITION

Certain additional building restrictions apply to Erf 1941 Knysna as a result of conditions incorporated into the relevant Title Deed. Condition C (f) relates to building lines. To allow the planned encroaching structures, removal of the below condition is required. Therefore, it is requested that the Council remove Condition C (f).

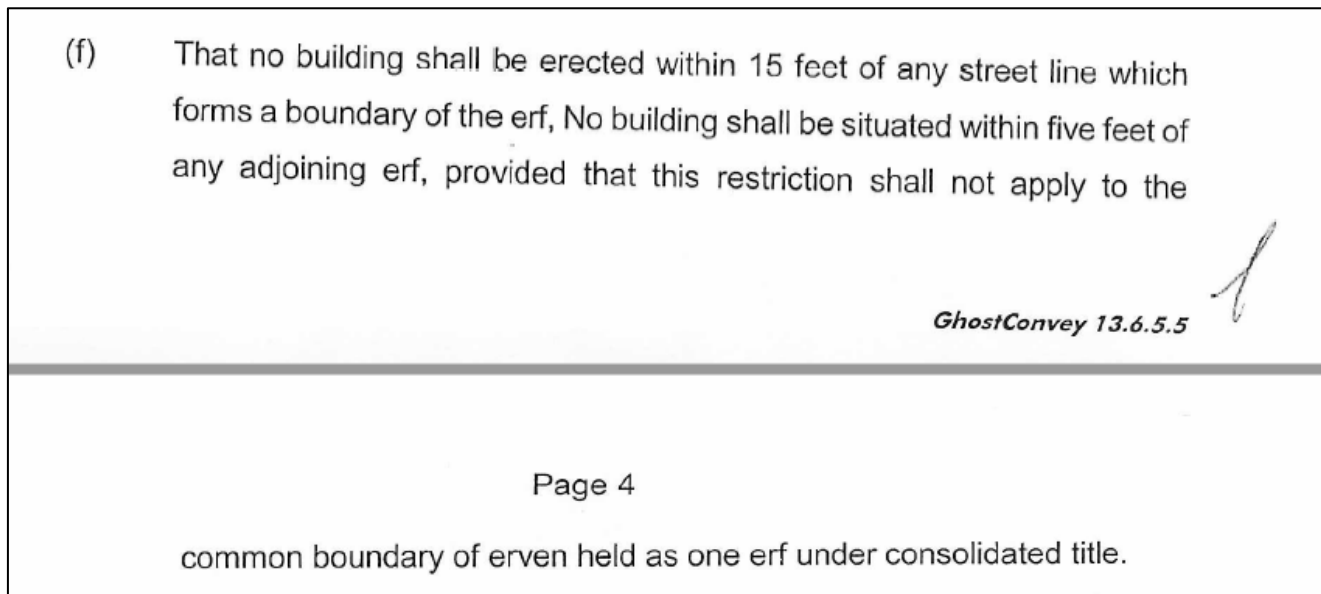


Figure 2: Extract indicating restrictive Title Deed Condition.

5. FACTORS TO CONSIDER

5.1 EXISTING STRUCTURES AND PROPERTY SIZE

All the existing structures on site comply with the provisions of Knysna Zoning Scheme By-Law and Title Deed conditions, except for the carport. The current governing Zoning Scheme only permits **carports**, outbuildings and garages within side and rear boundary building lines. The triangular shape of the property creates a very narrow entrance onto Steenbok Crescent. The design and position of the existing structures on the property makes it impossible to add a car port next to the existing garages. The garage was constructed on the 5m building line, which leaves enough space for a carport in front of the garage.

To place the carport to the east of the house will be unfunctional from a design and flow point of view and aesthetically unpleasing for both the owners who will lose the enjoyment of their garden and northern view and also from Horne Drive which is a main through way in Leisure Island.

5.2 PARKING REQUIREMENTS AND ACCESS

Knysna Zoning Scheme By-Law stipulates that for properties greater than 350m², two parking bays are required. On site, there is an existing garage which accommodates 2 cars.

The existing encroaching carport provides additional undercover parking for other cars. Access for the carport is gained through the existing driveway on Steenbok Crescent and pedestrian access is gained via Horne Drive.

It should be noted that the carport is attached to the existing garage and a car will not directly reverse to the street as there is an existing road reserve between the western property boundary and the street (Steenbok Crescent).



Figure 3: Picture indicating the existing garage, encroaching carport, access.

5.3 CONSIDERATION OF SECTION 33 (5) OF THE KNYSNA MUNICIPAL BY-LAW

It should be kept in mind that at the time when Leisure Isle township was established in the early 1930s, there was no Town Planning (or similar) Scheme in operation. Restrictive conditions of title were the only mechanisms available to ensure land use control. Today, the older neighbourhoods in towns and cities are restricted by two sets of legally binding parameters. This is not in the public interest as it often causes confusion for landowners and also creates an unnecessary administrative burden for the local authority. With the introduction of the Knysna Town Planning Scheme in 1992 and the more recent Zoning Scheme By-law in 2020, the need for this type of land use control has become redundant. The removal of the restrictive clause relating to the building lines will ensure that only one set of rules apply.

The personal benefit to the owners of Erf 1941 is that they will be able to keep the existing encroaching carport on the premises. The site-specific circumstance of having 2 street building line restrictions on this relatively small property, severely limits the development footprint of the property, which negatively impacts on the value of the property as the owner is more restricted than other properties that may only have one street boundary.

We do not believe that there will be any social benefit in keeping the restrictive condition. The removal of the condition will not remove all the rights enjoyed by the Leisure Island community. The property will still be restricted in terms of the other conditions contained in the Title deed, as well as the provisions of the Knysna Zoning Scheme By-Law.

The proposal relates to building line relaxation on a private property and is not a matter of public interest. By removing the restrictive condition, the land use will not change, and the character of the area will not be affected, especially since there are existing structures on site and the encroaching carport is part of these structures.

We believe that the removal of restrictive condition will be in the public interest for the reasons mentioned above.

5.4 ANTICIPATED IMPACTS OF THE DEPARTURE

It is believed that the building line relaxation will have no detrimental negative impact on the surrounding properties. The encroaching structure has been in existence for at least 10 years. Although the carport is visible from the street, it is not unsightly or out of character. The streetscape will not be affected as the carport is already existing and other properties in the area have similar setups of carports situated on the street boundaries. Therefore, it is not foreseen that the relaxation will have any impact on the character of the area.

The carport, it is situated on the paved driveway connecting the garage to the street and has therefore caused no environmental impact.



Figures 4 & 5: Picture indicating properties with carports along Steenbok Drive.

5.5 COMPATIBILITY WITH THE KNYSNA SPATIAL DEVELOPMENT FRAMEWORK.

Departure is a matter that is not addressed in Spatial Planning documentation. This by nature is very site-specific and the application will have to be considered on its own merit. It is sufficient to say that they proposal is not in conflict with the vision of the SDF.

5.6 COMPATIBILITY WITH SPLUMA DEVELOPMENT PRINCIPLES

In considering the application, the decision-maker needs to be guided by the DEVELOPMENT PRINCIPLES contained in (Chapter II) of Spatial Planning and land Use Management Act 2013 (Act no 16 of 2013) SPLUMA and Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA).

SPLUMA is a framework law, which means that the law provides broad principles for a set of provincial laws that will regulate planning. It does therefore not have much relevance to individual departure applications that are mostly site-specific.

Section 7 of the Act describes a set of development principles that need to be considered when evaluating any development application. These principles include the following:

5.6.1 Spatial Justice:

The principle of spatial justice requires that past spatial and other development imbalances must be redressed through improved access to and use of land. The proposal cannot directly contribute to spatial reform. These matters are best addressed through spatial development frameworks and zoning schemes and other management systems.

5.6.2 Spatial Sustainability:

The proposal supports this principle of spatial sustainability in the sense that it would not cause any negative detrimental impact on natural assets.

5.6.3 Spatial Efficiency:

The proposal supports the efficient use of existing resources and infrastructure where decision-making procedures are designed to minimise negative financial, social, economic, or environmental impacts. The positive consideration of the application will contribute to the efficient use of serviced urban land with minimal negative impact.

5.6.4 Spatial Resilience and Good Administration:

The proposal supports the principle of good governance and administration by submitting the required town planning application to authorise the existing encroaching structure.

6. CONCLUSION

Council is humbly requested to consider the following applications:

- i. Section 15 (2) (b): Application for a street building line relaxation from 4.5m to 0m to allow the existing encroaching carport.
- ii. Section 15 (2) (f): Application for Removal of Restrictive Title Deed Condition C (f) which relates to building lines.

The reasons for approving the proposal are summarised as follows:

- The situation of the carport in the street building line offers the most desirable placement, due to the position of the existing house and garage as well as the triangular shape of the property.
- The proposal is not in conflict with Spatial Planning Policies.
- The proposal will not detract from the character of the area as it is compatible with the single residential uses in the area and carport on the street boundary is a common occurrence in the street.
- There will be no direct negative impact any of the neighbours.
- The proposal will not negatively impact on the natural environment as no natural vegetation or garden had to be removed to accommodate the carport.
- The proposal is not in conflict with the development principles set out in Section 7 of SPLUMA.
- The street building line relaxation will allow the ratification of the existing encroaching carport.
- Removal of restrictive Condition C (f) will not change the land use of the property or the character of the area.