

KNYSNA LOCAL MUNICIPALITY

Notice is hereby given of an

ORAL HEARING

to be held by the

APPEAL AUTHORITY

on

Monday, 8 December 2025

at

12:00

in the Council Chambers

MUNICIPAL OFFICES
KNYSNA

ADMINISTRATOR

A G E N D A

Appeal Authority: Executive Mayor

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AGENDA

1. Opening of the Hearing
2. Items for Discussion
3. Closure

ITEM TO:

Appeal Authority

APPEAL REFERENCE	
REPORT DATE	15 March 2025
APPLICATION NO.	2534
REPORT AUTHOR	H Smit
JOB TITLE	Manager: Land Use Management
SACPLAN REG. NO.	A/1167/2000
TELEPHONE NO.	044-302-6319
APPLICATION DATE	09 July 2021
DECISION DATE	3 December 2024

APPEAL REPORT**APPLICATION FOR SUBDIVISION AND CLOSURE OF PUBLIC OPEN SPACES:****THE REMAINING EXTENT OF THE FARM NOETZIE NUMBER 394**

Was the original application processed correctly (if no, elaborate below):

Y

N

Not applicable**PART A: APPLICANT DETAILS**

Name & Surname	Lundikazi Khupiso			
Company name	VPM Planning CC			
SACPLAN registration number	C/9271/2020			
Registered owner(s)	Pezula Private			
Is the applicant the appellant?	Y	N	Is the appeal valid	Y
				N

PART B: APPELLANT(S) DETAILS (IF NOT THE APPLICANT)

First Name(s)	Surname	Property Description	Physical Address	Valid/invalid
Nick	Taylor	Noetzie Conservancy Owners' Association (NCOA)	-	-
Total Valid Appeals	1			

PART C: APPLICATION PROPERTY DETAILS

Property description (in accordance with Title Deed)	The Remaining Extent of the Farm Noetzie Number 394
Property Extent (m ²)	612,4771 Hectares (Ha)
Physical address	-
Area/Town	Knysna

Current zoning	Undetermined Zone I; Open Space III; and Transport Zone II						
Applicable zoning scheme	Knysna Zoning Scheme By-Law (2020)						
Current land use	Vacant with roads and infrastructure						
Are there existing buildings on the property?	No						
Title Deed number & date	T 106352/2000						
Any unauthorised land use/building work	☐	☒	If Yes, explain	Not applicable			
PART D: SUMMARY OF PUBLIC PARTICIPATION							
Total valid comments	12			Total valid comments and petitions	12		
Valid petitions	☐	☒	If yes, number of signatures	None			
Community organisation(s) response	☐	☒	N/A	Ward Councillor Response	☐	☐	N/A
Total letters of support	3						
Was public participation undertaken in accordance with section 45 -49 of the By-law on Municipal Land Use Planning					☒	☐	
If the Provincial Minister commented on the application, was he/she afforded the opportunity to comment on the appeal?					☐	☒	
If the proposal triggered an application for land development in terms of Section 10 of the Western Cape Land Use Planning Regulations, 2015, was the Provincial Minister afforded the opportunity to comment on the appeal?					☐	☒	

1. SUMMARY OF OBJECTIONS DURING PUBLIC PARTICIPATION

There were several comments/objections lodged against the application, namely from:

- (i) The Chiefwhip of the ANC and portfolio Chairperson of Governance, Councilor C Croutz;
- (ii) The Noetzie Conservancy Owner's Association (NCOA);
- (iii) Correspondence from E Brown;
- (iv) Correspondence from the Oosthuizen;
- (v) A Sandberg and R Moultrie;
- (vi) An objection was also received from C Spies;
- (vii) The owner of Erf 20361, Noetzie, A Steyn;
- (viii) An objection was received from J Metelerkamp;
- (ix) The owners of Cardona Investments 397 (Pty) Ltd of Erven 20354, 20355, 20356, Knysna;
- (x) Submission from H Otto of Erf 20349, Knysna seconded the objections of the NCOA and Cordona Investments;
- (xi) A Nicolson and T Jones expressed the interests of Erf 20339, Noetzie;

- (xii) Support for the application was received from J Lubbe, Danistan Investments (Pty) Ltd of Erf 20376, Knysna.

These objections can be summarised in the following manner:

- 1.1. The Chiefwhip of the ANC and portfolio Chairperson of Governance, Councilor C Croutz, represented their constituents in their opposition of the application as it restricts access for those who make use of the servitude to gain access to the beach for fishing.
- 1.2. The Noetzie Conservancy Owner's Association (NCOA) acknowledge and reiterate the environmental consciousness of the proposal and wish to add to the matter of the environmental status of portions of the proposed land to be subdivided. Specifically, the NCOA wishes to obtain clarity on the applicant's purpose to subdivide; and amongst other aspects, wishes to know whether the proposal is in accordance with the portion to be subdivided as per the conditions of approval, thus several requests have been provided for the Municipality to pronounce certain conditions should the proposal be approved.
 - 1.2.1 Firstly, the NCOA states that compliance with condition number 6 (six) of the record of decision (ROD) must be met as it requires that at least 500Ha are to be retained and managed as private open space.
 - 1.2.2 Secondly, the NCOA requires that the applicant revise the respective diagrams to indicate that the public thoroughfare extends from Erf 20328 west to 20359 in the east as per the General Plan 1915 for Noetzie as the proposal reflects that it only starts at 20330, Noetzie.
 - 1.2.3 Furthermore, the NCOA, wished to clarify whether the 152Ha stated in the applicant's memorandum is part of the requirements of the decisions previously granted and reiterate that the current land uses which have been noted ought to reflect the area dedicated for public parking.
 - 1.2.4 The fourth requirement of the NCOA is that the proposed subdivision application(s), registration of servitudes; and amendment of the general plan are to ensure that the free movement of animals due to the fact that portions of land are dedicated to the Eastern Heads Noetzie Coastal Corridor, as identified by SANParks.
 - 1.2.5 Following the devastation of the June Infernos during 2017, the commenting party wants to ensure that the applicant conducts controlled burns in order to allow for the sustainability of the Fynbos, in accordance with a fire management plan; and following membership with the Southern Cape Fire Association.
 - 1.2.6 The sixth point of objection by the NCOA requires that the proposal for a private right of way be refused, so as to ensure public passage. They have also proposed that a land swap be undertaken in order to avoid the loss of public land which is in favour of the Municipality, as a result of the proposal. This follows after the fact that during 2006, a member of the public was successful in obtaining instruction from the court (case number 03670/06) that action be taken for the road and steps to be re-opened.

- 1.2.7 Furthermore, the registration of the servitudes should include provision for access to CCTV, as infrastructure, in respect of the grant bestowed upon the NCOA by the Municipality.
- 1.2.8 Lastly, the NCOA states that the Municipality must impose a condition in respect of the area designated as "Open Space III" for nature conservation', in order to disallow the erection of any structures.
- 1.3 Correspondence from E Brown was received to fortify the sentiments of the NCOA and express reservations towards the proposal. These are predominantly parking related matters including that there is no parking provided for the river properties and therefore, the small triangle formed by the points H, K and J on the diagram of Minor Road 3 be included as part of the road diagram I; that a servitude be registered in favour of the public as per existing servitude to suffice for parking provision for the river properties as well.
- 1.4 The Oosthuizen have expressed their interests as the owners of Erven 20358 and 20359, Knysna (Noetzie) which are situated along the western regions of the regions of the properties along the river. It is said that, although the application attempts to comply with previous decisions and agreements (2002), it would be unfair for the current owners (and other river property owners) to be subjected to the constraints of having no access (to and) parking provision as a result of the subdivision of the Remainder of Farm 394.
- 1.5 The said beneficiaries of Erf 20351, Knysna (Noetzie), represented by A Sandberg, supported the contributions of the NCOA in respect of maintaining an unfenced biodiversity corridor; and that of R Moultrie with regards to the matter of the provision of access and parking for the river properties, be resolved prior to the approval of the subject application.
- 1.6 An objection was also received from C Spies, in their capacity as a resident of Knysna and whose sentiments were set against the backdrop of the injustices of apartheid planning. Following their experience of being denied access to Pezula on 07 April 2021 due to the unlawful gate which was erected at the Grane Way throughway. As such, the objector seeks clarity on the precise position of the road contained in the proposal; as well as whether the fishermen (public) will still gain access to the ocean. It is also mentioned that it is not clear whether the disposal of municipal land shall be undertaken in terms of Section 14 of the Local Government: Municipal Finance Management Act (MFMA, 2003) as they state that the Local Authority should discourage the disposal of land to developers when it be of benefit to those previously marginalised.
- 1.7 The owner of Erf 20361, Noetzie, A Steyn submitted an objection to the application for the closure of a public place, pointing out that Erf 13493 (Portion A) is currently used as a parking area and should be

retained as such, whereas, the application documents have not addressed the matter. In addition, the objector insists that a private right of way servitude be implemented in favour of Erf 20380, Noetzie; and that the private servitude to Erf 20379, Noetzie should include the public's pedestrian way to the beach. The last access requirements from the objector include that the private right of way servitude in favour of Erven 20328, 20329 and 20375, Noetzie, should also afford the same right to Erf 20330, Noetzie. With regards to services, the objector would like the application to see that the water and electrical servitude in favour of Erf 20379, Noetzie, extend from the said property to Erf 20361, Noetzie in respect of the existing connection. In closing, the objector states that the conditions of the 2011 subdivision approval should be upheld in respect of service installation relating to fibre and other public security infrastructure.

1.8 An objection was received from J Metelerkamp who states that the municipal steps from the beach will now come to a dead-end as a result of the proposed subdivision which should in fact be retained or move it sit gat there is a link between the steps and the present Municipal Street.

1.9 The owners of Cardona Investments 397 (Pty) Ltd of Erven 20354, 20355, 20356, Knysna, who supports the proposal to separate portion A from the Remainder of Farm 394 but with reservations. The main point of contention is that the application fails to meet its central purpose which is said to " formalize... historical and private access arrangements" due to the fact that the issue of parking for the river properties has not yet been resolved between the applicant and the respective owners, as envisaged in clause 6 of the 2002 Agreement. As a result, some of the river properties have since ±1980s utilized a flat portion of land located on the Remainder Farm 394. From this parking area, the residents must access their properties on foot or by means of a boardwalk that been constructed over various properties (and via the throughfare/ commonage) with the permission of Knysna Municipality. As such, it is found to be unfair that the applicants have not fulfilled the agreement and limited the resolution of access arrangements to certain properties as depicted on the subdivision plan.

1.10 Submission from H Otto of Erf 20349, Knysna seconded the objections of the NCOA and Cordona Investments. It was noted furthermore, that a condition be imposed to state, " Anny change in land use which may in future be applied for by the applicant shall be subject to the submission of a complete site development plan application to Knysna Municipality, which application shall be distributed for comment and objections to all interested and affected parties.", in keeping with the legal and regulatory framework.

1.11 A Nicolson and T Jones expressed the interests of Erf 20339, Noetzie, bringing into question the 'need' for the application if there is no proposal for development of the land; and the uncertainty

regarding the registration of the seaward boundary, parking provision for the riverside properties; as well as the out of date high-water mark indicated on the plans. As such, the objectors believe these matters should be resolved prior to the approval of the subject applications.

1.12 Support for the application was received from J Lubbe, Danistan Investments (Pty) Ltd of Erf 20376, Knysna.

1.2 Summary of Comments from Departments/Organs of State:

Name	Date Received	Summary of Comments	Recommendation		
Environmental Services	02/09/2021	It is stated in the motivation document that no construction will occur as a result of the application which is essentially a repeat of a previously approved application. If this is the case then Environmental Management has no objection. If construction is planned as a result of this application then we wish to retain the right to revise this comment.	Positive	Negative	Comment
Technical Services Directorate	27/08/2021	Unrestricted two-way vehicle access must be maintained at all times. Vehicle turning space must be created at the end of the road to allow safe and sufficient space for turning and loading. – No parking need to be accommodated.	Positive	Negative	Comment
SANParks		-Clarity is required about the future management and maintenance of the Open Space after subdivision.	Positive	Negative	Comment

		-Fencing will not be supported. -SANPARKS object as there is no indication that conservation outcome will be achieved. -Although no rezoning is requested at the moment, development rights can be applied for in the future. -Pezula ROD requires 500ha of open space and the application currently on the table needs to be clarified to ensure compliance. -SANPARKS is requesting a site visit with Knysna Municipality and VPM to confirm a way where long term formal conservation outcome can be discussed and agreed upon before they can support the application.			
Department of Environmental Affairs and Development Planning (DEADP)		-It is understood that this proposal is in line with the overall development plan for the Pezula Private Estate. An application for subdivision was previously considered and approved (11 September 2008) as part of the phased approvals of the Pezula Development but has lapsed. This application is essentially the same as the previously approved subdivision plan. -Based on the available information, this Department	Positive	Negative	Comment

		has no objection to the proposal in terms of a Provincial Regulatory Land Use Planning point of view.			
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2. SUMMARY OF MUNICIPAL EVALUATION ON ORIGINAL APPLICATION

The municipal evaluation compiled by the municipal planner can be summarised as follows:

2.1. The municipal planning assessment outlines the application history as follows:

- 19 November 2002: A letter issued by Knysna Municipality stated that approval was granted for the proposed Amendment of the Regional Structure Plan, Rezoning and Subdivision ("Pezula Private Estate").
- 10 April 2003: Approval was granted for the Amendment of the Regional Structure Plan, Rezoning and Subdivision of Farm Noetzie No. 394.
- 11 September 2008: The letter approved the Subdivision of a Portion of The Remainder of Farm Noetzie No. 394.
- 06 May 2011: The letter provided approval for the registration of access servitudes over Portion 78 of the Farm Noetzie No. 394, Erf 13493, Knysna and Erf 13494, Knysna.

2.2. The municipal planning assessment highlights that the SPLUMA principle of Good Governance and Administration is relevant as the proposal will allow the implementation of an existing approval and will allow the transfer of the remainder of the land to the Pezula HOA. Therefore, the proposal is considered to be consistent with the SPLUMA Principles, where relevant.

2.3. The Planner argues that The SDF recognises Noetzie as a rural coastal hamlet and recommends the opening of the Pezula Way – Blue Crane Way – Hornlee Road connection for permanent public access to Noetzie is a priority. Therefore, the subdivision and road closures shall in no way compromise these endeavors.

2.4. It is further argued in the planner's assessment that the proposal shall have any negative impact on municipal services because there are none in the Noetzie hamlet and the application does not include the extension of the Pezula estate(s). In addition, the departments of the Technical Services Directorate have not expressed any reservations on the proposed subdivision and road closure in respect of bulk infrastructure.

- 2.5. The application area comprises of "Undetermined Zone", "Open Space III" and "Transport Zone II" as indicated by the applicant. In addition, the Knoeztie Zoning Map (1995, date unclear) above reflects that there are "Resort Zone" properties which are also regulated in terms of the Noetzie overlay zone of the Knysna Zoning Scheme By-Law (2020).
- 2.6. The planner's assessment holds that the proposal intends to delineate the extent of Erf Portion A and no vertical development has been presented, the subdivision will not have a negative impact on the safety, health, or well-being of surrounding neighbours. More so, as the proposal intends to reinstate rights which were previously granted, the requirements of the conditions of approval shall still be applicable. Changes in planning legislation since 2008 have had no material effect which would require different consideration of the proposal for a subdivision of majority of the land, today. Therefore, the proposed development, by and large, is considered desirable as contemplated in terms of subsection 65(1)(c) of the Knysna Municipality By-law on Municipal Land Use Planning (2016).

3. DECISION ON APPLICATION

- 3.1. The Knysna Municipal Planning Tribunal at a meeting held on 3 December 2024 in considering the application resolved as follows:

"1. That, **Approval be Granted** in terms of section 60 of the Knysna Municipality By-Law on Spatial Planning and Land Use Management (2021) for the subdivision of the Remainder of Farm 394, Noetzie into Portion A (5.8654 Ha) and the Remainder."

- 3.2. The Knysna Municipal Planning Tribunal (KMPT) presented the following as reasons for their decision:

- (i) This approval applies to the application as outlined above and may not be construed as authority to depart from any other legal prescriptions
- (ii) The subdivision shall be generally in accordance with the Subdivision Plan numbered NOET394SUB6, drawn by VPM Planning and dated, 19 November 2021.
- (iii) The applicant's attention is specifically drawn to the conditions of approval in Annexure C of 2008 (v), and (vii) that provide for access to the beach area and parking and that the landowner must secure by way of servitudes.

- 3.3 The above approval is subject to the following conditions imposed in terms of section 66 of the Knysna Municipality By-Law on Spatial Planning and Land Use Management (2021):

- (i) The subdivision shall not compromise public access to amenities such as the beach, parking and related open spaces in Noetzie, provided that suitable access arrangements are in place.
- (ii) The proposal intends to re-instate subdivision rights which were previously granted, and to allow the transfer of the property, an undertaking that will assist with the improved management thereof.
- (iii) There is no change in zoning which has been proposed and therefore, the subdivision to create "Portion A" shall continue to be in harmony with the surroundings.
- (iv) The subdivision is considered desirable as it will not have a negative impact on the safety, health, or well-being of surrounding neighbours.
- (v) The proposal is not in conflict with the policy guidelines of the Spatial Development Framework (2020).

3.4 The KMPT outlined the following additional information for noting:

- (i) The landowner, and/ or its successor in title, shall ensure that a River Management Plan is approved and implemented to the satisfaction of the relevant authority.
- (ii) The landowner, and/ or its successor in title, shall ensure that an Invasive Plant Management Plan is approved and implemented to the satisfaction of relevant authority.
- (iii) The landowner, and/or his successor in title, shall ensure that a Fire Risk Management Plan is approved and implemented to the satisfaction of the relevant authority.

4. TYPE OF APPEAL

First Name(s)	Surname	Type of Appeal		
Lundikazi	Khupiso	Appealing the decision	Y	N
		Appealing the failure of the decision-maker to make a decision within the period permitted	Y	N
		Appealing a condition(s) of approval	Y	N
		Appealing the process followed	Y	N
		Appealing the conclusion of the decision-maker regarding the merits of the land development application	Y	N

5. APPEAL(S) MOTIVATION

The appellant provides the following reasons for their appeal:

- (i) Condition 2 (c) the conditions of approval relating to public access and public parking

- (ii) Item 4 (a) river management
- (iii) Item 4 (c) fire risk management.

A copy of the Appellant's appeal application is listed under **Annexure "C"**.

5.1. The Appellant argues that that the servitudes must be registered prior to subdivision to ensure they are legally binding and enforceable against current and future owners of the property. These include:

- (i) pedestrian and vehicular access down the Old Wagon Road (Minor Road 3);
- (ii) pedestrian access down the private road (to erf 20379) to the Municipal steps;
- (iii) road access to Erf 20380 (historic Pezula Castle);
- (iv) servitude to the western beachfront properties including erf 20330 which was omitted in the application (See point 10 (c) i in the NCOA 2021 objection attached.);
- (v) the public passage at the beach between erf 20330 and erf 20375.
- (vi) the existing public parking area, which has been in continuous use by the public since early last century and is still in use today.

5.2. The Appellant argues that a stream servitude should be registered and provision made for dealing with issues about existing, unregularised and possible future water access rights, abstraction rights and integrated stream management, in consultation with the relevant authorities.

5.3. The Appellant argues that hat the establishment of an integrated fire risk management plan for the proposed subdivided land be made a condition of approval and that the landowner and successors in title become members of the SCFA,

6. COMMENT ON APPEAL

6.1. Comment from Planning Space on the appeal in correspondence dated 3 March 2025 states that the appeal submitted by the Noetzie Conservancy Owners Association against the conditions of the subdivision approval of the Remainder of Farm Noetzie 394 lacks merit and does not comply with the requirements of Section 80 (2) of the Knysna Municipality Spatial Planning and Land Use Management By-Law. The appeal fails to provide valid grounds, factual or legal justification, or new issues for consideration.

6.2. The applicant further argues that the key objections, including the timing of servitude registration, the requirement for a River Management Plan, and Fire Risk Management, are based on ignorance of planning regulations and legal procedures.

6.3. The applicant also believe that the conditions imposed by the Tribunal align with statutory requirements, and the arguments presented in the appeal do not justify the administrative process of reviewing the decision and certainly do not justify overturning the decision, should it be reviewed.

6.4. The applicant concludes by stating that the appeal should be found invalid or alternatively should be dismissed.

A copy of the comment by the applicant is listed under **Annexure "D"**,

7. PROVINCIAL MINISTER'S COMMENT ON APPEAL

Not applicable.

8. MUNICIPAL ASSESSMENT OF COMMENTS

The comment by the applicant, Planning Space is correct in stating that the Appeal application is invalid as it fails to comply with Section 80 (1) of the Knysna Municipality Spatial Planning and Land Use Management By-Law (2021). Section 80 (1) states the following:

"1) An appeal is [in]valid if:

- a) in the case of an appeal contemplated in section 79(5), it is not lodged within the period referred to in that sub-section; or
- b) it does not comply with sub-sections (2) to (7).

Furthermore, the Applicant is correct in arguing that the conditions imposed by the Tribunal align with statutory requirements as it complies with the requirements of Section 66 of Knysna Municipality Spatial Planning and Land Use Management By-Law (2021)

9. MUNICIPAL PLANNING EVALUATION ON APPEAL

9.1. Consistency with SPLUMA

- 9.1.1. The municipal planning assessment highlights that the SPLUMA principle of Good Governance and Administration is relevant as the proposal will allow the implementation of an existing approval and will allow the transfer of the remainder of the land to the Pezula HOA. Therefore, the proposal is considered to be consistent with the SPLUMA Principles, where relevant.

9.2. Consistency with LUPA

The considerations and provisions of LUPA is not dissimilar to those discussed in 9.1. above.

9.3. Consistency with IDP, SDF and applicable policies

9.3.1. It is agreed that SDF recognises Noetzie as a rural coastal hamlet and recommends the opening of the Pezula Way – Blue Crane Way – Hornlee Road connection for permanent public access to Noetzie is a priority. Therefore, the subdivision and road closures shall in no way compromise these endeavors.

9.4. Consistency with guidelines prepared by the Provincial Minister

There are no considerations in respect of such matters as it relates to the subject appeal.

9.5. Impact on Municipal Engineering Services

9.5.1. The proposal shall not have any negative impact on municipal services because there are none in the Noetzie hamlet and the application does not include the extension of the Pezula estate(s). In addition, the departments of the Technical Services Directorate have not expressed any reservations on the proposed subdivision and road closure in respect of bulk infrastructure.

9.6. Outcomes of investigations/applications i.t.o. other laws

Not applicable.

9.7. Existing and Proposed Zoning comparisons and considerations

9.7.1. The application area comprises of "Undetermined Zone", "Open Space III" and "Transport Zone II" as indicated by the applicant. In addition, the Knoeztie Zoning Map (1995, date unclear) above reflects that there are "Resort Zone" properties which are also regulated in terms of the Noetzie overlay zone of the Knysna Zoning Scheme By-Law (2020).

9.8. Desirability of the Proposal

9.8.1. The author concurs with the Municipal Planning in that the proposal is desirable as the subdivision will not have a negative impact on the safety, health, or well-being of surrounding neighbours. More so, as the proposal intends to reinstate rights which were previously granted, the requirements of the conditions of approval shall still be applicable.

10. ADDITIONAL PLANNING EVALUATION RESTRICTIVE TITLE CONDITIONS

There are no restrictive title conditions prohibiting the proposed development and an application for the removal, amendment or suspension of restrictive title conditions do not form part of the application and will not be considered in the appeal application.

11. RECOMMENDATION

- 11.1. That, in accordance with Section 81(7)(f) of the Knysna Municipality Spatial Planning and Land Use Management By-Law(2021) it **BE DECIDED** that the subject appeal against the approval of the application(s) for the subdivision of the Remainder of Farm 394, Noetzie into Portion A (5.8654 Ha) and the Remainder, as decided on 3 December 2024 falls within the jurisdiction of the Knysna Municipality Appeal Authority.
- 11.2. That, in accordance with Section 81(1)(b) and (2) of the Knysna Municipality Spatial Planning and Land Use Management By-Law (2021), it **BE DECIDED** that the subject report and supporting documents on the appeal against the decision of the approval of the application(s) for the subdivision of the Remainder of Farm 394, Noetzie into Portion A (5.8654 Ha) and the Remainder, are considered to be adequate to determine the subject appeal in the absence of a hearing.
- 11.3. That the appeal submitted against the approval of the application(s) for the subdivision of the Remainder of Farm 394, Noetzie into Portion A (5.8654 Ha) and the Remainder, **BE DEEMED INVALID** in terms of Section 80(1) of the Knysna Municipality Spatial Planning and Land Use Management By-Law (2021).

12. REASONS FOR RECOMMENDATION

The reasons for the above recommendation in paragraph 11 are as follows:

- (i) The Appeal application by the Noetzie Conservancy Owners' Association (NCOA) fails to comply with the requirements of Section 80 (2) of the Knysna Municipality Spatial Planning and Land Use Management By-Law (2021).

13. ANNEXURES

ANNEXURE A – Appeal application by the Noetzie Conservancy Owners' Association (NCOA).

ANNEXURE B – Response from Planning Space.

APPEAL

APPLICATION FOR SUBDIVISION AND CLOSURE OF PUBLIC OPEN SPACES:

THE REMAINING EXTENT OF THE FARM NOETZIE NUMBER 394

Registered planner name: **Hennie Smit**
SACPLAN registration number: **A/1167/2000**
Date: **15 March 2025**

Registered Planner Signature:



Decision maker: Appeal Authority

APPROVED

APPROVED
CONDITIONALLY

APPROVED IN PART

REFUSED

Tutuzelwa Tsese

File No.:

15/5/1
15/2/5/3

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Monday, 10 February 2025 16:24
To: Lulamile Mapholoba; Knysna Municipality
Cc: NCOA Chairperson; Anita Strydom
Subject: To Appeal Authority: NCOA appeal application re subdivision of Farm 394 Noetzie
Attachments: Decision letter & conditions Farm 394 Noetzie.pdf; Proof of notification from KM.docx; NCOA Appeal Application form Farm 394 Noetzie.pdf; NCOA Appeal Motivation Noetzie Farm 394.docx; KM no appeal fee required.docx; NCOA objection final signed 2021.pdf

Attention: APPEAL AUTHORITY

Appeal by the Noetzie Conservancy Owners' Association (NCOA)
against parts of the Decision: Subdivision; Closure of Public Place: Remainder of the Farm 394,
Noetzie No. 394, Knysna

Dear MM,

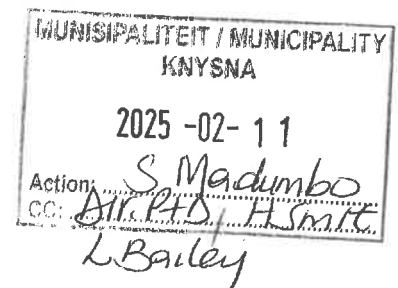
Trust you are well.
 Attached please find:

1. A copy of the KM decision regarding the above, which also contains the conditions of approval.
2. Proof of emailed notification by KM.
3. An Appeal Application Form
4. Motivation and reasons for the appeal.
5. Email from KM to say no fee required.
6. The original objections by the NCOA in 2021 to the above subdivision.

The appeal application and the motivation and reasons are submitted by the Noetzie Conservancy Owners' Association (NCOA), signed by the NCOA chair Nick Taylor, who is copied here.
 Note that the appeal form has been digitally signed.
 Please let me or the chair know if there is anything else you require from the NCOA for the appeal process.

Yours faithfully,
 Melanie Gosling
 NCOA member pp the NCOA chair.
melanie.gosling@gmail.com
 072 863 1425

NCOA Chair: Nick Taylor
chairperson@noetzie.co.za
 082 491 8821



Collab. Ref.: 2335759
File Ref.: Kny 394
Application No.: 2534
JH Smit
Tel: 044-302 6318



Knysna
Municipality Munisipaliteit uMasipala
Inclusive • innovative • inspired

2025-01-21

Via Electronic Mail

NCOA
c/o Melanie Gosling
KNYSNA
6570
Email: melanie.gosling@gmail.com

Dear Sir/Madam,

**DECISION: SUBDIVISION, CLOSURE OF PUBLIC PLACE: REMAINDER OF
THE FARM 394, NOETZIE NO. 394, KNYSNA**

Your comment in the above regard dated 13 September 2021, refers.

Please be advised that the Knysna Municipality Planning Tribunal at a meeting held on 03 December 2024, unanimously resolved the following:

1. That, **Approval be Granted** in terms of Section 60 of the Knysna Municipality By-Law on Spatial Planning and Land Use Management (2021) for the subdivision of the Remainder of Farm 394, Noetzie into Portion A (5.8654 Ha) and the Remainder.
2. The above approval is subject to the following conditions imposed in terms of Section 66 of the Knysna Municipality By-Law on Spatial Planning and Land Use Management (2021)
 - (a) This approval applies to the application as outlined above and may not be construed as authority to depart from any other legal prescriptions.
 - (b) The subdivision shall be generally in accordance with the Subdivision Plan numbered "NOET394SUB6", drawn by VPM Planning and dated, 19 November 2021.
 - (c) The applicant's attention is specifically drawn to the conditions of approval in Annexure C of 2008 (v), and (vii) that provide for access to the beach area and parking and that the landowner must secure by way of servitudes.

3. **Rationale:**

- (a) The subdivision shall not compromise public access to amenities such as the beach, parking and related open spaces in Noetzie, provided that suitable access arrangements are in place.
- (b) The proposal intends to re-instate subdivision rights which were previously granted, and to allow the transfer of the property, an undertaking that will assist with the improved management thereof.
- (c) There is no change in zoning which has been proposed and therefore, the subdivision to create "Portion A" shall continue to be in harmony with the surroundings.
- (d) The subdivision is considered desirable as it will not have a negative impact on the safety, health, or well-being of surrounding neighbours.
- (e) The proposal is not in conflict with the policy guidelines of the Spatial Development Framework (2020).

4. **Additional Information:**

- a) The landowner, and/or its successor in title, shall ensure that a River Management Plan is approved and implemented to the satisfaction of the relevant authority.
- b) The landowner, and/or its successor in title, shall ensure that an Invasive Plant Management Plan is approved and implemented to the satisfaction of relevant authority.
- c) The landowner, and/or his successor in title, shall ensure that a Fire Risk Management Plan is approved and implemented to the satisfaction of the relevant authority.

You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 79(2) of the said legislation.

The attached appeal form must be completed and should be directed to the Appeal Authority and received by the Municipal Manager, P.O Box 21, Knysna or via email to knysna@knysna.gov.za , within 21 days of notification of this decision together with proof of payment of the appeal fee.

Should you have any further enquiries, please contact Linda Mniki telephone number:
044-302 6383 or via e-mail address: lmniki@knsna.gov.za.

Yours faithfully,



JH SMIT

MANAGER: LAND USE MANAGEMENT

Delegations: P.78

/lb

Decision: Remainder of Farm 394 Noetzie, Knysna

Inbox

Search for all messages with label Inbox

Remove label Inbox from this conversation



planning

Thu, Jan 23,
2:02 PM

to me

Good day,

Kindly find attached hereto the decision for your attention.

Kind regards,

Liesl Bailey *Chief Clerk: Land Use Management*

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or 302 6589 (direct)

E-mail lbailey@knysna.gov.za

2 Attachments • Scanned by Gmail





APPEAL APPLICATION FORM

in terms of the Knysna Municipality By-law on Spatial Planning and Land Use Management (2021)

This form must be appended to the letter of appeal or memorandum which must be in accordance with Section 80 of the Planning By-law

PART A: APPEAL

Are you appealing against the decision made by the Authorised Employee or Municipal Planning Tribunal? If yes, indicate in Part E or attached memorandum if the appeal is lodged against the whole decision or part thereof. If the latter applies provide a description of the part.

Are you appealing in respect of the failure of the Authorised Employee or Municipal Planning Tribunal to make a decision within the period contemplated in Section 57(1) and (2) of the By-law? If yes, provide facts that prove the failure in Part E.

Are you appealing against the condition(s) of approval imposed by the Authorised Employee or Municipal Planning Tribunal? If yes, list relevant condition(s) and provide a description in Part E.

Is your appeal based on and primarily concerned with the process followed prior to the Authorised Employee or Municipal Planning Tribunal? If yes, specify in Part E.

Is your appeal based on and primarily concerned with the merits of the land development or land use application on which it is believed that the Authorised Employee or Municipal Planning Tribunal erred in coming to a conclusion? If yes, specify in Part E.

X	
X	

Date of Decision:

21/01/2025

Date of receiving notice of decision:

23/01/2025

Who took the original decision?:
(please select)

Municipal Planning Tribunal

X

Authorised Employee

PART B: APPELLANT DETAILS

First Name(s):

Nick

Surname:

Taylor (chair)

South African Council of Planners
(SACPLAN) Registration number
(if applicable):

Company Name :
(if applicable)

Noetzie Conservancy Owners' Association

Postal Address:

PO Box 336
Knysna

Postal Code:

6570

E-mail:

chairperson@noetzie.co.za

Telephone
Number:

Cell phone number

0824918821

PART C: APPELLANT PROPERTY DETAILS

For property that is affected by the proposed development

Property Description:	Noetzie Conservancy
Physical Address:	Noetzie
Town/Area:	Knysna

PART D: PROPERTY DESCRIPTION OF PROPOSED LAND DEVELOPMENT

Property Description:	Portion A of the Remainder of Farm 394 Noetzie		
Physical Address:	Noetzie		
Town/Area:	Knysna	Current Zoning:	Undertermined & Open Space III
Property Extent:	6.1ha	Current Land Use:	Mostly vacant with roads & public parking

PART E: APPEAL MOTIVATION AND REASONS:

Brief description of appeal (please attach motivating memorandum with detailed reasons/grounds for appeal):

The appeal is lodged by the NCOA against parts of the decision:

- Section 2 (c) the conditions of approval relating to public access and public parking
- Section 4 (a) river management
- Section 4 (c) fire risk management.

Please see attached memorandum listing detailed motivation and reasons for appeal by NCOA.

PART F: ATTACHMENTS AND SUPPORTING DOCUMENTS

Information and documentation required in terms of Section 38(1) of the Planning By-law

Complete the below checklist and attach all documents relevant to the application. Failure to submit all information and/or documents will result in the application being deemed incomplete. The application will not be considered complete until all required information and documents have been submitted.

- Proof of payment of appeal fees (applicant)
- Proof of serving of notice of appeal (applicant)

✓	✓	✗
✓	✓	✗

Copy of decision and proof of notification

Copy of conditions of approval

Motivation and reasons for appeal

Other (specify)

X	2	N/A
X	3	N/A
X	4	N/A
X	5	N/A

Copy of KM decision; Proof of notification; Copy of conditions of approval (contained in KM letter of decision); NCOA's motivation and reasons for appeal; NCOA's original objection in 2021; KM letter saying no fee required.

PART G: DECLARATION:

I hereby wish to confirm the following:

1. That the information contained in this appeal and accompanying documentation is complete and correct.
2. I'm aware that it is an offense in terms of section 86(1) to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct.

Appellant's Signature:



Digitally signed by
66acb63a-4939-4577-
a16f-74336211781b
Date: 2025.02.10 08:48:40 +02'00'

Date:

11/02/2025

Appellant Name:

Nick Taylor NCOA chair

FOR OFFICE USE ONLY:

Date received:

Received by:



NOETZIE CONSERVANCY OWNERS' ASSOCIATION

P.O. Box 336, Knysna, 6570

The Appeal Authority
Municipal Manager
Knysna Municipality
PO Box 21
Knysna

11th February 2025

Appeal by the Noetzie Conservancy Owners' Association (NCOA)
against parts of the Decision: Subdivision; Closure of Public Place; Remainder of the
Farm 394, Noetzie No. 394, Knysna

The Noetzie Conservancy Owners' Association (NCOA) is the legally constituted body, approved by the Knysna Municipality, representing all Noetzie homeowners and the conservancy.

Thank you for the opportunity to appeal against sections of the above decision, which are:

- Section 2 (c) relating to public access and public parking
- Section 4 (a) relating to river management
- Section 4 (c) relating to fire risk management.

Motivation and Reasons

1. **Condition 2 (c):** *the KM requires that the landowner must secure public access to the beach and public parking by way of servitudes.*

Servitudes in SA are legally enforceable *only* once the servitude has been registered and a servitude certificate has been issued.

The NCOA has not seen any evidence that these required servitudes have been registered and therefore our objections to the subdivision in this regard still stand.

(see point 10 in the attached NCOA objections of 2021).

We submit that the servitudes must be registered prior to subdivision to ensure they are legally binding and enforceable against current and future owners of the property.

These include:

- pedestrian and vehicular access down the Old Wagon Road (Minor Road 3);

- pedestrian access down the private road (to erf 20379) to the Municipal steps;
 - road access to Erf 20380 (historic Pezula Castle);
 - servitude to the western beachfront properties including erf 20330 which was omitted in the application (See point 10 (c) i in the NCOA 2021 objection attached.)
 - the public passage at the beach between erf 20330 and erf 20375.
 - the existing public parking area, which has been in continuous use by the public since early last century and is still in use today.
- (See point 10 (b) & photo circa 1940, annexure 6, in NCOA objection of 2021)

2. Point 4 (a) River Maintenance Management Plan:

The KM says under 4 (a) *that the landowner shall ensure a River Management Plan is approved and implemented to the satisfaction of the relevant authority.*

Note 1: the NCOA said in its objections in 2021 (see point 7 in the NCOA objection) that:

- This river crosses the western section of the land proposed for subdivision.
- It crosses several other properties.
- Its course has been unlawfully diverted in the past, causing severe erosion and land loss to erf 20330.
- Several weirs have been constructed on it without authorisation.
- Activities upstream affect landowners downstream.
- There is abstraction by some landowners, not others.

We said that because of the above problems, a stream *servitude* should be registered and provision made for dealing with issues about existing, unregularised and possible future water access rights, abstraction rights and integrated stream management, in consultation with the relevant authorities.

Note 2: Noetzie falls under the Garden Route Environmental Management Framework (GR EMF) of the Department of Forestry, Fisheries and Environment (DFFE) which states that all aquatic systems must be protected and maintained in an ecologically sound condition. Authorities are obliged to implement this policy.

Note 3: Riparian landowners in South Africa have rights and responsibilities regarding water that flows through or over their property, which include:

- using water for their own purposes, which cannot interfere with other landowners' use.
- considering the rights of other landowners who also have access to the water
- being responsible for maintaining the watercourse and the flow within it.
- authorisation and management of potential future maintenance waterworks.

Given the above Notes 1, 2 & 3, the NCOA submits that point 4 (a) of the KM's subdivision approval letter fails to:

- (a) provide for an *Integrated* River Management Maintenance Plan to maintain the river in an ecological sound condition.
 - (b) secure the rights of *all* the riparian property owners to be party to the drawing up of an integrated river management plan and ensuring its implementation.
 - (c) secure access rights for *all* riparian landowners that a registered stream servitude would secure.
-

3. Point 4 (c): Fire Risk Management:

The KM states in 4 (c): *"The landowner and/or his successor in title shall ensure that a Fire Risk Management Plan is approved and implemented to the satisfaction of the relevant authority."*

Note that:

- 1. Noetzie is situated in a high wildfire risk zone, necessitating particular attention to integrated environmental management in land use planning.
- 2. During the June 2017 fires, four out of the 30 houses at Noetzie were destroyed (13.3%).
- 3. The 2017 fires destroyed sections of indigenous forest and critically endangered Knysna Sand Fynbos .
- 4. The majority of Noetzie houses are located in places that are problematic for conventional fire response services.
- 5. There is no municipal water supply at Noetzie and no fire hydrants available for fire fighting vehicles.
- 6. The majority of houses rely on rainwater only, and household water reserves are contained in water tanks not under pressure.
- 7. Much of the area destroyed by fire at Noetzie in 2017 was on the land proposed for subdivision.
- 8. The portion of Erf 394 to be subdivided is 6.1ha, a substantial area that makes up the largest portion of the 10ha that is the Noetzie Conservancy.

Given the above, we submit that the provisions of point 4 (a) of the decision letter are inadequate to address the fire risk.

We submit that:

- (a) The establishment of an *integrated* fire risk management plan for the proposed subdivided land be made a condition of approval.
- (b) After a fire risk assessment has been completed, a fire risk management plan be established *in consultation* with the KM, the Southern Cape Fire Association and the NCOA, to the satisfaction of both the SCFA and NCOA.
- (c) The plan complies with the Conservation of Agricultural Resources Act regulations.
- (d) The landowner and successors in title become members of the SCFA.

Signed:

A handwritten signature in black ink, appearing to read 'N. Taylor', written in a cursive style.

Nick Taylor

Chair: Noetzie Conservancy Owners' Association (NCOA)

chairperson@noetzie.co.za

082 491 8821

Liesl Bailey

Wed, Feb 5, 10:55 AM
(4 days ago)

to me

Hi Melanie,

Please note that you don't have to pay an appeal fee. It is only for the applicant.

Kind regards,

Liesl Bailey Chief Clerk: Land Use Management

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or 302 6589 (direct)

E-mail lbailey@knysna.gov.za

COMMENT BY THE NOETZIE CONSERVANCY OWNERS' ASSOCIATION (NCOA)

ON THE APPLICATION: REMAINDER OF THE FARM NOETZIE NO. 394: SUBDIVISION, CLOSURE OF A PORTION OF PUBLIC ROAD AND REGISTRATION OF SERVITUDES APPLICATIONS

The Municipal Manager

Knysna Municipality.

13th September 2021

Dear Sir,

The Noetzie Conservancy Owners' Association (NCOA) is the legally constituted body, approved by the Knysna Municipality, representing all Noetzie homeowners and the conservancy.

We welcome the opportunity to comment on the above application that was submitted to Knysna Municipality by VPM Town and Regional Planners and Professional Land Surveyors on behalf of Pezula Private Estate (Pty) Ltd. The municipality forwarded a copy of VPM's application, dated 18 May 2021, to the NCOA requesting comment.

INTRODUCTION

We are pleased that the applicant notes that the Noetzie Township, which includes the land proposed for subdivision:

- is a "sensitive and unique environment"
- that the land falls outside the urban edge
- that it lies to the seaward side of the Coastal Management Line
- that any new development proposal would be subject to the Noetzie Overlay Zone in terms of Knysna's Zoning Scheme Bylaw.

We believe it is important to add that the land proposed for subdivision:

- is also part of the Garden Route National Park (GRNP).
- has been designated by SANParks as a "Priority Nature Area".
- has been identified by SANParks as important east-west corridor for animal and plant migration, linking The Heads with Sinclair Nature Reserve. Called the **Eastern Heads to Noetzie Coastal Corridor**, it forms part of SANParks' Knysna Protected Environment. (KSDF 3.4.1.1b)
- Is part of the buffer zone for SANParks' core conservation zone of Sinclair Nature Reserve.
- forms part of the Noetzie Conservancy, registered with CapeNature in December 1998, comprising 6.1ha of the 10ha that constitutes the conservancy.
- falls within the Coastal Protection Zone as defined in section 16 of the Integrated Coastal Management Act.

In addition, Knysna's Spatial Development Framework (KSDF) states that one of the objectives of the Garden Route National Park, into which this land falls, is to **"conserve the diverse terrestrial and aquatic ecosystems of the GRNP, on a landscape scale, through adaptive, collaborative and innovative management"**.

It is also relevant to note some **background information**. In a letter addressed to Pezula Private Estate (Pty) Ltd dated 28 August 2002, the NCOA withdrew its then objections to the proposed rezoning and sub-division application that was necessary for the development of Pezula Private Estate. The letter specifically recorded that the NCOA had met the developer to discuss its concerns and that they had been resolved to the NCOA's satisfaction, but that in the event that the final application "differed materially from the outcome of our discussions", the letter would be null and void. The resolution of the NCOA's concerns as reflected in the letter of 28 August 2002 was achieved by means of a formal agreement signed by the NCOA on the same day and signed on behalf of PPE (Pty) Ltd on 3 September 2002 (see NCOA Annexure 1), referred to as "the 2002 agreement". The letter of 28 August 2002 was annexure A to the 2002 agreement. For current purposes, the salient provisions of the 2002 agreement are the following:

- The "Property" was defined as "the remainder of the Farm Noetzie, Farm no 394 Knysna in extent approximately 612 hectares, located between the Sparrebosch Golf Course Development and the Noetzie River".
- Recordal C confirms that the withdrawal of the NCOA's objections to the rezoning and subdivision of the Property was subject to the terms and conditions contained therein.
- Clause 1 states that "PPE undertakes that in the event of any proposed future development of the "Noetzie Infill", the existing Town Planning Scheme Regulations pertaining to that section of the property ... will be adhered to by PPE".
- Clause 6 states that "PPE undertakes, with the assistance of NCOA, to use its best endeavours to resolve with certain Noetzie property owners all outstanding access, encroachments, easements and other infringements that occur on the Property".
- Clause 7 states that although there was at the time no plan to develop the Noetzie Infill, "[s]hould PPE wish to develop this area in future, the zoning and design of such proposed development will be in accordance with [the Noetzie Town Planning Scheme]".
- Clause 10 states that "if future development is proposed within the "Noetzie Infill", this will be for "Open Space" or "Resort Zone 1", ie 'holiday accommodation' in terms of the definitions contained in the scheme Regulations for Noetzie Local Council".

Listed below are issues the NCOA wishes to raise regarding the above application, not necessarily in order of importance.

1. PURPOSE OF THE SUBDIVISION APPLICATION

The applicant states that the land proposed for subdivision, although situated within the Noetzie Local Council boundaries, is nevertheless part of the "mother erf" of the Farm Noetzie No. 394, and "still forms part of the same cadastral entity". It does not exist as a separate legal entity.

The applicant also states that if the subdivision is approved, the land in question:

- will remain the property of the current owner, Pezula Private Estate (Pty) Ltd
- will retain the current "Undetermined" and "Open Space III" zoning.
- no additional rights (such as development rights) are being sought.

Given the above, the NCOA seeks clarity on the purpose of, and need for, the proposed subdivision. The applicant gives two reasons:

- i. The first is simply to "reinstate the previous subdivision approval" of 2008 that has lapsed. However, the purpose of the 2008 subdivision was to allow for a housing resort to be built, but this application does not seek development or any additional rights.

- ii. The second reason is that the current owner, Pezula Private Estate (Pty) Ltd, is **required** to transfer the remainder of the Farm Noetzie No 394 to the Pezula Homeowners' Association, as this was one of the conditions the authorities laid down when they approved Pezula housing development. As the applicant states, the owner must therefore transfer the land to the homeowners to comply with these conditions of approval. That point is clear.

What is not clear is why Pezula Private Estate (Pty) Ltd, is keeping a portion of the land that it is required to hand over to the homeowners' association.

On the face of it, it would appear that retaining ownership of some of the remainder of Farm Noetzie No 394 is in conflict with the conditions of approval.

What is also not clear is what conditions were laid down by the authorities in the Record of Decision regarding the ownership of the remainder of Farm Noetzie No. 394 including land access and what may or may not be done with the land – for instance whether it can be developed or sold.

This has direct bearing on the subdivision application.

Given the above, the NCOA seeks clarity on:

- i. **the applicant's purpose and need to subdivide**
- ii. **whether the owner's intention to retain a portion of the remainder of Farm Noetzie No. 394 complies with, or conflicts with, the conditions of approval for the Pezula housing development.**
- iii. **whether the application satisfies the requirement for land use applications to show a *need and desirability* for subdivision**
- iv. **what conditions were laid down for the remainder of the Farm Noetzie No. 394 once transfer has taken place, particularly regarding ownership, land access and rights on the land.**

2. PEZULA'S DEFICIT REGARDING PRIVATE OPEN SPACE

We wish to bring to your attention that one of the conditions of approval in the Record of Decision for the original Pezula Private Estate development was that "***at least 500 hectares must be retained and managed as Private Open Space***" (condition six of the ROD).

An independent audit commission by Pezula in 2005 found that only 492.49ha of the development constituted Private Open Space. It is our understanding that this figure remains true today. Pezula is thus 7.51ha in deficit of the requirement to set aside 500ha of open space, and is in breach of this condition.

We raise this because the 6.1ha of land the applicant wishes to subdivide from the mother erf, will go a long way to rectifying this breach. There is a case to be made that the land in question should be designated as Private Open Space to make up most of Pezula's open space deficit and ensure compliance with the ROD.

We draw your attention to Knysna's Spatial Development Framework that states that of the objectives of the Garden Route National Park, into which this land falls, is to "**conserve the diverse terrestrial and aquatic ecosystems of the GRNP, on a landscape scale, through adaptive, collaborative and innovative management**".

We raise these issues in order to give Knysna Municipality:

- i. the bigger picture surrounding this application.
- ii. to alert it to ROD compliance issues.
- iii. to offer constructive suggestions regarding sustainable use of the "undetermined" land in question, which would provide an opportunity for Pezula to become compliant with its ROD. The suggested use of the land, to become part of the private open space requirement, would be also aligned with objectives of the Garden Route National Park, which are incorporated into the Knysna Spatial Development Framework.

3. BOUNDARIES OF THE PROPOSED SUBDIVISION

The NCOA seeks clarity on the boundary of the property on the seaward side.

On the diagrams submitted by the applicant to the Municipality, the seaward boundary of the property is shown to extend across the public thoroughfare onto the rocky outcrop. A small section extends below the 1997 high water mark.

This seaward boundary was a source of public dispute in the 2008 subdivision application.

In the Noetzie General Plan of 1915, submitted with the application, it appears that the seaward boundary may extend to the high water mark (See applicant's annexure C5).

In 2018 the NCOA made inquiries to the Surveyor General, through a professional land surveyor, concerning thoroughfares, roads and passages at Noetzie.

In his reply dated 17 October 2018, the Surveyor General attached a General Plan no 19 (3031) of the remainder of Farm Noetzie 394, which showed the seaward boundary of the property extending **in a straight line** from the south-western point of erf 20379 to the south eastern point of erf 20330. It excludes the rocky outcrop and the public thoroughfare. (See NCOA Annexure 2)

When the Knysna Municipality approved the subdivision (now lapsed) it listed in a letter to the applicant on 11 September 2008 several conditions that "must be attended to prior to transfer being applied for." (See applicant's annexure E2).

One of these conditions was: "The boundary to the property on the seaward side shall be clarified by the Surveyor General prior to transfer being permitted."

It is not clear whether this was done. If it was, the NCOA requests the applicant to provide the relevant documentation from the Surveyor General.

If it was not done, and if the Municipality approves this subdivision, the NCOA submits that the Municipality must make it a condition of approval, as it did in 2008, that the boundary of the property on the seaward side shall be clarified by the Surveyor General prior to transfer being permitted.

4. PUBLIC THOROUGHFARE

A public thoroughfare extends from the western-most erf of Noetzie Township, over the beach and rocks and through the forest along the river to the eastern-most erf. This had been in existence since the township's birth over 100 years ago.

The public thoroughfare extends from erf 20328 in the west to erf 20359 in the east. It is clearly depicted on the Noetzie General Plan of 1915, submitted with the application. (Applicant's annexure C5).

However, the applicant has failed to depict the thoroughfare correctly on the diagrams it has submitted to the Municipality. (See applicant's annexure Diagram 4 and Diagram 5).

Instead the applicant's diagrams depict the public thoroughfare starting only at erf 20330. This is incorrect and must be rectified.

It must be noted that the Surveyor General stated in the same letter we refer to under point 3 above, dated 17 October 2018, that the thoroughfare at Noetzie was shown as "a public street" in their records.

He added: "A passage and thoroughfare is described as a public street in the Land Use Planning Ordinance 15 of 1985." (See NCOA Annexure 2)

The Noetzie thoroughfare is therefore Municipal land.

The applicant must submit revised diagrams to the Municipality which depict the public thoroughfare in its correct position, according to the Noetzie General Plan 1915, extending from erf 20328 to erf 20359.

5. PROPERTY DETAILS

The NCOA seeks clarity on point 2.2 of the applicant's subdivision application. This consists of a table with the heading Property Detail. The property size is listed as "approximately 152 hectares".

- i. Does the 152ha constitute all the land owned by Pezula Private Estate (Pty) Ltd that is outside the Pezula Private Estate development?
- ii. Does this 152ha constitute all the land that Pezula Private Estate (Pty) Ltd is required to transfer to the Pezula Homeowners' Association, in compliance with the conditions of approval?

On the same table "Land Use" is listed as "vacant, with roads and infrastructure."

This must be amended to reflect that there is **public parking** on the land. It should also reflect that 6.1ha – i.e. the land proposed for subdivision – forms part of the Noetzie Conservancy, registered with CapeNature.

The table 2.2 must be amended to read: Land Use: Vacant, with roads, infrastructure and public parking, with 6,1ha forming part of the Noetzie Conservancy.

We seek clarity on what the 152ha refers to.

6. HIGH WATER MARK

The date of the High Water Mark on the diagrams submitted by the applicant is 21st October 1997.

The Intergovernmental Panel on Climate Change (IPCC) stated in its report released in August that the average sea level rise between 1971 and 2006 was 1.9mm a year, increasing to 3.7mm a year between 2006 and 2018.

This was two and a half times the average yearly rate of sea level rise throughout most of the twentieth century.

We attach three photographs taken at Noetzie illustrating some high tides over the last few years. (See NCOA Annexures 3, 4 and 5).

Residents' experience over many decades is that exceptional high tides have always occurred at Noetzie, but that these have now become more frequent.

An updated High Water Mark is relevant to the application for two reasons:

- i. the High Water Mark is used as a reference point in establishing property boundaries on the coast. The seaward boundary of the property is in question.
- ii. The High Water Mark is used as a reference point in many pieces of legislation, some of which could affect this application. For instance the Integrated Coastal Management Act stipulates what can and cannot be done within 100m of the High Water Mark.

Given the above, the NCOA submits that if the Municipality approves this subdivision, it must require the applicant to have the High Water Mark at Noetzie resurveyed and updated.

7. STREAM SERVITUDE AND MANAGEMENT

There is a stream that crosses several properties on the western side of the land proposed for subdivision. It is important to have integrated management of the stream, both for its proper ecological functioning and to avoid adding to, or exacerbating, problems that have already occurred through landowners' actions in the past.

Several weirs were constructed on the stream years ago, apparently without authorisation, and the stream course was unlawfully diverted near its mouth, resulting in substantial erosion and loss of land to erf 20330. Remedial action, required by the Department of Water Affairs, is costing the adjacent landowner a substantial amount.

If the subdivision is approved, we submit that a stream servitude be recognised and recorded on the subdivisional plan, and that provision is made to deal with issues about access rights, abstraction rights, and integrated stream management, in consultation with the relevant authorities.

8. FENCES AND WILDLIFE CORRIDORS

Much of the Farm Noetzie No. 394 consisted of pine plantations until the late 1990s. This allowed for animal movement from Harkerville and Sinclair Nature Reserve in the east to Sparrebosch and the eastern Heads in the west.

Since the late 1990s sections of this biodiversity corridor have gradually been fenced, first with the Sparrebosch housing development and later with the Pezula housing development. There is a 2km fence running down both sides of the 5km Noetzie Road enclosing the Pezula development. This has only one animal underpass.

If the 6.1ha of land proposed for subdivision is also fenced, it will close a large part of this already shrinking biodiversity corridor. As we stated earlier, this corridor is part of the **Eastern Heads to Noetzie Coastal Corridor**, identified by SANParks and an important east-west corridor for animal and plant migration. It links The Heads with Sinclair Nature Reserve.

The corridor also forms part of SANParks' Knysna Protected Environment (KSDF 3.4.1.1b)

Given the crucial biodiversity role this portion of land performs, and given that the applicant has said there will be no construction, we submit that if the Municipality approves the subdivision it makes it a condition of approval that the property will not be fenced.

9. FIRE MANAGEMENT

The Municipality is acutely aware that fire is a significant danger on the Garden Route, as was experienced in the devastating June 2017 fires.

According to the Southern Cape Fire Association (SCFA) one of the contributing factors is that there is no distinct "fire season", but rather that fire is a risk all year round.

The only two houses on the Noetzie headland at the time of the 2017 fires both burned down.

An additional two houses next to the river were also destroyed in the fire.

The vegetation on the land proposed for subdivision includes fynbos that naturally burns every 10 to 15 years. Fynbos is a fire climax vegetation, needs fire to regenerate, and will become extinct without fire. This may require controlled burns.

If the subdivision is approved, we submit that the Municipality makes it a condition of approval that the landowner becomes a member of the Southern Cape Fire Association, and that an approved fire management plan is put into place in consultation with the Municipality, the SCFA and the NCOA, and that the plan is put into practice.

10. ROAD CLOSURES AND AMENDMENT OF GENERAL PLAN

That application includes a proposal for road closures and amendment of the General Plan.

a. The Noetzie/Old Wagon Road:

The applicant wishes to close the unmade road on the general plan that links the Wagon Road to the rest of the Noetzie Road. We draw your attention to important, existing, unresolved issues that relate to this proposal for road closure:

- The fact that alignment of the Noetzie road through the proposed subdivision area has not been properly defined (as required *inter alia* by clause 6 of the 2002 agreement). Although a survey plan was prepared reflecting a portion of the existing Noetzie/Wagon Road, it is incomplete. The surveyed section ends at the boom at the top of the Old Wagon Road and does not continue to tie in with the road reserve that is defined by, and passes between, the 'top' even on the headland. (see applicant's annexure C2-SG)
- The fact that this road, or street, has not been noted in the Knysna Municipality's Asset Register.

The applicant wishes to close the unmade road on the general plan that links the Wagon Road to the rest of the Noetzie Road and to "relocate it to its correct position", but provides no plans to show the future alignment.

It is required that a road design be undertaken to determine the future alignment and road reserve which can then be lawfully registered as a municipal street. Associated with this will be the provision of on-street public parking (and/or adjacent public parking), with suitable turn facility for vehicular traffic, thereby facilitating beach access controls.

It is important to note that the current Noetzie road encroaches on some of the properties on the headland on the eastern side, while at least one property on the western side encroaches onto the road reserve. This must (*inter alia* in compliance with clause 6 of the 2002 agreement) be corrected when the future alignment of the road is designed.

Note that a condition of approval in the 2008 subdivision approval was: "When Provincial Road DR1771 is deproclaimed to a municipal road, it is to be established in a 20m wide servitude or road reserve to Council's satisfaction, at owner's cost."

Given the above, we do not support the proposed closure of this unmade road until the matters we raise here are satisfactorily resolved, particularly the submission of plans showing the future road alignment, road reserve, public parking and encroachments.

b. Public Parking

In addition to the above, we wish to draw your attention to the fact that the public has parked on the land proposed for subdivision since early last century, as older Knysna and Noetzie residents can confirm.

We attach an undated photograph of a car parked on the land that later became the tarred parking area with 20 parking bays. The design of the car suggests the photograph was taken sometime in the 1940s (NCOA Annexure 6).

George Parks and Sons, the former owners of the this land, entered into a lease agreement with the then Divisional Council of Outeniqua in 1981, in terms of which this parking area was leased by the Divisional Council. The lease agreement was later transferred to the Knysna Municipality.

Pezula Private Estate (Pty) Ltd acquired the remainder of the Farm Noetzie No. 394 in 2000 and the rights and obligations were then transferred to this company.

In September 2006 this lease agreement was terminated by Pezula Private Estate (Pty) Ltd, apparently because at that time the lease had not been paid for six years.

Regardless of the above, the parking area has been in continuous use by the public since at least early last century, and is still in use today, and is one of the **"outstanding access, encroachments, easements and other infringements that occur on the Property"** that PPE is required to endeavour to resolve with the assistance of the NCOA, as required by clause 6 of the 2002 agreement.

We draw your attention to one of the Municipality's conditions of approval for the 2008 subdivision of the property, which was: "The owner of the of Portion A shall take cognizance of condition 3.28 of approval for Pezula development which requires that, should it be deemed necessary in the view of the Municipality to improve access to the Noetzie beach and the related parking area, as a result of the Pezula development, the developer of the Pezula Estate shall be obliged to finance such improvements." (Applicant's annexure E2).

If the subdivision is approved, provision must be made for adequate public parking and beach access, and this must be recorded on the subdivision plan.

c. Private access to the western beachfront properties:

- i. It is agreed that the servitude to the western beachfront properties must be suitably registered in favour of the relevant erven. It is presumed that this suggestion is made inter alia in an effort to comply with the provisions of clause 6 of the 2002 agreement.

However, there is an error in the application, as it omits to include erf 20330 as one of the relevant erven in favour of which the servitude will be registered. This must be corrected.

- ii. Note that the last section of the road to the western properties proposed to be closed ends in a public passage at the beach between erf 20330 and erf 20375. (See NCOA Annexure 2).

If the road closure is approved, this final section of the road must be retained as a public passage.

- iii. If approved, the proposed road closure will alienate public land vested in Knysna Municipality, and the Municipality must be appropriately compensated. Without being prescriptive, we suggest this could take the form of a negotiated land swap, possibly for parking, or to make the public pedestrian access to the Municipal steps a Municipal road.

If the subdivision is approved, we support both the registration of the servitude and the proposed closure of this road to the western properties on condition that:

- The public passage at the end of the road remains a public passage and is marked accordingly and entrenched on the subdivision plan.
- Erf 20330 is correctly included as one of the erven in favour of which the servitude will be registered.
- Adequate compensation is made to the Municipality for the loss of land when the road is closed.

d. Road Access to the Historic Pezula Castle erf 20380.

The application has overlooked access to the historic Pezula Castle on erf 20380 (not to be confused with the former Noetzie Castle on erf 20379, which was renamed in the 2000s to Pezula Castle, with the result that there are now two castles with the same name.)

This historic Pezula Castle is situated high on the Noetzie hillside on erf 20380 and there is no vehicular access from the beach. Ever since the historic Pezula Castle was built in the 1930s, this erf 20380 has always had access down a strip road branching off from the strip road to erf 20379. This is also one of the “**outstanding access, encroachments, easements and other infringements that occur on the Property**” that PPE is required to endeavour to resolve with the assistance of the NCOA, as required by clause 6 of the 2002 agreement.

We submit that if the application is approved, road access to erf 20380 must be retained via this strip road and reflected on the subdivision plan.

e. Historic private right of way to erf 20336

There is an historic private right of way to erf 20336 down the strip road to the historic Pezula Castle on erf 20380, that links up with steps built on erf 20336 to access this property.

The original owners of erf 20380 and erf 20336 built the steps in the 1930s. This is a further outstanding access issue that PPE is required to endeavour to resolve with the assistance of the NCOA, as required by clause 6 of the 2002 agreement.

If the subdivision is approved, this private right of way to erf 20336 must be retained and recorded on the subdivision approval.

f. Access to Erf 20379: (to the former Noetzie Castle, renamed Pezula Castle in the 2000s.)

The applicant has applied for a certificate of exemption from the requirements of section 24 (1) (f) of the Knysna Municipality Standard Municipal Land Use Planning Bylaw, in order to register a private right of way servitude down the strip road to erf 20379.

However, we submit that the exemption they have applied for is not applicable. Section 15 (2) (n) states that the approval of the Municipality **is** required for the closure of “a public place or part thereof”. The strip road contains both municipal land and a public right of way.

- i. This strip road to erf 20379 crosses a portion of Municipal land situated at the top of the municipal access steps to the beach. This constitutes "closure of a public place or part thereof" and requires the owner to apply for permission to the Municipality. (See NCOA Annexures 7 and 8 where the Municipal steps are marked "Portion 90 Road".)
- ii. This strip road also provides an historic public pedestrian right-of-way that gives the public pedestrian access from the parking place down the strip road to the Municipal steps leading to the beach. This pedestrian access is marked in blue on the applicant's annexure Diagram 4. This pedestrian right of way must remain and must be depicted and entrenched on the subdivision plan if the application is approved.
- iii. This right of way was recognised by the Knysna Municipality when it approved the 2008 subdivision and made the following condition of approval: "All access-ways and roads to serve the subdivisions or road reserves, as applicable, over Portion A and the Remainder, **and public access to Noetzie beach from the Noetzie Road shall be protected and entrenched**, all to the Council's satisfaction, at the applicant's cost, prior to transfer being granted." (Applicant's annexure E2)
- iv. The applicant's diagram of the Municipal steps shows the Municipal property extending only about half way up the steps, and does not include the section across the strip road. This is incorrect. The Municipal property including the entire steps and a portion of the strip road needs to be reflected on the subdivision plan, if approved.

We draw your attention to the fact that Pezula Private Estate closed this strip road to public pedestrian access in 2006 which later led to a member of the public taking court action to have the road and steps re-opened. She won the case (case number 03670/06) and the court ordered the company to "immediately restore free and unfettered access to the public across the municipal steps and the strip road." (See NCOA Annexure 9).

We include the above to show that the strip road has been recognised by the court as a lawful public right of way.

Given the issues raised above, we object to this road becoming a private right of way.

- g. **The Unmade Road on the General Plan leading to erf 20379.**
 - **We have no objection to the closure of the section of unmade road leading from Noetzie Road to what is now the consolidated erf 20379, on condition that adequate compensation is made to the Municipality for the loss of land when the road is closed.**

For the record, we wish to point out that this unmade road marked on the General Plan 1915 was not, as the applicant states, designed to give access to erf 20379, but to give public access to the beach, as can be seen from the plan.

A section of the unmade road was used as a public footpath even before the township was proclaimed in 1915.

The 1915 map shows that the unmade road also gave access to five separate erven in the Noetzie Township (Applicant's annexure C5). These erven were later consolidated. This too, is an outstanding access issue that PPE is required to endeavour to resolve with the assistance of the NCOA, as required by clause 6 of the 2002 agreement.

h. Access to and parking for the River Properties

In terms of the General Plan, access to (and parking for) the “River Properties”, now numbered as erven 20337 - 20359 and 20357 was intended to be via the Old Wagon Road and the “**thoroughfare**” and “**commonage**” on the beach- and river-fronts.

With the development of modern means of transport during the 20th century, combined with changes to the topology of the land near the mouth of the Noetzie River, however, this manner of access to the River Properties proved to be impractical, and indeed impossible. As a result, alternative solutions were sought. In particular, what is now erf 20338 came to be accessed by means of a small informal clearing on the remainder of the Farm Noetzie 394 to the East of Old Wagon Road. Furthermore, the remaining River Properties were accessed by means of a track constructed from the Old Wagon Road that briefly transverses the remainder of the Farm Noetzie 394 before crossing erven 20339 - 20344 and emerging back onto the remainder of the Farm Noetzie 394 and running behind erven 20344 – 20347 (“**the river track**”).

Although these arrangements meant that erven 20338, 20339, 20344, 20346, 20347 and 20348 could be accessed directly by motor vehicle, it remains impossible for the remaining River Properties to do so. As a result, these remaining River Properties (in particular erven 20341, 20343, 20345, 20349, 20351 – 20359 and 20377) have for many years since at least the 1980s utilised a flat portion of land located on the remainder of the Farm Noetzie 394 behind Erven 20344 to 20347 for the purposes of motor vehicle parking (“**the river parking**”).

Seemingly in compliance with clause 6 of the 2002 agreement, the portions of the river track traversing over the remainder of the Farm Noetzie 394 (originally identified on Diagram SG492-83 prepared in 1983) was registered as a public servitude (5 metres wide) in approximately 2006, and is reflected on the title deed the remainder of the Farm Noetzie 394. Access to the River Properties via the portions of this track over Erven 20339 – 20344 is currently governed by means of private arrangements between the owners of those Erven and the River Properties.

However, despite attempts that have been made by the NCOA and the individual owners of the River Properties to engage with PPE (Pty) Ltd, the issue of parking for the River Properties has not yet been resolved between PPE (Pty) Ltd and the owners of the River Properties, as envisaged in clause 6 of the 2002 agreement. In the event that the subdivision proceeds and PPE becomes entitled to alienate the portion of the remainder of the Farm Noetzie 394 to the east of the Noetzie “Infill” and running along the Noetzie River, the agreed resolution of the issue of the river parking will be imperiled.

In the circumstances, the NCOA is not able to support the subdivision plan in the absence of tangible steps being taken to resolve the issue of the river parking. The NCOA is willing to assist in the process to finalise and formalise the required arrangements.

11. WATER AND PIPELINE RETICULATION SERVITUDE AND FIRE HYDRANT

We agree it is necessary to reflect the water and electrical servitudes on the subdivision plan if approved.

However, we note that the applicant's diagram 5 shows the servitude ending at erf 20379 and states that this servitude is in favour of erf 20379.

However, Pezula Private Estate arranged electricity provision to Montrose Castle, erf 20361, and this should be reflected in the servitude.

The 4m wide servitude passes through indigenous fynbos, which as we stated earlier, naturally burns every 10 to 15 years. A major problem with the 2017 fires was that there was no water supply to fight the fires at Noetzie as there is no fire hydrant.

If the application is approved, the servitude must be reflected correctly on the subdivision plan, extending to erf 20363.

In addition, an easily accessible and suitably positioned fire hydrant should be installed in the municipal water pipeline.

12. OPEN SPACE III

Part of the land proposed for subdivision is zoned Open Space III.

The Knysna Municipality Zoning Scheme Bylaw designates this as "nature conservation area".

When the 2008 subdivision was approved, the Municipality made it a condition of approval that this area remain nature reserve, and that "no structure may be erected thereon".

If subdivision is approved, the Municipality should include the above as a condition of approval.

CONCLUDING REMARKS

1. One of conditions of approval for the Pezula Private Estate, which is still legally applicable, is that the developer, Pezula Private Estate (Pty) Ltd, must transfer the remainder of the Farm Noetzie 394 to the Pezula Homeowners' Association after the development had been completed.

A crucial question that needs to be answered is whether the conditions of approval permit Pezula Private Estate (Pty) Ltd to retain a portion of this land for itself. If not, then the subdivision application would be in breach of this condition of approval.

A second crucial question on which we seek clarity is what rights do the conditions of approval give to the Pezula Homeowners' Association over the remainder of Farm Noetzie 384 once the Association takes transfer of the land. For instance whether the land can be developed or sold.

2. If the application is approved:
 - all public rights of way, roads to serve Noetzie township and public access to Noetzie must be retained, protected and entrenched on the plan to the Council's satisfaction prior to transfer.
 - plans must be submitted showing the future Noetzie road alignment, road reserve and provision for public parking prior to approval
 - the seaward boundary of the property, and the updated high water mark, must to established by the relevant authorities prior to approval
 - a stream servitude on the western side of the property must be recorded on the plan
 - an approved fire management plan must be put in place
 - the property, part of an important biodiversity corridor, must not be fenced
 - provision be made for a fire hydrant on the headland
3. The strip road to erf 20379 cannot be made into a private servitude as it crosses a section of Municipal land and it is an historic public pedestrian right of way.
4. If road closures of unbuilt roads are approved, adequate compensation must be made to the Municipality, possibly in the form of land swops.
5. The land proposed for subdivision is unique, identified as part of an important corridor for biodiversity and for maintaining ecological functioning.

It is a buffer zone for the Garden Route National Park, forms part of the Noetzie Conservancy, falls within the Coastal Protection Zone, is on the seaward side of the Coastal Management Line, and has been identified by SANParks as Priority Nature Area.

It also is important to note that Knysna's Spatial Development Framework states that one of objectives of the Garden Route National Park is to ***"conserve the diverse terrestrial and aquatic ecosystems of the GRNP, on a landscape scale, through adaptive, collaborative and innovative management"***.

As the applicant is not contemplating development, it would deem to be in the best long-term interest of the remainder of the Farm Noetzie No. 394 for the land to be left as a single land parcel, in the interest of conserving this environmentally sensitive coastal strip, both for the proper functioning of the natural environment and for the benefit of current and future generations.

In conclusion, because of the issues we have raised, we do not support the application in its current form.



.....

Joanna Taylor

Chair: Noetzie Conservancy Owners' Association (NCOA)

taylor@psychiatryvillagemed.co.za



+27443841741

TO: 0118377617

P: 1/23



P O Box 3373 Knysna 6570
www.sparrebosch.co.za

FACSIMILE TRANSMITTAL SHEET

TO:	Chris Everett	FROM:	Liezl Clause
COMPANY:		DATE:	2002/09/03
		TOTAL PAGES (INC. THIS ONE):	Twenty-three
FAX NUMBER:	011 - 8377617	OUR E-MAIL:	l.clause@pezula.com
PHONE NUMBER:		OUR TEL NO:	044 - 384 1222 or 083 285 7188
REF:		OUR FAX NO:	044 - 384 1741

Dear Mr Everett,

Pezula / Noetzie Agreement

Attached, please find the signed agreement and addendums. Mr Marius Botha, in his capacity as Director of Pezula Private Estate signed the agreement.

Best regards,

(Signature)
LIEZL CLAUSE

FAX TO:	MIKE DAVE
COMPANY:	ANGLO
FAX NO:	011 638 4636
FROM:	CHRIS EVERETT
COMPANY:	M4M
FAX NO:	021 419 7678
PAGE:	1 OF 23
DATE:	7/2/03
PHONE NO:	021 418 3760
Post-it FAX PAD 7661	

7.FEB.2005 16:01 MARINE & MINERAL
3-SEP-2002 16:49 FROM: PEZULA CLUB +27443841741
+27443841741

NO.665 P.2
TO: 0118377617 P: 2/23

28.AUG.2002 12:20 CONCOR ENGINEERING 2711 8377617

NO.188 P.3/24

AGREEMENT

between

**Noetzie Conservancy Owners'
Association
("NCOA")**

PO Box 519
PINEGOWRIE
2123

(duly represented by Eion Roy McClintock Brown
(Chairman))

and

**Pezula Private Estate (Pty) Ltd
("PPE")**

Registration No.2000/019673/07
(duly represented by Clive Bruce Venning)

3-7.FEB.2005:16:02 MARINE & MINERAL
 3-7.FEB.2005:16:02 FROM: PEZULA CLUB TELEPHONE 341741
 +27443841741

NO. 665 P.3
 TO: 0116377617 P: 3/23

28.AUG.2002 12:20 CONCOR ENGINEERING 2711 6877617

NO. 189 P. 4/24

Page 2

Definitions

In this agreement the following terms will have the meaning as stipulated next to it hereunder:

- 1 "Noetzie Township - The area of jurisdiction of the former Knoetzie Transitional Local Council, prior to its incorporation into the Knyana Municipality
- 2 "Noetzie Infill" - A section of the Property currently zoned "Undetermined" situated within the Noetzie Township as indicated on "Annexure C" hereto, and excluding separately owned or zoned areas
- 3 "NCOA" - The Noetzie Conservancy Owners' Association duly constituted, an association of property owners of the Noetzie Township and duly represented by its elected committee.
- 4 "Property" - The remainder of the Farm Noetzie, Farm no 394 Knyana, in extent approximately 612 hectares, located between the Sparreboach Golf Course Development and the Noetzie River.
- 5 "PPE" - Pezula Private Estate (Pty) Ltd, a company duly registered in South Africa and owner of the Property.

Recordal

- A. PPE is the owner of the Property and is desirous of developing the Property and for this purpose has submitted applications for rezoning and sub-division of the Property excluding the Noetzie Infill to the relevant authorities
- B. NCOA has, as an interested and affected party, lodged certain objections against the proposed development referred to in A above.
- C. The duly authorised representatives of PPE and NCOA have discussed the concerns of NCOA and have reached an agreement that NCOA will withdraw its objections aforesaid as confirmed in "Annexure A" hereto subject to certain terms and conditions as contained in this Agreement

3-7.FEB.2005 16:02 MARINE & MINERAL
 222 18:58 FROM: PEZULA CLUB TC (443841741)

NO. 665
 TO: 0115377617

P. 4

P: 4/23

28.AUG.2002 12:28

+27443841741
 CONCOR ENGINEERING 2711 6377617

NO. 168

P. 5/24

Page 3

Now therefore the parties agree as follows

1. PPE undertakes that, in the event of any proposed future development of the "Noetzie Infill", the existing Town Planning Scheme regulations pertaining to that section of the property, annexed hereto marked "Annexure B", together with Addendum A referred to therein, will be adhered to by PPE.
2. Should any party propose any modifications to "Annexure B", it would require the approval of a two thirds majority of the Noetzie property owners as well as PPE.
3. Any reference to the term "Resort Zone II" relating to the residential sites in the proposed development, and as contained in the documentation referred to in A above, will either be:
 - 3.1 deleted and replaced with "Residential Zone I" in terms of the existing Knyana Zoning regulations or
 - 3.2 no consent use will be permitted in the "Resort Zone II" zoning
4. All areas in the proposed development to be zoned as "Open Space" will not be resold, alienated, sub-divided or rezoned within 20 years from the date of the sale of the first stand and thereafter without commitment to the required processes.
5. The municipal boundary of the former Knoetzie Local Town Council will remain as per the original gazetted plan annexed hereto, marked "Annexure C"
6. PPE undertakes, with the assistance of NCOA, to use its best endeavours to resolve with certain Noetzie property owners all outstanding access, encroachments, easements and other infringements that occur on the Property.
7. It is hereby recorded that there is, at date hereof, no plan in existence for the development of the "Noetzie Infill". Should PPE wish to develop this area in future, the zoning and design of such proposed development will be in accordance with Annexure B.

3- 7.FEB.2005:16:03:03 FROM: PPE MARINE & MINERAL 341741

TO: 01153117 NO. 665 P.5 P:5/23

+27443841741

28.AUG.2002 12:20

CONCOR ENGINEERING 2711 8377617

NO.158 P.6/24

Page 4

- 8 PPE withdraws any threats of legal or other action against NCOA or its members resulting from its objections to the re-zoning and sub-division.
- 9 Should the final documentation submitted by PPE not reflect the terms of this Agreement or contain any new issues not addressed in this Agreement, the NCOA may lodge further objections to the development. In such case, this agreement will be regarded as null and void.
- 10 If future development is proposed within the "Noetzie Infill", this will be for "Open Space" or "Resort Zone I", is 'holiday accommodation' in terms of the definitions contained in the Scheme Regulations for Noetzie Local Council.

THUS DONE AND SIGNED AT JOHANNESBURG, ON 28th August 2002

For and on behalf of the NCOA:

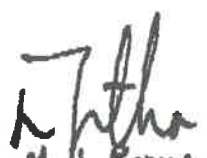

for Mr Elon Brown
Chairman

Witnesses:

- 1 
- 2 

THUS DONE AND SIGNED AT KNYSSNA, ON 3 SEPTEMBER 2002

For and on behalf of PPE:


M. H. SOTHU
Mr G. V. Venter
Managing Director

Witnesses:

- 1 
- 2 




5. 7.FEB.2005 16:03 FROM: MARINE & MINERAL
PEZULA CLUB TEL: 011 837 7617
+27443841741

NO. 665 P. 6
TO: 011 837 7617 P. 6/23

28.AUG.2002 12:21 CONCOR ENGINEERING 2711 8377617

NO. 188 P. 7/24

ANNEXURE A

Noetzie Conservancy Owners' Association



Please respond to the author of this communication at

P.O. Box 519,

Pinegowrie,

2123.

Fax (011) 837 - 7617

28th August 2002.

Pezula Private Estate (Pty) Ltd

PO Box 1240

6570

Attention: Mr G. Venning

Dear Mr Venning,

Re Pezula Private Estate Development

This letter serves to confirm that the **Noetzie Conservancy Owners' Association (NCOA)** hereby withdraws its objections as at date hereof to the proposed rezoning and sub-division Application for the Pezula Development.

We have met with the developer to discuss all of our previously identified concerns and have resolved all issues to our complete satisfaction.

In the event of the final Application or EIR to be submitted by the developer differing materially from the outcome of our discussions, we reserve the right to file objections to these, in which case this letter shall be null and void.

Yours faithfully

Mr Eion Brown
Chairman

NCOA Committee: Eion Brown (Chairman), Marissa Botha, Andrew Brown, Mike Dawe, Chris Everett, Daniel Fabian, Sharon Goring, Aubrey Wynne-Jones

3. 7. FEB. 2005 16:03 FROM: MARINE & MINERAL
PELLEH CLUB TEL: 27449841741
+27449841741

NO. 665
TD: 0118377617

P. 7

P: 7/23

1028. AUG. 2002 12:21 FROM: RECONCOR ENGINEERING 2711 8377617
+27449841741

NO. 188
TD: 0118377617

P. 8/24

P: 7/21

B

1. TOWN PLANNING SCHEME FOR KNOETZIE

Note:

No direct reference is made in these regulations to the Town Planning Scheme Map or the register of all land units which are to be read with the regulations, see Sections 1.2.1 and 1.2.2. This is because the map and the register are covered by Sections 10 and 12 of the Land Use Planning Ordinance, No 15 of 1988 as amended by P/N No. 100/1987, P/N No. 8/1992 and Proclamation R189 of 1994, which require that these documents are held by the local authority. However, a copy of the map is included at the back of this document.

SCHEME REGULATIONS FOR KNOETZIE LOCAL COUNCIL (proposed final wording for the Gazette)

1. DEFINITIONS

In these regulations, unless inconsistent with the context -

Advertise means to serve a notice on every owner of land who in the opinion of the Council has an interest in the matter and whose address the Council knows or can obtain and, if the Council so decides, to publish in the Provincial Gazette and in the press, a notice -

- specifying the place where, and the hours during which particulars of the matter will be available for inspection, and
- stating that objections may be lodged with the Council before a date likewise specified, being not less than twenty-one (21) days after the date on which the notice is so served or so published.

Authority usage means a use which is practised by a public authority and of which the locality factors are such that it cannot be classified or defined under other uses in these regulations, and includes uses practised by -

- The State, such as military training centres and installations, telecommunication facilities, police stations and jails;
- The Province, such as road stations and road camps; and,
- A local authority, such as fire services, sewage farms, dumping grounds, reservoirs, composting installations and water purification works.

Basement means that portion of a building, the finished floor level of which is at least 2m below, or the ceiling of which is at most 1m above, a level halfway between the highest and lowest natural levels of the ground immediately contiguous to the building.

Building means, in addition to the meaning assigned thereto in paragraphs (a) and (b) of section 2(vii) of the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976), any structure or erection whatsoever, irrespective of its nature or size.

THB

1

3. 7.FEB.2005 16:04 FROM: MARINE & MINERAL
 FROM: PELUWA CLUB TEL: 43341741
 +27443341741

NO. 665
 TO: 0119377617

P. 8

P: 8/23

* 1428. AUG. 2002 12:21 FROM: RECONCOR ENGINEERING 2711 8377617
 +27443341741

TO: 0119377617

P. 9/24

P: 8/21

Building line means the line delimiting the area measured from the boundary of a land unit, or from a setback, if any, within which no building or other structure except a boundary fence may be erected.

Business premises means a site or building or structure on or in which business is done and includes shops, offices, financial institutions or restaurants or other buildings or structures for similar uses, but does not include places of assembly or entertainment, institutions, service stations, public garages, industries, roadside trades, bottle stores or supermarkets.

Bed and Breakfast Establishment means a building for human habitation with not more than 4 bedrooms (8 beds) for the purposes of offering overnight accommodation. Refer to Addendum A.

Conservation usage means by use of a building or site or part thereof which, in the opinion of the council, on appeal or objection, the Premier, whose decision shall be final, is worthy of preservation.

Council means the Council of the Local Authority to whose area of jurisdiction these regulations apply and shall include a committee or person acting on behalf of such Council and specifically authorised by such Council to do so.

Coverage means the total percentage area of a site that may be covered by buildings that are covered by a roof or projection, as measured over the exterior walls thereof; provided that the area covered by the first meter (as measured from the outside of the exterior wall concerned) of an eave or other projection shall not be included in the calculation of the permissible coverage.

Departure has the meaning assigned thereto in the Ordinance.

Dwelling-house means a detached building containing only one dwelling unit.

Dwelling unit means a self-contained interlocking group of rooms with not more than one kitchen, used only for the living accommodation and housing of a single family, together with such outbuildings as are ordinarily used therewith.

Existing use means the use or uses which, in the opinion of the council, is or are practised actually and lawfully on or in a property, structure or building or part thereof.

Floor factor means the factor (expressed as a proportion of 1) which is prescribed for the calculation of the maximum floor space of a building or buildings permissible on a land unit, it is the maximum floor space as a proportion of the net erf area.

Floor space in relation to any building or structure means the area covered by a roof, slab or projection, excluding a projection not exceeding 1m over an exterior or a similar support.

Floor space shall be measured from the outer face of the exterior walls or similar supports of such building or structure, and where a building or structure consists of more than one storey, the total floor space for the purposes of the definition of "maximum floor space" shall be the sum of the floor space of all the storeys, including that of basements.

Ground floor means the lowest floor of a building which is not a basement.

Holiday accommodation means a harmoniously designed and built holiday development in an unique natural environment with an informal clustered layout which may include the provision of dwelling units, whether in private or public ownership, which comprises a single enterprise and which shall only be marketed by means of short-term renting or time sharing and may include a hotel.

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Holiday housing means a harmoniously designed and built holiday development consisting of dwelling units. The individual development of each of the properties must contribute to the overall appearance as identified in the Urban Design Guidelines. A Homeowners Association must be established to which membership by the owners of all Resort Zone II properties is compulsory.

Information centre means a facility where information and exhibits pertaining to the history, flora, fauna, and regulations governing conduct, places of interest and other material of interest to the public is stored and displayed.

Land has the meaning assigned thereto in the Ordinance.

Land unit has the meaning assigned thereto in the Ordinance.

Land use restriction has the meaning assigned thereto in the Ordinance.

Motor vehicle means a vehicle designed or intended for propulsion by other than human or animal power and includes a motor cycle and a trailer or caravan, but does not include a vehicle moving exclusively on rails.

Nature reserve means (in parenthesis with the express proviso that any area demarcated or zoned as nature reserve shall not in any way restrict existing rights of property owners in KwaZulu-Natal) a national park, or some other nature park which is in the ownership of the public authority or has been declared as such in terms of legislation and remains in private ownership; it consists of an area which is utilised as a game park or reserve for fauna or flora in the natural habitat.

Occupant means any person who physically inhabits a building, a structure or land continuously or from time to time.

Occupation practice means the practising of an occupation, or a trade, or the conducting of an enterprise from a dwelling unit by one or more occupants of the dwelling unit concerned and his or their assistants, without disturbances such as noise, traffic congestion, air pollution, the congregation of people, excessive traffic generation or a lowering of aesthetics being caused; provided that a general medical practitioner shall be exempt from the condition with regard to occupancy.

Parking bay means an area measuring not less than 5,5m by 2,5m which is clearly outlined and demarcated for the parking of one motor vehicle and which is accessible to the satisfaction of the local authority.

Private parking means land or a building or part thereof that is accessible only to property owners and their authorised family and guests.

Public parking means land or building or part of a building which is utilised for parking purposes under the control of the Council.

Public Road means any road or street for public use or any land intended for such purposes.

Public toilets means toilets set aside for the use of the public.

Scheme regulations has the meaning assigned thereto in the Ordinance.

Site Development Plan means a plan indicating the location of buildings, infrastructure and landscaping on an erf, including the siting, construction materials and colours of services, roads, paths and fences and walls.

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Staff housing means dwelling units for the use of the Council's permanent or casual employees.

Tourist facilities means amenities for tourists such as lecture rooms, restaurants, gift shops and restrooms permitted by the Council as a consent use, but does not include overnight accommodation.

Zoning has the meaning assigned thereto in the Ordinance.

Zoning map has the meaning assigned thereto in the Ordinance.

Zoning scheme has the meaning assigned thereto in the Ordinance.

1.2 LAND USE

1.2.1 Area of zoning scheme

The extent of the zoning scheme is indicated on the zoning map.

1.2.2 Zoning according to utilisation

Notations on the zoning map are intended to indicate utilisation of land and not land ownership.

1.2.3 Components of the zoning scheme

This zoning scheme shall consist of three components: the scheme regulations, the zoning map, and the register. Approved departures shall be recorded in the register.

1.2.4 Zoning of the land as specified land-uses

The land shown in Table A is zoned for the respective purposes set out in column 1 of Table A and shall, subject to any provisions to the contrary in the Ordinance and these regulations, not be used for any other purpose.

TABLE A

Location	Zoning	Colour notation
LT 866	Resort Zone I	Pink
LT 240	Resort Zone II	Pink/black hatching
LT 124	Transport Zone I	Dark-brown
LT 929	Open Space Zone I	Dark Green outline
LT 158	Authority Zone	Red
LT 1	Undetermined Zone	Black hatching with black outline

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1.2.5 Erection of buildings and utilisation of land in specified use zones

The purpose, called primary uses, for which land may be utilised in the various zones indicated in column 1 of Table B are shown in column 2 of Table B. The purposes, called consent uses, for which land may be utilised or buildings may be erected with the consent of the council in the various zones indicated in column 1 of Table B are set out in column 3 of Table B. Any use not reflected in column 2 or 3 shall, subject to any provisions to the contrary in the Ordinance and these regulations, not be permitted in the zone concerned.

It must be noted that the buildings and uses which are permitted in terms of Table B or may be approved with the consent of the council may be subject to departures, which may in effect make the right attached to a land unit more or less restricted than is apparent from the notation on the map. In such cases the relevant information relating to the land unit shall be recorded in the register kept for this purpose (see regulation 1.2.3).

TABLE B

Zones	Primary Use	Consent Uses
Resort Zone I	Holiday accommodation	None
Resort Zone II	Holiday housing	Bed and Breakfast Establishment
Open Space Zone I	Nature reserve	None
Transport Zone I	Public road	None
Authority Zone	Authority usage including Staff housing, Access control, Information centre, Public toilets	None
Undetermined Zone	Existing buildings only	Existing buildings only

1.3 PLANNING CONTROL

1.3.1 Resort Zone 1 (Refer to Addendum A)

1.3.1.1 Colour Notation: Pink

Primary use: Holiday accommodation

Secondary use: None

1.3.1.2 Land Use Restrictions:

With the rezoning of land to Resort Zone I, the local authority shall lay down conditions with regard to density, layout, landscaping, building design, etceteras, at such time as application for development is made.

A site development plan shall be approved by and filed with the local authority, clearly indicating the following:

the location of buildings on the property;
 density;

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building design;
building materials;
services including design parameters and location and method of sewage disposal;
roadways and parking where applicable;
boundary walls and fences;
landscaping;
for all new buildings and additions and alterations to existing buildings.

1.3.2 Resort Zone II (Refer to Addendum A)

1.3.2.1 Colour Notation: Pink with Black Hatching

Primary Use: Holiday Housing
Consent Use: Bed and Breakfast Establishment

1.3.2.2 Land Use Restrictions

Coverage: Including garage and outbuildings, shall not exceed 35% of the area of the erf

Front building line: at least 5 metres

Rear building line: at least 1 metre

Side building line: at least 1,5 metres

- Parking:
- (a) Parking shall be provided either on site or off-site subject to agreement with surrounding land-owners according to Council's requirements as they may be laid down from time to time.
 - (b) Parking shall be provided at the ratio of 1 bay for two beds in bed and breakfast establishments. These bays shall be provided either on or off site.

1.3.2.3 Additional Provisions

- (a) the parameters of the existing lawful development shall apply as land-use restrictions where departures from these land use restrictions occur on land deemed to be zoned as Resort Zone II, with effect from the date of commencement of the Scheme;
- (b) a site development plan shall be approved by and filed with the local authority clearly indicating:
 - the location of buildings on the erf;
 - building design;
 - building materials;
 - services including design parameters and location of septic tank;
 - roadways and parking where applicable;
 - boundary walls and fences;
 - landscaping;
 - for all new buildings and additions and alterations to existing buildings.

Note: KLC is to prepare its own building plan approval, zoning and consent use application forms to comply with these regulations.

- (c) The site development plan shall comply with the urban design guidelines, see section 5, General.

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- (d) When new buildings are constructed only that land area required for the building footprint and plus a 3 metre clearance for construction should be cleared of indigenous vegetation.
- (e) The calculation of bedrooms for Bed and Breakfast Establishment shall include all bedrooms on the property.

1.3.3 Open Space Zone I (Refer to Addendum A)

1.3.3.1 Colour Notation: Dark Green Outline

Primary Use: Nature Reserve

Consent Use: None

1.3.4 Transport Zone I

1.3.4.1 Colour Notation: Light brown

Primary Use: Public road

Consent Use: None

1.3.4.2 No structure shall be erected or use practised except such as is compatible with "public road" as defined.

Roads and Landscaping to be governed by urban design guidelines for the Headland Precinct

1.3.5 Authority Zone (Refer to Addendum A)

1.3.5.1 Colour Notation: Red

Primary Use: Authority usage including staff accommodation, information centre, public toilets.

Consent Use: None

1.3.5.2 The land use restrictions and additional provisions applicable to this zone shall apply as for every site or use or type of building approved by the Premier or, if authorised thereto by the Premier, the Council.

1.3.6 Undetermined Zone (Refer to Addendum A)

1.3.6.1 Colour Notation: Black hatching with black outline

Primary Use: Existing Buildings only

Consent Use: Existing Buildings only

1.4 GENERAL

1.4.1 Urban Design Guidelines

KLC shall be divided into three precincts for the purpose of Urban Design Guidelines, namely, The Headland, the Beach and the River, as shown on the Urban Design Precinct Map.

ANNEXURE 1 (CONTINUED)

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Although the Council shall strive towards establishing the predominant theme in each precinct as set out hereunder, the guidelines shall not be interpreted rigidly.

Headland - unobtrusive, single storey, contemporary Cape;
Beach - stone castellated buildings/Millwood corrugated iron house;
River - rustic, hidden away, unobtrusive buildings.

Retaining walls, rainwater tanks and other infrastructure are also governed by these guidelines.

The Urban Design Guidelines shall be as follows:

No.	Element	Headland	Beach	River
1.	Appearance			
1.1	Style and Character	Contemporary Cape, drawing from elements of existing building	I. "castles", castellated parapets etc. II. "Millwood" houses	Rustic lodge/hide very unobtrusive
1.2	Height	One storey	One - two storey(s)	One-two storey(s) (soft foundations as appropriate)
2.	Colour/materials			
2.1	Walls	Dark greens and browns - drawing from existing building and picking up indigenous vegetation colours	Terrace walls on Millwood Houses - stone otherwise corrugated iron - light coloured walls Other styles - stone + brick	Dark colours - greens and browns, varnished wood, Sande, greens that tie in with the natural colours.
2.2	Openings and Trim (barge boards, door and window mullions and architraves, columns, balustrades, other decorative elements)	Contrasting colours but which are still sensitive to the local natural colours	Contrasting colours but which are still sensitive to the local natural colours	Contrasting colours but which are still sensitive to the local natural colours
2.3	Roofs	dark greens, browns, or black	dark greens, browns or black	dark greens, browns or black
3.	Roofs			
3.1	Shape	Double pitched	Double (Millwood) or single pitched (etc)	Double pitched
4.	Landscaping	Indigenous	Indigenous	Indigenous
5.	Roads	shall have a rural quality with no pre-cast concrete kerbs and channels etc.	shall have a rural quality with no pre-cast concrete kerbs and channels etc.	shall have a rural quality with no pre-cast concrete kerbs and channels etc.

1.4.2 Sensitive Coastal Area Regulations

Permits for development in terms of the Oudiniwa Sensitive Coastal Area regulations (No. R.881) of the Environmental Conservation Act (No. 73 of 1989) shall be applied for as part of application for Building Plan or other development approval.

1.4.3 Utilization of zoned land

- No person shall damage or destroy zoned land so as to destroy or impair its utilisation for the purpose for which it is zoned, provided that the council may consent to the deposit on such land of waste materials or refuse.

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- ii. In giving its consent under this regulation, the council may impose such conditions as it may deem fit.
- iii. Subject to the provisions of any other law, nothing in this regulation contained shall be construed as prohibiting the reasonable fencing of land.
- iv. Undetermined Zone shall only be considered for rezoning to the following use zone:
Open Space Zone;
Resort Zone I.

A site development plan shall be approved by and filed with the local authority, clearly indicating the following:

Any development proposals in this area must be preceded by an Environmental Impact Study according to Integrated Environmental Management guidelines by a consultant who must be independent from the developer although such developer may fund all or part of the work.

1.4.4 Reservation of remainder

Where the coming into operation of a provision of the zoning scheme involves the acquisition by the council of a portion of a land unit, the said provision may be applied by the council to the remainder of the land unit, if

- i. In the opinion of the council, the remainder will be too small to develop as a separate entity, or
- ii. The development of the remainder will be undesirable.

1.4.5 Imposed conditions

Where permission to erect a building or execute any works or to utilise a building or land for any particular purposes or to perform any other activity has been granted under this zoning scheme and conditions have been imposed, such conditions shall have the same force and effect as if they were part of this scheme.

1.4.6 Compliance with regulations

Nothing in these regulations contained shall be deemed to grant exemption from compliance with any of the council's regulations.

1.4.7 Non-conforming sites

The council shall require that all future buildings or the extension and maintenance work of existing buildings on the site shall be in line with the land use restrictions contained in these regulations, with the by-laws of the council, and with any other laws which are applicable.

1.4.8 Applications for consent use

- i. Subject to the provisions of regulation 1.4.9 of these regulations, the council may, where application is made to it for its consent to the erection or utilisation of a building in a zone in which a building of the type proposed may be erected and utilised only with the council's special consent, grant or refuse its consent, and shall in granting its consent be entitled to impose such restrictive conditions as it may deem fit governing the erection or utilisation of such building.

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- ii. In considering such application, regard shall be had to the question whether the use for which the building is intended or designed, or the proposed building, is likely to mar the amenity of the neighbourhood, including marring owing to the emission of smoke, fumes, dust, noise or smells.

1.4.9 Advertisement of intended application for consent use

- i. Any person intending to make application to the council for its consent to the erection or utilisation of a building or to the utilisation of land, whether wholly or partly, for any purpose requiring the council's special consent, shall, if the council is of the opinion that any landowner may have an interest in the matter, first advertise the application concerned.
- ii. The council shall take into consideration any objections received within the period referred to in the advertisement and shall notify the applicant and the persons, if any, from whom objections were received, of its decision.
- iii. Any decision of the council given in terms of this paragraph shall be by special resolution of the council as defined in the Municipality Ordinance, 1974 (Ordinance 20 of 1974), or the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976).

1.4.10 Conditions applicable to consent uses

Consent uses, as listed in column 3 of Table B, shall be subject to the following conditions:

- i. Any consent use in a particular zone which is a primary use in any other zone shall be subject to the same conditions applicable to the primary use in the other zone, unless special land use restrictions apply in respect thereof.
- ii. Any consent use in a particular zone which is not a primary use in another zone shall be subject to the same conditions as the primary use in the zone in which it is a consent use, unless special land use restrictions apply in respect thereof.
- iii. The council may in both of the above-mentioned cases lay down other conditions with regard to any specific property.

1.4.11 Occupational practice and other rights

- i. Without prejudice to any powers of the council under any other law, nothing in a zoning scheme contained shall be construed as prohibiting or restricting, or enabling the council to prohibit or restrict, the following:
 - a. The letting, subject to the council's regulations relating to bed and breakfast establishments, boarding houses and hostels, by any occupant of a dwelling-house of any part of such dwelling-house;
 - b. The occasional utilisation of a place of public worship, place of instruction or institution as a hall for social functions, or
 - c. The utilisation of a portion of a dwelling unit for purposes of occupational practice.
- ii. The following conditions shall apply where a portion of a dwelling unit is utilised for purposes of occupational practice:
 - a. Such dwelling-house, flat or residential building or any portion thereof shall not be used for purposes of a shop, business premises, an industry or a noxious

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trade; -

- b. No goods for sale shall be publicly displayed;
- c. No advertising sign shall be displayed other than an un-illuminated sign or notice not projecting over a street and not exceeding 2 000mm² in area and indicating only the name and profession or occupation of the occupant, and
- d. No activities shall be carried on which are or are likely to be a source of disturbance or nuisance to occupants of other dwelling units or portions thereof.

iii. If anybody is of the opinion that any condition referred to in regulation 1.4.11.1 or the definition of "occupational practice" is contravened, such person may lodge a written complaint with the council requesting action in terms of section 39(1)(b) of the Ordinance.

1.4.12 Combined use buildings

Where more than one primary and/or content use is approved in the same building in a particular zone, the requirements with regard to floor factor, height and coverage, as prescribed for the primary use of the zone concerned, shall be applicable, and the following conditions shall apply with regard to all other land use restrictions:

- i. Where a use which is permitted in a combined-use building in a particular zone is a primary use in another zone, the use concerned shall be subject to the same conditions, except those with regard to floor factor, height and coverage, applicable to the primary use in the other zone.
- ii. Where a use which is permitted in a combined-use building in a particular zone is not a primary use in any other zone, the use concerned shall be totally subject to the conditions applicable to the primary use in the zone in which the use concerned is permitted.

1.4.13 External appearance of buildings

Any person intending to erect any building shall furnish the council for its consideration, if it so requires (in addition to any plans and particulars required to be submitted under any of the council's regulations), with drawings or some other sufficient indication of the external appearance of the proposed building, including a description of the building materials to be used for that purpose. The drawings shall be upon suitable and durable material to a scale of 1:100, except that where the building is so extensive as to render a smaller scale necessary, the drawings may be to a scale of 1:200. The council may require such alteration to the external appearance and building materials as it may deem necessary, see regulation 1.4.1.

1.4.14 Utilisation of outbuildings

No outbuilding may be utilised for any purpose other than that for which the plans have been approved by the council, and no such outbuilding may be utilised until the main building is completed or occupied, unless otherwise resolved by the council.

1.4.15 Carports

Subject to the council's approval, a carport which will exceed a street or side building line may be erected subject to the following conditions except where due to local constraints adhering to such conditions is not possible:

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- i. The width of the carport, measured parallel to the street boundary, shall be not more than 6m.
- ii. The carport shall be supported by metal, wooden, brick or cement poles or pillars. These poles or pillars may have a maximum measurement of 360mm horizontal gauge (or 360mm diameter in the case of piping), and at most four poles or pillars may be provided on one side of the carport.
- iii. No walls, except boundary walls, shall be constructed so as to enclose the carport.
- iv. The height of the carport, measured from the floor to the top of the roof, shall not exceed 3m.
- v. The sides of the roof shall be neatly finished with a fascia not exceeding a depth of 250mm.
- vi. The facade of the carport shall be not closer than 300mm to the street boundary.
- vii. No gates which open onto the roadway shall be permitted.
- viii. Standard provision shall be made for the collection and run-off of rainwater from the carport.
- ix. Written confirmation from the adjoining owner(s), if a side building line will be exceeded, and the owner(s) of both adjoining land units, if a street building line will be exceeded, to the effect that they have no objection against the proposed carport shall be obtained.
- x. The carport shall comply with regulation 1.4.1

1.4.16 Council Duties

The council shall allow any person at any reasonable time to examine any scheme regulations, zoning map or register, as contemplated by sections 9, 10 and 12 respectively of the Ordinance, which are or is kept in the office of the council; provided that any information in connection with the zoning scheme which is given to any person shall only be valid if it is in writing and signed by the official duly authorized thereto by the council.

1.4.17 Service of documents

The provision of section 211 of the Municipal Ordinance, 1974 (Ordinance 20 of 1974), and section 213 of the Divisional Councils Ordinance, 1976 (Ordinance 18 of 1976), shall *mutatis mutandis* apply to this zoning scheme.

1.4.18 Townships and minor subdivisions in terms of the Townships Ordinance, 1934

Notwithstanding anything to the contrary in these regulations contained, conditions of ownership imposed by the Premier upon the approval of townships and minor subdivisions in terms of the Townships Ordinance, 1934 (Ordinance 33 of 1934), shall be applicable in as far as such conditions are more restrictive than the provisions of the zoning scheme.

1.4.19 Aesthetics and landscaping

Where paving, landscaping, other treatment or any aesthetic requirement is deemed necessary by the council, or the Premier if the matter is considered by him, in order to

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prepare land for development, it may be required by the council or the Premier, as the case may be, and such requirement shall be carried out to the satisfaction of the council or the Premier, as the case may be, at the cost of the owner.

1.4.20 Site Cleaning

All residential sites shall be cleaned by hand according to the approved site development plan. No site works should be embarked upon prior to approval of site development plan and building plans.

1.5 APPROVAL OF DEPARTURES AND SUBDIVISIONS BY COUNCIL

1.5.1 Departures

A council, may, in terms of section 15(1)(b) of the Ordinance grant or refuse an application for a departure, or in terms of section 15(5) determine an extended period, after which such departure shall lapse; provided that, where the council authorises the utilisation of land on a temporary basis as contemplated by section 15(1)(a)(ii), such concession shall be granted for a period of at most five years, with the exception of a departure for which a permit is required in terms of section 25 of Act 89 of 1987, in which case the concession may be granted for such number of years as is related to the expected life time of the mine concerned.

1.5.2 Subdivisions

1.5.2.1 A council may grant or refuse an application for the subdivision of land in terms of section 25(1) of the Ordinance within, and subject to the conditions applicable to, a subdivisional area, as well as an application for the subdivision of land involving no change in zoning.

1.5.2.2 Whenever a council has granted a subdivision in terms of section 25(1) of the Ordinance, it may act in terms of section 30 of the Ordinance.

1.5.2.3 In the process of the creation of new streets in any subdivision in terms of these regulations, the general principles in regard to layout, street intersections and gradients, as set out in parts 3, 4.4, 4.5, 10.7.1 and 11 of Part B of the document: "Guidelines for the Provision of Engineering Services in Residential Townships", published by the former Department of Community Development and as amended from time to time, shall be complied with. The following additional requirements shall also be met:

- a. Any street intersection shall be so located, with due regard to topography, that there is sight distance in all directions of at least 40m from such intersection where possible.
- b. The transverse gradient of any street shall not be steeper than 1 in 6 (that is the gradient of the land before construction) where possible.
- c. The longitudinal gradient of any portion of a street shall not be steeper than 1 in 8 (that is the gradient of the land before construction) where possible.
- d. The weaving distance (distance between intersections in different directions), that is between the nearest corners of the streets concerned, shall be at least 40m where possible.
- e. The angle of intersection of streets shall be at least 70° where possible.

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1.5.2.4 Subdivision shall only be permitted that can clearly demonstrate to the Council how they take into account slopes, soils, hydrology, vegetation and visual quality to enhance the environment on KwaZulu. Subdivisions suggestive of a conventional suburban environment i.e. uniform rectangular plots will not be permitted.

1.5.2.5 Subsequent to the granting of a subdivision in terms of section 25(1) of the Ordinance, the person who at any time is the owner of any land unit directly involved in the subdivision shall be required, without compensation:

- a. To allow gas mains, electricity, telephone and television cables and/or wires, main and/or other water pipes and foul sewers and storm water pipes, ditches or channels of any other land unit or units to be conveyed across the land unit concerned, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon, if considered necessary by the Council and in such manner and position as may from time to time be reasonably required; this shall include the right of access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above, and
- b. To receive such material or permit such excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the Council.

1.5.2.6 In terms of section 31(2) of the Ordinance, a Council may permit a building or structure to be erected on a land unit forming part of a subdivision which has not been confirmed.

1.6 REMOVAL OF RESTRICTIONS

Notwithstanding regulations 1 and 1.2 of these regulations, all conditions restricting subdivision, the number of buildings that may be erected on the land, or any other restrictive conditions which may have a bearing on the subdivision or departure applied for and registered against the land unit shall, where applicable, first be removed prior to an application being granted.

1.7 COMMERCIAL ACTIVITY

No commercial activity other than that pertaining to the operation of bed and breakfast establishments, holiday business concessions and holiday accommodation shall be permitted.

3-7 FEB 2005 15:16:11 FROM: PEELUM CLUB TEL: 43841741
+27443841741

NO. 665
TO: 0118377617

P. 21

P. 21/23

28 AUG 2002 12:25

CONCOR ENGINEERING 2711 8577617

NO. 188

P. 22/24

ADDENDUM A

REASONS FOR CERTAIN OF THE CONDITIONS:

Bed and Breakfast Establishment means a building for human habitation with not more than 4 bedrooms (8 beds) for the purpose of offering overnight accommodation.

Reason:

This definition has been included because it is likely that Knopzie property owners will increasingly offer this service to subsidise the cost of their dwellings. There is concern that it should be properly monitored.

1.3.1 RESORT ZONE I

Primary use: Holiday accommodation

Reason:

Knopzie's context certainly complies with the requirement of a unique natural environment and the need for development to be informally clustered and harmoniously designed. It is the intention that no alienation of property for freehold tenure should be permitted in this zone.

1.3.1.2 Land Use Restrictions:

With the rezoning of land to Resort Zone I, the local authority shall lay down conditions with regard to density, layout, landscaping, building design, etcetera, at such time as application for development is made.

Reason:

The possibility of development in this area is foreseen and therefore the current agricultural zoning, in terms of the guide plan, is inappropriate. However, the exact nature and location of such development cannot be forecast at this stage. Furthermore any development proposals in this area must go through a rezoning and subdivision process. Rezoning in this area will be from undetermined zone.

1.3.2 RESORT ZONE II

Primary Use: Holiday Housing

Reason:

As stated above Knopzie's context certainly complies with the requirement of a unique natural environment and the need for development to be informally clustered and harmoniously designed. It is the intention that property can be alienated for freehold tenure in this zone.

Consent Use: Bed and Breakfast Establishment

Reasons:

Knopzie's property owners are increasingly seeking avenues of income to offset the costs of maintaining their holiday homes. This pressure is unavoidable. Rather than attempting to prohibit such activity, possibly forcing these ventures underground and thereby more difficult to monitor, a more positive strategy will be to permit this activity but make it subject to public control and scrutiny.

In any event small scale bed and breakfast establishments, not more than four rooms (8 beds) in total (including all beds on the property), are seen as compatible with the current level of development in Knopzie.

It should be noted that consent uses still require an application to Council with a positive approval before they can be exercised.

1.3.3 OPEN SPACE ZONE I

Reason:

All sensitive parts of Knopzie, the coast, the estuary, the steep hill slopes (greater than 1:4) and the indigenous vegetation should enjoy the highest level of protection:

3-7 FEB. 2005: 16:12Z DM: PE MARINE & MINERAL 341741A
+27443841741

TO: 0116311617 NO. 665

P. 22

P: 22/23

25 AUG. 2002 12:25Z CONCOR ENGINEERING 2711 8377617
1.3.6 AUTHORITY ZONE

NO. 188

P. 23/24

Reason: There is a need to accommodate the local authority functions described above in order to facilitate good management at Knoske, particularly over the holiday seasons.

1.3.6 UNDETERMINED ZONE

Reason: The possibility of development in this area is foreseen and therefore the current agricultural zoning, in terms of the guide plan, is inappropriate. However, the exact nature and location of such development cannot be forecast at this stage. Furthermore any development proposals in this area must go through a rezoning and subdivision process. Rezoning in this area will be to the Resort Zone 1 (holiday accommodation) and Open Space 1 (nature reserve) zones. Therefore, in the interim Undetermined Zone will apply.

200

1

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11-23-23

P. 24/24





rural development
& land reform

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

SURVEYOR-GENERAL: WESTERN CAPE

90 Plein Street / Private Bag X9028, CAPE TOWN, 8000; Tel: 021 467 4800; Fax: 021 4653006; Email: sgdatawc@drdlr.gov.za

**MARK DE BRUYN
PROFESSIONAL LAND SURVEYORS
PO BOX 135
KNYSNA
6570**

*Enquiries: ML Zulu
My Reference: Knys 394 vol 2 p148
Your Reference:*

2018-10-17

Attention: Mark De Bruyn

Sir

**STATUS REPORT: THOROUGHFARES, PASSAGES AND ROADS IN NOTZIE FARM 394,
KNYSNA.**

I refer to your letter dated 2018-09-26

According to my records, the land shown **COLOURED IN GREEN AND ORANGE** on the attached plans represent:

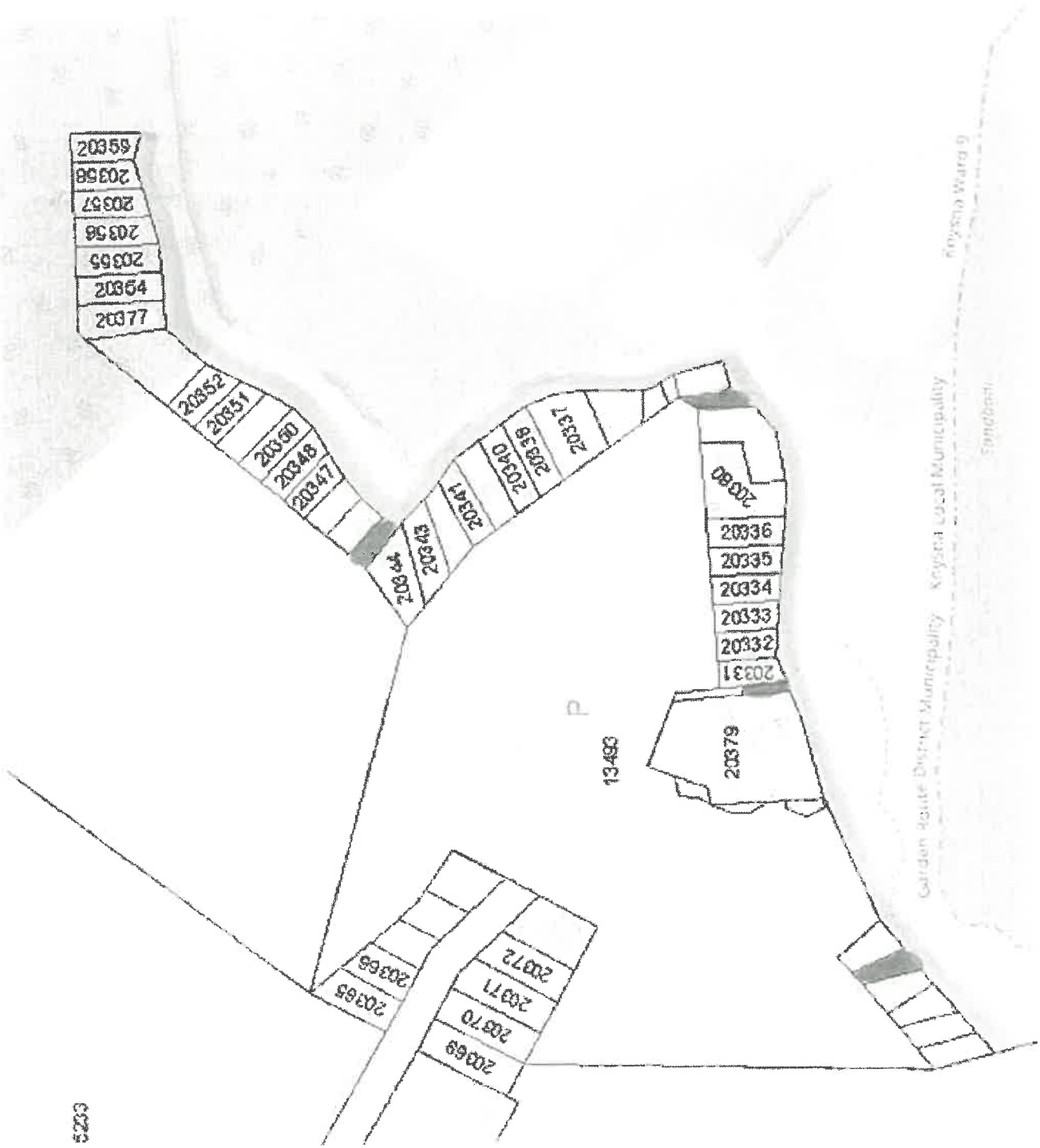
- Remainder Farm 394, Knysna as shown on **General Plan No. N19 (3031)**

It is shown as **PUBLIC STREET** in our records.

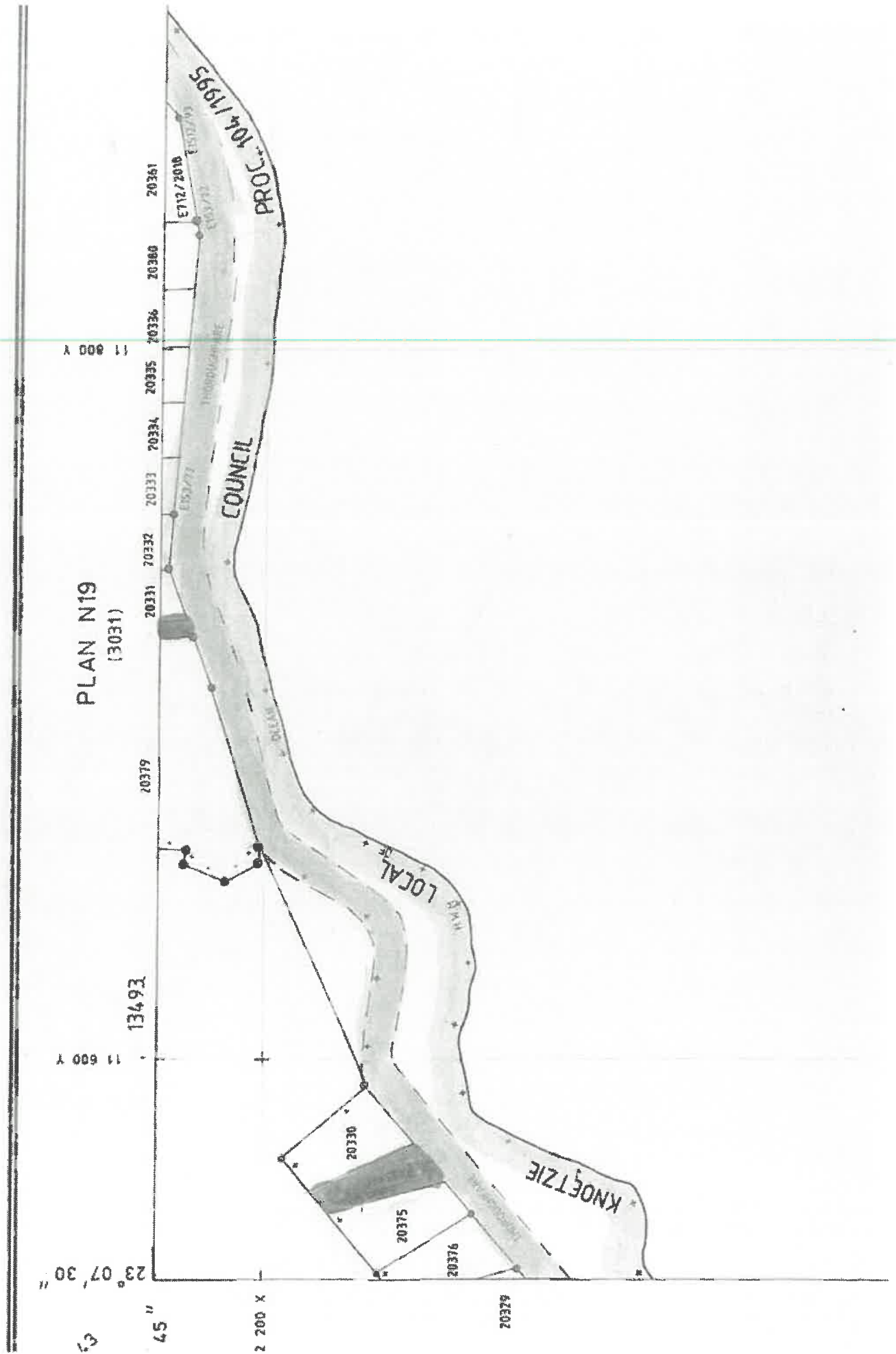
Note: A passage and thoroughfare is described as a public street in the Land Use Planning Ordinance 15 of 1985, should you wish to permanently close the above mentioned property, a normal closure procedure will have to be followed.

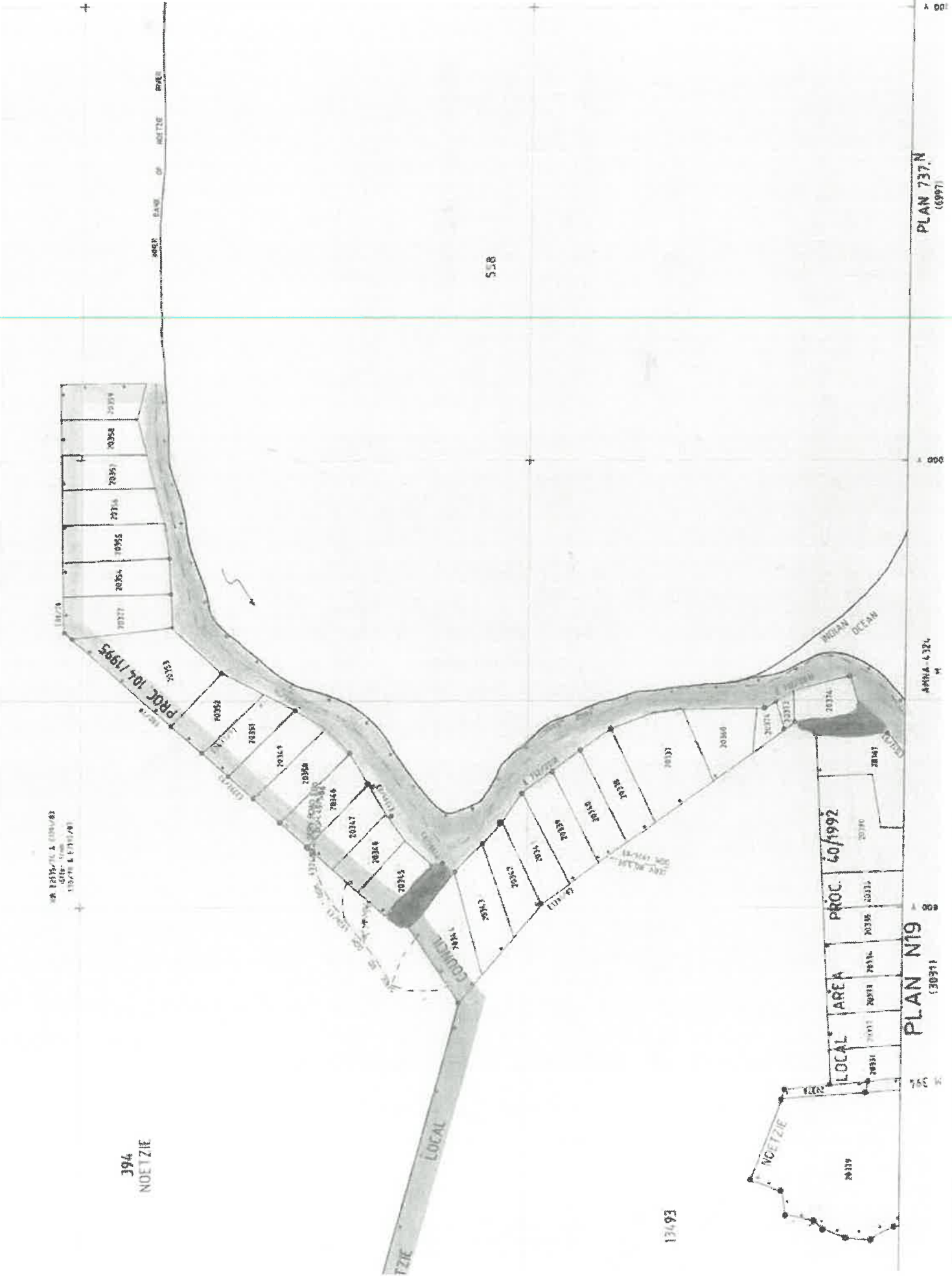
Yours faithfully

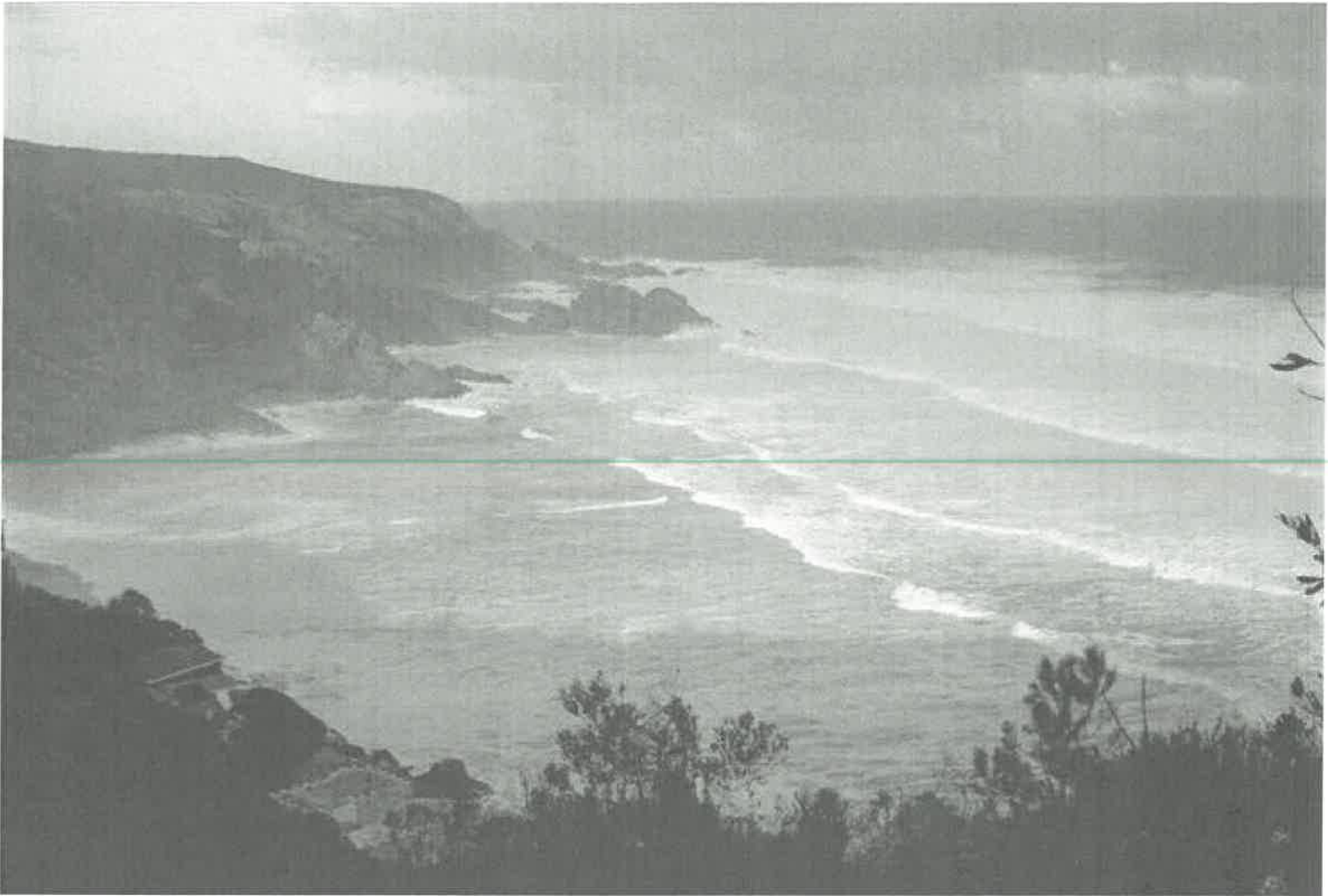
**ML Zulu
For Surveyor-General: Western Cape**



1 : 1000







ANNEXURE 4

[Back to main document](#)





ANNEXURE 6

[Back to main document](#)



[Back to main document](#)

26-JAN-2005 18:14 FROM:GOSLING ASSOCIATES 0215320277

TQ:0116384636...

P: 1/2

FROM : DURCM

PHONE NO. : 0216719785

Jul. 05 2002 10:17AM P3

DE VILLIERS REID CHIDDY & MURRAY
Professional Land Surveyors

Portion 91 of the Farm NOETZIE No.394

KNYSNA

S. G. No.

4267-93

Approved

F. Bennett
Surveyor-General

1997-03-04

SHEET 2 of
2 SHEETS

KNYSNA ADMINISTRATIVE DISTRICT
WOOE

MIKE DANE
TO SCAN &
DISTRIBUTE
PLEASE
REGARD
CR & GOSLING

car park.

Remainder Farm
NOETZIE No. 394

APPROX POSITION
OF STRIP READ

Remainder Farm
NOETZIE No.394

124

125

126

Port

Portion 27

ROAT

394/23

Thoroughfare

ABCEFG IS NOW 394/91

Surveyed in April 1993
by me

T.J. Chiddy
Professional Land Surveyor

Scale: 1/750

394/91

26-JAN-2005 18:14 FROM:GOSLING ASSOCIATES 0215320277

TO:0116384636

P:1/2

FROM : DURCH

PHONE NO. : 0216719785

Jul. 05 2002 10:17AM P3

DE VILLIERS REID CHIDDY & MURRAY
Professional Land Surveyors

Portion 91 of the Farm NOETZIE No.394

KNYSNA

KNYSNA ADMINISTRATIVE DISTRICT

S.G. No.

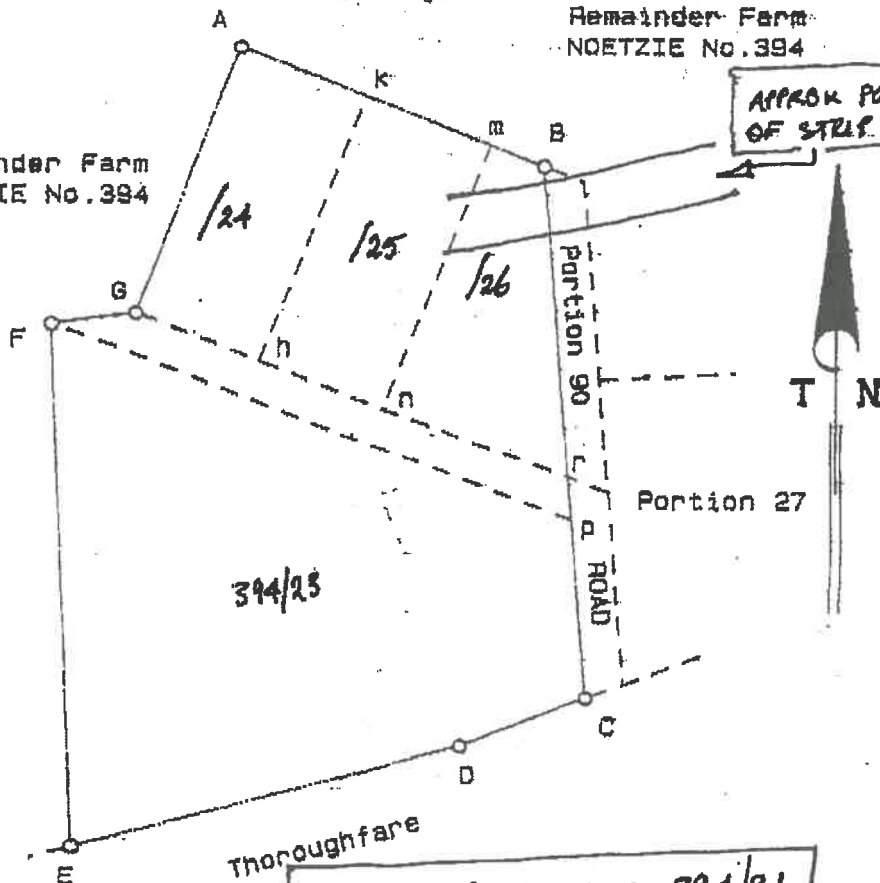
4257-93

Approved

P. H. H. H.
Surveyor-General
1994-03-04

SHEET 2 of
2 SHEETS

MIKE DAVE
TO SCAN &
DISTRIBUTE
PLEASE
REGARD
CR & GOSLING

Remainder Farm
NOETZIE No.394Remainder Farm
NOETZIE No.394APPROX POSITION
OF STRIP ROAD

Surveyed in April 1993
by me

T. J. Chiddy
T. J. Chiddy
Professional Land Surveyor

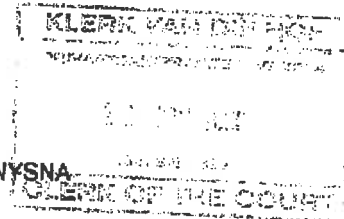
Scale: 1/750

394/91

RV Date/Time 20/05/2009 10:12
20 May 09 10:33

P.001

p.1



IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF KNYSNA
HELD AT KNYSNA

CASE NO.: 03670/06

In the matter between:

JULIAN BETH GOSLING

APPLICANT

And

PEZULA PRIVATE ESTATE (PTY) LTD

FIRST RESPONDENT

KNYSNA LOCAL MUNICIPALITY

SECOND RESPONDENT

DRAFT ORDER

Having read the documents filed of record and having considered the matter the Court grants the following order:

1. 1.1 A rule nisi is issued calling upon the Respondent to show cause to this Court on the 26th of January 2007 at 09h00 or as soon thereafter as they can be heard why the following order should not be made:

2

1.1.1 Ordering the First Respondent to immediately restore free and unfettered access to the public across the municipal steps and the "strips" road.

1.1.2 Ordering the First Respondent to remove the shadedcloth or any other obstacle either preventing the public's access from the parking area to the "strips" road or preventing the public's access from the municipal steps to the "strips" road.

1.1.3 Ordering the First Respondent to remove any notices that may indicate to the public that they do not have free and unfettered access to the strips road or to the municipal steps or visa versa.

1.1.4 Ordering the First Respondent not to allow a security guard to either inform the members of the public that they have no right to use the "strips" road and the municipal steps or to actually prohibit the public to use the "strips" road and the municipal steps.

1.1.5 The Sheriff is authorised and ordered, in the event of the First Respondent failing to comply with this order immediately, to ensure compliance with this order by restoring access to the public as set out above.

1.2 That this rule operate as an interim interdict.

Date/Time 20/05/2009 10:12

P. 003

09 09 10:34

p. 3

3

- 1.3 That the Respondents be ordered to pay the costs of this application only in the event of the application being defended.

BY ORDER OF THE COURT:

CLERK OF THE COURT
MAGISTRATE'S COURT KNYSNA



Knysna Municipal Manager

3 March 2025

PO Box 21

Knysna

6530

By email to: knysna@knysna.gov.za

For Attention: Hennie Smit

Sir,

**RESPONSE TO THE APPEAL RECEIVED: SUBDIVISION OF THE REMAINDER OF REMAINDER OF THE
FARM NOETZIE NO 394**

We hereby confirm that we have received a notification about an appeal submitted by Melanie Gosling on behalf of the Noetzie Conservancy Owners Association, against the decision of the Knysna Municipal Planning Tribunal (the “KMPT”) that approved the Subdivision of the Remainder of the Farm Noetzie 394, subject to certain conditions.

The Appeal states that the NCOA is the legally constituted body, representing all Noetzie homeowners and the conservancy. For the sake of good order, a copy of the minutes/resolution authorising the lodgement of an Appeal against the Decision of the Tribunal should accompany the Notice of Appeal.

Regardless of the above, we submit that the appeal fails to comply with the requirements of Section 80 (2) of the Knysna Municipality Spatial Planning and Land Use Management By-Law, as it does not adequately set out the following:

Planning Space Garden Route Pty Ltd (Co Reg. P2022 / 307865 / 07)

Website: <https://www.planningspace.co.za> **Email:** Lundi@planningspace.co.za **Postal Address:** PO Box 2029, Knysna, 6570

Physical Address: Knysna Branch: Quayside Office Park, Corner of Hedge and Gordon Street, Unit 6 Ground Floor, Knysna

Plettenberg Bay Branch: 23 Bowtie Drive, Plettenberg Bay, 6600

Contact: Lizemarie Botha-082 855 1125 | Lundikazi Khuphiso-066 222 0016

a) Grounds for the appeal:

- i) The appellant did not suggest that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 of (Act 3 of 2000);
- ii) The appellant fails to provide a substantive argument regarding the merits of the land development or land use application that would indicate an error in the Tribunal's decision. Instead, the appeal is based on a misunderstanding of land use and legal procedures rather than any legitimate grounds for review. It also seeks to expand the conditions imposed by the Tribunal.

b) Factual or legal basis:

The appellant does not present any factual or legal findings to support their appeal, relying instead on misinterpretations of planning regulations and unrealistic expectations from both the Municipality and the landowner.

c) New issues for consideration:

The appeal introduces no new matters for the Appeal Authority to consider. Rather, it merely reiterates objections previously raised, which have been considered by the Tribunal and sufficiently addressed in the conditions of approval.

Accordingly, the appeal lacks merit and does not meet the statutory requirements for consideration.

RESPONSE TO REASONS SET OUT IN THE APPEAL

A. REGISTRATION OF SERVITUDES

Condition 2 (c) of the Subdivision Approval stipulates that the landowner must secure public access to the beach and provide public parking through the registration of servitudes. As indicated on the attached Subdivision Plan, the following servitudes have been provided:

- A private right-of-way servitude over Portion A (unregistered Erf 13493), in favour of Erf 20379 Knysna and a public walkway following the same route to the public stairs.

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- Servitude area, 683m² in extent over Portion A (unregistered Erf 13493), in favour of Erven 20328, 20329, 20376, 20375, and 20330 to be used for private access and parking purposes;
- Private right of way servitude 5m wide, in favour of Erven 20328, 20329, 20376, 20375 and 20330;
- Private Right of way servitude, usufruct and encroachment servitudes in favour of Erf 20380;
- Private right of way and parking servitude in favour of Erf 20338;
- Servitude to protect an existing water pipeline traversing over Portion A (unregistered Erf 13493), which extends to Erf 20379;
- Servitude to protect the existing electrical reticulation traversing over Portion A, which extends to Erf 20379.
- A temporary servitude in favour of the general public providing access to, and use of, the existing 18 parking bays currently located on the property, with the provision that should the registered owner of the subdivided Erf no 13493 at any time in the future wish to relocate or realign the position of the parking, provision must be made to the satisfaction of the Knysna Municipality for access to and use of adequate alternative parking facilities for 18 parking bays.
- Protection of the use of the existing public road that leads from the boundary of the property to the beach in either a road reserve or a temporary access servitude, subject to the feedback from the Surveyor General regarding the status of the road as depicted on GP 19.

The Noetzie Conservancy Owners Association (NCOA) has appealed to this condition, arguing that the servitudes must be registered prior to the subdivision to ensure their legal enforceability. However, this interpretation overlooks the statutory requirements outlined in Section 20 of the Knysna Municipality Land Use Planning Bylaw.

Section 20 (5) states that if the municipality approves a subdivision, the applicant must submit a General Plan or diagram to the Surveyor General Office for approval, including proof to the satisfaction of the Surveyor General Office of:

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Contact: Lizemarie Botha-082 855 1125 | Lundikazi Khuphiso-066 222 0016

- a) the municipalities' decision to approve the subdivision;
- b) the conditions of approval imposed in terms of section 66; and
- c) the approved Subdivision Plan.

In accordance with this provision, all relevant conditions of approval must be met before the subdivision can be approved in the Office of the Surveyor General and be registered in the Deeds Office. This means that once the municipality approves the subdivision plan (after the appeal has been resolved), which must include the required servitudes as per the above condition, the process for formalising these servitudes follows a well-established legal sequence:

- Surveyor General Approval – The servitude diagrams will be submitted and approved by the Surveyor General concurrently with the subdivision diagram.
- Simultaneous Registration – The registration of the subdivision and the servitudes will occur at the same time, ensuring that the servitudes are legally binding upon registration.
- Regulatory Compliance – The subdivision cannot be registered without the simultaneous registration of the required servitudes, guaranteeing their enforceability.

Thus, the argument that servitudes must be registered prior to subdivision is fundamentally flawed. The established legislative framework ensures that these servitudes will be secured in a legally binding manner at the appropriate stage in the approval and registration process. Consequently, the appeal against Condition 2 (c) should be dismissed.

B. RIVER MANAGEMENT PLAN

Point 4 (a): Requirement for a River Management Plan:

Section 4 of the approval provides some additional information to the land owner that does not form part of the decision or the conditions thereto and cannot technically be appealed. Section 4 (a) of the approval document states that the landowner or their successor in title must ensure that a River Management Plan is approved and implemented to the satisfaction of the relevant authority. This

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condition was explicitly included in response to the Noetzie Conservancy Owners Association (NCOA)'s initial objections. The NCOA originally requested that:

- A stream servitude be registered.
- Provisions be made to address existing unregularised and potential future water access and abstraction rights.
- An integrated stream management plan be developed in consultation with the relevant authorities.

The NCOA appears to expect that the landowner must:

- Provide a fully developed Integrated River Management Plan that includes a much wider area upstream.
- Ensure that all riparian property owners participate in its formulation and implementation.
- Secure formal access rights for all riparian landowners, similar to what a registered stream servitude would provide.

Knysna Municipality's jurisdiction:

The NCOA's expectations fail to consider that the municipal planning authority does not regulate water use rights in South Africa. In terms of Section 66 (8) of the Knysna Municipality: Spatial Planning & Land Use Management By-law, a municipality may not approve a land use application subject to a condition requiring approval under other legislation. However, any approval granted under this By-Law must inform the applicant that compliance with other applicable legislation is still required.

Thus, while the municipality has alerted the landowner to the need for a River Management Plan, it cannot enforce this condition, as water use falls outside its jurisdiction. The relevant regulatory authority for water rights and management is the Department of Water and Sanitation (DWS), in terms of the National Water Act, 1998 (Act No. 36 of 1998) and the property falls under the jurisdiction of the Breede-Gouritz Catchment Management Agency.

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Landowners' responsibility:

The NCOA claims that the landowner should be solely responsible for formulating and implementing a collective River Management Plan. However, this expectation is unreasonable for the following reasons:

- The current landowner is not the transgressor regarding water access and abstraction rights—most existing issues stem from surrounding property owners as stated in the appeal.
- It is not the landowner's sole responsibility to regulate or coordinate river management efforts that extend beyond their property boundaries.
- Such an initiative should be a collaborative effort involving all affected parties, with the NCOA itself being best positioned to facilitate coordination, in line with the aims of the NCOA Constitution.

Access Rights for Riparian Landowners:

The NCOA further requests that all riparian landowners be granted access rights to the river, in the form of a stream servitude. However, there is no legal basis for this demand:

- There are no existing access rights to the river for any property owners.
- The granting of the subdivision does not alter or create new access rights.
- Any claim to such rights would need to be legally established, which is beyond the scope of this application.

We believe that the municipality has correctly included additional information alerting the owners or their successors of the need for a River Management Plan but cannot legally enforce its implementation as a condition of the subdivision.

The appeal against section 4 (a) cannot be reviewed as it is not part of the approval or the conditions thereto. As such it should be dismissed.

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Contact: Lizemarie Botha-082 855 1125 | Lundikazi Khuphiso-066 222 0016

C. FIRE RISK MANAGEMENT PLAN

Item 4 (c) stipulates that the landowner and/or their successor in title must ensure the approval and implementation of a Fire Risk Management Plan. The NCOA contends that this condition is insufficient to adequately address the fire risk associated with the proposed development. In light of this, they request the following measures be imposed as conditions of approval:

- The establishment of an Integrated Fire Management Plan is to be included as a condition of approval.
- Following the completion of a comprehensive fire risk assessment, the development of a Fire Risk Management Plan in consultation with the Knysna Municipality (KM), South Cape Fire Association (SCFA), and NCOA.
- Assurance that the Fire Risk Management Plan complies with the requirements set forth in the Conservation of Agricultural Resources Act (CARA).
- The mandatory membership of the landowner in the South Cape Fire Association.

We believe that the aforementioned requests can be adequately addressed through the required Fire Management Plan and do not provide sufficient grounds for appealing the original decision.

The rationale for not including these stipulations as conditions of approval is twofold. First, the fire risk exists independently of the subdivision; it is a pre-existing condition that the landowner and the NCOA are responsible for managing, regardless of whether a subdivision is approved. Second, the management of fire risk should be seen as an ongoing obligation of the landowner and the NCOA, which does not necessitate a direct connection to the subdivision process.

In summary, the responsibility for addressing fire risk lies with the landowner, and existing provisions can adequately ensure that fire management needs are met without the need to impose additional conditions related specifically to the subdivision. The NCOA's appeal on this matter is therefore also unfounded and should be dismissed.

In conclusion, we would like to propose that the appeal against item 4 (c) is invalid or should be dismissed as it does not comply with the requirements of Section 80 (2).

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Contact: Lizemarie Botha-082 855 1125 | Lundikazi Khuphiso-066 222 0016

D. CONCLUSION

The appeal submitted by the Noetzie Conservancy Owners Association against the conditions of the subdivision approval of the Remainder of Farm Noetzie 394 lacks merit and does not comply with the requirements of Section 80 (2) of the Knysna Municipality Spatial Planning and Land Use Management By-Law. The appeal fails to provide valid grounds, factual or legal justification, or new issues for consideration. Key objections, including the timing of servitude registration, the requirement for a River Management Plan, and Fire Risk Management, are based on ignorance of planning regulations and legal procedures. We believe that the conditions imposed by the Tribunal align with statutory requirements, and the arguments presented in the appeal do not justify the administrative process of reviewing the decision and certainly do not justify overturning the decision, should it be reviewed. Consequently, the appeal should be found invalid or alternatively should be dismissed.

We thank you for your attention to this matter.

Kind Regards,

A handwritten signature in cursive script, appearing to read 'Lizemarie Botha', is shown in a light grey, semi-transparent box.

Lizemarie Botha.

Planning Space Garden Route Pty Ltd (Co Reg. P2022 / 307865 / 07)

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Contact: Lizemarie Botha-082 855 1125 | Lundikazi Khuphiso-066 222 0016

Knysna Municipality
Attention: Liesel Bailey
Administrator: Tribunal and Appeal Authority

Email: lbailey@knysna.gov.za

5 December 2025

Dear Sirs

SUBJECT: PURPORTED APPEAL HEARING – 8 DECEMBER 2025 AT 12H00: REMAINDER OF FARM NOETZIE 394 – OBJECTION TO ULTRA VIRES PROCEEDINGS

As previously recorded, we act on behalf of Pezula Private Estate (Pty) Ltd, the applicant in this matter.

We address you regarding the notice received yesterday inviting our client to attend an oral hearing before the Appeal Authority scheduled for 8 December 2025 at 12h00 in relation to the subdivision of Remainder of Farm Noetzie 394, Knysna.

Our client objects in the strongest possible terms to the convening of this purported hearing. The objection is based on multiple independent grounds of unlawfulness, irrationality, and procedural unfairness, which are set out below.

First, on 15 October 2025, Mr J.H. Smit, the Land Use Manager of the Knysna Municipality, addressed a letter to Planning Space, acting on behalf of the applicant, expressly confirming that, in terms of section 80(1)(b) of the Knysna Municipality By-law on Spatial Planning and Land Use Management (2021), the appeal forming the subject matter of the ongoing dispute “had been finalised” and had already been adjudicated and pronounced upon. Mr Smit unambiguously recorded that the matter had been finalised.

The legislative framework therefore provides for one appeal only, and that appeal has already been exercised and concluded. The doctrine of *functus officio* applies. The Appeal Authority has exhausted its jurisdiction and cannot lawfully reconvene, rehear, or reconsider an appeal already determined. The notice issued to us is therefore *pro non scripto*, as the By-law contains no empowering provision for a second or further appeal process.

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Any attempt by the Municipality or the Appeal Authority to hold an additional “appeal hearing” would constitute *ultra vires* conduct, inconsistent with both the By-law and SPLUMA, and invalid from inception.

Secondly, we place on record that we have on several prior occasions formally alerted the Municipality to this jurisdictional bar. The Municipality’s own senior official, Mr Smit, ultimately confirmed our position in writing. The Municipality is therefore fully aware that it lacks lawful authority to convene the appeal scheduled for 8 December 2025 and would be acting intentionally outside its statutory powers should it nonetheless proceed.

Thirdly, the notice period afforded is, independently, fatally defective. The email sent to us yesterday demands attendance on Monday, 8 December 2025, at 12h00, providing one business day’s notice for a substantive appeal hearing.

Such notice is unreasonable to the point of absurdity. It is impossible to prepare adequately, consult our client, consider the agenda, prepare any written submissions, or meaningfully participate. Counsel already briefed in the matter is based in Cape Town and must make travel arrangements and is notwithstanding already engaged in Court Proceedings on the particular day. It is self-evidently impossible for counsel to appear on such truncated notice.

The Municipality’s conduct violates the duty to provide reasonable and procedurally fair notice as required by section 3 of PAJA.

For ease of reference, the notice sent yesterday reads as follows:

“Good day,

I trust you find this well.

You are hereby invited to attend an Oral Hearing held by the Appeal Authority on 8 December 2025, 12:00pm in the Council Chambers, 5 Clyde Street, Knysna CBD.

Kindly find attached hereto the Agenda for your attention and perusal. The full agenda will be available on our website by end of business today at <https://www.knysna.gov.za/government/council/knysna-municipal-planning-tribunal/>

Kindly confirm in writing, should you wish to make an oral presentation. Please submit a written summary of your oral presentation after the proceedings.

Kind regards,

The Municipality is, or ought to be, aware that issuing an impossible notice period compounds the unlawfulness already inherent in attempting to convene a second appeal hearing.

Fourthly, any decision taken at or arising from such an *ultra vires* and procedurally unfair hearing would immediately be susceptible to review under section 6 of the Promotion of Administrative Justice Act, 2000, including:

- 1.1. s 6(2)(a)(i) – the administrator acted without lawful authority;
- 1.2. s 6(2)(f) – failure to comply with mandatory and material procedures;
- 1.3. 6(2)(h) – the action is so unreasonable that no reasonable decision-maker could have taken it.

We record formally that we hold instructions to institute such review proceedings immediately and on an urgent basis, including a request for a punitive costs order *de bonis propriis* against the individual decision-makers should the Municipality persist in advancing a process that it knows is unlawful and outside the scope of its statutory powers. Proceeding under these circumstances would constitute an abuse of process.

In light of the above, we demand written confirmation forthwith, today, that the Municipality will not proceed with the purported appeal hearing scheduled for 8 December 2025 at 12h00, nor with any other process seeking to reconsider the appeal already finalised in terms of section 80(1)(b).

Failing such confirmation, all our client's rights are reserved.

Be guided accordingly.

Yours sincerely



Marius Botha