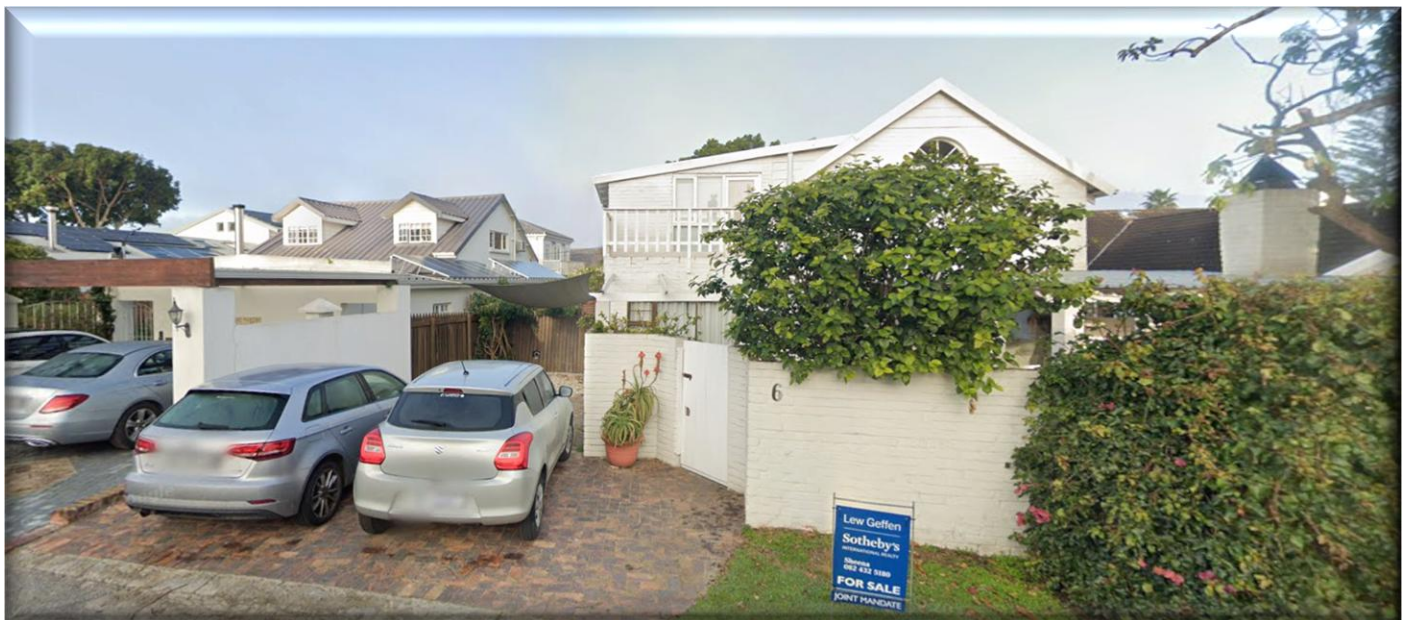


— **MOTIVATING MEMORANDUM** —

in support of an application
lodged by virtue of Sections 15(2)(b) and (f)
of the
Knysna Spatial Planning and Land Use Planning Management Bylaw of 2021
to obtain permission to depart from development parameters
of the Knysna Zoning Scheme Bylaw of 2020
and
remove a restrictive title condition
in respect of
Erf 1967, Leisure Island, Knysna



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1. **BACKGROUND**

The matriarch of the Bogenhofer family bought this property in 1984. In 1998 she established the company Bogenhofer Ontwikkeling (Eiendoms) Beperk, which company took transfer of the property in 1999.

Since 1984 this property was the holiday residence of the family and over time, as the family grew older, things changed. Mr. Hans-Rudi Bogenhofer (the authorised director of the holding company) bought their interests in the property from his siblings and is effectively the present landowner.

To improve the property, the landowner approached the Knysna company Plans R Us to prepare the required building plans. During the preparation of the building plans it became apparent that a land use application will be required to obtain permissions for certain existing and planned improvements to the original property. The matter was then referred to the author, who investigated the case and found irregularities. It was then determined that town planning applications will have to be submitted for the following purposes:

- (a) For permanent departures from the development parameters of the Zoning Scheme By-law to relax development parameters; and
- (b) For the removal of title restrictions; and
- (c) For the determination of an administrative penalty in respect of transgressions of the Zoning Scheme By-law.

To address these, new landowner then issued an authorisation to the author for the lodging of the required land use applications, as shown by the attached Company resolution (**Annexure A1**) and Power of Attorney (**Annexure A2**).

This application serves to address (a) above while the application related to the determination of administrative penalties, will be submitted separately.

2. **THE APPLICATION**

This application is lodged by virtue of Sections 15(2)(b) and (f) of the Knysna Spatial Planning and Land Use Planning Management Bylaw of 2021 for:

2.1 The permanent departure from the development parameters of a dwelling house, as prescribed by the Knysna Zoning Scheme of 2020, for the following building line relaxations as shown on the Site Development Plan attached as **Annexure H1**:

- (a) The relaxation of the street building line of 4,5 m to:
 - (i) 2,26 m in respect of the existing veranda roof, marked **3**; and
 - (ii) 0,00 m in respect of the proposed carport, marked **4**.
- (b) The relaxation of the western side building line of 2,0 m to:
 - (i) 0,00 m in respect of the proposed deck, marked **1**; and
 - (ii) 0,00 m in respect of the existing as-built braai, marked **2**; and
 - (iii) 0,00 m in respect of the existing veranda roof, marked **3** and
 - (iv) 0,40 m in respect of a proposed pool pump, marked **7**.
- (c) The relaxation of the eastern side building line of 2,0 m to:
 - (i) 0,00 m in respect of the proposed carport, marked **4**; and
 - (ii) 1,76 m in respect of the proposed deck, marked **6**.

2.2 The permanent departure from the development parameters of a dwelling house related to vehicular access/exits, as prescribed by the Knysna Zoning Scheme of 2020 to allow a double access/exit of 7,00 m in width in respect of the proposed carport, marked **4** on **Annexure H1**.

2.3 The removal of condition B(f) from Title Deed T68439/1999.

3. THE SUBJECT PROPERTY

3.1. The Subject Property

The application applies to Erf 1967, Knysna, hereinafter referred to as the subject property.

3.2. Locality

As indicated on the locality plan attached as **Annexure B**, the subject property is situated at 6 Recreation Drive, Leasure Island. This is in the jurisdiction of the Knysna Local Municipality which falls within the boundaries of the Eden District Municipality of the Western Cape Province.

3.3. Ownership

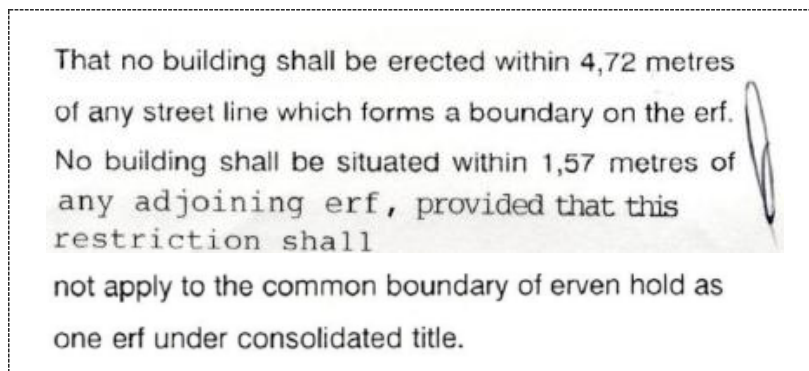
The property is now registered in the name of **Bogenhofer Ontwikkeling (Eiendoms) Beperk** registration number 98/19789/07.

For the purposes of the authorisation to lodge this application, also refer to **Annexures A3 and A4** which are the CIPC certificate of the holding company and a copy of the ID document of the sole director.

3.4. Title Deed

The subject property is currently registered by virtue of Deed of Transfer T68439/1999 as per attached **Annexure C**.

Title condition B(f) reads as follows:



Although this condition only refers to a “building”, it will be safe to assume that a building includes integrated and attached roofed structures, external stairs/steps/landings, galleries, canopies, balconies, stoeps, verandahs, terraces, porches, enclosing walls/railings, or any portion thereof.

The street and lateral building lines of 4,72 m and 1,57 m respectively, is restrictive to the existing and proposed development of the property and is dealt with in more detail hereafter.

Because of the negative impact of this condition, it is proposed to be removed. In paragraph 11.4 this proposal is discussed in the context of Section 33(4) of the Knysna Municipality Spatial Planning and Land Use Management By-law of 2021.

3.5. SG Diagram

The subject property appears on page 2 of the SG General Plan for the township of Leisure Isle, SG General Plan no. 2395/1936 as shown on **Annexure D**.

3.6. Bonds

The property is currently not bonded.

3.7. Size

According to its Title Deed, the subject property is 496 m² in extent. This corresponds with the SG General Plan.

3.8. Land use

The use of land in the vicinity of the subject property is shown on **Annexure E**.

3.9. Topography

The topography of the area presents no challenges for urban development as the whole island is flat and below the 5 m contour. Refer to **Annexure F**.

4. LAND USE ZONING AND DEVELOPMENT CONTROL MEASURES

According to the Knysna Zoning Scheme Bylaw of 2020 the subject property is zoned **Singe Residential Zone I (SRZI)** – Refer to **Annexure G**.

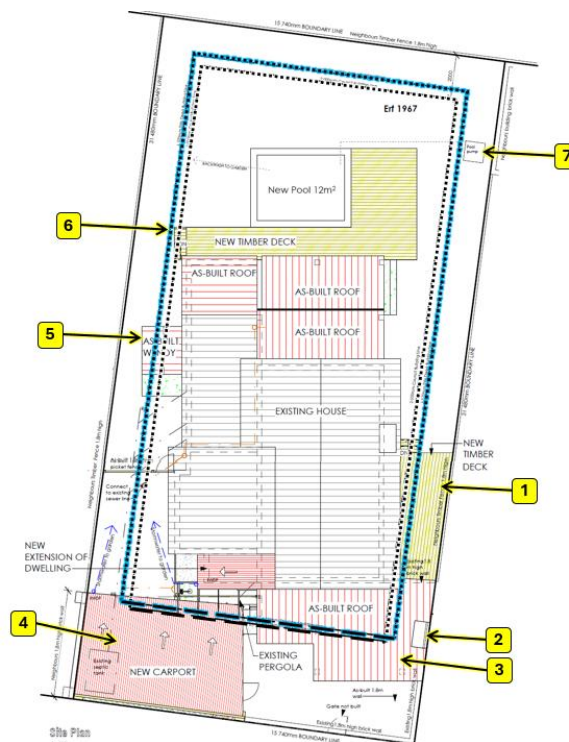
To evaluate the existing development of the property, the development parameters of the Zoning Scheme is compared with the proposed building plan (**Annexure I**) in the table below. Refer to **Annexure H1** (SDP) for the placement of the encroachments.

CONTROLS	KNYSNA ZONING SCHEME AND TITLE DEED	EXISTING AND PROPOSED
Primary land use	A dwelling house.	A dwelling house with the usual outbuildings and a proposed pool.
Consent uses	Crèche Guest house (>2 rooms) Home care facility House shop Second dwelling unit >60m ²	No consent uses granted or required.
Max. height	• Max. number of floors = 2 • Max. overall height = 8,5 m above NGL	The main dwelling consists of two levels. The maximum height of 8,5m above NGL is not exceeded.
Coverage	Max. 50% for all buildings	41,69% according to Annexure I .
Street	• Zoning Scheme = 4,5 m but 1,5 m for carports according to s.21(2)(b) of the Zoning Scheme • Title Deed = 4,72 m	Encroachments (distance from boundary): • The existing veranda roof, marked 3 = 2,26 m. • The proposed carport, marked 4 = 0,00 m.
Side (west)	• Zoning Scheme = 2,0 m but with conditional relief for garages, carports and outbuildings • Title Deed = 1,57 m	Encroachments (distance from boundary): • The proposed deck, marked 1 = 0,00 m. • The existing braai, marked 2 = 0,0 m. • The existing veranda roof, marked 3 = 0,0 m. • The proposed pool pump, marked 7 = 0,40 m.
Rear	• Zoning Scheme = 2,0 m but with conditional relief for garages, carports and outbuildings • Title Deed = 1,57 m	No encroachments.
Side (east)	• Zoning Scheme = 2,0 m but with conditional relief for garages, carports and outbuildings • Title Deed = 1,57 m	Encroachments (distance from boundary): • The proposed carport, marked 4 = 0,00 m. • The existing Wendy house, marked 5 = 0,88 m. • The proposed deck, marked 6 = 1,76 m.
Vehicular access points	S.45(4)(a) limits site accesses to one. S.45(4)(b) allows for exceptions to the above rule.	The existing single access is proposed to be widened.
Width of vehicular access points	According to the table in S.45, the maximum width of a single entrance or exit way is 4,0 m.	The single entrance/exit way is proposed to be 7,00 m wide.

CONTROLS	KNYSNA ZONING SCHEME AND TITLE DEED	EXISTING AND PROPOSED
Boundary wall height	S.27(a) restricts the height of boundary walls and fences to 2,1 m above ground level.	No encroachments.
Height of retaining structures	S.26(b) limits the height of a retaining structure to 2,5 m above NGL, subject to conditions.	No encroachments.

5. AN ANALYSIS OF THE ENCROACHMENTS AND THE PROPOSED MODUS OPERANDI TO REGULARISE THE EXISTING DEVELOPMENT

The following image serves to assist with the tabular analysis of the problems posed by the relevant building works on the subject property.



Annex. H1 ref.	STRUCTURE	EXISTING AND POTENTIAL TRANSGRESSIONS AND REMEDIES
1	Proposed deck	More than 500 mm above NGL and encroaching the western side building line of the Zoning Scheme. The Title Deed does not regulate decks. ☒ Apply in terms of S.15(2)(b) to relax the western side building line to 0,00 m. ☒ Apply in terms of S.15(2)(f) to remove condition B(f) of the Title Deed.
2	Existing braai	Encroaching the western side building line of the Zoning Scheme and the Title Deed. ☒ Apply in terms of S.15(2)(b) to relax the western side building line to 0,00 m. ☒ Apply in terms of S.15(2)(f) to remove condition B(f) of the Title Deed.
3	Existing veranda roof	Encroaching the street building line and western side building line of the Zoning Scheme and the Title Deed. ☒ Apply in terms of S.15(2)(b) to relax the western side building line to 0,00 m and the street building line to 2,26 m. ☒ Apply in terms of S.15(2)(f) to remove condition B(f) of the Title Deed.

Annex. H1 ref.	STRUCTURE	EXISTING AND POTENTIAL TRANSGRESSIONS AND REMEDIES
4	Proposed carport	1. Encroaching the eastern side building line of the Zoning Scheme and Title Deed. S.21(2)(a) of the Zoning Scheme does not provide relief because the carport will be more than 6,5 m wide. ✗ Apply in terms of S.15(2)(b) to relax the eastern side building line to 0,0 m. ✗ Apply in terms of S.15(2)(f) to remove condition B(f) of the Title Deed. 2. Encroachment of the street building line of the Zoning Scheme (1,5 m according to s. 21(2)(b)) and Title Deed. ✗ Apply in terms of S.15(2)(b) to relax the street building line to 0,0 m. ✗ Apply in terms of S.15(2)(f) to remove condition B(f) of the Title Deed. 3. The width of the vehicular access/exit is more than the maximum of 4,0 m. ✗ Apply in terms of S.15(2)(b) to relax the width parameter to 7,00 m.
5	Existing Wendy	Encroaching the eastern side building line of the Zoning Scheme and the Title Deed. ✓ S.21(2)(a) conditionally permits outbuildings within side building lines. As these conditions are met, <u>no further action is required</u>. ✗ Apply in terms of S.15(2)(f) to remove condition B(f) of the Title Deed.
6	Proposed deck	More than 500 mm above NGL and encroaching the eastern side building line of the Zoning Scheme. The Title Deed does not regulate decks. ✗ Apply in terms of S.15(2)(b) to relax the eastern side building line to 1,76 m.
7	Proposed pool pump	Encroaching the western side building line of the Zoning Scheme. The Title Deed does not regulate pool pumps. ✗ Apply in terms of S.15(2)(b) to relax the eastern side building line to 0,40 m.

6. PUBLIC PARTICIPATION

The neighbours

None of the neighbours were formally approached, however, during the site surveys many neighbours approached the architect for more information and they seemed to be satisfied with the planning.

The Homeowners Association

The HOA of Leisure Isle is known as the Leisure Island Residents' Association (LIRA). The chairperson, Mr. Colin Mathiesen was telephonically contacted by the author on 12 November to establish their procedure for commenting on the application. Mr. Mathiesen indicated that LIRA only reacts on land use applications if specifically required by the municipality and also when mediation is required. For this reason, no further efforts were made to obtain their comments.

7. SPATIAL PLANNING GUIDELINES

Land development should be measured and tested against the guiding policy frameworks applicable in the area of concern. Although this case can be considered as a lesser development proposal, the effect of it on the town was evaluated against the spatial planning and land use guidelines and policies listed below, and it was found to be aligned and in support of:

- National level: The Spatial Planning and Land Use Management Act of 2013.
- The National Spatial Development Framework of 2022.
- Provincial level: The Western Cape Land Use Planning Act of 2014 and the Western Cape Provincial Spatial Development Framework.

- District level: The Eden District SDF of 2017.

One of the overarching themes of these policies and guidelines which relates to this application, is the essentiality of developing the urban centres to be more efficient by increasing densities. As the National SDF puts it:

This ‘drive from below’ will also lead to a relaxation of bylaws and (1) far less petty and far more high level land use regulations, enabling far greater levels of economic activity and far more organic and inclusive economic growth, (2) far greater diversity in economic activities, housing forms and tenure types, (3) far more horizontal and vertical mixing of land uses, (4) far higher settlement densities, and (5) far more vibrant city streets.

Refer to **Annexure K1** for a detailed evaluation of SPLUMA, the Western Cape SDF and the Eden District SDF.

8. **SPATIAL PLANNING GUIDELINES AT LOCAL LEVEL**

Spatial development at local level is inter alia guided by the Knysna Spatial Development Framework of 2020.

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

The **Spatial Development Vision** is to *Establish Knysna as an authentic place that works for all of its residents and continues to attract visitors. Build an equitable and inclusive society within a sustainable and resilient ecosystem.*

The SDF’s two **Spatial Development Strategies** and **Objectives**, are:

- Manage risk, safeguard resilience: The integrity of Knysna’s environmental and economic assets must be central to a secure future for all.

Objective

- To ensure that land use and settlement growth is directed and managed to protect and rehabilitate the functionality of Knysna’s environmental services and systems - natural assets. These support life and livelihoods, offer the potential for further prosperity, as well as buffer the impacts of climate change and extreme events to life and property. In other words, the intention is to secure a sustainable and resilient base for Knysna to function and prosper.

- Drive inclusivity for economic and social well-being: Access to opportunity for all.

Objectives

- to promote development that is inclusive, integrated and efficient, located in the right place and of a high urban design quality
- to ensure that opportunities, services and amenities are accessible to all in an equitable manner
- to recognise limited resources must be shared in a strategic manner, where they are leveraged effectively for the benefit of as many people in need as possible, while basic needs are met.

To apply the Spatial Development Strategies in space, three key elements that structure activity in space were identified, namely:

- Environmental systems and the services they provide are to be protected and managed; and
- The settlements and their needs have to be reinforced, and developed in a targeted way to ensure inclusivity, productivity, efficiency and integration; and
- The regional mobility network as well as the local accessibility networks must be optimised for the needs of the people.

Under paragraph 3.4.2.2 *Spatial Proposals* sub-paragraph a. *Settlement Hierarchy*, the function/role of the Knysna town settlement, to which this property belongs, is described as follows:

Main urban centre in terms of location of new housing, jobs, services and facilities with a focus on development and densification. The centre hosts main health, education, cultural facilities as well as government services. As an economic hub it contains industry, services sector and Innovative business environments.

Under paragraph 4.4.2.3 Spatial policies and policy guidelines, the most relevant policy is Policy E1, which reads as follows:

Maintain a compact settlement form to achieve efficient, cost effective service delivery and resource use, create thresholds for future public transport provision and enable equitable accessibility

Policy H – *Foster distinctive, attractive settlements with strong sense of place*, is also relevant to this case.

This case

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

It is clear that the development of this erf is in support of the MSDF's Spatial Development Strategies as outlined in its paragraph 3.4 - *Spatial Development Framework: Applying these strategies in space* and partially quoted above.

9. OTHER LEGISLATION

The National Environmental Act (Act 107 of 1998)

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

The Building Standards Act (Act 103 of 1977)

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

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

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

10. THE PURPOSE AND USE OF LAND USE CONTROL MEASURES

10.1. General overview

Refer to **Annexure K2** for a brief discussion.

10.2. Building lines as instrument to control land development

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

For health and safety:

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

For services:

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

For urban design:

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

When an application for the relaxation of a building line is to be considered, it is factors such as the above that should be considered. In other words, if a good reason for maintaining a specific building line determination is not present, a relaxation should be allowed to facilitate development.

11. MOTIVATION

11.1. The historical context of the existing transgressions

- (a) The built-in braai (Item **2** on **Annexures H1 and H2**)

The brick-and-mortar superstructure of the external braai was built before the matriarch of the family purchased the property in 1984. Ever since there were small improvements. In circa 2019 the landowner fitted a stainless-steel component, commonly referred to as a built-in braai and similar to the photo below.



- (b) The veranda roof (Item **3** on **Annexures H1 and H2**)

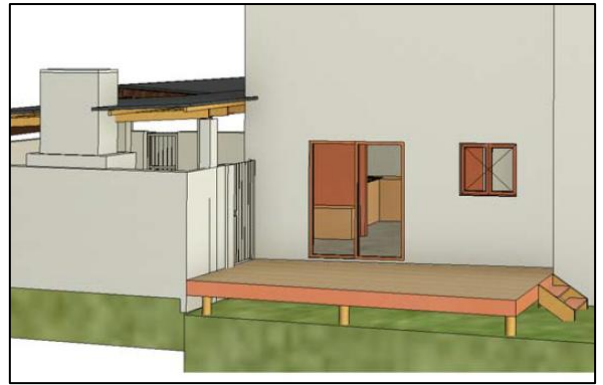
Similar to the built-in braai, there has always been a pergola on the street side of the dwelling. However, in circa 2019 the landowner converted it into a roof for the veranda by adding roof plates on top.

According to the landowner, no complaints were ever received from the neighbours in spite of the structures analysed above being over the building lines.

11.2. The reasons and impacts of the existing and proposed encroachments

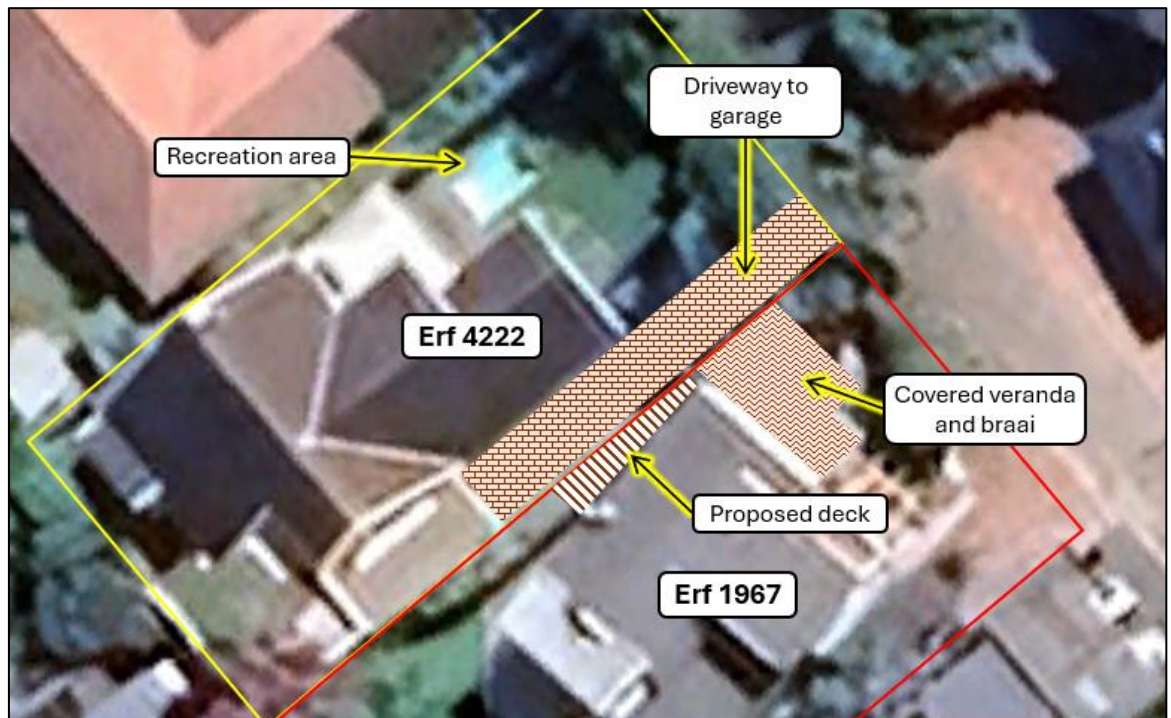
- (a) The proposed external deck on the western side (Item **1** on **Annexures H1 and H2**)

At this stage the back yard is accessed from the covered veranda (Item **3**) via an external door shown on the photo below. The planning is to add a sliding door to that side of the house (see the image below), but because there is a height differential as shown in the photo below, two sets of steps will have to be available. This is impractical and somewhat dangerous and therefore it is planned to install a deck as shown by the 3D image below. This deck will cover the whole area and reach to the property boundary thereby requiring a side building line relaxation to 0,00 m.



Although this deck is planned to be 600 mm above NGL at the most, the side boundary wall will partially ensure that the neighbour's privacy will not be compromised. Furthermore, on the neighbour's side, the area next to the boundary is used as a vehicular driveway. Their outdoor living space is developed on the other side of their house. Refer to the aerial image inserted below which shows these features.

It is safe to assume that this proposed deck will not have a negative impact.



- (b) The external braai and covered veranda (Items 2 and 3 on Annexures H1 and H2)

As discussed in paragraph 11.1 above, these are the only existing irregular structures, and they have been in place for many years without attracting any complaints.

The physical features of the environment explained in paragraph (a) above also apply here and for the same reasons it will be safe to assume that the neighbouring property will not be affected detrimentally by the positioning of the external braai and the covered veranda.

- (c) The proposed carport (Item 4 on Annexures H1 and H2)

The well-known residential suburb of Leisure Isle has over 400 properties of which the majority is zoned Single Residential I. With an average erf size of 793 m², it can be regarded as one of the old residential neighbourhoods with an above average density.

As demonstrated in the image below, the cluster where the subject property is found is, however, designed at an even higher density with an average erf size of less than 500 m². To the north of this cluster is another cluster where erven are slightly larger but due to them being narrow, they experience the same challenges with the design of vehicular accesses/exits.



The common solution found in these clusters as well as in many other cases in Leisure Island, is a double width access/exit with a carport or garage frequently encroaching upon street and side building lines. This solution not only ensures safe on-site parking but partially address the need for visitors parking.

Below are a few of the typical cases of double-width accesses/exits and encroachments of street building lines which contribute to the unique streetscape of this neighbourhood.





With this as background and also taking into consideration how the subject property was developed from the beginning, the positioning of the proposed new carport is the only logical solution to the challenge of providing at least two covered off-street parking spaces for this dwelling. Taking into consideration that many residents also need space to park trailers and/or boats on site, the challenge to provide sufficient on-site parking can become very tricky. If there is a need for parking space for a trailer/boat in this case, the carport can be slightly modified to create another parking space deeper into the erf.

As shown in the photographs in paragraph 11.7, the proposed carport will almost be a mirror image of what is found on neighbouring Erf 1964. To make this work, there is no choice but to apply for the relaxation of the street and side building lines to 0,00 m.

Note that the carport was deliberately designed with side walls at the same height as the boundary walls, and with a low flat roof and with openings between the roof and side walls. This sensitive design matches the neighbour's carport and will ensure that this carport will also appear minimalistic preventing it from dominating the streetscape.



The proposed carport (above) compared with the existing carport directly to its east (below).



- (d) The proposed external deck on the southern side (Item 6 on Annexures H1 and H2)

South of the existing dwelling is a relatively large open space which is under-utilised. It is planned to develop this space by adding a swimming pool and linking it with the dwelling by means of a 600 mm high timber deck. Except for one corner of this deck, everything, including the pool, will not encroach on the building lines.

The positioning and height of this encroaching corner of the deck is of such nature that it cannot have any significant negative impact on the neighbour at Erf 1964.

- (e) The proposed pool pump (Item 7 on Annexure H1)

The pool pump is proposed to be placed 400 mm from the western side boundary in the southern part of the subject property.

The only issue of concern with a pool pump is noise which can become a nuisance. To counteract this, the strategy is twofold namely, to place the pump in a cover that contains acoustic insulation and secondly, to place it away from living rooms of neighbours.

The ideal placement would have been below the proposed deck that will connect the house with the pool. Unfortunately, this deck will only be approximately 600 mm high and will thus not leave enough space unless the pump is placed partially below the natural ground level. Placing it below natural ground level will, however, result in it being flooded when rain falls.

The proposed position of the pool pump, indicated by a yellow star on the image, is at the furthest practicable position from all neighbours, except Erf 4222. The reason for placing it closer to Erf 4222 is that the buildings closest to the pool pump is used for garaging which will buffer sounds from the remainder of their house.



11.3. Spatial Planning Policies and Guidelines and other legislation

As discussed in paragraphs 7 and 8, it is evident that the approval of this application will not formalise a development that can be deemed as in disagreement with the aims of SPLUMA as well as the other relevant spatial planning policies and guidelines.

11.4. Why the Title Restrictions may be removed or amended

Retaining control with modern land use management instruments

As contextual background, it must be noted that when this township was established in circa 1936, modern land use control instruments such as Zoning Schemes or Town Planning Schemes were not generally in use in South Africa. Then, the administrator of the province, who was responsible of land use control at that time, used title restrictions to attain some form of control. When SPLUMA was promulgated, this authority devolved to the local authorities.

As foundational motivation for the removal of the relevant title conditions, it is proposed that the municipality will, by means of its Zoning Scheme, retain control of this facet of land use management.

Given the array of modern town planning control measures available to authorities, employing conditions of title as a measure of controlling land use, is old fashioned and rather impractical. Other than conditions protecting specific rights of beneficiaries, the removal of these types of restrictive conditions of title will thus have no negative influence on the control of urban development.

The vested interests of other parties and broad society

According to Section 33(4) of the Knysna Municipality Spatial Planning and Land Use Management By-law of 2021, when the Municipality considers an application for the removal, suspension or amendment of a restrictive condition, it must have regard to the following:

- (a) *the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;*
- (b) *the personal benefits which accrue to the holder of rights in terms of the restrictive condition;*
- (c) *the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;*
- (d) *the social benefit of the restrictive condition remaining in place in its existing form;*
- (e) *the social benefit of the removal, suspension or amendment of the restrictive condition;*
- and*
- (f) *whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights;*
- (g) *Whether the removal would be in the public interest.*

In response to the above, the following comments:

- Clause (a):

The relevant conditions do not grant any direct financial benefit to any person.

- Clause (b):

The removal of restriction B(f) will not benefit the landowner directly because these conditions are a duplication of development control measures that are incorporated in the Zoning Scheme by-law and empowering by-laws such as the Knysna Spatial Planning and Land Use Management Bylaw of 2021.

The personal benefits of title restriction B(f) relating to building lines may relate to the blocking of solar access of neighbours; obstruction of their scenic views; their privacy; protecting property values; and maintaining the character of the area. These aspects are addressed in this report, and it was concluded that the respective encroachments will not have a negative impact on any neighbouring property in particular, or the area in general.

- Clause (c):

By removing the title restriction B(f) relating to building lines, the existing encroachments as explained by means of the Site Development Plan (Annexure H1) can be regularised. This will also enable the approval of the proposed new encroachments.

- Clause (d):

Although the title restrictions can offer potential social benefits such as the establishment and maintenance of certain physical characteristics of the neighbourhood's urban design, considerations such as the scarcity of land and the consequent need to use it more efficiently gradually transformed neighbourhoods all over South Africa making the typical title restrictions, which were imposed decades ago, inappropriate.

- Clause (e):

Opposed to modern land use by-laws which are more dynamic and faster to adapt to societal changes and needs, title restrictions are stagnant and not representative of the contemporary needs of societies. Thus, removing such title restrictions and relying on the Zoning Scheme by-law, will allow better protection of current societal needs.

Furthermore, by retaining title restrictions originally imposed to control urban development in the absence of alternative methods, the modern land use control instruments are duplicated. In the spirit of the national governing act (SPLUMA), this practice should be avoided as it leads to inefficient administration.

- Clause (f):

The removal of title condition B(f) will not directly or indirectly affect any of the other title conditions registered against this property.

To summarise: It is the opinion that by approving the application for the removal of the mentioned condition from the Title Deed of the subject property, none of the above considerations nor the rights of any third party and/or broader society will be ignored or negatively affected. Furthermore, all other rights protected by virtue of the property's Title Deed will remain intact.

Remove or amend the title conditions?

From the analysis of the encroachments earlier in this report, it is clear that, to amend title condition B(f) relating to building lines in a manner that it will accommodate the existing and proposed encroachments, will result in an amended Title Deed that will probably be so complicated that the Registrar of Deeds may reject it. If this happens, then we will deal with a decision that cannot be implemented and which the municipality will have to answer for. As mentioned before, removing the condition(s) is without risk as full control of this aspect of land use will be retained by means of the Zoning Scheme.

11.5. The urban fabric and amenity of the neighbourhood

Compared with most of the surrounding dwellings, the rejuvenation of this property will have a positive impact on the neighbourhood. It especially is the redevelopment of the parking facilities that begs for attention.

Similar to the surrounding properties, the size of this erf (<500 m²), is relatively small. Consequently, street frontages are also small and side spaces for garages/carports are restricted. This resulted in the unique streetscape of the area; namely double width accesses/exits to garages/carports that are placed close to the street.

All of the development proposals, but especially the proposed carport, will contribute to the creation of a product that will be in much more harmony with the existing streetscape than the present set-up.

Until today no complaints or resistance to any aspect of the existing development has been filed, implying that the municipality as well as the neighbourhood is satisfied with the status quo. Other than the proposed new carport, only the proposed decks will encroach building lines but, as they will not be visible from the street, the urban fabric and amenity of the neighbourhood cannot be affected detrimentally by them.

11.6. Interests of the neighbours

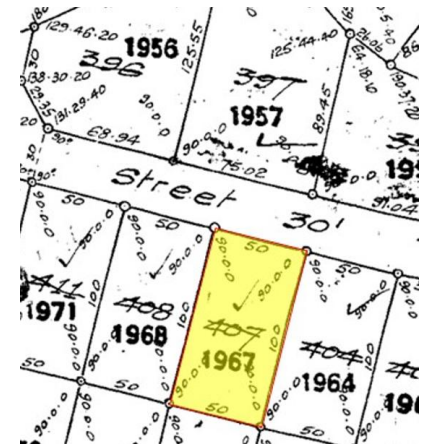
As discussed in paragraph 6, the Public Participation Process [PPP] for this application has been left to the municipality.

It is anticipated that the design, placing and finishing of the improvements on this property will most probably not invite any negative reactions during the PPP.

11.7. Precedents

Abundant examples of encroachments similar to these exist in this neighbourhood and elsewhere in Knysna. The relaxations applied for are thus not extra-ordinary.

Below are photographs demonstrating how many close neighbours overcame the problem with vehicular access/exits in a similar way as proposed with this application.



Erf 1964



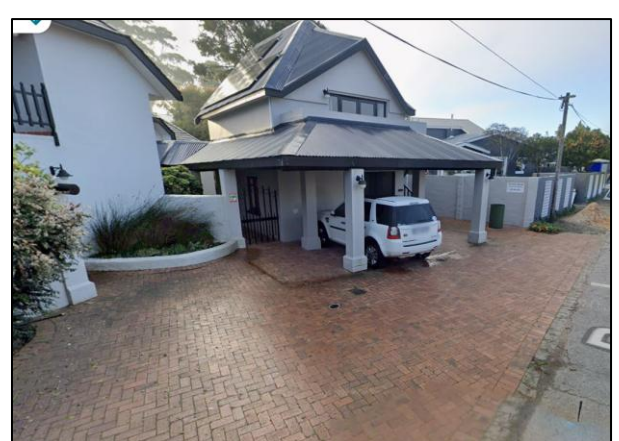
Erf 1968 now 4222



Erf 1956



Erf 1957



11.8. Impact on engineering services

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

11.9. Impact on fire prevention

The proposed departures and removal of restrictions will not cause a fire hazard, nor will it impede any firefighting operation on the subject property or neighbouring properties. Sufficient side spaces will be available on the property for firefighters to move around buildings.

11.10. Impact on roads and traffic

Leisure Island is one of Knysna's neighbourhoods characterised by the slow pace at which traffic moves through the streets. The typically narrow streets with numerous speed bumps throughout, makes it almost impossible to drive faster than 30 to 40 km/h. This design has numerous benefits

which encourage residents to walk and/or pedal on bicycles in the area without fear for their personal safety.

A secondary benefit of this streetscape is the relative safety with which residents can enter and exit their stands with their vehicles. Inevitably these conditions, together with the relatively small stands and narrow street frontages, resulted in many stands being served by double width accesses/exits.

It is the opinion that the proposed double-width carport will, for the reasons explained above, not pose any extra-ordinary threat to the safety of road users neither will it impede on traffic movements/patterns. Since this property is placed away from corners, sight distances will not be influenced by the proposal.

11.11. Desirability

Viewed from all perspectives, the proposed development can be deemed as desirable because the approval of the application:

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

12. CONCLUSION

This application is dualistic in nature – it proposes the formalisation and regularisation of a braai and covered veranda that have been in place for many years without attracting resistance from surrounding neighbours. Secondly it proposes three new structures which will encroach upon building lines, namely two timber decks of 600 mm above NGL as well as a carport.

As demonstrated in this memorandum, none of the existing and proposed structures will detract from the streetscape or have a negative impact on the privacy, safety, solar access, scenic views or property rights of neighbours. It will also not place an additional burden on municipal engineering services or infrastructure or affect traffic safety negatively.

The restrictive title condition which is proposed to be removed, relates to building lines only and does not provide a financial or social benefit to anybody. By removing this condition neighbouring properties and the rights of landowners and the broader community will not be adversely affected. Similarly, the neighbourhood and town cannot be adversely affected by this removal because the Zoning Scheme as instrument of land use control, will remain intact.

Based on the conclusions above, it is the opinion that the approval of this application will contribute to the bettering of the town.


A.C. BURGER Pr. Planner (A/767/1994)