

— **MOTIVATING MEMORANDUM** —

in support of an application
lodged by virtue of Sections 15(2)(b), (f) and (o)
of the
Knysna Spatial Planning and Land Use Planning Management By-law of 2021
to obtain permission to depart from development parameters
of the Knysna Zoning Scheme By-law of 2020
and remove restrictive title conditions
and for consent for a second dwelling larger than 60 m²
in respect of
Erf 102, Brenton, Knysna



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1. **BACKGROUND**

The subject property was acquired by the matriarch of the Oudmayer family in 2024. The family intends to construct a garage complex on the property, comprising covered parking for two vehicles and an entertainment room above.

To facilitate this development, the family engaged **Plans R Us** (Knysna) to prepare the necessary building plans. During the plan preparation process, it emerged that certain existing and proposed improvements do not fully comply with the applicable development parameters and restrictions under the **Knysna Zoning Scheme By-law (2020)** and relevant title deed conditions.

Upon referral to the undersigned town planner for investigation, the following irregularities and non-compliances were identified:

- Existing and/or proposed encroachments on prescribed building lines and height parameters set by the Knysna Zoning Scheme By-law.
- Restrictive title deed conditions that prohibit or limit the existing development.

To regularise these matters and enable lawful construction of the proposed garage complex, separate land use applications are required in terms of **Section 15(2) of the Knysna Spatial Planning and Land Use Management By-law (2021)** (as amended), specifically:

- (a) Permanent departure(s) from the development parameters of the Knysna Zoning Scheme By-law, in terms of **Section 15(2)(b)**, to address existing and/or proposed non-compliances (e.g., building line relaxations, coverage, or height deviations).
- (b) Removal, suspension, or amendment of restrictive title deed conditions, in terms of **Section 15(2)(f)**, to permit the proposed improvements.
- (c) Consent in terms of **Section 15(2)(o)** to permit the existing second dwelling of larger than 60 m².
- (d) Determination of an administrative penalty for past contraventions of the zoning scheme, in terms of **Section 15(2)(r)** read with **Section 93** (enforcement provisions allowing for penalties in lieu of or alongside regularisation).

The landowner has duly authorised the undersigned to lodge the required applications, as evidenced by the attached **Power of Attorney (Annexure A)**.

The present application is confined to items (a), (b) and (c) above.

A separate application for the determination of an administrative penalty will be submitted concurrently to ensure comprehensive regularisation.

2. **THE APPLICATION**

This application is lodged by virtue of **Sections 15(2)(b), (f) and (o) of the Knysna Spatial Planning and Land Use Planning Management By-law 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) 0 m in respect of the timber deck, marked **1**.
 - (ii) 0,82 m in respect of the existing room at basement level, marked **2**.
 - (iii) 0,13 m in respect of the external staircase, marked **3**.
 - (iv) 0,58 m in respect of the existing retaining wall, marked **4**.
 - (v) 4,02 m in respect of the proposed boardwalk above ground level, marked **11**.
- (b) The relaxation of the western side building line of 2,0 m 0,00 m in respect of the existing retaining walls, marked **6** and **7**.
- (c) The relaxation of the eastern side building line of 2,0 m to:

- (i) 0,87 m in respect of the existing retaining wall, marked **7**.
- (ii) 1,80 m in respect of the existing dwelling, marked **10**.

- 2.2 The **permanent departure** from the development parameters of a dwelling house related to **height** to allow at third level, the existing utility room of approximately 18 m² integrated with the dwelling house and placed below the second dwelling at lower basement level.
- 2.3 The **removal of title conditions** D.6(b) and (d) from Title Deed T62719/2024.
- 2.4 **Consent** to allow the existing integrated second dwelling of 80 m².

3. THE SUBJECT PROPERTY

3.1. The Subject Property

The application pertains to **Erf 102, Brenton** (also known as Brenton-on-Sea), hereinafter referred to as the subject property.

3.2. Locality

As shown on the Locality Plan (**Annexure B**), the property is situated at 102 Watsonia Avenue, at its intersection with Gladiolus Avenue, in the township of Brenton-on-Sea. It falls within the jurisdiction of Knysna Local Municipality, Garden Route District Municipality, Western Cape Province.

3.3. Ownership

The property is registered in the name of **Raylene Oudmayer**.

3.4. Title Deed

The property is held under **Deed of Transfer T62719/2024** (copy attached as **Annexure C**).

Title condition **D.6(b)** determines that only one dwelling may be erected on the property while a second dwelling is contained in the main building.

Title condition **D.6(d)** prescribes street, rear, and side building lines of 4,72 m, 3,15 m, and 1,57 m respectively. These conditions restrict the existing and proposed development on the property and are addressed in detail later in this memorandum.

The application in terms of Section 15(2)(f) seeks the removal restrictive conditions to regularise the existing building and structures.

3.5. SG Diagram

The subject property appears on **Sheet 1** of the **General Plan 10313/1958** of Brenton Township as shown on **Annexure D**.

3.6. Bonds

The property is not bonded.

3.7. Extent

The property measures **1 417 m²** in extent per the Title Deed, corresponding to **14 295 Cape feet²** as reflected on the SG General Plan.

3.8. Current and Surrounding Land Use

The subject property is in a predominantly residential suburb, as illustrated on the Land Use Plan (**Annexure E**). Surrounding properties are characterised by single residential dwellings, consistent with the area's established residential character.

3.9. Topography

The topography of the area is illustrated by **Annexure F1** (General topography) and **Annexure F2** (Slope profile). These annexures, together with supporting photographs in this memorandum, demonstrate that the property features a sloping terrain typical of many areas in Knysna.

To accommodate the natural gradient and ensure structural stability, safe access, and functional use of the site, mitigation measures such as elevated decking, external staircases, and retaining walls were implemented. While these adaptations achieved practical outcomes, they resulted in encroachments beyond the prescribed development parameters.

These encroachments arose primarily as necessary responses to the site's challenging topography rather than deliberate non-compliance, and, as demonstrated in this report, they have had no adverse impact on neighbouring properties, views, safety, or the surrounding environment (as motivated elsewhere in this memorandum).

4. **LAND USE ZONING AND DEVELOPMENT CONTROL MEASURES**

According to the Knysna Zoning Scheme By-law 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 (**Annexures I1 to I3**) in the table below. Refer to **Annexure H1** (SDP) for the placement of the encroachments.

CONTROLS	KNYSNA ZONING SCHEME	TITLE DEED
Primary land use	A dwelling house.	One dwelling house with the ordinary outbuildings.
Consent uses	Crèche Guest house (>2 rooms) Home care facility House shop Second dwelling unit >60m ²	Not applicable.
Max. height	- Max. number of floors = 2 - Max. overall height = 8,5 m above NGL	No restriction.
Coverage	Max. 50% for all buildings	Max. 50% for all buildings
Street	4,5 m but 1,5 m for carports according to s.21(2)(b) of the Zoning Scheme	4,72 m
Sides	2,0 m but with conditional relief for garages, carports and outbuildings	1,57 m with conditional relief for outbuildings.
Rear	2,0 m but with conditional relief for garages, carports and outbuildings	3,15 m with conditional relief for outbuildings.
Vehicular access points	S.45(4)(a) limits site accesses to one. S.45(4)(b) allows for exceptions to the above rule.	No restriction.
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.	No restriction.
Boundary wall height	S.27(a) restricts the height of boundary walls and fences to 2,1 m above ground level.	No restriction.
Height of retaining structures	S.26(b) limits the height of a retaining structure to 2,5 m above NGL, subject to conditions.	No restriction.

5. **AN ANALYSIS OF THE EXISTING AND PROPOSED TRANSGRESSIONS AND THE PROPOSED MODUS OPERANDI TO REGULARISE THEM**

5.1. **Tabular analysis**

The table below analyses existing and proposed non-compliances based on the **Knysna Zoning Scheme By-law, 2020** and title deed conditions (Title Deed T62719/2024). Encroachments are cross-referenced to **Annexure H1** (Site Development Plan). Also refer to **Annexure H2** as well as **Annexure I1 to I3** for the naming of the levels of the building.

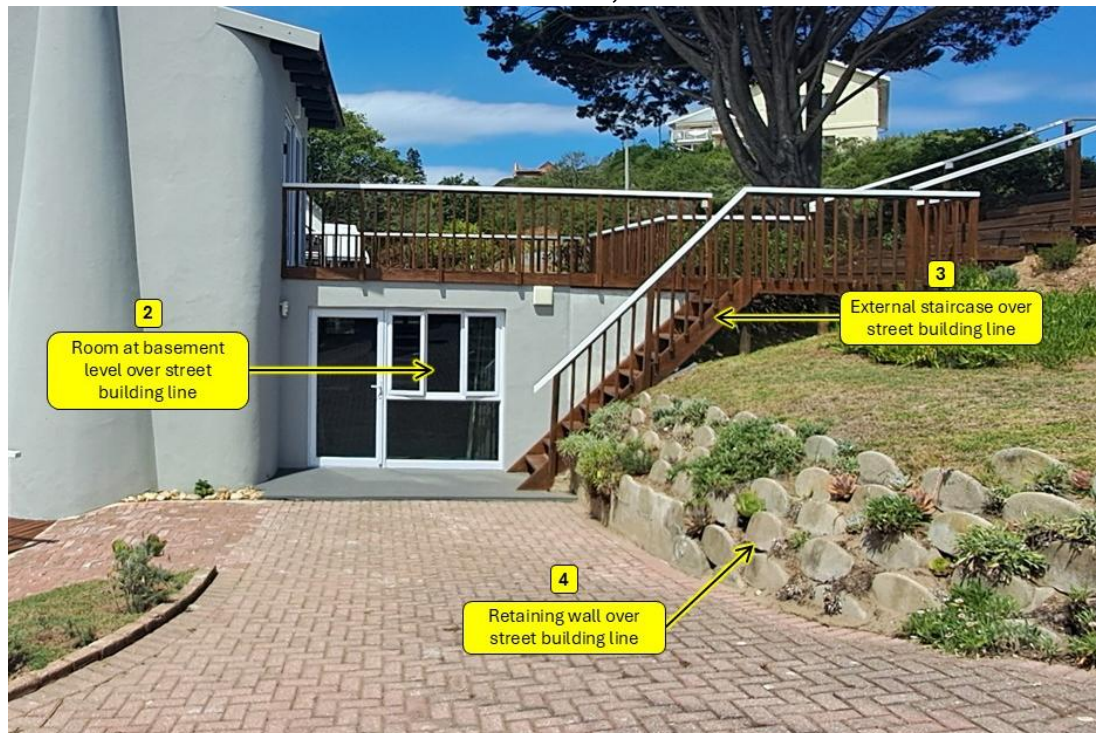
Annex. H1 reference	Structure	Transgressions	Proposed Remedy/Application
1	Decking	Encroaches street and eastern B.L.s of Zoning Scheme while > 500 mm above NGL Contravenes title condition D.6(d)	Permanent departure S.15(2)(b) to relax street B.L. to 0,00 m and eastern side B.L. to 0,26 m Removal of D.6(d) - S.15(2)(f)
2	Room at basement level	Encroaches street and eastern side B.L.s of Zoning Scheme Contravenes title condition D.6(d)	Permanent departure S.15(2)(b) to relax street B.L. to 0,82 m Removal of D.6(d) - S.15(2)(f)
3	External staircase	Encroaches street B.L. of Zoning Scheme Contravenes title condition D.6(d)	Permanent departure S.15(2)(b) to relax street B.L. to 0,13 m Removal of D.6(d) - S.15(2)(f)
4	Retaining wall	Encroaches street B.L. of Zoning Scheme Contravenes title condition D.6(d)	Permanent departure S.15(2)(b) to relax street B.L. to 0,58 m Removal of D.6(d) - S.15(2)(f)
5 & 6	Retaining walls	Encroach western B.L. of Zoning Scheme Contravenes title condition D.6(d)	Permanent departure S.15(2)(b) to relax western side B.L. to 0,00 m Removal of D.6(d) - S.15(2)(f)
7	Retaining wall	Encroaches eastern side B.L. of Zoning Scheme Contravenes title condition D.6(d)	Permanent departure (S.15(2)(b)) to relax eastern side B.L. to 0,87 m Removal of D.6(d) - S.15(2)(f).
8	Utility room at 3rd level	Exceeds maximum 2 storeys (Zoning Scheme). No title restriction.	Permanent departure S.15(2)(b) for height relaxation to allow 3 storeys
9	Second dwelling (>60 m ²)	Exceeds 60 m ² limit for second dwelling as of right (Zoning Scheme definition of "dwelling house") Contravenes title condition D.6(b) (one dwelling only).	Consent use S.15(2)(o) to retain second dwelling Removal of D.6(b) - S.15(2)(f)
10	External wall of main dwelling	Encroaches eastern side B.L. of Zoning Scheme Complies with title condition D.6(d)	Permanent departure S.15(2)(b) to relax eastern side B.L. to 1,80 m
11	Proposed boardwalk between upper levels of dwelling and garage complex	Encroaches street B.L. of Zoning Scheme Contravenes title condition D.6(d)	Permanent departure S.15(2)(b) to relax street B.L. to 4,02 m.
Not marked	Overall height of all existing and proposed buildings	Refer to Annexure J (8.5m Height blanket (transparent)) where the overall height of all buildings was tested and found to be in compliance with the 8,5 m limit	No further actions required

5.2. Photographs of the existing encroachments

Encroachments 1, 2 and 10



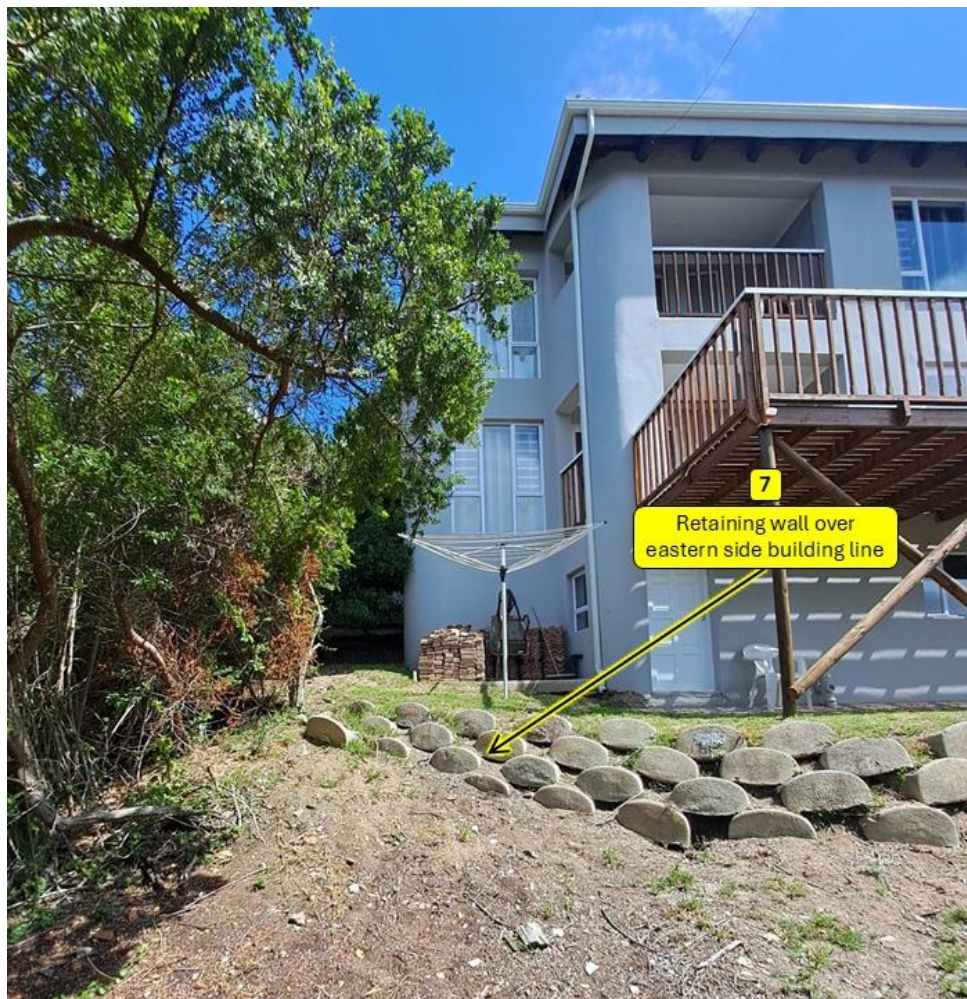
Encroachments 2, 3 and 4



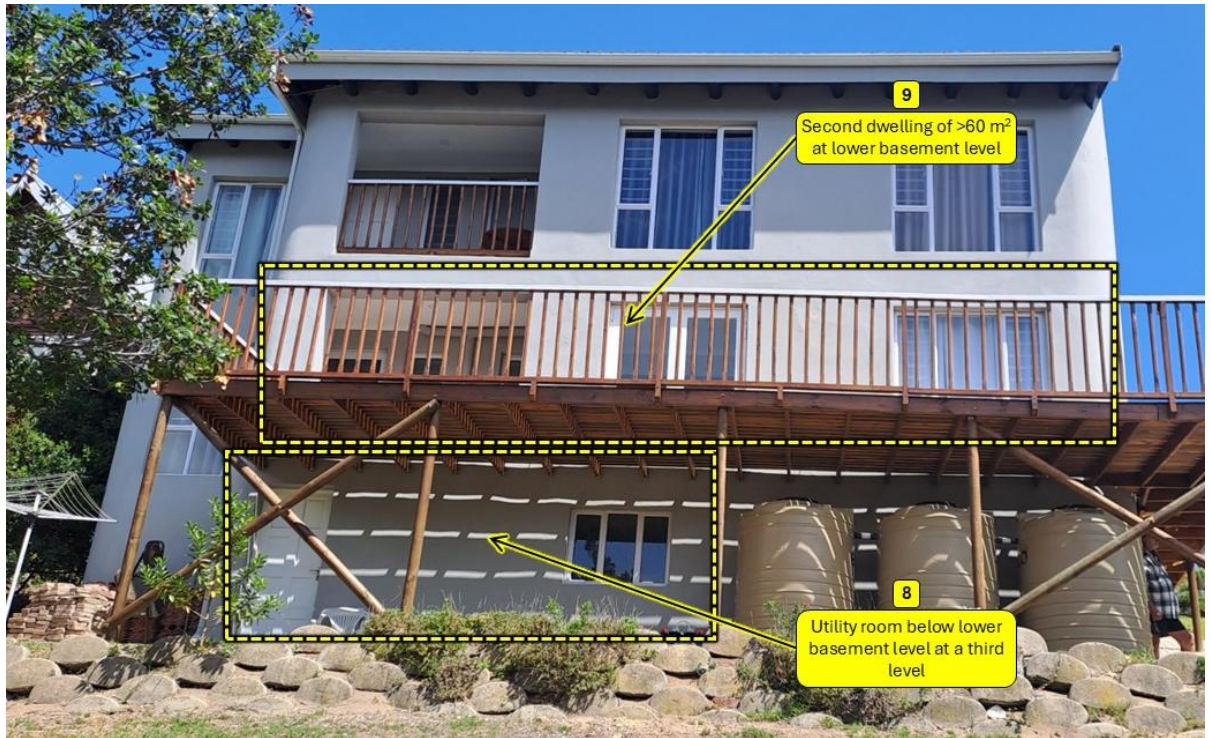
Encroachments 5 and 6



Encroachment 7



Encroachments 8 and 9



Encroachments 8 and 10



6. PUBLIC PARTICIPATION

The notification of the application will be conducted by the municipality as they usually do.

None of the neighbours were formally approached, however, no objections are anticipated based on the absence of prior complaints and low-impact nature.

7. SPATIAL PLANNING GUIDELINES

7.1. At levels above local

Land development proposals must be assessed against applicable spatial planning policy frameworks at national, provincial, and district levels. Although this application involves regularisation of existing minor encroachments and a modest addition (garage complex with entertainment room), it has been evaluated against the following key frameworks and found to be fully aligned and supportive:

- **National level:** Spatial Planning and Land Use Management Act, 2013 (SPLUMA), which promotes spatial justice, sustainability, efficiency, and resilience (Section 7 principles).
- **National Spatial Development Framework (NSDF), 2022**, which advocates for compact, efficient urban form, higher densities, reduced sprawl, and flexibility in regulations to enable inclusive growth and economic activity.
- **Provincial level:** Western Cape Land Use Planning Act, 2014 (LUPA) and Provincial Spatial Development Framework, emphasizing orderly development, welfare, and principles of spatial sustainability and efficiency.
- **District level:** Garden Route District Spatial Development Framework (2017), supporting integrated, resilient settlements and targeted urban development.

A core theme across these frameworks is promoting efficient urban centres through densification, infill development, and flexible application of regulations to accommodate site-specific conditions (e.g., topography). The NSDF highlights the need for "far higher settlement densities," "far more horizontal and vertical mixing of land uses," and relaxation of petty regulations to foster organic, inclusive growth.

A detailed alignment assessment against the Knysna Zoning Scheme By-law (2020) parameters is provided in **Annexure K1**, which evaluates the physical features of the existing and proposed development (building lines, height, coverage, second dwelling size) against the scheme's measurable controls.

This zoning-level analysis relates to higher-order frameworks (SPLUMA, Western Cape Provincial Spatial Development Framework, and Garden Route District SDF) through the **hierarchical alignment principle** embedded in South African spatial planning law: municipal zoning schemes must give effect to and remain consistent with municipal spatial development frameworks and broader national/provincial policies (SPLUMA Section 25). The proposal supports these objectives by regularising historical adaptations necessitated by steep slopes (for structural stability and safe access) and enabling a modest garage/entertainment addition without significant footprint expansion, environmental harm, or adverse neighbour impacts—thereby demonstrating that the justified, low-impact departures uphold the intent of compact, resilient, and efficient urban development across all policy tiers.

7.2. At local level

Local spatial development is guided primarily by the **Knysna Municipal Spatial Development Framework (MSDF), 2020** (as amended).

The subject property (Erf 102, Brenton-on-Sea) falls within the defined **urban edge** and is categorised under the **Urban Development Spatial Planning Category (SPC)** in the MSDF. It remains zoned Single Residential Zone I (SRZI), consistent with the framework's designation for residential areas.

The MSDF's **Spatial Development Vision** is to establish Knysna as an authentic, equitable, inclusive place that works for all residents and visitors, within a sustainable and resilient ecosystem.

Key **Spatial Development Strategies** and **Objectives** relevant here include:

- **Manage risk, safeguard resilience:** Direct land use to protect environmental assets, buffer climate impacts, and ensure sustainable functionality.

Objective: Protect natural systems supporting life, livelihoods, and resilience.

- **Drive inclusivity for economic and social well-being:** Promote inclusive, integrated, efficient development of high urban design quality, equitable access to opportunities/services, and strategic resource sharing.

To apply these strategies spatially, the MSDF identifies three structuring elements:

- Protect and manage environmental systems.
- Reinforce settlements for inclusivity, productivity, efficiency, and integration.
- Optimise regional/local mobility and accessibility networks.

Under **Settlement Hierarchy** (para. 3.4.2.2), Knysna (including Brenton-on-Sea as part of the broader urban system) functions as the **main urban centre** for housing, jobs, services, and facilities, with a focus on densification.

Relevant **Spatial Policies** (para. 4.4.2.3):

- **Policy E1:** Maintain compact settlement form for efficient service delivery, resource use, public transport thresholds, and equitable accessibility.
- **Policy H:** Foster distinctive, attractive settlements with strong sense of place.

This case

The property is within the urban edge and Urban Development SPC, with no zoning change proposed. Regularisation of topography-driven encroachments and the modest garage addition support compact, infill development on an existing site, enhancing efficiency without sprawl or environmental harm. It aligns with MSDF strategies for resilient, inclusive settlements by enabling functional use of sloped land while preserving neighbourhood character and views (no adverse impacts demonstrated).

8. OTHER LEGISLATION

8.1. National Environmental Management Act (NEMA), Act 107 of 1998

The proposal triggers no listed activities under NEMA. The property is not within a Critical Biodiversity Area, Ecological Support Area, or listed Threatened Ecosystem. No environmental authorisation is required, and the development poses no risk to biodiversity or ecosystems.

8.2. National Building Regulations and Building Standards Act, Act 103 of 1977

Building plan approval will follow successful land use regularisation. Under Section 7, plans may be refused if the building disfigures the area, is unsightly/objectionable, derogates neighbouring property values, or endangers life/property. None apply here: the garage complex is modest, integrates with existing structures, responds to site topography, and maintains/attracts the residential character without visual intrusion, value impact, or safety risks (as motivated throughout this memorandum).

9. THE PURPOSE AND USE OF LAND USE CONTROL MEASURES

9.1. General overview

Land use controls (zoning schemes, building lines, title conditions) serve sustainable development by shaping communities, promoting welfare, and aligning with higher-order spatial visions (Constitution Section 156; SPLUMA Sections 25 & 28; LUPA Section 23; Knysna Zoning Scheme By-law Section 3). They ensure orderly growth, economic/social inclusion, efficiency, and minimal environmental/public health impact.

SPLUMA empowers flexibility (amendments for site-specific needs), recognising rigid application fails diverse contexts—especially in topographically complex coastal areas like Knysna/Garden Route, where uniform parameters often require departures for practical, resilient development.

Departures are not arbitrary; they address diversity (e.g., slopes necessitating retaining walls/decking) while upholding core purposes (health/safety, services, urban design). Refusing them risks inefficient land use or uniform, unattractive outcomes (e.g., repetitive "boxitecture" ignoring context).

Public input is for considering impacts, not vetoing via popularity. Flexibility reflects modern trends toward compact, inclusive towns—town planners must educate stakeholders to avoid rigidity stifling progress.

9.2. Building lines as instrument to control land development

Building lines primarily serve:

- **Health and safety:** Ventilation/sunlight access; fire prevention/gaps; emergency access; traffic sight lines.
- **Services:** Space for utilities/engineering infrastructure; road reserves.
- **Urban design:** Attractive streetscapes; density control; private amenity.

Relaxations are appropriate where no material harm arises (e.g., no blocked views/sunlight, fire risk, services interference, or amenity loss). Here, encroachments stem from topography mitigation (stability/access), cause no adverse effects (no neighbour complaints, no environmental/safety impacts), and enable efficient site use—warranting approval per policy flexibility.

9.3. Height as instrument to control land development

Height restrictions in zoning schemes, like building lines, are long-established tools designed to achieve a balance between individual landowner rights, community welfare, and broader urban objectives. In the Knysna Zoning Scheme By-law (2020), the maximum height for a dwelling house in the Single Residential Zone I is limited to two storeys and 8,5 m above natural ground level (NGL). These controls serve several interrelated purposes:

For health, safety and amenity

- To limit overshadowing and ensure reasonable access to sunlight and daylight for neighbouring properties and public spaces.
- To preserve ventilation and airflow between buildings.
- To reduce the visual dominance of structures and maintain a human scale in residential areas.
- To mitigate wind and micro-climatic effects in hilly or exposed locations.
- To support fire safety by limiting vertical spread and ensuring that emergency services can reach upper levels effectively.

For urban design and character

- To prevent overly dominant or out-of-scale buildings that could erode the established character of low-density residential neighbourhoods.
- To contribute to a coherent streetscape and skyline, avoiding abrupt transitions in building massing.
- To reinforce a sense of place consistent with the Knysna MSDF's Policy H (foster distinctive, attractive settlements with strong sense of place).

For services and infrastructure

- To manage demand on municipal services (water pressure, sewer capacity, stormwater management) that can be strained by excessive vertical development.

- To align building mass with the carrying capacity of existing engineering networks.

Application to this case – the utility room at third level

The specific transgression under consideration is the existing utility room of approximately 18 m², integrated into the dwelling house and situated at a third level below the lower basement/second dwelling level. This configuration exceeds the zoning scheme's maximum of two storeys.

The departure sought is modest and highly site-specific:

- The utility room is small (≈18 m²) and fully contained within the overall building envelope.
- It is located below the lowest floor of the dwelling level on a sloping site, meaning it does not protrude above the main dwelling roofline or add to the visible building height when viewed from the street or neighbouring properties.
- The overall height of the structure remains well below the 8,5 m limit above NGL.
- No additional floor area is added to the dwelling's habitable space, and the room serves only ancillary/storage/utility functions.

Importantly, none of the core purposes of height control are compromised:

- There is no overshadowing, loss of sunlight, or ventilation impact on neighbours (the room is below grade).
- The visual scale and streetscape appearance remain unchanged from the existing (and long-established) built form.
- No increased demand is placed on municipal services or infrastructure.
- Fire safety and emergency access are unaffected, as the additional level is below the main living areas.
- The proposal aligns with the Knysna MSDP's emphasis on efficient use of existing developed sites and resilience to site constraints (topography-driven design).

In the absence of any material harm to amenity, safety, character, or services, and given the necessity of the configuration to achieve functional use on a constrained sloping site, the relaxation of the two-storey limit for this limited, below-grade utility space is justified. The departure is consistent with the flexibility envisaged in SPLUMA Section 28 and supports the broader policy intent of compact, context-responsive development rather than rigid application of generalised rules.

This approach ensures orderly yet practical development while upholding the underlying objectives of height control.

10. MOTIVATION

This application seeks approval for permanent departures from the Knysna Zoning Scheme By-law (2020) development parameters (Section 15(2)(b)), removal of restrictive title deed conditions (Section 15(2)(f)), and consent for the existing second dwelling exceeding 60 m² (Section 15(2)(o)), to regularise historical non-compliances and enable lawful construction of a modest garage complex (covered parking for two vehicles with entertainment room above).

10.1. Nature and Origin of the Transgressions

The encroachments and height exceedance are not the result of deliberate or willful non-compliance but necessary responses to the property's, sloping topography (as illustrated in **Annexures F1, F2**, and supporting photographs).

- Elevated decking (Transgression 1), external staircase (Transgression 3), retaining walls (Transgressions 4–7), basement-level room (Transgression 2), utility room at third level (Transgression 8), and proposed boardwalk (Transgression 11) were implemented to achieve structural stability, safe pedestrian/vehicular access, and functional use of the site.

- The second dwelling (80 m², Transgression 9) is integrated within the main building envelope and has been in existence for many years.

10.2. Absence of Material Adverse Impacts

No material adverse impacts have arisen or are anticipated from the existing or proposed development:

- No interference with neighbours' views, sunlight, ventilation, privacy, or amenity.
- No obstruction of traffic sight lines, fire access, or emergency services.
- No strain on municipal engineering services or utilities.
- No environmental degradation or increased fire risk.
- No disfigurement of the area, unsightliness, or derogation of property values (consistent with Section 7 of the National Building Regulations and Building Standards Act).
- The established residential character of Brenton-on-Sea is preserved.

These factors confirm the transgressions are of **negligible gravity and extent**, as detailed in the separate administrative penalty motivation (Section 93(9) criteria). The landowner's proactive regularisation upon discovery further demonstrates good faith.

10.3. Policy alignment and justification

The proposal is fully aligned with higher-order spatial planning frameworks (SPLUMA, NSDF 2022, Western Cape PSDF, Garden Route DSDF) and the Knysna MSDF 2020, as assessed in Sections 7–8 and Annexure K1. It promotes:

- Compact, efficient infill development within the urban edge and Urban Development SPC.
- Resilient adaptation to site constraints (topography).
- Functional, inclusive use of existing residential land without sprawl.

The hierarchical alignment principle ensures that justified departures from development parameters (**Annexure K1**) uphold these broader objectives. Rigid application of uniform parameters would undermine SPLUMA Section 28 flexibility and the MSDF's call for context-responsive, efficient settlements (Policy E1, Policy H).

10.4. Removal of Restrictive Title Deed Conditions – Compliance with LUPA Section 39

The application includes removal of Title Deed T62719/2024 conditions D.6(b) ("only one dwelling... while a second dwelling is contained in the main building") and D.6(d) (prescribed building lines of 4,72 m street, 3,15 m rear, 1,57 m sides).

In terms of **Section 39 of the Western Cape Land Use Planning Act, 2014 (LUPA)**, a municipality may remove, suspend, or amend restrictive conditions on application, subject to notice requirements (subsection (2)) and consideration of relevant factors.

Section 39(5) of LUPA requires the municipality to have regard to:

- The personal rights of any person in whose favour the restrictive condition operates.
- The interests of the community as a whole.
- Whether the condition is obsolete or unreasonable.
- The effect on surrounding properties and the neighbourhood.
- Any other relevant considerations.

Retaining control with modern land use management instruments

As contextual background, it must be noted that when this township (Brenton-on-Sea) was established in circa 1958 (per General Plan 10313/1958), modern land use control instruments such as zoning schemes or town planning schemes were not generally in widespread use in South Africa.

At that time, the Administrator of the Province (responsible for land use control) relied on restrictive title deed conditions to exert some form of oversight and shape development.

The promulgation of the **Spatial Planning and Land Use Management Act, 2013 (SPLUMA)** devolved primary authority over municipal planning (including land use management and zoning) to local authorities. Municipalities now administer comprehensive zoning schemes that provide detailed, enforceable development parameters, consent uses, departures, and enforcement mechanisms.

As foundational motivation for the removal of the relevant title conditions, it is proposed that the municipality will, by means of its Zoning Scheme By-law (2020), retain full and modern control of this facet of land use management. The zoning scheme offers a far more flexible, transparent, and adaptive framework than outdated title conditions, allowing site-specific departures (as sought here) while ensuring orderly development aligned with the Knysna MSDF and higher-order policies.

Given the array of modern town planning control measures available to authorities (e.g., zoning parameters, consent uses under Section 15(2)(o), departures under Section 15(2)(b), and administrative penalties under Section 93), employing conditions of title as a measure of controlling land use is old-fashioned and rather impractical. Other than conditions protecting specific rights of named beneficiaries, the removal of these types of restrictive conditions of title will thus have no negative influence on the control of urban development.

Remove or amend the title conditions?

From the analysis of the encroachments earlier in this report, it is clear that amending title condition D.6(d) relating to building lines in a manner that would accommodate the existing and proposed encroachments would result in an amended Title Deed that would probably be so complicated (with multiple site-specific relaxations, measurements, and exceptions) that the Registrar of Deeds may reject it. If this happens, the municipality would be faced with a decision that cannot be implemented, creating unnecessary administrative burden and potential liability.

As mentioned before, removing the condition(s) is without risk: full control of this aspect of land use will be retained by means of the Zoning Scheme By-law (2020), which provides for building line relaxations, departures, and consent uses where justified and low-impact. Removal is therefore the practical, efficient, and preferable option.

Assessment against Section 39(5):

- **Personal rights of beneficiaries:** No identifiable private beneficiaries hold personal rights under these conditions; they are standard township restrictions for general planning purposes, with no evidence of current enforcement or prejudice to third parties.
- **Interests of the community:** Removal advances orderly regularisation, compact settlement form, and resource efficiency (MSDF Policy E1; SPLUMA principles).
- **Obsolete or unreasonable:** The conditions are effectively obsolete in this context, conflicting with contemporary zoning provisions and no longer serving a useful purpose given the site's constraints and lack of adverse impacts.
- **Effect on surrounding properties and neighbourhood:** Removal will have no material effect (no views/sunlight/privacy interference, no value derogation, no complaints received).
- **Other relevant factors:** Spatial justice, sustainability, and resilience support removal, facilitating resilient adaptation to natural site features without environmental harm.

Municipal public participation (per Section 44 of LUPA and municipal processes) will provide opportunity for comment. The absence of complaints over time supports negligible impact.

10.5. Consent for Second Dwelling >60 m² – Section 15(2)(o)

The Knysna Zoning Scheme By-law (2020) defines a “dwelling house” to include one second dwelling unit not exceeding 60 m² as of right. A second dwelling exceeding 60 m² requires consent use under

Section 15(2)(o). The existing integrated second dwelling measures approximately 80 m² and is fully contained within the main building envelope.

Consent is motivated as follows:

- The second dwelling is an historical, integrated component of the main structure, not a separate freestanding unit, minimising visual bulk and land take.
- It has been in place for many years with no reported complaints or observable negative effects on neighbours, amenity, or the neighbourhood character.
- The additional 20 m² does not materially increase demand on municipal services, infrastructure, or parking, nor does it alter the property's single-residential character.
- The proposal aligns with the Knysna MSDF 2020's emphasis on compact, efficient settlement form (Policy E1) and inclusive housing options within existing urban areas. It supports higher densities on developed sites without sprawl or environmental impact.
- Removal of title condition D.6(b) (sought concurrently under Section 15(2)(f)) removes the legal barrier to consent, ensuring consistency between zoning and title deed provisions.
- The modest size increase (80 m² total) is proportionate and common in modern residential contexts where integrated second dwellings provide flexible family accommodation without compromising residential welfare.

Consent under Section 15(2)(o) is therefore appropriate, low-impact, and consistent with policy objectives for efficient, resilient, and inclusive residential development.

10.6. The urban fabric and amenity of the neighbourhood

The urban fabric of Brenton-on-Sea is characterised by a low-density, single residential suburban pattern with predominantly detached dwelling houses on erven of similar size (around 1 000–2 000 m²), set within a hilly, vegetated coastal landscape. The area exhibits a relaxed, semi-rural residential character with generous setbacks, natural vegetation, and limited formal streetscaping.

The existing and proposed development on Erf 102 is entirely consistent with this urban fabric:

- The dwelling house, integrated second dwelling, decking, staircase, retaining walls, and proposed garage/entertainment complex remain within the single residential use class and do not introduce any new or incompatible land uses.
- The modest scale of the garage addition (covered parking for two vehicles plus small entertainment room above) does not alter the overall building massing or roofline when viewed from the street or neighbouring properties.
- Topography-responsive elements (elevated decking, retaining walls, below-grade utility room) are typical responses to the sloping terrain found throughout Brenton-on-Sea and contribute to a natural, site-sensitive built form rather than a rigid, flat-land imposition.
- The proposal preserves open space, vegetation buffers, and private outdoor areas, maintaining the area's sense of spaciousness and privacy.

With regard to amenity, the development upholds and, in some respects, enhances neighbourhood amenity:

- No loss of sunlight, ventilation, or scenic views for adjoining properties (structures are either below natural ground level or follow the contour without protruding excessively).
- No increase in noise, activity, or overlooking that would affect residential peace.
- The garage/entertainment room addition provides functional family space without generating additional traffic or visitor numbers that could disrupt the quiet residential environment.
- Regularisation of existing structures eliminates any legal uncertainty, contributing to long-term neighbourhood stability and confidence.

In terms of the Knysna MSDF 2020's Policy H ("Foster distinctive, attractive settlements with strong sense of place"), the proposal respects and reinforces the authentic, context-responsive character of Brenton-on-Sea by allowing practical adaptation to natural site conditions rather than enforcing impractical uniformity. The urban fabric remains cohesive, the amenity of the neighbourhood is protected, and the proposal contributes positively to a sustainable, liveable residential environment.

10.7. Interests of the neighbours

The interests of neighbours (including amenity, privacy, views, sunlight, ventilation, and property values) are a core consideration under LUPA Section 49 (desirability) and municipal public participation requirements. In this case:

- No interference with views, sunlight, ventilation, or privacy is anticipated or has occurred (structures are below-grade or topography-contoured; no bulk increase visible from adjacent properties).
- No complaints have been received despite long-standing existence of the transgressions.
- The modest garage addition and regularisation do not introduce new visual dominance or overshadowing.
- Property values are not derogated (consistent with Section 7 of the National Building Regulations); the proposal preserves/enhances residential character in Brenton-on-Sea.
- Public participation (municipal notification) will allow neighbours to comment, but evidence supports negligible prejudice

10.8. Impact on engineering services

LUPA and SPLUMA emphasise efficient land use with minimal strain on infrastructure (water, sewer, stormwater, electricity, telecommunications).

- No municipal engineering services are affected or encroached upon (no interference with water/electricity/sewage/telecom lines or reserves).
- The second dwelling (80 m²) and garage addition are integrated into existing structures with no significant increase in demand (low additional load on services).
- Topography-driven retaining walls/decking do not disrupt stormwater flow or utilities.

The proposal optimises existing developed land without requiring new bulk infrastructure.

10.9. Impact on fire prevention

Fire safety is critical in Knysna (post-2017 fires context), with controls ensuring gaps for firefighting access, reduced fire spread risk, and compliance with SANS 10400-T (fire protection).

- No increased fire risk: encroachments are minor, do not reduce building separation gaps materially, and do not block emergency access routes.
- Retaining walls and elevated structures do not create fire traps or impede firefighters (access remains via existing paths/road).
- The utility room (below-grade) and garage addition pose no additional vertical spread risk.
- The site's topography actually aids natural fire breaks in some aspects (slopes), and no flammable material accumulation is involved.

Overall, fire prevention objectives are upheld without compromise.

10.10. Impact on roads and traffic

Considerations include traffic generation, access safety, sight lines, parking, and road reserve impacts (Knysna Zoning Scheme Section 45 on vehicular access).

- No increase in traffic volume or intensity (residential garage for two vehicles; second dwelling already occupied).
- No obstruction of sight lines at intersections (Watsonia/Gladiolus Avenue).
- Existing access points remain unchanged; proposed garage integrates with current driveway.
- No encroachment on road reserves or planned widenings.
- Pedestrian/vehicular safety is maintained or improved (boardwalk/external staircase facilitates safe slope navigation).

The proposal has negligible traffic/road impact.

10.11. **Desirability**

Desirability is the overarching test (LUPA Section 49; Knysna By-law requirements), assessing compatibility with surrounding uses, SDF/MSDF alignment, impacts, and public interest.

- **Compatible and desirable:** The development remains Single Residential Zone I, consistent with Brenton-on-Sea's established low-density residential character. Regularisation enables efficient use of sloped land without changing use or introducing incompatible activities.
- **Policy support:** Aligns with Knysna MSDF (compact form, resilience to topography, urban-edge infill), SPLUMA principles (efficiency, sustainability), and higher SDFs (densification, flexibility).
- **Positive outcomes:** Facilitates family accommodation (second dwelling), functional additions (garage/entertainment), and full compliance without sprawl or environmental harm.
- **No negative externalities:** As detailed above, no adverse effects on neighbours, services, fire safety, traffic, or character.
- **Public interest:** Promotes sustainable, resilient development on existing sites, supporting broader goals of equitable housing and resource efficiency.

11. **CONCLUSION**

The departures are minor, site-specific, and proportionate. The proposed garage complex is modest and integrates with the existing dwelling without altering the built form's visual profile or amenity. Regularisation, including consent for the second dwelling, will bring long-standing structures into full compliance, facilitate lawful future development, and align with national, provincial, district, and local policy imperatives for efficient, resilient, and inclusive urban growth.

It is respectfully submitted that the Municipality approve:

- The permanent departures under Section 15(2)(b) as detailed in Section 2.1 and 2.2.
- Removal of title deed conditions D.6(b) and (d) under Section 15(2)(f), in compliance with Section 39 (including subsection (5)) of LUPA.
- Consent for the existing second dwelling under Section 15(2)(o).

Approval will enable expeditious building plan submission and construction while upholding the principles of sustainable, equitable land use management.



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